# CITY OF PORTLAND, MAINE

# PLANNING BOARD

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

**AGENDA**
**PORTLAND PLANNING BOARD MEETING**

The Portland Planning Board will hold a meeting on Tuesday, February 18, 2020, 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**.

**1. ROLL CALL AND DECLARATION OF QUORUM**

**2. COMMUNICATION AND REPORTS**

**3. REPORT OF ATTENDANCE AT THE MEETING HELD ON FEBRUARY 11, 2020**

i. Attendance will be posted as soon as it is received.

**WORKSHOP - 4:30 PM**

i. ReCode (estimated time 4:30 p.m.) The Planning Board will hold a workshop to review drafts of Articles 8 (Overlay Zones), 9 (Form-Based Zones), 10 (Waterfront Zones), 11 (Shoreland Zone), and 12 (Floodplain Zone) of the ReCode. At the meeting, staff will also present revisions to Articles 1-7, based on Planning Board and public feedback received at the last Planning Board workshop on this topic.

**** THERE WILL BE NO PUBLIC HEARING PORTION OF THIS MEETING ****

# MEMORANDUM
# PLANNING AND URBAN DEVELOPMENT DEPARTMENT
# PLANNING DIVISION

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|---|---|
| **To:** | Sean Dundon, Chair, and Members of the Portland Planning Board |
| **From:** | Christine Grimando, Director |
| | Nell Donaldson, Director of Special Projects |
| | Matt Grooms, Senior Planner |
| **Date:** | February 14, 2019 |
| **Re:** | ReCode Update |
| **Meeting Date:** | February 18, 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 Fall of 2019, Planning staff completed a first draft of the new land-use code as envisioned under Phase I and initiated the public review process. This review is framed around a series of special Planning Board meetings dedicated to ReCode, where the Board sequentially reviews between three and five new articles of the draft code at a given time, as well as proposed edits into previously reviewed articles, based upon feedback from the Board, public and other City departments.

To date, the Planning Board has held two workshops, to consider and provide feedback on the first seven of the anticipated 23 articles that will make up the new land-use code. These articles include; *Introductory Provisions*, *Administration*, *Definitions*, *Non-Conforming Uses and Structures*, *Zones, Use Standards*, and *Dimensional Standards* and together establish the authority of the document and review bodies, general definitions, parameters for the continuation of existing uses and structures, and the basic framework for the city's zoning.

At this third workshop, the Planning Board will continue its iterative review of the land-use code, and provide initial feedback on Articles 8-13, which consist of *Overlay Zones*, *Form-Based Zones*, *Waterfront Zones*, *Shoreland Zone*, *Flood Plain Management* and the *Resource Protection Zone.* These articles, while considered components of zoning, exist outside of the three primary zoning articles (those reviewed at the January workshop) on account of either their format, complexity, or ties to state statute that would complicate a more seamless incorporation into those primary zoning articles.

For more information on the ReCode process, or to review and comment on the draft document, please visit the ReCode website. Public comments may also be submitted through email to planningboard@portlandmaine.gov.

## II. GENERAL FEEDBACK ON PROCESS

Since adoption of *Portland's Plan 2030* in 2017, Planning staff have focused on the restructuring of the city's land use code to create a more streamlined, functional, and consistent document that is easier to interpret, administer, and amend. Through changes to format, elimination of redundancies, and where prudent, consolidation of like standards or elimination of unnecessary, confusing, or outdated language, the Land Use Code has been reduced in length by more than 500 pages and has gained an organizational clarity lacking in the current code.

While the intent and substance of much of the existing Land Use Code has been maintained in the draft, ReCode is not an effort to amend that document, but rather to create an entirely new product. By virtue of its significant reorganization of content, there have been both organizational and substantive changes made to the existing code, including consolidation, elimination, and addition of language. The process has also involved the introduction of some early policy initiatives.

In prior memos, staff attempted to broadly categorize the types of edits that have been incorporated into the draft, highlight the major structural changes to the code, and focus in more detail on the substantive policy changes that are being proposed. At the January 21st workshop, both the Planning Board and members of the public requested additional public information around proposed changes to the code, and suggested that staff prepare either a redlined version of the document or a compendium of all substantive changes, so as to highlight key differences between the existing code and this draft. The Planning Board also recommended that staff develop an FAQ page for the ReCode website to help answer general questions and provide a more direct response to members of the public on how public comments are being used to shape this document.

In response, the packet of material prepared for the February 18th workshop and all subsequent meetings will feature a more thorough compendium of changes, including areas where the code has been clarified, language has been consolidated, language has been eliminated, or in select instances, a more substantive policy change has been made. This overview of changes for Articles 1-13 is included as *Attachment 1*. Similarly, a spreadsheet has been developed to track public comment received for both prior versions of the public comment document, which outlines staff's response to questions, comments, or suggestions provided during the public comment period *(Attachment 2)*. In addition, the ReCode website has now also been updated with an FAQ page, which provides answers to commonly asked questions. Staff will be seeking feedback from the Planning Board on the effectiveness of these approaches at this next workshop.

## III. RECODE: REVISIONS TO ARTICLES 1 to 7

At the January 21st Planning Board workshop, staff heard comments from the Board and the public on not only the process and methodology used to convey changes as described above, but also on the document's content, formatting, and organization. Using this feedback, staff have incorporated a number of edits into Articles 1-7, which are clearly visible as redlined text in the updated version *(Attachment 4)*. Many of the proposed edits are a direct response to pointed feedback. However, a number of other edits are not tied directly to any particular comment or suggestion, and are instead the result of staff's internal drafting and review process, which involves repeated comparison of the existing code against the draft text and refinement of both the document's content and organization. Last, at the January workshop, the public and the Board raised concerns regarding a number of proposed changes. As a result, some language that had previously been struck during the rewrite has now been reinstated.

A summary of edits, points of discussion, and topics for future consideration related to Articles 1-7 is discussed below. Please note that this list is not exhaustive, but attempts to capture vast majority of feedback received.

1. **Minor clean-up based on Board/Public Feedback**: Many of the proposed edits to Articles 1-7 are minor in nature. For example, staff has replaced state statute citations, clarified the abbreviation of 'Area Median Income', and replaced 'his/her' with 'their'.

2. **Document Structure and Format:** A few of the comments received related to the organization of the document and its interface. For example, one member of the Planning Board requested that the Table of Contents be broken out further to improve navigability. Similarly, one member of the public questioned why definitions related to signage were so prevalent in that chapter. In response, the table of contents has been modified to reflect more of the document hierarchy, and definitions related to signs have now been relocated to the Signs article.

3. **Content Changes based on Board/Public Feedback:** At the January workshop, some of the feedback received resulted in more substantive amendments to existing or proposed policy. For example, one member of the Planning Board requested clarification on the Rule of Measurement related to 'Fractions', which resulted in that rule being eliminated. This was a new rule being introduced, that was perceived to impact how certain measurements are calculated, with the examples cited being setbacks and building height. Moving forward, rules for fractions will be evaluated on a case by case basis, as is currently practiced.

   Zone purpose statements were flagged in a number of public comments, in particular, language that had been removed from the R-6 and B-6 zones related to small lot infill development standards and recommendations for future development standards for the B-6 zone. Initially, staff felt that this text was unnecessary, given that small-lot infill development standards were removed from the R-6 zone in 2015, and that the City has the authority to establish design standards regardless of the purpose statement language. However, members of the public ascribed significant importance to this language, and for this reason, much of this language has been reintroduced.

   At the January workshop, staff attempted to codify existing practice for measuring building height based upon average post-development grade. To do this, a definition for average grade was added, and the definition for height was revised to state that height is measured from average grade for development not located on the islands. Members of the public were concerned that this definition would allow a developer to grade a site such that a building could be made taller than would otherwise be permitted. In response, staff removed both the average grade definition and reference to average grade in the height definition.

4. **Topics for Future Consideration – R-6 Dimensional Changes:** In concert with a separate effort to amend the R-6 design standards, at the January workshop staff included a tie-in change to the R-6 dimensional requirements, limiting building widths based upon stories and the number of residential units. Members of the public and the Planning Board voiced a concern that the R-6 design changes were being conflated with the rest of ReCode, and also that there should be a more robust public process to discuss those changes. In light of this feedback, staff are tabling discussion of the R-6 design changes and are in the process of discussing the best format for additional public outreach on the topic of the R-6 zone more broadly. Similarly, the building width requirement has been removed from this draft. It should be noted that staff has received some public comment in support of the inclusion of a building width standard for the R-6 zone at this time.

5. **Alternative Energy:** At present, wind energy systems are broken out into one of ten separate categories based upon either the structure's height or its mounting form (freestanding or roof mounted), are allowed as either accessory or principal uses and are permitted either by-right (building permit), permitted under site plan review, or permitted as a conditional use (ZBA). These provisions are supplemented by a series of performance and dimensional standards that often overlap with other applicable regulations, such as those of the site plan ordinance. Solar energy systems, while not as complicated as wind energy systems, still feature five separate categories of form and a similarly complex permitting scheme.

   Given the complexity of these regulations, staff found it infeasible to cleanly transfer this framework intact into the draft code, and are instead proposing that the regulations be simplified. For example, in the case of

wind energy, the new framework does not significantly differentiate between roof-mounted or ground-mounted wind energy systems, and treats all such development as conditional uses. The proposed framework for solar energy systems meanwhile, maintains all of the existing area thresholds, but instead eliminates the 'dual-use' category, previously used to describe, for example, a parking deck with solar, as this form is effectively captured under roof-mounted solar. Staff recognize that these changes result in a policy shift and are seeking feedback on this approach.

6. **B-2 Drive-Through Amendment**: In the time since Articles 5-7 were released to the public in December, the City Council approved a text amendment to the B-2 zone, which allows drive-throughs only where such accessory use is coupled with a residential use consisting of three or more residential units. This text has now been added to the draft.

7. **Topic for Future Consideration - Accessory Dwelling Units (ADUs):** At the last workshop, staff heard feedback from the non-profit affordable housing group HomeStart and one member of the Planning Board that they were supportive of staff removing the affordability and deed restriction requirement for ADUs on Peaks Island. Staff are requesting that the Planning Board weigh in at this next workshop with direction on this approach.

## III. RECODE: OVERVIEW OF ARTICLES 8 to 13

This workshop includes an introduction to Articles 8 to 13 of the ReCode: *Overlay Zones, Form-Based Zones, Waterfront Zones, Shoreland Zone, Floodplain Management* and *Resource Protection Zone* (*Attachment 5*), which function as supplemental zoning chapters.

### A. Article 8: Overlay Zones

In the existing code, treatment of overlay zones is inconsistent, with some overlay zones being housed within the regulations for a particular zone, whereas others are laid out as an independent set of regulations. This article compiles all overlay zones and associated regulations into one location. Given the vast discrepancies between the various overlay zones, this article does not attempt to standardize formats for overlay zone requirements, as was done in the use and dimensional articles, and instead presents each overlay zone individually in alphabetical order. Substantive changes include elimination of the Flexible Housing Overlay, which does not appear on the current zoning map (along with associated definitions under Article 3); elimination of retroactive language within the Fort Sumner Park Overlay zone, which is no longer relevant; relocation of R-7 design standards to the City's Design Manual; and an update to the list of allowable uses in the PAD Overlay Zone, which have been revised so as to be consistent with updated terminology established for the use article.

### B. Article 9: Form-Based Zones

Unlike traditional zoning, a form-based code does not rely on typical use or dimensional requirements as can be found in Euclidean style zoning. Instead, a high-quality built form is prescribed through detailed design parameters which serve as the basis for ensuring compatibility between abutting development. Given this unique regulatory structure, it is impossible to effectively condense and present the India Street Form Based Code within either the use or dimensional articles. For this reason, a separate Form Based Zones article has been included, which carries over the existing regulations for the IS-FBC largely intact. The only substantive changes include updates to the list of prohibited uses, so that these use terms are consistent with the revised terminology found in the use article.

### C. Article 10: Waterfront Zones

At present, the waterfront zones are included as traditional sections of the zoning ordinance, and include regulations primarily on the basis of use, dimensional, and performance standards. While technically these characteristics should enable transfer of these regulations into the use and dimensional articles, staff are

cognizant of the fact that our waterfront zones are among the most complex and highly regulated zones within the city. For example, there are a substantial number of uses permitted only within waterfront zones, which would completely alter the look and efficiency of use tables. All three waterfront zones feature unique dimensional restrictions and limitations on both use and development intensity according to geographic location within the zone that would be very difficult to capture in either use or dimensional tables. Given the complex nature of these zones, staff have proposed leaving the regulations for the three waterfront zones entirely untouched. In support of this approach, staff have added a brief introduction to this article, which outlines the rationale for this choice.

D. **Article 11: Shoreland Zone**
Shoreland zoning regulations are mandated by state statute, and must be consistent with requirements laid out by Maine DEP. In effect, the Shoreland Zone functions as an overlay zone, and further regulates development within close proximity to the water's edge to mitigate environmental impact of such development. Any amendment to municipal shoreland zoning regulations must be reviewed and approved by Maine DEP, and therefore, it is logical to maintain the shoreland zoning regulations as a separate article. Staff anticipates a full update of the city's shoreland zoning as a part of Phase II of ReCode. As a result, only minor changes to address typographical errors are proposed at this time.

E. **Article 12: Floodplain Management**
The floodplain management article provides supplemental regulations for all development located within special flood hazard areas as defined by FEMA and outlines the process and requirements for securing a flood hazard area development permit. Staff has relocated the definition of 'gross area' to this article, given its reference to floodplain, and made some minor modifications to accurately reflect the review process. Otherwise, no substantive changes are proposed to this set of regulations.

F. **Article 13: Resource Protection Zone**
The Resource Protection Zone is an existing zone within the City that generally coincides with areas that fall within either the Shoreland Zone or within flood zones, and strictly limits development to very low impact uses related to recreation, scientific research, and education. In anticipation of a future effort to update Shoreland Zone-related provisions, the Resource Protection Zone regulations have been extracted out of traditional zoning and converted into a new stand-alone article without significant alteration.

## V. PUBLIC COMMENT

As noted above, public comment on the drafts of Articles 1-7 is included in *Attachment 3*. A total of 109 public comments were submitted using the web-based document review platform, which provide feedback on the document's structure and organization, as well as on its content. Much of the comment received focuses on existing policy which has been carried forward into the new document and such comments are being catalogued for future discussions as we proceed into Phase 2. Other comments requested a more thorough description of changes between the existing code and this draft, which staff are outlining in a separate spreadsheet which will be included as an attachment to this memo. The last set of comments were largely focused on R-6 dimensional requirements, which while existing policy, saw increased attention on account of the separate but concurrent effort to update the R-6 design standards and establish a new building width requirement within the dimensional article. Based upon feedback received at the January workshop, updates to the R-6 zone are being postponed, and so going forward, staff suggest no change to existing policy. Please see *Attachment 2,* which outlines staff's responses to the comments received for more information.

Two new general public comments were received since the January workshop, and to date, a total of 46 public comments have been submitted on the ReCode effort. The two most recent comments both pertain to the R-6 dimensional and design changes presented at the January workshop. As stated above, staff has tabled efforts to

update the design criteria for the R-6 zone, and have removed the R-6 building width requirements from the newest version.

## VI. NEXT STEPS

In addition to incorporating feedback from this workshop, staff will continue to gather public comment on the revised drafts of Articles 1-7 and the draft Articles 8-13 as presented here via the ReCode website. Staff anticipates returning to the Planning Board with revisions to Articles 1-13 and drafts of the next slate of articles on March 17, 2020.

## VII. ATTACHMENTS

1. Compendium of Changes to Articles 1-13
2. City Responses to Public Comment 1-7
3. Public Comment on Articles 1 - 7
4. Revised Draft ReCode, Articles 1-7
5. Draft ReCode, Articles 8-13
6. Public Comment (Received by email)

| OVERVIEW OF RECODE EDITS | | | |
|---|---|---|---|
| **Article** | **ReCode Section/Subsection** | **Existing Code Reference (if relevant)** | **Change** |
| **1 Introductory Provisions** | **1.3, 1.7, 1.8** | | Added purpose, delegation of authority, rules of interpretation provisions. |
| | **1.5** | **Article III, Div. 1, 22, 26.5, 27; Article V; Article VIII** | Consolidated enforcement provisions from across existing code. |
| | **1.6** | **Article III, Div. 1** | Added language to clarify relationship with other laws provisions. |
| | **1.9** | **Article III, Div. 1** | Added language to clarify amendment procedure. |
| **2 Administration** | **2.1.8, 2.2.6, 2.3.7** | **Article II; Article VI; Article IX, Div. 2** | Consolidated noticing language for meetings of all boards, updated to comply with state law and current practice. |
| | **2.1.10, 2.2.8, 2.3.9** | **Article II; Article III, Div. 27 & 28; Article VI; Article IX, Div. 2** | Modified jurisdiction provisions to clarify roles, reflect current practice (e.g. eliminated references to 'urban renewal plans' from Planning Board and development of plaque system and Council reporting requirements from HP Board. Added CLG reference to HP.) |
| | **2.1.11, 2.3.10** | **Article III, Div. 28; Article V** | Consolidated and clarified administrative appeal procedures for Planning Board and ZBA. |
| | **2.2.2, 2.2.4** | **Article IX, Div. 2** | Updated HP Board term limits to align with Chapter 2 and eliminated two year limit on board chair. |
| | **2.3** | **Article III, Div. 27 & 28; Article VI** | Updated ZBA provisions to reflect current law, clarify variance language. |
| **3 Definitions** | | **Across all articles** | Modified definitions to bring in alignment with other parts of code/state law (e.g. impervious surface, bed and breakfast, lodging house, rooming unit, PRUD, special needs independent dwelling unit, structure) |
| | | **Across all articles** | Consolidated redundant definitions where appropriate (e.g. dwelling unit, lot, street) |
| | | **Across all articles** | Added definitions to clarify where currently undefined (animal-related services, appurtenance, communication studio, repair services, tasting room, telecommunication tower) |
| | | **Article III, Div. 1** | Modified definitions to add definitional language from 'Use' (intermediate care facility, sheltered care group home, retail) |
| | | **Across all articles** | Added definitions where definitional language exists elsewhere in code (e.g. agriculture, airport restricted access areas, correctional pre-release facility, mulitplex, PUD, repair services, sounds) |
| | | **Article III, Div. 1** | Eliminated commonly defined or outdated definitions (e.g. adult day care facility, chemical free night club, health care practitioner, engineer, tourist home, nanotechnology, non-profit organization) |
| | | **Across all articles** | Integrated definitions with specific applications into text of relevant article (e.g. eligible project, temporary parking, 'shoreland zone,' gross area) |
| | | **Article III, Div. 1** | Added/modified definitions to address consolidated like uses (e.g. hotel-related, service-related, office-related, auto service station-related, preschool-related, warehousing-related, cultural facilities) |
| | | **Across all articles** | Moved definitions to Article 3 from elsewhere in code where appropriate (e.g. building alteration, building addition, accessory and principal buildings) |
| **4 Nonconforming Uses, Structures, & Lots** | **4.2.1 & 4.2.2** | **Article III, Div. 23** | Clarified language around determination of non-conforming uses (e.g. struck references to building design in determination of nonconforming uses) |
| | **4.2.4 & 4.4.1** | **Article III, Div. 23** | Added language clarifying regulations around timelines (e.g. discontinuance of accessory uses, extensions of structure- and lot-related nonconformities in cases of use extensions; broadened timelines for reconstruction of non-conforming structures) |
| | **4.3.1** | **Article III, Div. 23** | Restructured lots of record language for clarity. Added clarity regarding lawfulling nonconforming structures on developed lots of record. |
| | **4.4.1** | **Article III, Div. 23** | Eliminated reference to rebuilding in the R-6 under the small lot provisions as these provisions no longer exist. |
| | **4.4.5** | **Article III, Div. 23** | Modified applicability for non-conformities as to number of dwelling units (modified date and expanded list of zones to include R-5, R-6, and B-2) |
| **5 Zones** | **Tables 5-B to 5-G** | **Article III** | Eliminated purpose statement language not related to purpose (e.g. PRUD design language in R-3/R-5, repeating performance standards in I-L and I-M, setback excetions for additions in B-1, frameworks for other standards in B-6 and B-7) |
| | **Tables 5-B to 5-G** | **Article III** | Updated language to reflect consolidated uses (e.g. general offices in the O-P and R-P) and to strike language related to uses that are not currently permitted (e.g. hospitals in I-H) |
| | **Table 5-D** | **Article III, Div. 9** | Consolidated B-1 and B-1b zones. Simplified and clarified associated use and dimensional provisions in Articles 6 and 7. |

| OVERVIEW OF RECODE EDITS | | | |
|---|---|---|---|
| **Article** | **ReCode Section/Subsection** | **Existing Code Reference (if relevant)** | **Change** |
| | **6.1, 6.2, 6.3, 6.6, 6.7** | **Article III; Article III, Div. 24;** | Added applicability, determination of use, and change of use language, accessory use general guidelines, temporary use general guidelines, based on existing policy if applicable. |
| | **6.2.2** | **Article III** | Eliminated specific prohibited use language which exists intermittently in favor of general language. |
| | **Tables 6-A to 6-F** | **Article III** | Added floor area limits for services, offices, and retail. Modified floor area limits for places of assembly. Moved other dimensional-related language to Article 7 where feasible. |
| | **Tables 6-A to 6-F** | **Article III** | Consolidated like uses (e.g. hotel-related, service-related, office-related, auto service station-related, preschool-related, warehousing-related, cultural facilities). |
| | **Tables 6-A to 6-F** | | Added parks and open space as permitted use across zones (permitted intermittently at present), telecommunication towers where allowed in practice. |
| | **Tables 6-A to 6-F; 6.4; 6.5** | **Article III** | Eliminated language which targets populations or uses protected under law (e.g. 'manufactured housing' as isolated single-family use; exclusion of certain populations from sheltered care group homes; prohibition on 'addiction treatment' clinics). |
| | **Tables 6-A to 6-F** | **Article III** | Eliminated use restrictions which run counter to policy directives around ADUS (e.g. limitations on two-family in R-4, R-5, R-6) |
| | **Tables 6-C, 6-E** | **Article III** | Clarified provisions for self-storage as permitted/conditional use. |
| | **6.4, 6.5.6** | **Article III** | Consolidated use standards where minor variations exist across zones (auto- and boat-related uses, drive-throughs, preschools as conditional use, off-street parking in mixed use zones, utility substations, SF limits on industrial uses in B-6 zone; off-street parking; solar energy systems; wind energy systems) |
| | **6.4, 6.5.6** | **Article III** | Eliminated provisions that introduce administrative burdens (e.g. deed restrictions SNIDUs, lease term limits for surface parking) |
| | **Tables 6-A to 6-F** | **Article III** | Eliminated some one-off provisions for purposes of consistency (e.g. maximum lot areas for multiplexes and SNIDUs in some zones, selective places of assembly in some zones) |
| | **6.6** | **Article III; Article III, Div. 24;** | Consolidated accessory use regulations (e.g. ADUs, drive-throughs, antennas and discs) and added accessory use regulations for tasting rooms |
| **6 Use** | **6.8** | **Article III** | Consolidated performance standards where minor variations exist across zones (e.g. noise standards, outdoor effects, outdoor storage, waste disposal, storage of vehicles) |

| OVERVIEW OF RECODE EDITS | | | |
|---|---|---|---|
| **Article** | **ReCode Section/Subsection** | **Existing Code Reference (if relevant)** | **Change** |
| **7 Dimensional** | **7.1** | | Added applicability. |
| | **7.2** | | Added rules of measurement where no rule currently exists for purposes of clarity(e.g. building footprint, landscaped open space ratio, lot coverage). |
| | **7.2** | **Article III, Div. 1, 15.2, 22** | Clarified rules of measurement based on existing practice (setback, stepback, street frontage, revisions to clarify 'structure' v. 'building'). |
| | **Tables 7-A to 7-H** | **Article III** | Generalized standards across zones where appropriate (e.g. average depth of front yards for front setback in residential zones, maximum front setback from all frontages in mixed use zones). |
| | **Tables 7-A to 7-H** | **Article III** | Eliminated some one-off standards for purposes of consistency (multiplex density based on street frontage in R-5; FAR regs for R-P, B-4; minimum lot width for B-4) |
| | **Tables 7-A, 7-D** | **Article III** | Simplified minimum lot area for places of assembly by consolidating into two classes based on floor area. |
| | **Tables 7-A, 7-D** | **Article III** | Modified qualifying floor area for detached accessory structures to 250 SF. |
| | **Tables 7-A to 7-H** | **Article III** | Generally eliminated dimensional references to adjacent residential zone (e.g. I-B, B-4 FAR, R-P impervious surface ratio). |
| | **Table 7-E** | **Article III** | Eliminated obsolete language (e.g. references to B-5 between Forest and Franklin, as no longer exists). |
| | **Table 7-E** | **Article III** | Modified regulations for purposes of consistency (e.g. B-4, currently framed as residential in nature; B-2 density update, currently less dense than B-1) |
| | **Table 7-E** | **Article III, Overlay maps** | Consolidated height-related standards to height overlay maps, where they exist (e.g. B-3, B-6, B-7). |
| | **7.4** | **Article III, Div. 25; Article X** | Clarified corner clearance and fence standards, consolidated dimensional standards for alternative energy. |
| | **7.5.1** | **Article III, Div. 25** | Updated height exceptions to clarify approach to structures which are currently unregulated (e.g. telecommunication towers, deck railings as rooftop appurtenances) |
| | **7.5.5 & 7.5.6** | **Article III, Div. 25** | Updated setback and stepback exceptions to clarify and reflect current practice (eg. to allow bay windows and balconies to project up to two feet), consolidated setback exceptions in R zones. |
| **8 Overlay Zones** | **8.1.4** | **Article III; Design Manual** | Consolidated R-7 design standard language to Design Manual. |
| | | **Article III, Div 4.5** | Eliminated Flexible Housing Overlay Zone. |
| | **8.3** | **Article III, Div. 7** | Eliminated obsolete language from Fort Sumner Overlay (e.g. retroactive clause). |
| | **8.8** | **Article III, Div. 12** | Updated uses in PAD Overlay to match updated use provisions. |
| **9 Form-Based Zones** | **9.1.7** | **Article III, Div. 15.2** | Updated uses to match updated use provisions. |
| **10. Waterfront Zones** | **10.1** | | Added introductory language to clarify interpretation of article. |
| **11. Shoreland** | **11.3** | **Article III, Div. 26** | Relocated language for review process related to entire article. |
| **12. Floodplain Management** | **12.4 & 12.5** | **Article III, Div. 26.5** | Added language to clarify process (e.g. timeline for Flood Hazard Permits, certificates of compliance, role of DPW, submittals) |
| **13. Resource Protection Zone** | **13** | **Article III, Div. 19** | -- |
| **In general** | | **Article III, Div. 1; Article IV; Article V; Article IX** | Consolidated fees in separate fee schedule |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #1 (Articles 1-4)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Functionality | 1 | 0. Table of Contents | N/A | I love how you can click on the Chapters and jump to the chapter! Soooooo much better. | |
| | 7 | 2. Administration | 2.3.10.D | 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" | Staff are continuing to evaluate the use of dynamic links in the text, similar to what is found now in the draft document. We recognize that the majority of users will interact with this document on-line and that such functionality would improve usabilty. |
| | 8 | 2. Administration | 2.3.10.D | 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. | Definitions referenced in this comment can be found within Article 7, 'Dimensional' as they are considered 'Rules of Measurement'. |
| | 9 | 3. Definitions | 3 | 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 elsewher | The Definitions article is designed such that, in the future, it will function as part of a unified development code, where all articles are coordinated to form one cohesive document with very limited or no overlap. Under that model, as many definitions as possible would be located here within the Definitions article.<br><br>Given that Phase 1 involves adaptation of the existing document (not a unified development code) to this new format, there are unavoidable instances where such a seamless transition would likely be considered too confusing. For example, certain definitions related to 'floodplain', 'historic preservation' and 'subdivision' are unique to those articles, and not featured elsewhere in the code. Similarly, certain terms, such as 'lot' or 'street' are defined differently depending upon the article within which they are defined.<br><br>For these reasons, general definitions are all located within the Definitions Article, and unique definitions are located within their respective Article. |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #1 (Articles 1-4)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Existing Policy and Discussion Points for Phase 2 | 2 | 1. Introductory Provisions | 1.3 | To what extent will the City Council's recent declaration of a climate emergency inform the new Land Use Code? | Land use policy is a critically important tool to curb emission of greenhouse gases, and is recognized as such within Portland's Plan 2030 and as well in the joint climate action plan, 'One Climate Future' between Portland and South Portland. While Phase 1 does not specifically target policies with climate implications, we are suggesting two sets of climate-friendly substantive change to existing policy; a complete revamping of Portland's Accessory Dwelling Unit (ADU) provisions as an incremental approach to increasing density city-wide, and revisions to our off-street parking standards, to reduce parking requirements for residential uses and faciliate broader use of our shared parking and fee in-lieu programs.<br><br>As we proceed into Phase 2, all proposed policy changes will be assessed, in part, based upon the anticipated environmental and climate-related impacts, which will inform the recommendation by staff to the Planning Board and City Council. Similarly, goals and objectives from both 'One Climate Future' and 'Portland's Plan 2030' will be utilized as a framework for comprehensively incorporating climate friendly development regulations into our land-use code. |
| | 3 | 1. Introductory Provisions | 1.6.6 | It would be helpful to expound on the term 'private agreement' and add examples, e.g., private restrictive covenants, condominium rules and regulations, etc. | The regulation cited is existing policy and staff recommend no change to this regulation as part of Phase 1. This comment is being archived for future discussions as part of Phase 2. |
| | 5 | 2. Administration | 2.1.1 | 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 | |
| | 6 | 2. Administration | 2.1.10.O | 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. | |
| | 10 | 4. Nonconforming Uses, Structures & Lots | 4.3.1.A | 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. | |
| Syntax and Grammar | 4 | 1. Introductory Provisions | 1.9.2.A | 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! | Public comments related to syntax and grammar will be incorporated into the next iteration of this document. |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Redlined Document | 2 | 0. Table of Contents | N/A | How can this process be made more transparent? It should not be up to lay citizens or a volunteer board to do side-by-side comparisons of existing and proposed draft language. Similarly it is next to impossible to do a good job of making sure concepts do not slip through the cracks when chunks of proposed language are being rolled out in succession.<br>If this Phase I is being represented as just repackaging without making substantive changes, maybe staff needs to simultaneously be presenting the Planning Board, the public and other reviewers with a marked up copy of the current zoning ordinance indicating where all of the pieces have been moved to (or where they are to appear in future drafts).<br>Disappearing language may be inadvertent or it may be intentionally held for some future section. The point is we don't currently have this information, it is impossible to do a thorough review without it, and only staff has access to the information to recreate what they have done as they have produced the new draft.<br>Similarly the proposed draft clearly is not all just reorganizing without substantive changes. Where there are specific policy changes (such as ADUs) staff should be calling them out very clearly as decision points. Where there is any substantive change whatsoever (such as reconciling conflicting definitions), it should be flagged so that others have the opportunity to evaluate whether it is substantive or de minimus.<br>It is also not reasonable for the public to be presented with multiple versions of successive drafts UNLESS they are redlined to highlight what changes have been made from one version to the next. If multiple staff people are all making proposed changes, there has to be one central place where they are compiled.<br>There needs to be more public outreach and explanation. This platform seems like more of a gimmick than something that promotes meaningful dialogue. We need face to face explanations of what is being proposed and why. It is also not workable to include these comments by reprinting each page with a "bubble" and reprinting a page for each comment.<br>Given all of the difficulties, is "Recode" really serving its purpose? How about a less ambitious effort to tackle the substantive issues that actually need attention to make them consistent with the new comp plan -- revisions to implement increased density along off peninsula corridors, a reworking of how heights are calculated to measure from predevelopment grade and capping the additional height that can be achieved from averaging on steep slopes, revisions to actually encourage affordable housing without height bonuses which are counterproductive in the R-6 zone. These are actual things that need attention. Maybe it would be more productive to table the mired down reorganization and get on with needed substantive revisions to the existing zoning. | Given that the land-use code is being entirely restructured, and therefore almost all parts of the code are being affected, a redlined version of the existing code is not being produced. Instead, staff are developing a spreadsheet that catalogues major changes being proposed, and will include this spreadsheet in future public meetings. |
| | 3 | 0. Table of Contents | N/A | Like every other document or policy that is or has been revised, there needs to be red-line changes of the different language from the old and new document. In this document, there are massive changes to language from the Chapter 14 land use ordinance without being flagged. The Planning Dept should have red-lined all the changes on this proposed document so we can see what is being changed. It shouldn't be up to the residents to see what was sneakily changed by Planning Dept thinking we would not review this document. | |
| | 4 | 0. Table of Contents | N/A | Why is this review document not presented in redline form? This is the standard and widely accepted method for reviewing proposed changes to a document. The absence of redline format presents an unnecessary burden on the reviewer. I ask that the document be presented in redline format for "collaborative and accessable" dialog and review of this important document. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Redlined Document (and other) | 52 | 6. Use Standards | 6 | These are extracted from comments I made to the Planning Board prior to its 12/17 workshop: MY MAJOR OBJECTION AT THIS TIME IS THAT THERE ARE SUBSTANTIVE POLICY CHANGES BEING MADE BY OMISSION, WITHOUT ANY FLAGGING OF THOSE CHANGES FOR THE BOARD OR THE PUBLIC. Staff keeps repeating that Phase I is formatting and organizational, and that policy debate and changes will not be made until after Phase I is adopted. Then in Phase II policy changes to bring the zoning into line with the comprehensive plan will be pursued. However, in the draft before you there are substantive changes. I have not done an exhaustive review, nor should it by my job or the job of the public at large to identify all of the changes. The burden should be on staff to flag each of these changes in a memo to be presented to the Planning Board and the public for subsequent discussion. I primarily only looked at the R-6 draft text. Among the changes I found from the existing R-6 language are the following:<br>1. For some reason Professional Offices is changed to "General Offices" in the chart, which then refers to notes. At the qualifying note 6.5.6.C, somebody, making a substantive change, has decided to omit the existing language which currently states that professional offices are allowed BUT that category excludes personal services, retail services and veterinarians. The new draft only expressly says that veterinarians are excluded. The list of illustrative examples of permitted professional offices contained in the existing text are omitted in the draft. 14-137(c)(2). I don't know whether somebody has made the judgment that personal services or retail services should be allowed. It has not been flagged as a decision point because there has been a representation that there are no substantive changes.<br>2. The current R-6 extensive provisions about manufactured housing do not appear in the draft sections. 14-136(a)(4). It is unclear what the intent is for individual manufactured housing units.<br>3. In the current R-6 zoning, there are requirements that documentation of special needs independent living units must be recorded in the Registry of Deeds. Those provisions are omitted in the current draft. Was there a decision to delete that requirement? 14-136 (b)(7)<br>4. Only some of the R-6 conditions for hostels are included. It is unclear whether staff intends to house them elsewhere or they have decided not to include them at all. 14-136 (b)(9).<br>5. The sheltered care group homes in the current R-6 zone are specifically limited to homes that are not serving parolees, persons involved in correctional prerelease programs or current illegal drug users. That restriction is omitted in the draft which is before you. Similarly our current zoning requires that the proposed use provide adequate on-site staffing AND supervision of residents. The draft omits the requirement for adequate supervision.<br>6. In the dimensional standards, there is an inconsistency between "grade, average" and "grade, predevelopment," with the latter stating it is at the corners of the foundation of the proposed structure. Even if we are putting off until Phase II the critical policy discussion on getting height measured correctly, there seems to be something missing if these "rules of measurement" are supposed to be documenting how it is actually done now.<br>7. The discussion in 7.5 D rooftop appurtenances fails to acknowledge that there are exceptions to the statement that rooftop appurtenances may exceed the height limitations. At a minimum it should say except as otherwise limited in the Munjoy Hill Conservation Overlay Zone or a similar overlay zone.<br>These are just some examples of what appear to be substantive changes that have not been flagged as being contained in the materials before you. Admittedly some of them are fairly subtle. But the point is that there are policy choices that are being made by staff, and they are not being held for discussion in Phase II, nor are they being flagged so that you and the public are aware of the shifts. Some of the changes (e.g. personal services vs. professional services, parolees and persons in correctional pre-release programs, adequate supervision, rooftop appurtenances exceeding height limitations, etc.) delete provisions that were there for a purpose and could have a significant impact on how well the proposed uses fit into a dense residential neighborhood.<br>In addition to these variations from existing language, there are areas that are so different that they cannot even be tracked to see what is being left out. For example, staff needs to explain what they are doing about preschool, day care facilities and home babysitting services. They seem to be lumping them together in some provisions, but the definition of preschool seems to assume a school that might be providing some day care services; it does not seem broad enough to include home babysitting services. | General services and retail are separate use categories that are not explictly called out as conditional uses in the R-6; as a result, they would not be permitted. References to manufactured housing as a distinct category of single-family use have been eliminated. Deed restrictions for SNIDUs have been eliminated as part of an effort to address provisions that add extra layers of administrative/enforcement burden. Conditions for hostels have been consolidated in Article 6; conditions related to fire code and the parking ordinance have been eliminated, as the cross-reference is redundant. Site plan review will be a function of site plan thresholds in Article 13. Language regarding 'supervision' for sheltered care group homes has been added. Language prohibiting certain populations has been eliminated given Fair Housing Concerns. Regarding height, see below. Language regarding height exceptions not applying where otherwise noted has been added to the revised draft. |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Syntax and Formatting | 51 | 6. Use Standards | 6.2.2 | In addition there are obvious errors. It says uses not expressly listed in Tables 6-1 to 6-6 are prohibited. There are no tables 6-1 to 6.6. They are 6-A to 6-F. 6.2.2. | Revised |
| | 67 | 6. Use Standards | 6.6.2.E | Should it be subsection (4)? | Confirmed as correct |
| | 6 | 1. Introductory Provisions | 1.9.2 | The wording here appears to be missing something. It doesn't read well. | Struck erroneous comma |
| | 7 | 1. Introductory Provisions | N/A | Change all instances of "his/her" to "their" to include people of all genders. | Revised throughout code |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Existing Policy and Discussion Points for Phase 2 Discussions | 10 | 2. Administration | 2.1 | What happened to the term limits for Planning Board members? They used to exist. | Term limit defined in Chapter 2 of the Code (2-32) |
| | 11 | 2. Administration | 2.1.1 | The appointment and advertisement of new vacancies needs to be more robust.. disappointing to see openings advertised during the holidays and with only a few mentions on social media | Section cited is existing policy, and no changes are proposed at this time. Will be catalogued for future discussion as part of Phase 2. |
| | 14 | 2. Administration | 2.1.8.A | Does the public comment here serve a purpose? We have experts giving recommendations; public comment is often skewed against density or housing needs. NIMBY has outsized input because of this setup. | |
| | 15 | 2. Administration | 2.1.7 | There has been a problem with conflict of interest with certain Planning Board members that only do business in Portland in the development arena. These qualifications should be barred from applying for Planning Board since they represent a conflict of interest and is unethical because their decisions will be biased. | |
| | 22 | 3. Definitions | 3 | This is a good start, but is not tied to any particular amount of income, so there is no way of knowing what kind of housing is affordable. At least there should be a clear citation to some particular public regulation or state standard so that people will know what is meant. | |
| | 110 | 7. Dimensional Standards | 7.5.1.D | why is there no max limit in height? Over time the definition of appurtenance might get altered to include something not listed. Also what about deck railings? What is to stop someone from building a ten foot railing that is opaque in nature and completely blocks views? | |
| | 111 | 7. Dimensional Standards | 7.5.1.D | I do not understand why there are no dimensional limitations for any rooftop appurtenance. The absence of standards allows for the potential abuse of any sort of rooftop appurtenance. Size as well as visual impacts can be significant if they are not restricted in any manner. I strongly suggest the inclusion of specific limits with relation to height, volume, and visual impacts for any rooftop appurtenance. | |
| | 112 | 7. Dimensional Standards | 7.5.1.D | There are many things wrong with this section. 1) This is very vague and must have more clear definition of how much higher from the actual rooftop an appurtenance can protrude. 2) It also needs to provide how large this appurtenance can be by providing length and width maximums. 3) There also needs to be screening language to cover these mechanicals so they are not seen from street scape. 4) There should also be a side note to see Munjoy Hill Overlay district for additional restrictions. | |
| | 26 | 3. Definitions | 3 | This is a problem because it focuses only on "earnings", which is a defined term. It permits so called low income housing units to be sold to retired persons whose "earnings": may be low, but who have substantial assets and retirement income that is not earnings. There is no cap on the sales price of these units, which can be priced on resale out of the range of low earning persons. There should be some kind of "income" or "assets" test for this as well. | |
| | 27 | 3. Definitions | 3 | This has the same weakness as does the definition of affordable housing - it can include well to do retirees whose current earnings and modest, but who have substantial income and assets. They are not the workforce that are intended to be covered by this provision. There should be an income or assets or both test. | |
| | 29 | 4. Nonconforming Structures & Lots | 4.4.3 | This section should have a provision that allows for horizontal extensions of a non-conforming side yard that is in keeping with the historic fabric of the neighborhood. If all of the houses in a neighborhood have non-conforming side yard setbacks that define the character of that neighborhood, what is the point of limiting that for rear additions? | |
| | 30 | 5. Zones | 5.2.1 | Portland has way too many zones. Recode is the appropriate opportunity to streamline the number and types of zones. | |
| | 31 | 5. Zones | 5.2.1 | The character of the tree must be considered with zone boundaries. A warehouse or hotel in one zone across the street from residences in another zone may not be appropriate. We should reconsider the middle of a ROW as a default zone boundary. | |
| | 102 | 7. Dimensional Standards | 7.3 | Do not permit garages on front facades. | |
| | 95 | 7. Dimensional Standards | 7.3 | eliminate front setback requirements | |
| | 96 | 7. Dimensional Standards | 7.3 | These minimums are way too restrictive. In the suburban zones they impact walkability of neighborhoods and eliminate any chance of neighborhood businesses. In more urban areas the limits eliminate opportunities for smaller dwellings g units, i.e. tiny houses | |
| | 35 | 5. Zones | 5.4 | PRUDs area poor land use development model. We should be moving away from permitting this kind of development. | |
| | 108 | 7. Dimensional Standards | 7.5.1.F | There is an existing side yard setback exception in the R3 zone that allows decreases on one side if added to the other side that appears to not have made it into the this version. This should be continued in the new version except that the reduction should be adjusted to allow setbacks consistent with the historic built fabric of adjacent properties. I will elaborate in a letter to the planning board. | |
| | 109 | 7. Dimensional Standards | 7.5.1.D | What does "underlying zone" mean? Does this mean someone can install a telecommunication town in their backyard and it goes 50 feet high even though the building height allowance in R-6 is 45 feet? | |
| | 38 | 5. Zones | 5.4 | Interesting how zoning talks about traffic but not walkability or access to transit. Measure what you treasure! | |
| | 97 | 7. Dimensional Standards | 7.3 | Much of our city was built with minimal setbacks. It works fine. | |
| | 40 | 5. Zones | 5.4 | "unique character of Western Promenade"? You've got top be joking. Half of Portland can claim "unique character". This is NIMBYism written into the code. Get rid of R4. | |
| | 94 | 7. Dimensional Standards | 7.3 | 5' is sufficient minimum | |
| | 93 | 7. Dimensional Standards | 7.3 | This is confusing.. Are these maximum or minimum lot square footage? This section should have 2 rows.. Maximum square footage and Minimum square footage and then each zone should have 2 figures. This is where combining lots can be addressed to stop the combining of lots. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Existing Policy and Discussion Points for Phase 2 Discussions | 43 | 5. Zones | 5.4 | What is low intensity? Why is it desirable? | Section cited is existing policy, and no changes are proposed at this time. Will be catalogued for future discussion as part of Phase 2. |
| | 89 | 7. Dimensional Standards | 7.3 | I correct myself, these setbacks appear to be close to being a direct correlation to the existing setbacks I assume the benefits and detriments of these setbacks will be revisited for appropriateness in future review phases. | |
| | 90 | 7. Dimensional Standards | 7.3 | How can a lot width be wider than a street frontage? | |
| | 46 | 5. Zones | 5.4 | Cumberland Ave east of Washington should be zoned for more business use. | |
| | 47 | 5. Zones | 5.4 | i.e. tractor trailers. Some cities have restricted large truck access to significant parts of their city, directing delivery to smaller vehicles. The result is streets and intersections designed more for people not big trucks, cleaner air, more livable cities. | |
| | 89 | 7. Dimensional Standards | 7.3 | It appears that you are proposing to double the current 8′ side yard setbacks to 16′ in the R-3 (and other zones). So lets do some math. Many of these existing properties are 5,000 SF, or 50′x100′. Due to the narrowness of the lots, the existing historical fabric of these properties wast to build the houses (up to 3 stories) adjacent to one property line (just enough so that the eaves didn't overhang) and to put the driveway on the other side, which typically takes up about 16-18′). If you take the proposed 16′ setback on one side and an 18′ driveway on the other side of a 50′ wide lot, that leave you with a 16′ wide house. What this all comes down to is that the zoning setbacks for previously developed lots SHOULD conform with the existing historical fabric of the neighborhood or risk creating infill development that is grossly out of character and/or not developable. This also leads to the observation that the existing zoning map has no rhyme or reason as to why some adjacent neighborhoods that appear the same are zoned differently. | |
| | 92 | 7. Dimensional Standards | 7.3 | Many, many historical existing lots in Portland are 5,000 SF, or 50′ x 100′. This is the historical fabric of Portland and creates nice medium density neighborhoods. I'm guessing there is grandfathered non-conformity. Now, go down to my comment on side yard setbacks to see why this is a problem. | |
| | 50 | 5. Zones | 5.4 | What effect will the re code have on the proposed homeless shelter on 645 Riverside street. I understand the code was amended in 2017 to allow such a facility within a industrial zone. Given the requirements and expectations is this the proper place for such a facility ?<br>Thank you for your time and consideration regarding my question. John | |
| | 74 | 7. Dimensional Standards | 7.2 | Portland Zoning setbacks and other bulk and mass regulations are often in conflict with and much more restrictive than the built historical fabric of the neighborhoods. This creates re-development and additions that are out of character from the historic fabric of the neighborhood. The ordinance should include language that allows existing historic structures that were built to conform with the original neighborhood's character intent to be able to be expanded within the historic fabric. For example, an existing non-conforming side yard setback should be allowed to be expanded back to the rear setback line so as to stay in conformance with the neighborhood's character, not the zoning setbacks that don't conform with the built environment. | |
| | 55 | 6. Use Standards | 6.4.1 | get rid of they min. street width requirement. We need more narrow streets. | |
| | 56 | 6. Use Standards | 6.5.6.H | This max. distance reduces opportunities for shared parking with local businesses and other strategies to share parking at a neighborhood level. | |
| | 57 | 6. Use Standards | 6.5.6.K | does the 500 foot limit relate to a single residental group home where up to two people can live in an apartement? I am hoping this restriction is meant for bigger facilities as there is a massive shortage of group homes for disabled. I have an interest in creating a group home in an apartement some day but know there is another residential home on o'brion street. | |
| | 70 | 6. Use Standards | 6.8.1 | why aren;t displaced residents addressed for r-6? Diplaced in the r-6 zone relates to forced out because of demos and not being able to afford to come back. | |
| | 71 | 6. Use Standards | 6.8.1 | Why are displaced residents only addressed in B-2,B3b, and B-3c? There have been many displaced residents in R-6. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Comments Regarding R-6 Zone | 80 | 7. Dimensional Standards | 7.3 | I agree with the comment by Peter Murray. The decreased building setbacks have not achieved the intended result with regard to overall housing densities. In addition, they pose safety concerns, and are too distinct from other residential dimensional standards throughout the city. Residential dimensions should reflect different objectives in different zoning districts, however the extremely stark differences for the r6 zone dimensional requirements show no relation to any sort of cohesiveness that a comprehensive plan should exhibit. | As many are aware, the City approved substantive amendments to the R-6 zone in 2015, and more recently, in 2018, adopted the Munjoy Hill Neighborhood Conservation Overlay. At the 1.21.20 Planning Board workshop, staff introduced Article 7 of the ReCode, which included a new proposal to institute a maximum building width requirement (recommended in concert with a simultaneous effort to update R-6 design standards). Otherwise, no changes to dimensional requirements for the R-6 zone were (or are) proposed. Based upon feedback received at the 1.21.20 workshop, staff will remove the proposed building width requirement, and will postpone discussion of proposed changes to R-6 Design requirements. |
| | 81 | 7. Dimensional Standards | 7.3 | A 5 foot side setback also creates serious safety issues. How will effective access for emergency or fire occur within a five foot width? Any public safety representative will tell you that this will pose significant issues for fire and health related emergencies. | |
| | 82 | 7. Dimensional Standards | 7.3 | 5 foot side yard set back does not provide sun light, ventilation or sufficient area for green space. | |
| | 83 | 7. Dimensional Standards | 7.3 | How is a 5 foot setback even allowed when the fire chief said to get to a 2 story side window, they must have at least 10 feet between buildings? This seems to be unsafe and illegal language . | |
| | 84 | 7. Dimensional Standards | 7.3 | Displaying the various dimensional requirements in a tabular form makes clear the extreme treatment of the R6 in the 2015 amendments. Compared with any other zone, even those permitting multi-family development, the setbacks, height limits, and all dimensional requirements for the R6 have been placed in a class by themselves. The Munjoy Hill Overlay did not make any real change in these dimensional requirements, which are now permitting destructive and incongruous development in the R6 zone. | |
| | 85 | 7. Dimensional Standards | 7.3 | Does this mean you can build a 10 foot wide house? | |
| | 86 | 7. Dimensional Standards | 7.3 | 5 foot side yard does not allow for off street parking | |
| | 87 | 7. Dimensional Standards | 7.3 | this is confusing. Is this meant to mean no lot in an r-6 zone exceeds 2000 sf? Please explain. What about the trend of combining lots. This destrpys the neighboor character by permitting massive buildings to be built. | |
| | 88 | 7. Dimensional Standards | 7.3 | Why does R-6 Zoning continued to be targeted by Planning Dept for changing? Why aren't the other residential zones changed as well? Having the residential standards side by side shows the extreme disparity of R-6 zoning to the other residential zones where R-6 continues to be target for constant zoning changes but the other residential zones don't have any changes. | |
| | 91 | 7. Dimensional Standards | 7.3 | Where on Table 7-A does the R-6 Zone standards refer and include the R-6 Design Standards and Munjoy Hill Overlay Zone? It should be very clear that R-6 Design Standards are to be included in considering a proposed development. | R-6 design requirements are only applicable to reviews triggering site plan review, and for this reason, are not listed within zoning. |
| | 98 | 7. Dimensional Standards | 7.3 | Why is R-6 Lot coverage so much larger than other residential zones? By doing this, these new buildings are not allowing any open green space, gardens, or trees. This is ruining Munjoy Hill since a lot of mature heritage trees are being removed by developers and NOT being replaced. This is bad for the environment. | As many are aware, the City approved substantive amendments to the R-6 zone in 2015, and more recently, in 2018, adopted the Munjoy Hill Neighborhood Conservation Overlay. At the 1.21.20 Planning Board workshop, staff introduced Article 7 of the ReCode, which included a new proposal to institute a maximum building width requirement (recommended in concert with a simultaneous effort to update R-6 design standards). Otherwise, no changes to dimensional requirements for the R-6 zone were (or are) proposed. Based upon feedback received at the 1.21.20 workshop, staff will remove the proposed building width requirement, and will postpone discussion of proposed changes to R-6 Design requirements. |
| | 99 | 7. Dimensional Standards | 7.3 | This is a confusing statement. This is almost encouraging developers to build garages when the Planning Dept stated they prefer "eyes on street". How are garages eyes on street? This also causes more curb cuts which removes more parking on streets. | |
| | 100 | 7. Dimensional Standards | 7.3 | The allowance of a 20% higher lot coverage ratio for the R6 zone compared to all the other zones within Portland is s a very significant increase. Please reconsider this difference, as it is not reflective of or consistent with residential development throughout the rest of the city. Residential and use in the R6 is not that significantly different from other zones, especially on the peninsula, and I struggle to understand the justification for such a large difference. | |
| | 103 | 7. Dimensional Standards | 7.3 | This should be no more than 35' 45' is too tall to fit in the neighborhoods | |
| | 104 | 7. Dimensional Standards | 7.3 | This dimensional standard is not in any way reflective of the existing housing stock within the R6 district. The vast majority of houses are typically between 18-30 feet wide. | |
| | 105 | 7. Dimensional Standards | 7.3 | The mass and scale of 45 feet wide x 45 high housing is not consistent with the mass and scale of R-6 neighborhoods. The mass and scale of 60 foot wide x 35 foot high is not consistent with the mass and scale of R-6 neighborhoods. | |
| | 106 | 7. Dimensional Standards | 7.3 | This appears to be brand new. While it might be a good idea to have a maximum building width, what is the rationale for the specific new maximum building width standards that are just being introduced in the R-6? How does it apply on a corner lot? Is there a comparable building depth maximum that would apply there? If a lot has frontage on two streets, how does one determine which is the width? | |
| | 107 | 7. Dimensional Standards | 7.3 | Agreed - 35 feet should be the maximum permitted in the R-6 - period. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Average Grade and Building Height Measurement | 76 | 7. Dimensional Standards | 7.2 | Pre-development Grade is measured and takes precedence on the islands. This should also take precedence on main land as well.. | These edits were attempts to codify existing Zoning practice for determining building height based upon the average post-development grade. Based upon feedback at 1.21.20 workshop, this definition and height calculation methodology will be evaluated under Phase II. This definition and reference to average grade has been struck from this draft. |
| | 77 | 7. Dimensional Standards | 7.2 | Pre development grade should take precedence on non-island development (main land) as well. | |
| | 78 | 7. Dimensional Standards | 7.2 | This is a real problem. Tying average grade for the purposes of applying hight limitations to the "finished grade" at the four corners of a proposed building is subject to abuse by developers who will create artificial finished grades by heaping earth around the foundations of their projects, held back by retaining walls i some cases and constituting essentially planters. This can increase the average grade by as much as 6 feet or more on a sloping lot, and thus can increase structure height above the dimensional limits by 6 feet or more. What is wrong with tying average grade to either the grade of the site existing pre-construction, or referring it to grades surrounding the site such as along the borders or on public sidewalks or streets abutting the site? Another alternative is to use the pre-development grade, which we understand is done on the Portland islands. | |
| | 79 | 7. Dimensional Standards | 7.2 | Why does the mainland use grade average rather than grade, pre-development as to measure for height? This is very misleading and unfair for a developer to build up the earth of the pre grade to reach higher building heights. The mainland should be using the pre-development grade to measure height of building. | |
| | 101 | 7. Dimensional Standards | 7.3 | Why isn't it clear where building height is measured? All mainland building height should be measured from the pre-grade development just like the Islands are. By the Planning department being vague or not following the island height measurement which is from the pre-grade development and not the grade average has caused a massive scale and massing issue that would have NOT existed if it was just on islands and mainland, the building height simply measured from the pre-grade development and NOT the grade average. Please change this. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Accessory Dwelling Units (ADUs) and Short Term Rentals | 59 | 6. Use Standards | 6.6.2.A | This is a real policy problem. The temptation to convert garages, sheds, etc. into short term rental (AirBnB) units is very strong. While it may make sense to allow ADUs for members of the family of the dominant structure, allowing wider use will only exacerbate our short term rental problems and the creation of a substandard housing stock. Would recommend that this subject be rethought and debated separately, | Short-term rentals are governed by the City's short-term rental ordinance and are not identified within zoning as a specific use. |
| | 64 | 6. Use Standards | 6.6.2.A | Why isn't it clear in this section if an ADU is restricted only for a long term residence or a vehicle to be used as short term rental.? | |
| | 54 | 6. Use Standards | Table 6-A | AirBnB's are permitted in all R zones, correct? Are these not lodging houses? | |
| | 58 | 6. Use Standards | 6.6.2.A | It appears that the restrictions on affordable housing deed restrictions are now limited to Peaks Island.<br><br>As a residential property owner in Oakdale and resident of one of the property units, the ADU I recently created was subjected to this same deed restriction (a qualifying factor that was not brought to my attention until after I had done the work and applied for a zoning variance).<br><br>My hope and desire is that as a three unit property, I not have these income restrictions that limit whom I rent the space to (long term). I do not think it reasonable or fair to that the city impose a 30 year deed restriction making this new unit an affordable housing unit, especially considering that I live on the property.<br><br>Additionally, I have been told that I as the property owner and full time resident am not allowed to reside in the new ADU because I qualify as the "developer". Three unit properties should not necessarily be considered commercial properties. I can see how some new condo developments might, but old houses in residential neighborhoods with a newly added legal third unit just don't fit the description of commercial property.<br><br>My understanding is that this particular situation may be an unintended consequence of code that was loosely worded and hadn't taken into account the negative economic impact of this restriction on certain properties.<br><br>ADU's should serve homeowners in their efforts to create more housing, generate rental income and provide housing for themselves, family or tenants of their choosing.<br><br>I hope the board/committee will amend the current code to re-classify properties currently subjected to this deed restriction, and make the new code retroactive. My ADU was created in 2019...<br><br>If re-applying for the newly adopted zoning ordinance is what it takes, that can be done, but it shouldn't come a cost and should be expedited, especially if it becomes an extra step for those who have followed the code to this point in endeavor to appease the rules and build units above-board.<br><br>Otherwise, there is very little incentive for homeowners to abide these new codes and create legal ADUs, considering the rental income limitations, additional paperwork (tenant income verification) and the many codes that impose things like sprinkling, etc. | New ADU provisions are intended to remove major obstacles to ADU development, notably identification as a conditional use, off-street parking and density requirements, and requirements that units be rented as affordable units and that lots be deed restricted, which with the newest iteration, will apply city-wide. |
| | 63 | 6. Use Standards | 6.6.2.A | ADUs are useful options for housing family members (in-laws, grown up children, etc.) but should not be considered a substitute for fully qualifying housing units, and should NOT be used for Short Term Rentals. | |
| | 60 | 6. Use Standards | 6.6.2.A | I have a 3 unit on beckett street with a 1950's era garage in the driveway. Is this indicating that because i have a 3 unit I could not convert the garage to an additional dwelling unit? If so that does not make sense to me if the goal in r-6 is to increase density and considering what developers are building in the neighboorhood after tearing down buildings. | While changes to the ADU provisions represent an important step towards increasing housing density city-wide, we do not support its use in larger residential |
| | 62 | 6. Use Standards | 6.6.2.A | ADU's should be permitted with 3+n unit buildings. | |
| | 61 | 6. Use Standards | 6.6.2.A | This should apply city wide. | Will apply city-wide with newest iteration. |
| | 66 | 6. Use Standards | 6.6.2.A | Way too small. minimum size is unnecessary. | Minimum unit sizes are intended to facilitate development of units that are visibly accessory and compatible within Portland's wide range of neighborhoods. |
| | 24 | 3. Definitions | 3 | Does the city recognize 1. Accessory Dwelling Unit ? If so, should be in the definitions and detail requirements in the plan ? If not recognized, why not, is it considered something else ? 2. Is Air B n B discussed somewhere in the plan ? Is it considered a "Hostel" ? And or what zones are allowed ? I believe there are many in most all zones now ? I probably missed these .... thanks for considering. | While not specifically defined, ADU's are effectively defined within the language of the Use Article, as development standards determine what is permitted as an ADU. Short-term rentals are governed under the city's short-term rental ordinance, and are not specifically identified as a use. |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Purpose Statements | 36 | 5. Zones | 5.4 | What happened to the Purpose of R-6 definition that includes "...conserve the existing housing stock and residential characters of neighborhoods..." in the proposed ReCode? | In select instances, purpose statements have been revised to eliminate unnecessary langauge (i.e. references to dimensional language or performance standards) or to bring purpose statements in line with zoning regulations. Based upon feedback received at the last workshop, purpose statement language has been reinstated where not otherwise covered elsewhere in the regulations. |
| | 37 | 5. Zones | 5.4 | Why was the R-6 Zone definition changed? The old R-6 Zone definition should remain as is:<br>The purpose of the R-6 residential zone is:<br><br>(a) To set aside areas on the peninsula for housing characterized primarily by multifamily 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. | |
| | 39 | 5. Zones | 5.4 | I also question why the following was deleted from the existing R-6 Purpose statement if Phase I is supposed to be non-substantive, formating changes: "In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula." True the 2015 amendments, unwisely, eliminated the "vacant, underutilized" restriction, but shouldn't this change be flagged and there be a discussion about retaining the goal that new housing development be consistent with the compact lot development pattern typiclly found on the peninsula? | |
| | 41 | 5. Zones | 5.4 | This statement of the purpose of the R-67 zone is incomplete and appears to be misleading. First of all, a lot of the current R-6 is single and two family dwellings. The character of the neighborhood should be protected from incompatible residential development as well as from professional office development, which has not been a problem in recent years | |
| | 42 | 5. Zones | 5.4 | RE: Mr. Murrays' point: What is "incomparable residential development"? This is subjective. | |
| | 48 | 5. Zones | 5.4 | Why have you substantially changed the B-6 zoning definition without flagging the major changes? This is not transparent to the public. | |
| | 49 | 5. Zones | 5.4 | Why aren't the purpose statements imported intact? The purpose statement for the B-6 zone is paraphrased, leaving out language about encouraging a "distinctly urban form" and leaving out a qualifier "as recommended in the Eastern Waterfront master plan for redevelopment." These are in the current purpose statement and are important phrases. Has staff made some policy decision to omit them? If so, it should be flagged and explained for further discussion. | |
| | 36 | 5. Zones | 5.4 | What happened to the Purpose of R-6 definition that includes "...conserve the existing housing stock and residential characters of neighborhoods..." in the proposed ReCode? | |
| | 37 | 5. Zones | 5.4 | Why was the R-6 Zone definition changed? The old R-6 Zone definition should remain as is:<br>The purpose of the R-6 residential zone is:<br><br>(a) To set aside areas on the peninsula for housing characterized primarily by multifamily 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. | |

## REVIEW COMMENTS ON RECODE DRAFT - ITERATION #2 (Articles 1-7)

| | Comment # | Article | Section | Comment | Staff Response |
|---|---|---|---|---|---|
| Other | 5 | 1. Introductory Provisions | 1.8.4 | so add two days to any time limit? | Correct |
| | 23 | 3. Definitions | 3 | Why is there such a disproportionate emphasis on signs on the definition section? Might it be better handled as a separate document which is incorporated by reference into the zoning ordinance? | Moved sign defnitions to signs article. |
| | 25 | 3. Definitions | 3 | Maine does not currently have a parole system. Suggested changes could be: Reentry Housing Facility. A facility housing up to 12 persons under the supervision of the Maine Department of Corrections, plus staff. I recommend reaching out to Bruce Noddin, the director for Maine Prisoner Reentry Network for guidance. | Have revised definition accordingly. |
| | 32 | 5. Zones | 5 | Why aren't waterfront zones included in Article 5? They are geographic zones just like the others. | Given the unique nature and the complexity of regulations that govern Portland's waterfront zones, those zones |
| | 33 | 5. Zones | 5 | Where are the Working Waterfront Zones? Shouldn't they be in the Zone section as they are referred to in the Comprehensive Plan? | |
| | 44 | 5. Zones | 5.4 | Following up on Ben's statement. When current zoning does not align with current use we should reconsider the appropriateness of the zoning. | While it is generally understood that zoning will be reevaluated as part of Phase 2, it should be noted that zoning does not necessarily need to reflect the existing development pattern. All zoning should be |
| | 45 | 5. Zones | 5.4 | There are many neighborhoods on the current zoning map that do not appear to conform with the stated purposes. It is my guess that they were erroneously zoned when the map was created and have not changed since. The existing map should carefully reviewed for conformance. | |
| | 53 | 6. Use Standards | Table 6-A | This is currently a conditional use in R-5 14-117 b.5 | Permitted use within R5, though 2 acre lot size provison is eliminated. |
| | 65 | 6. Use Standards | 6.6.2.D | Does this language reflect the recent Council approved text amendments in the B2 zones? | Revised to include new language |
| | 68 | 6. Use Standards | 6.8.9 | Does this noise decimal limit include any concerts that are held in another part of town that reverberates to the neighborhoods? | Depending on the zone, noise is either measured from nearest residential zone, from the lot line of the noise producing source, from open space, or from the point of complaint. Revised to reflect this nuance. |
| | 69 | 6. Use Standards | 6.8.9 | does r-p include r-6? | No, under this performance standard, sound impacts from residential zones are not regulated. |

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# #001

Posted by **Foo** on **12/17/2019** at **11:26am**
*Type: Observation*
*Agree: 1, Disagree: 0*
Bar

> Reply by **Foo** on **12/17/2019** at **11:26am**
> *Type: Question*
> *Agree: 0, Disagree: -1*
> rep

# #002

Posted by **Barbara Vestal** on **01/07/2020** at **3:13pm**
*Type: Question*
*Agree: 1, Disagree: 0*
How can this process be made more transparent? It should not be up to lay citizens or a volunteer board to do side-by-side comparisons of existing and proposed draft language. Similarly it is next to impossible to do a good job of making sure concepts do not slip through the cracks when chunks of proposed language are being rolled out in succession.

If this Phase I is being represented as just repackaging without making substantive changes, maybe staff needs to simultaneously be presenting the Planning Board, the public and other reviewers with a marked up copy of the current zoning ordinance indicating where all of the pieces have been moved to (or where they are to appear in future drafts).

Disappearing language may be inadvertent or it may be intentionally held for some future section. The point is we don't currently have this information, it is impossible to do a thorough review without it, and only staff has access to the information to recreate what they have done as they have produced the new draft.

Similarly the proposed draft clearly is not all just reorganizing without substantive changes. Where there are specific policy changes (such as ADUs) staff should be calling them out very clearly as decision points. Where there is any substantive change whatsoever (such as reconciling conflicting definitions), it should be flagged so that others have the opportunity to evaluate whether it is substantive or de minimus.

It is also not reasonable for the public to be presented with multiple versions of successive drafts UNLESS they are redlined to highlight what changes have been made from one version to the next. If multiple staff people are all making proposed changes, there has to be one central place where they are compiled.

There needs to be more public outreach and explanation. This platform seems like more of a gimmick than something that promotes meaningful dialogue. We need face

to face explanations of what is being proposed and why. It is also not workable to include these comments by reprinting each page with a "bubble" and reprinting a page for each comment.

Given all of the difficulties, is "Recode" really serving its purpose? How about a less ambitious effort to tackle the substantive issues that actually need attention to make them consistent with the new comp plan -- revisions to implement increased density along off peninsula corridors, a reworking of how heights are calculated to measure from predevelopment grade and capping the additional height that can be achieved from averaging on steep slopes, revisions to actually encourage affordable housing without height bonuses which are counterproductive in the R-6 zone. These are actual things that need attention. Maybe it would be more productive to table the mired down reorganization and get on with needed substantive revisions to the existing zoning.

## #003

Posted by **Karen Snyder** on **01/12/2020** at **3:56pm**

*Type: Question*

*Agree: 2, Disagree: 0*

Like every other document or policy that is or has been revised, there needs to be red-line changes of the different language from the old and new document. In this document, there are massive changes to language from the Chapter 14 land use ordinance without being flagged. The Planning Dept should have red-lined all the changes on this proposed document so we can see what is being changed. It shouldn't be up to the residents to see what was sneakily changed by Planning Dept thinking we would not review this document.

## #004

Posted by **Michael Hoover** on **01/10/2020** at **8:42am**

*Type: Question*

*Agree: 2, Disagree: 0*

Why is this review document not presented in redline form? This is the standard and widely accepted method for reviewing proposed changes to a document. The absence of redline format presents an unnecessary burden on the reviewer. I ask that the document be presented in redline format for "collaborative and accessable" dialog and review of this important document.

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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 development to the public realm, Portland's open spaces, and the environment.

## 1.4 APPLICABILITY

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

## 1.5 ENFORCEMENT

### 1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer is authorized to institute or cause to be instituted by the Corporation Counsel in the name of the City any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the Land Use Code.

### 1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in 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 complete[005]usiness 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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## #005

Posted by **George Carhart** on **01/08/2020** at **6:56pm**
*Type: Question*
*Agree: 0, Disagree: 0*
so add two days to any time limit?

### 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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## #006

Posted by **Jen F** on **01/28/2020** at **7:05pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
The wording here appears to be missing something.  It doesn't read well.

## #007

Posted by **Scott H** on **01/17/2020** at **12:22pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
Change all instances of "his/her" to "their" to include people of all genders.

## #008

Posted by **Scott H** on **01/17/2020** at **12:22pm**
*Type: Suggestion*
*Agree: 2, Disagree: 0*
Change all instances of "his/her" to "their" to include people of all genders.

## #009

Posted by **Scott H** on **01/17/2020** at **12:22pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
Change all instances of "his/her" to "their" to include people of all genders.

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 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.

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 vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other

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## #010

Posted by **Barbara Vestal** on **01/07/2020** at **2:40pm**
*Type: Question*
*Agree: 2, Disagree: 0*
What happened to the term limits for Planning Board members?  They used to exist.

## #011

Posted by **Em Burnett** on **01/17/2020** at **9:51am**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
The appointment and advertisement of new vacancies needs to be more robust.. disappointing to see openings advertised during the holidays and with only a few mentions on social media

## #012

Posted by **Scott H** on **01/17/2020** at **12:27pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

interested parties as may be directed in the vote of adjournment.

### 2.1.7 Conflicts

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

### 2.1.8 Meetings and procedures

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

1. Workshops 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 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.
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

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## #013

Posted by **Scott H** on **01/17/2020** at **12:27pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

## #014

Posted by **Em Burnett** on **01/17/2020** at **9:53am**
*Type: Question*
*Agree: 1, Disagree: -1*
Does the public comment here serve a purpose? We have experts giving recommendations; public comment is often skewed against density or housing needs. NIMBY has outsized input because of this setup.

## #015

Posted by **Karen Snyder** on **12/17/2019** at **1:39pm**
*Type: Question*
*Agree: 2, Disagree: 0*
There has been a problem with conflict of interest with certain Planning Board members that only do business in Portland in the development arena. These qualifications should be barred from applying for Planning Board since they represent a conflict of interest and is unethical because their decisions will be biased.

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 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

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## #016

Posted by **Scott H** on **01/17/2020** at **12:27pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

## #017

Posted by **Scott H** on **01/17/2020** at **12:27pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

decision of the Board shall constitute the record.

B. **Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

### 2.1.10 Jurisdiction and authority

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

A. To prepare and recommend a Comprehensive Plan to the City Council;

B. To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;

C. To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing, and completing specific projects;

D. To hear, review and approve, conditionally approve, or deny master development plans and major site plans;

E. To hear, review and approve, conditionally approve, or deny applications for subdivision approval;

F. To hear, review, and approve or deny applications for conditional uses listed in Article 6;

G. To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;

H. To review and offer its recommendations to the City Council on certain public projects;

I. To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;

J. To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;

K. Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;

L. To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;

M. To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper; provided, however, that such expenditures shall

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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.

### 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 Planning Board all of the papers constituting the record upon which the action appealed from was taken.

B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.

C. **Action**. Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the Board to act within 30 days shall be deemed 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

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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.

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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 determination or recommendation of the Historic Preservation Board to the applicant and property owner(s).

### 2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

A. To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects;

B. To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and 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



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## #018

Posted by **Scott H** on **01/17/2020** at **12:28pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

## #019

Posted by **Scott H** on **01/17/2020** at **12:28pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his or her" to "their" to include people of all genders.

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

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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

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# #020

Posted by **Scott H** on **01/17/2020** at **12:22pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his/her" to "their" to include people of all genders.

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 021 designee shall serve as staff to the Board of Appeals.

B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings and hearings of the Board shall be open to the public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.

C. **Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

1. In all cases, to the petitioner;
2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant;
3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means;
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Commission of the Department of Environmental Protection at least 20 days prior to action by the Board;

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# #021

Posted by **Scott H** on **01/17/2020** at **12:23pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Change all instances of "his/her" to "their" to include people of all genders.

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.

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### 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;

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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;

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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



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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 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.

### 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 023

**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 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 amou022

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

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

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

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

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

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

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

**Auto service station**. A business selling gasoline, diesel, or propane fuel 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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## #022

Posted by **Peter Murray** on **01/05/2020** at **9:47am**

*Type: Suggestion*

*Agree: 2, Disagree: 0*

This is a good start, but is not tied to any particular amount of income, so there is no way of knowing what kind of housing is affordable. At least there should be a clear citation to some particular public regulation or state standard so that people will know what is meant.

## #023

Posted by **Barbara Vestal** on **01/07/2020** at **2:45pm**

*Type: Question*

*Agree: 1, Disagree: -1*

Why is there such a disproportionate emphasis on signs on the definition section? Might it be better handled as a separate document which is incorporated by reference into the zoning ordinance?

**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.

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

**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.

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

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

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

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

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**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.

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**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. 025

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

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

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

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

**Dwelling, single-family**. A building containing one dwelling unit. 024

**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

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## #024

Posted by **Eric Huber** on **01/17/2020** at **4:50pm**

*Type: Question*

*Agree: 1, Disagree: 0*

Does the city recognize 1. Accessory Dwelling Unit ? If so, should be in the definitions and detail requirements in the plan ? If not recognized, why not, is it considered something else ? 2. Is Air B n B discussed somewhere in the plan ? Is it considered a "Hostel" ? And or what zones are allowed ? I believe there are many in most all zones now ? I probably missed these .... thanks for considering.

## #025

Posted by **VICTORIA MORALES** on **01/15/2020** at **4:50pm**

*Type: Suggestion*

*Agree: 0, Disagree: 0*

Maine does not currently have a parole system. Suggested changes could be: Reentry Housing Facility. A facility housing up to 12 persons under the supervision of the Maine Department of Corrections, plus staff. I recommend reaching out to Bruce Noddin, the director for Maine Prisoner Reentry Network for guidance.

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

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

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

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

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

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

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

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

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

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

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

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**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.**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.** 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

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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 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.

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

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

**Lot**. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds which at the

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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 u026 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.

**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

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# #026

Posted by **Peter Murray** on **01/05/2020** at **9:53am**

*Type: Suggestion*

*Agree: 1, Disagree: 0*

This is a problem because it focuses only on "earnings", which is a defined term. It permits so called low income housing units to be sold to retired persons whose "earnings": may be low, but who have substantial assets and retirement income that is not earnings. There is no cap on the sales price of these units, which can be priced on resale out of the range of low earning persons. There should be some kind of "income" or "assets" test for this as well.

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.

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**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.

**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.

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**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

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recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.

**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. In industrial zones only, repair services shall include motor vehicle repair services.

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

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

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

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

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

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

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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.

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Sign, cont.

**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.

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Sign, cont.

**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.

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Sign, cont.

**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 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:

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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, 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 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

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mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use.

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

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

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

**Street.** A public way established by ~~or~~ maintained under public authority, or a way dedicated to the use of the public.

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

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

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

**Studios for artists and craftspeople**. A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom 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.

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**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.

**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.

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**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.

**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).

**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, 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: 027

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.

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# #027

Posted by **Peter Murray** on **01/05/2020** at **9:57am**

*Type: Suggestion*

*Agree: 2, Disagree: 0*

This has the same weakness as does the definition of affordable housing - it can include well to do retirees whose current earnings and modest, but who have substantial income and assets. They are not the workforce that are intended to be covered by this provision.  There should be an income or assets or both test.

**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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# #028

Posted by **Peter Murray** on **01/05/2020** at **9:58am**
*Type: Suggestion*
*Agree: 2, Disagree: 0*
See comment to preceding provision.

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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 (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 setback 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 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 setback dimensions.

C. The lot is a lot of record that conformed to the applicable lot size, lot width, and street frontage requirements as of June 5, 1984, and can meet the applicable 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 setback dimensions; and (v) 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-2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which

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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 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.

F. 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. 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.

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 any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would

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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 subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from

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# #029

Posted by **Ben Walter** on **01/14/2020** at **5:00pm**

*Type: Suggestion*

*Agree: 1, Disagree: -1*

This section should have a provision that allows for horizontal extensions of a non-conforming side yard that is in keeping with the historic fabric of the neighborhood.
If all of the houses in a neighborhood have non-conforming side yard setbacks that define the character of that neighborhood, what is the point of limiting that for rear additions?

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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## #030

Posted by **Markos Miller** on **01/20/2020** at **10:42am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Portland has way too many zones. Recode is the appropriate opportunity to streamline the number and types of zones.

## #031

Posted by **Markos Miller** on **01/20/2020** at **10:44am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
The character of the tree must be considered with zone boundaries. A warehouse or hotel in one zone across the street from residences in another zone may not be appropriate. We should reconsider the middle of a ROW as a default zone boundary.

## #032

Posted by **Barbara Vestal** on **01/07/2020** at **2:39pm**
*Type: Observation*
*Agree: 1, Disagree: 0*
Why aren't waterfront zones included in Article 5? They are geographic zones just like the others.

## #033

Posted by **Karen Snyder** on **01/12/2020** at **4:11pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Where are the Working Waterfront Zones? Shouldn't they be in the Zone section as they are referred to in the Comprehensive Plan?

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: 045 DENTIAL 044 E 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. 034 |
| **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. 035 |
| **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. 040 |
| **R-5** | To provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family and low-inter 043 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 developmen 038 ff-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 037 36 e the existing housing stock and residential character of neighborh 042 041 by controlling the scale and external impacts of professional offices and other nonresidential uses. 039 |
| **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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## #034

Posted by **Markos Miller** on **01/20/2020** at **10:48am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
R1 and R2 sound the same. Eliminate multi-unit housing restrictions throughout the City

## #035

Posted by **Markos Miller** on **01/20/2020** at **10:48am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
PRUDs area poor land use development model. We should be moving away from permitting this kind of development.

## #036

Posted by **Rob Whitten** on **01/08/2020** at **4:55pm**
*Type: Question*
*Agree: 1, Disagree: 0*
What happened to the Purpose of R-6 definition that includes "...conserve the existing housing stock and residential characters of neighborhoods..." in the proposed ReCode?

## #037

Posted by **Karen Snyder** on **01/08/2020** at **4:56pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why was the R-6 Zone definition changed? The old R-6 Zone definition should remain as is:
The purpose of the R-6 residential zone is:

(a) To set aside areas on the peninsula for housing characterized primarily by multifamily 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.

## #038

Posted by **Markos Miller** on **01/20/2020** at **10:52am**
*Type: Observation*
*Agree: 0, Disagree: 0*
Interesting how zoning talks about traffic but not walkability or access to transit. Measure what you treasure!

## #039

Posted by **Barbara Vestal** on **01/08/2020** at **6:54pm**
*Type: Question*
*Agree: 1, Disagree: 0*
I also question why the following was deleted from the existing R-6 Purpose statement if Phase I is supposed to be non-substantive, formating changes: "In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula." True the 2015 amendments, unwisely, eliminated the "vacant, underutilized" restriction, but shouldn't this change be flagged and there be a discussion about retaining the goal that new housing development be consistent with the compact lot development pattern typiclly found on the peninsula?

## #040

Posted by **Markos Miller** on **01/20/2020** at **10:50am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
"unique character of Western Promenade"? You've got top be joking. Half of Portland can claim "unique character". This is NIMBYism written into the code. Get rid of R4.

## #041

Posted by **Peter Murray** on **01/05/2020** at **10:04am**
*Type: Suggestion*
*Agree: 3, Disagree: 0*
This statement of the purpose of the R-67 zone is incomplete and appears to be misleading. First of all, a lot of the current R-6 is single and two family dwellings. The character of the neighborhood should be protected from incompatible residential development as well as from professional office development, which has not been a problem in recent years

## #042

Posted by **Markos Miller** on **01/20/2020** at **10:55am**
*Type: Observation*
*Agree: 0, Disagree: 0*
RE: Mr. Murrays' point: What is "incomparable residential development"? This is subjective.

## #043

Posted by **Markos Miller** on **01/20/2020** at **10:53am**
*Type: Question*
*Agree: 0, Disagree: 0*
What is low intensity? Why is it desirable?

## #044

Posted by **Markos Miller** on **01/20/2020** at **10:46am**

*Type: Suggestion*

*Agree: 0, Disagree: 0*

Following up on Ben's statement. When current zoning does not align with current use we should reconsider the appropriateness of the zoning.

## #045

Posted by **Ben Walter** on **01/14/2020** at **4:48pm**

*Type: Suggestion*

*Agree: 0, Disagree: 0*

There are many neighborhoods on the current zoning map that do not appear to conform with the stated purposes. It is my guess that they were erroneously zoned when the map was created and have not changed since. The existing map should carefully reviewed for conformance.

**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:<br>A. An IR-3 zone should have a minimum land area of 20 acres;<br>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;<br>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;<br>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<br>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. 046 |
| **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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# #046

Posted by **Markos Miller** on **01/20/2020** at **10:58am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Cumberland Ave east of Washington should be zoned for more business use.

**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. 047 |
| **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** 049 | 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. 048 |
| **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. |

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**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. |

## #047

Posted by **Markos Miller** on **01/20/2020** at **11:06am**
*Type: Observation*
*Agree: 0, Disagree: 0*
i.e. tractor trailers. Some cities have restricted large truck access to significant parts of their city, directing delivery to smaller vehicles. The result is streets and intersections designed more for people not big trucks, cleaner air, more livable cities.

## #048

Posted by **Karen Snyder** on **01/12/2020** at **3:43pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why have you substantially changed the B-6 zoning definition without flagging the major changes? This is not transparent to the public.

## #049

Posted by **Barbara Vestal** on **01/07/2020** at **2:52pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why aren't the purpose statements imported intact? The purpose statement for the B-6 zone is paraphrased, leaving out language about encouraging a "distinctly urban form" and leaving out a qualifier "as recommended in the Eastern Waterfront master plan for redevelopment." These are in the current purpose statement and are important phrases. Has staff made some policy decision to omit them? If so, it should be flagged and explained for further discussion.

### TABLE 5-F: INDUSTRIAL AND AIRPORT ZONE PURPOSE STATEMENTS

050

| | |
|---|---|
| **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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# #050

Posted by **John McGovern** on **01/21/2020** at **11:01am**

*Type: Question*

*Agree: 0, Disagree: 0*

What effect will the re code have on the proposed homeless shelter on 645 Riverside street. I understand the code was amended in 2017 to allow such a facility within a industrial zone. Given the requirements and expectations is this the proper place for such a facility ?

Thank you for your time and consideration regarding my question.  John

# 6 USE STANDARDS 052

## 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: 051

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.

## #051

Posted by **Barbara Vestal** on **01/07/2020** at **2:36pm**
*Type: Observation*
*Agree: 1, Disagree: 0*
In addition there are obvious errors. It says uses not expressly listed in Tables 6-1 to 6-6 are prohibited. There are no tables 6-1 to 6.6. They are 6-A to 6-F. 6.2.2.

## #052

Posted by **Barbara Vestal** on **01/07/2020** at **2:32pm**
*Type: Observation*
*Agree: 3, Disagree: 0*
These are extracted from comments I made to the Planning Board prior to its 12/17 workshop: MY MAJOR OBJECTION AT THIS TIME IS THAT THERE ARE SUBSTANTIVE POLICY CHANGES BEING MADE BY OMISSION, WITHOUT ANY FLAGGING OF THOSE CHANGES FOR THE BOARD OR THE PUBLIC.

Staff keeps repeating that Phase I is formatting and organizational, and that policy debate and changes will not be made until after Phase I is adopted. Then in Phase II policy changes to bring the zoning into line with the comprehensive plan will be pursued. However, in the draft before you there are substantive changes. I have not done an exhaustive review, nor should it by my job or the job of the public at large to identify all of the changes. The burden should be on staff to flag each of these changes in a memo to be presented to the Planning Board and the public for subsequent discussion.

I primarily only looked at the R-6 draft text. Among the changes I found from the existing R-6 language are the following:

1. For some reason Professional Offices is changed to "General Offices" in the chart, which then refers to notes. At the qualifying note 6.5.6.C, somebody, making a substantive change, has decided to omit the existing language which currently states that professional offices are allowed BUT that category excludes personal services, retail services and veterinarians. The new draft only expressly says that veterinarians are excluded. The list of illustrative examples of permitted professional offices contained in the existing text are omitted in the draft. 14-137(c)(2). I don't know whether somebody has made the judgment that personal services or retail services should be allowed. It has not been flagged as a decision point because there has been a representation that there are no substantive changes.

2. The current R-6 extensive provisions about manufactured housing do not appear in the draft sections. 14-136(a)(4). It is unclear what the intent is for individual manufactured housing units.

3. In the current R-6 zoning, there are requirements that documentation of special

needs independent living units must be recorded in the Registry of Deeds. Those provisions are omitted in the current draft. Was there a decision to delete that requirement? 14-136 (b)(7)

4. Only some of the R-6 conditions for hostels are included. It is unclear whether staff intends to house them elsewhere or they have decided not to include them at all. 14-136 (b)(9).

5. The sheltered care group homes in the current R-6 zone are specifically limited to homes that are not serving parolees, persons involved in correctional prerelease programs or current illegal drug users. That restriction is omitted in the draft which is before you. Similarly our current zoning requires that the proposed use provide adequate on-site staffing AND supervision of residents. The draft omits the requirement for adequate supervision.

6. In the dimensional standards, there is an inconsistency between "grade, average" and "grade, predevelopment," with the latter stating it is at the corners of the foundation of the proposed structure. Even if we are putting off until Phase II the critical policy discussion on getting height measured correctly, there seems to be something missing if these "rules of measurement" are supposed to be documenting how it is actually done now.

7. The discussion in 7.5 D rooftop appurtenances fails to acknowledge that there are exceptions to the statement that rooftop appurtenances may exceed the height limitations. At a minimum it should say except as otherwise limited in the Munjoy Hill Conservation Overlay Zone or a similar overlay zone.

These are just some examples of what appear to be substantive changes that have not been flagged as being contained in the materials before you. Admittedly some of them are fairly subtle. But the point is that there are policy choices that are being made by staff, and they are not being held for discussion in Phase II, nor are they being flagged so that you and the public are aware of the shifts. Some of the changes (e.g. personal services vs. professional services, parolees and persons in correctional pre-release programs, adequate supervision, rooftop appurtenances exceeding height limitations, etc.) delete provisions that were there for a purpose and could have a significant impact on how well the proposed uses fit into a dense residential neighborhood.

In addition to these variations from existing language, there are areas that are so different that they cannot even be tracked to see what is being left out. For example, staff needs to explain what they are doing about preschool, day care facilities and home babysitting services. They seem to be lumping them together in some provisions, but the definition of preschool seems to assume a school that might be providing some day care services; it does not seem broad enough to include home babysitting services.

## 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 | | | | ● | 053 | ● | |
| | Lodging hou 054 | | | | | ◐[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.

## #053

Posted by **Julie Larry** on **01/08/2020** at **2:13pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
This is currently a conditional use in R-5 14-117 b.5

## #054

Posted by **Markos Miller** on **01/20/2020** at **11:03am**
*Type: Answer*
*Agree: 0, Disagree: 0*
AirBnB's are permitted in all R zones, correct? Are these not lodging houses?

## 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 | ◐ | ◐ | ● | ◐ | |
| | Educational facilities (including seasonal camps) | ◐ | ◐ | | | |
| | Governmental uses | ◐ | ◐ | ● | ◐ | 6.5.6.F[6] |
| | 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) | | | ● | ● | |
| Other | Studios for artists and craftspeople | | | | ● | |
| | 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 | ◐ | ◐ | ● | ● | |

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 |

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

**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.

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 | ● | ● | ● | | |
| | Marijuana manufacturing facility | ● | ● | ● | | |
| | Marijuana cultivation facility (<2,000 SF plant canopy) | ● | ● | ● | | 6.4.10 |
| | 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] | ● | ● | | |

**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.

**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.

## 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 f055 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

# #055

Posted by **Markos Miller** on **01/20/2020** at **11:07am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
get rid of they min. street width requirement. We need more narrow streets.

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,

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

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

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

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,

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,

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

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

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

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

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

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

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

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.

# #056

Posted by **Markos Miller** on **01/20/2020** at **11:14am**

*Type: Observation*

*Agree: 0, Disagree: 0*

This max. distance reduces opportunities for shared parking with local businesses and other strategies to share parking at a neighborhood level.

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

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.

K. Sheltered care group h057s

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.

### 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

# #057

Posted by **enoch wenstrom** on **01/02/2020** at **7:31pm**

*Type: Question*

*Agree: 0, Disagree: 0*

does the 500 foot limit relate to a single residental group home where up to two people can live in an apartement?  I am hoping this restriction is meant for bigger facilities as there is a massive shortage of group homes for disabled.  I have an interest in creating a group home in an apartement some day but know there is another residential home on o'brion street.

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

# #058

Posted by **Patrick Roche** on **01/17/2020** at **9:51pm**
*Type: Suggestion*
*Agree: 0, Disagree: -1*
It appears that the restrictions on affordable housing deed restrictions are now limited to Peaks Island.

As a residential property owner in Oakdale and resident of one of the property units, the ADU I recently created was subjected to this same deed restriction (a qualifying factor that was not brought to my attention until after I had done the work and applied for a zoning variance).

My hope and desire is that as a three unit property, I not have these income restrictions that limit whom I rent the space to (long term). I do not think it reasonable or fair to that the city impose a 30 year deed restriction making this new unit an affordable housing unit, especially considering that I live on the property.

Additionally, I have been told that I as the property owner and full time resident am not allowed to reside in the new ADU because I qualify as the "developer". Three unit properties should not necessarily be considered commercial properties. I can see how some new condo developments might, but old houses in residential neighborhoods with a newly added legal third unit just don't fit the description of commercial property.

My understanding is that this particular situation may be an unintended consequence of code that was loosely worded and hadn't taken into account the negative economic impact of this restriction on certain properties.

ADU's should serve homeowners in their efforts to create more housing, generate rental income and provide housing for themselves, family or tenants of their choosing.

I hope the board/committee will amend the current code to re-classify properties currently subjected to this deed restriction, and make the new code retroactive. My ADU was created in 2019...

If re-applying for the newly adopted zoning ordinance is what it takes, that can be done, but it shouldn't come a cost and should be expedited, especially if it becomes an extra step for those who have followed the code to this point in endeavor to appease the rules and build units above-board.

Otherwise, there is very little incentive for homeowners to abide these new codes and create legal ADUs, considering the rental income limitations, additional paperwork (tenant income verification) and the many codes that impose things like sprinkling, etc.

Thank you for you time and consideration.

Recode Portland is a great endeavor to correct years of frustrating code and process. I

am glad to see this underway.

Thank you.

## #059

Posted by **Peter Murray** on **01/05/2020** at **10:13am**
*Type: Suggestion*
*Agree: 1, Disagree: -1*
This is a real policy problem. The temptation to convert garages, sheds, etc. into short term rental (AirBnB) units is very strong. While it may make sense to allow ADUs for members of the family of the dominant structure, allowing wider use will only exacerbate our short term rental problems and the creation of a substandard housing stock. Would recommend that this subject be rethought and debated separately,

## #060

Posted by **enoch wenstrom** on **01/02/2020** at **7:36pm**
*Type: Question*
*Agree: 0, Disagree: 0*
I have a 3 unit on beckett street with a 1950's era garage in the driveway. Is this indicating that because i have a 3 unit I could not convert the garage to an additional dwelling unit? If so that does not make sense to me if the goal in r-6 is to increase density and considering what developers are building in the neighboorhood after tearing down buildings.

## #061

Posted by **Markos Miller** on **01/20/2020** at **11:18am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
This should apply city wide.

## #062

Posted by **Markos Miller** on **01/20/2020** at **11:17am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
ADU's should be permitted with 3+n unit buildings.

## #063

Posted by **Peter Murray** on **01/05/2020** at **5:47pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
ADUs are useful options for housing family members (in-laws, grown up children, etc.) but should not be considered a substitute for fully qualifying housing units, and should

NOT be used for Short Term Rentals.

## #064

Posted by **Karen Snyder** on **01/12/2020** at **4:33pm**

*Type: Question*

*Agree: 1, Disagree: 0*

Why isn't it clear in this section if an ADU is restricted only for a long term residence or a vehicle to be used as short term rental.?

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 sh066 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-065ughs.** 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:

## #065

Posted by **Julie Larry** on **01/08/2020** at **1:07pm**
*Type: Question*
*Agree: 0, Disagree: 0*
Does this language reflect the recent Council approved text amendments in the B2 zones?

## #066

Posted by **Markos Miller** on **01/20/2020** at **11:20am**
*Type: Observation*
*Agree: 0, Disagree: 0*
Way too small. minimum size is unnecessary.

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

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

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

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 067 ut 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

# #067

Posted by **Julie Larry** on **01/08/2020** at **1:04pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
Should it be subsection (4)?

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.

### 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)

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

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

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 | 069 BA | 068 A |
| 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

## #068

Posted by **Karen Snyder** on **01/12/2020** at **4:37pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Does this noise decimal limit include any concerts that are held in another part of town that reverberates to the neighborhoods?

## #069

Posted by **enoch wenstrom** on **01/02/2020** at **7:39pm**
*Type: Question*
*Agree: 0, Disagree: 0*
does r-p include r-6?

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

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

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

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

### 6.8.12 Outdoor storage

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

**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.

## #070

Posted by **enoch wenstrom** on **01/02/2020** at **7:42pm**
*Type: Question*
*Agree: 1, Disagree: 0*
why aren;t displaced residents addressed for r-6?  Diplaced in the r-6 zone relates to forced out because of demos and not being able to afford to come back.

## #071

Posted by **Karen Snyder** on **01/12/2020** at **4:42pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why are displaced residents only addressed in B-2,B3b, and B-3c?  There have been many displaced residents in R-6.

B. In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a

C. vibrograph or similar instrument at the property boundaries.

# 7 DIMENSIONAL STANDARDS

## 7.1 APPLICABILITY

Construction, alterations, and 074ions 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 075nished grades measured at th078und level adjoining a072rners of a structure.

**Grade, pre-development.** Average grade, existing on October 1, 2[illegible], at the corners of the foundation of th077oposed structure.

**Height.** The vertical measurement from average grade, or the p079evelopment gra073n 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.

## #072

Posted by **Karen Snyder** on **01/12/2020** at **4:56pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why is average grade even in here? This is a loophole language for the developers. The average grade should be NEVER used for measuring building height because this means the developer only has to build up the grade of the pre-development. This is unfair and misleading language to abutters and contributes to the scale and massing issue that currently exists.
.

## #073

Posted by **Maggy Wolf** on **12/30/2019** at **2:50pm**
*Type: Suggestion*
*Agree: 2, Disagree: 0*
The measurement of height should be applied to pre-development grade on the mainland, as it is done on the islands. Recently, we have seen an increasing abuse of using the finished grade, where projects are raising the grade beyond just a foot or two, allowing a builder to add 4-12 feet to the height of the building. This is extremely unfair to existing neighbors. The best way to stop this abuse is to use pre-development grade.

## #074

Posted by **Ben Walter** on **01/14/2020** at **4:39pm**
*Type: Suggestion*
*Agree: 0, Disagree: -1*
Portland Zoning setbacks and other bulk and mass regulations are often in conflict with and much more restrictive than the built historical fabric of the neighborhoods. This creates re-development and additions that are out of character from the historic fabric of the neighborhood. The ordinance should include language that allows existing historic structures that were built to conform with the original neighborhood's character intent to be able to be expanded within the historic fabric. For example, an existing non-conforming side yard setback should be allowed to be expanded back to the rear setback line so as to stay in conformance with the neighborhood's character, not the zoning setbacks that don't conform with the built environment.

## #075

Posted by **Michael Hoover** on **01/10/2020** at **8:56am**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
The planning board has already run into difficulties establishing the average grade for proposed development. The current language is unclear and subject to interpretations which are intended to increase the overall height of the building by as much as 6-8 feet

higher than existing standards. This uncertainty is easily resolved by revising the language to define
predevelopment grades by utilizing predevelopment (existing) grade (not proposed building foundations) conditions for all of the city, not just the islands within the city limits.

## #076

Posted by **Karen Snyder** on **01/08/2020** at **5:08pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
Pre-development Grade is measured and takes precedence on the islands. This should also take precedence on main land as well..

## #077

Posted by **Rob Whitten** on **01/08/2020** at **5:07pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
Pre development grade should take precedence on non-island development (main land) as well.

## #078

Posted by **Peter Murray** on **01/05/2020** at **5:55pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
This is a real problem. Tying average grade for the purposes of applying hight limitations to the "finished grade" at the four corners of a proposed building is subject to abuse by developers who will create artificial finished grades by heaping earth around the foundations of their projects, held back by retaining walls i some cases and constituting essentially planters. This can increase the average grade by as much as 6 feet or more on a sloping lot, and thus can increase structure height above the dimensional limits by 6 feet or more. What is wrong with tying average grade to either the grade of the site existing pre-construction, or referring it to grades surrounding the site such as along the borders or on public sidewalks or streets abutting the site? Another alternative is to use the pre-development grade, which we understand is done on the Portland islands.

## #079

Posted by **Karen Snyder** on **01/12/2020** at **4:52pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why does the mainland use grade average rather than grade, pre-development as to measure for height? This is very misleading and unfair for a developer to build up the earth of the pre grade to reach higher building heights. The mainland should be using

the pre-development grade to measure height of building.

**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

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

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

## 7.3 DIMENSIONAL STANDARDS

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

## TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

| | | R-1 | R-2 | R-3[2] | R-4 | R-5[2] | R-5A[5] | R-6 | R-6A[1] |
|---|---|---|---|---|---|---|---|---|---|
| Lot area (min.) | Governmental | 15,000 SF | 10,000 SF | 6,500 SF | 6,000 SF | 6,000 SF | | | |
| | Hospital | | | 10 ac. | | 5 ac. | | 2 ac. | |
| | Intermediate or long-term, extended care facility | 3 ac. | 3 ac. | 2 ac. | | 2 ac. | 1.5 ac. | 1 ac.[8] | |
| | Lodging house | | | | | 9,000 SF | | | |
| | Multiplex | | | | 9,000 SF | 9,000 SF | | | |
| | Place of assembly <10,000 SF | 1 ac. | 1 ac. | 1 ac. | 15,000 SF | .5 ac. | | 10,000 SF | |
| | Place of assembly >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. | [illegible] | 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. | <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 | |

## #080

Posted by **Michael Hoover** on **01/10/2020** at **9:21am**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
I agree with the comment by Peter Murray. The decreased building setbacks have not achieved the intended result with regard to overall housing densities. In addition, they pose safety concerns, and are too distinct from other residential dimensional standards throughout the city. Residential dimensions should reflect different objectives in different zoning districts, however the extremely stark differences for the r6 zone dimensional requirements show no relation to any sort of cohesiveness that a comprehensive plan should exhibit.

## #081

Posted by **Michael Hoover** on **01/10/2020** at **9:13am**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
A 5 foot side setback also creates serious safety issues. How will effective access for emergency or fire occur within a five foot width? Any public safety representative will tell you that this will pose significant issues for fire and health related emergencies.

## #082

Posted by **Rob Whitten** on **01/08/2020** at **5:22pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
5 foot side yard set back does not provide sun light, ventilation or sufficient area for green space.

## #083

Posted by **Karen Snyder** on **01/12/2020** at **5:17pm**
*Type: Question*
*Agree: 1, Disagree: 0*
How is a 5 foot setback even allowed when the fire chief said to get to a 2 story side window, they must have at least 10 feet between buildings? This seems to be unsafe and illegal language .

## #084

Posted by **Peter Murray** on **01/05/2020** at **5:59pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
Displaying the various dimensional requirements in a tabular form makes clear the extreme treatment of the R6 in the 2015 amendments. Compared with any other zone, even those permitting multi-family development, the setbacks, height limits, and all

dimensional requirements for the R6 have been placed in a class by themselves. The Munjoy Hill Overlay did not make any real change in these dimensional requirements, which are now permitting destructive and incongruous development in the R6 zone.

## #085

Posted by **Rob Whitten** on **01/08/2020** at **5:14pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Does this mean you can build a 10 foot wide house?

## #086

Posted by **Rob Whitten** on **01/08/2020** at **5:17pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
5 foot side yard does not allow for off street parking

## #087

Posted by **enoch wenstrom** on **01/02/2020** at **7:46pm**
*Type: Question*
*Agree: 2, Disagree: 0*
this is confusing. Is this meant to mean no lot in an r-6 zone exceeds 2000 sf? Please explain. What about the trend of combining lots. This destrpys the neighboor character by permitting massive buildings to be built.

## #088

Posted by **Karen Snyder** on **01/12/2020** at **5:05pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why does R-6 Zoning continued to be targeted by Planning Dept for changing? Why aren't the other residential zones changed as well? Having the residential standards side by side shows the extreme disparity of R-6 zoning to the other residential zones where R-6 continues to be target for constant zoning changes but the other residential zones don't have any changes.

## #089

Posted by **Ben Walter** on **01/14/2020** at **4:31pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
It appears that you are proposing to double the current 8' side yard setbacks to 16' in the R-3 (and other zones). So lets do some math. Many of these existing properties are 5,000 SF, or 50'x100'. Due to the narrowness of the lots, the existing historical fabric of these properties wast to build the houses (up to 3 stories) adjacent to one

property line (just enough so that the eaves didn't overhang) and to put the driveway on the other side, which typically takes up about 16-18'). If you take the proposed 16' setback on one side and an 18' driveway on the other side of a 50' wide lot, that leave you with a 16' wide house. What this all comes down to is that the zoning setbacks for previously developed lots SHOULD conform with the existing historical fabric of the neighborhood or risk creating infill development that is grossly out of character and/or not developable. This also leads to the observation that the existing zoning map has no rhyme or reason as to why some adjacent neighborhoods that appear the same are zoned differently.

> Reply by **Ben Walter** on **01/18/2020** at **8:33am**
> *Type: Suggestion*
> *Agree: 0, Disagree: 0*
> I correct myself, these setbacks appear to be close to being a direct correlation to the existing setbacks I assume the benefits and detriments of these setbacks will be revisited for appropriateness in future review phases.

## #090

Posted by **Ben Walter** on **01/18/2020** at **8:51am**
*Type: Question*
*Agree: 0, Disagree: 0*
How can a lot width be wider than a street frontage?

## #091

Posted by **Karen Snyder** on **01/12/2020** at **5:48pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Where on Table 7-A does the R-6 Zone standards refer and include the R-6 Design Standards and Munjoy Hill Overlay Zone? It should be very clear that R-6 Design Standards are to be included in considering a proposed development.

## #092

Posted by **Ben Walter** on **01/14/2020** at **4:17pm**
*Type: Observation*
*Agree: 0, Disagree: 0*
Many, many historical existing lots in Portland are 5,000 SF, or 50' x 100'. This is the historical fabric of Portland and creates nice medium density neighborhoods. I'm guessing there is grandfathered non-conformity. Now, go down to my comment on side yard setbacks to see why this is a problem.

## #093

Posted by **Karen Snyder** on **01/12/2020** at **5:08pm**
*Type: Question*

*Agree: 0, Disagree: 0*
This is confusing.. Are these maximum or minimum lot square footage? This section should have 2 rows.. Maximum square footage and Minimum square footage and then each zone should have 2 figures. This is where combining lots can be addressed to stop the combining of lots.

## #094

Posted by **Markos Miller** on **01/20/2020** at **11:34am**
*Type: Observation*
*Agree: 0, Disagree: 0*
5' is sufficient minimum

## #095

Posted by **Markos Miller** on **01/20/2020** at **11:32am**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
eliminate front setback requirements

## #096

Posted by **Markos Miller** on **01/20/2020** at **11:31am**
*Type: Observation*
*Agree: 0, Disagree: 0*
These minimums are way too restrictive. In the suburban zones they impact walkability of neighborhoods and eliminate any chance of neighborhood businesses. In more urban areas the limits eliminate opportunities for smaller dwellings g units, i.e. tiny houses

## #097

Posted by **Markos Miller** on **01/20/2020** at **11:33am**
*Type: Observation*
*Agree: 0, Disagree: 0*
Much of our city was built with minimal setbacks. It works fine.

## 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. | | 65 ft. |
| **Structure Height** (max.) — **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]<br>3+-family, 3 stories: 60 ft.[13]<br>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, in no case more than 20 ft. | |

[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.

## #098

Posted by **Karen Snyder** on **01/12/2020** at **5:30pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why is R-6 Lot coverage so much larger than other residential zones? By doing this, these new buildings are not allowing any open green space, gardens, or trees. This is ruining Munjoy Hill since a lot of mature heritage trees are being removed by developers and NOT being replaced. This is bad for the environment.

## #099

Posted by **Karen Snyder** on **01/12/2020** at **5:33pm**
*Type: Observation*
*Agree: 1, Disagree: 0*
This is a confusing statement. This is almost encouraging developers to build garages when the Planning Dept stated they prefer "eyes on street". How are garages eyes on street? This also causes more curb cuts which removes more parking on streets.

## #100

Posted by **Michael Hoover** on **01/10/2020** at **9:39am**
*Type: Observation*
*Agree: 1, Disagree: 0*
The allowance of a 20% higher lot coverage ratio for the R6 zone compared to all the other zones within Portland is s a very significant increase. Please reconsider this difference, as it is not reflective of or consistent with residential development throughout the rest of the city. Residential and use in the R6 is not that significantly different from other zones, especially on the peninsula, and I struggle to understand the justification for such a large difference.

## #101

Posted by **Karen Snyder** on **01/12/2020** at **5:26pm**
*Type: Question*
*Agree: 1, Disagree: 0*
Why isn't it clear where building height is measured? All mainland building height should be measured from the pre-grade development just like the Islands are. By the Planning department being vague or not following the island height measurement which is from the pre-grade development and not the grade average has caused a massive scale and massing issue that would have NOT existed if it was just on islands and mainland, the building height simply measured from the pre-grade development and NOT the grade average. Please change this.

## #102

Posted by **Markos Miller** on **01/20/2020** at **11:35am**

*Type: Suggestion*
*Agree: 0, Disagree: 0*
Do not permit garages on front facades.

## #103

Posted by **erna koch** on **01/03/2020** at **3:33pm**
*Type: Suggestion*
*Agree: 0, Disagree: 0*
This should be no more than 35'  45' is too tall to fit in the neighborhoods

## #104

Posted by **Michael Hoover** on **01/10/2020** at **9:26am**
*Type: Observation*
*Agree: 1, Disagree: 0*
This dimensional standard is not in any way reflective of the existing housing stock within the R6 district.  The vast majority of houses are typically between 18-30 feet wide.

## #105

Posted by **Rob Whitten** on **01/08/2020** at **5:33pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
The mass and scale of 45 feet wide x 45 high housing is not consistent with the mass and scale of R-6 neighborhoods. The mass and scale of 60 foot wide x 35 foot high is not consistent with the mass and scale of R-6 neighborhoods.

## #106

Posted by **Barbara Vestal** on **01/07/2020** at **2:49pm**
*Type: Question*
*Agree: 1, Disagree: 0*
This appears to be brand new. While it might be a good idea to have a maximum building width, what is the rationale for the specific new maximum building width standards that are just being introduced in the R-6?  How does it apply on a corner lot? Is there a comparable building depth maximum that would apply there?  If a lot has frontage on two streets, how does one determine which is the width?

## #107

Posted by **Peter Murray** on **01/05/2020** at **6:00pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
Agreed - 35 feet should be the maximum permitted in the R-6 - period.

# #108

Posted by **Ben Walter** on **01/18/2020** at **8:41am**

*Type: Suggestion*

*Agree: 0, Disagree: -1*

There is an existing side yard setback exception in the R3 zone that allows decreases on one side if added to the other side that appears to not have made it into the this version. This should be continued in the new version except that the reduction should be adjusted to allow setbacks consistent with the historic built fabric of adjacent properties. I will elaborate in a letter to the planning board.

## 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<br>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.<br>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. | Bldg. Length 100 ft. or less: 25 ft. | Bldg. Length 100 ft. or less: 25 ft. |
| | 4 or more D.U. in building: 35 ft. | Bldg. Length >100 ft.: 35 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 facilit es 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.

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] | |
| | | <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. | |
| | Detached Accessory Ground Coverage < 250 SF | | 10 ft.[5] | 10 ft.[5] | 10 ft.[10] | | |

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.

## 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]<br><br>Off-Peninsula: 35 ft. | 45 ft., except:<br>50 ft. if first floor is occupied by a commercial use.<br>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 |

## 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]<br>Restaurants (public area): 2,000 SF<br>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<br>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<br>Other uses in B-2 and B-2c: 80%<br>Other uses in B-2b: 90% | | 80% | | | |

[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.

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.

**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.

### 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:

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

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

## #109

Posted by **Karen Snyder** on **01/12/2020** at **5:45pm**
*Type: Question*
*Agree: 1, Disagree: 0*
What does "underlying zone" mean? Does this mean someone can install a telecommunication town in their backyard and it goes 50 feet high even though the building height allowance in R-6 is 45 feet?

## #110

Posted by **enoch wenstrom** on **01/02/2020** at **7:54pm**
*Type: Question*
*Agree: 1, Disagree: 0*
why is there no max limit in height? Over time the definition of appurtenance might get altered to include something not listed. Also what about deck railings? What is to stop someone from building a ten foot railing that is opaque in nature and completely blocks views?

## #111

Posted by **Michael Hoover** on **01/10/2020** at **9:47am**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
I do not understand why there are no dimensional limitations for any rooftop appurtenance. The absence of standards allows for the potential abuse of any sort of rooftop appurtenance. Size as well as visual impacts can be significant if they are not restricted in any manner. I strongly suggest the inclusion of specific limits with relation to height, volume, and visual impacts for any rooftop appurtenance.

## #112

Posted by **Karen Snyder** on **01/12/2020** at **5:41pm**
*Type: Suggestion*
*Agree: 1, Disagree: 0*
There are many things wrong with this section. 1) This is very vague and must have more clear definition of how much higher from the actual rooftop an appurtenance can protrude. 2) It also needs to provide how large this appurtenance can be by providing length and width maximums. 3) There also needs to be screening language to cover these mechanicals so they are not seen from street scape. 4) There should also be a side note to see Munjoy Hill Overlay district for additional restrictions.

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

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

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;

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

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

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

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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# 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 development to the public realm, Portland's open spaces, and the environment.

## 1.4 APPLICABILITY

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

## 1.5 ENFORCEMENT

### 1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer is authorized to institute or cause to be instituted by the Corporation Counsel in the name of the City any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the Land Use Code.

### 1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in 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~~1.8.5 Obligatory terms and conjunctions

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

A. The terms "must", "shall", or "will" are mandatory terms that express a requirement or impose an obligation.
B. The terms "must not", "shall not", "will not", and "may not" express a prohibition.
C. The term "should" expresses a recommendation or suggestion and does not express a requirement or imposition.
D. The term "may" is permissive and does not express a requirement or imposition.
E. The conjunction "and" indicates that all connected words or provisions apply.
F. The conjunction "or" indicates that the connected words or provisions may apply singly or in any combination.
G. The conjunction "either [...] or" indicates that the connected words or provisions apply singly, but not in combination.

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### ~~1.8.7~~1.8.6 Gender

Words denoting one gender apply to all genders.

### ~~1.8.8~~1.8.7 Abbreviations

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

**Council.** The Portland City Council.

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

**Public Works Authority.** Either the Director of the Department of Public Works or ~~his/her~~their 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 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~~their own defense at a public hearing.

### 2.1.4 Officers

A. **Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. The chair may administer oaths.

B. **Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.

### 2.1.5 Committees

The chair of the Planning Board shall assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The Board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1~~,~~ M.R.S.~~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 vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other

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interested parties as may be directed in the vote of adjournment.

### 2.1.7 Conflicts

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

### 2.1.8 Meetings and procedures

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

1. Workshops 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~~their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1~~,~~ M.R.S~~.A.~~, ~~Section~~ § 401 et seq. shall be informational only and shall not 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.
2. Land Use Code or Zoning Map amendment. Notice of public hearing shall be publicly posted in the municipal office at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first

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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~~ any workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

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

The cost of noticing shall be charged to the applicant.

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

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

### 2.1.9 Record and decisions

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

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papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.

B. **Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

### 2.1.10 Jurisdiction and authority

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

A. To prepare and recommend a Comprehensive Plan to the City Council;

B. To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;

C. To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing, and completing specific projects;

D. To hear, review and approve, conditionally approve, or deny master development plans and major site plans;

E. To hear, review and approve, conditionally approve, or deny applications for subdivision approval;

F. To hear, review, and approve or deny applications for conditional uses listed in Article 6;

G. To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;

H. To review and offer its recommendations to the City Council on certain public projects;

I. To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;

J. To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;

K. Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;

L. To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;

M. To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other

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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.

#### 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 Planning Board all of the papers constituting the record upon which the action appealed from was taken.

B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.

C. **Action**. Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the Board to act within 30 days shall be deemed 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

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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

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major site plan under Article ~~13~~14, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.

The cost of noticing shall be charged to the applicant.

C. **Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee structure to enhance efficiency in consideration of Historic Preservation Board business. Such rules shall be filed with the Planning Authority and with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

### 2.2.7 Record and decisions

A. The Director of the Department of Planning & Urban Development or ~~his or her~~their 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~~their absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.

B. No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section ~~16~~17.5.

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 determination or recommendation of the Historic Preservation Board to the applicant and property owner(s).

### 2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

A. To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects;

B. To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and Council for the

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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

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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~~their own defense at a public hearing.

### 2.3.4 Officers

A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office.

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

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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~~their designee shall serve as staff to the Board of Appeals.

B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings and hearings of the Board shall be open to the public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.

C. **Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

1. In all cases, to the petitioner;
2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant;
3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means;
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine

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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.

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### 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;

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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;

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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

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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 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.

### 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 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 Chapter 4, Article III of the City of Portland Code of Ordinances.

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

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

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

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

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

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

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

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

~~**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.

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

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

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

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

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

**Building, principal**. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one

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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:

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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 pre-release programs.

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

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

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

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

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

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

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

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

**Emergency operations.** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

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

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

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

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

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

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

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

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

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

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

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

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**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. **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.** 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

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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 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.~~

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

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

**Lot**. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a 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

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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 Area Median Income (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.

~~**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,

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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

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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.

**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.

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**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 Land Use Code and other applicable codes and ordinances.

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**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. In industrial zones only, repair services shall include motor vehicle repair services.

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

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

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

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

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

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

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**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, cont.**~~

~~**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.~~

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~~**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, cont.**~~

~~**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.~~

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~~**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, cont.**~~

~~**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.~~

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~~**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 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.

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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, 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 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.

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

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

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

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

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

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

**Studios for artists and craftspeople**. A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom 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.

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**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.

**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

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

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

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

**Wind energy system**. A wind energy generator and all associated facilities. ~~Wind energy 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, 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.

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**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 (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.~~article 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 setback 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 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 setback dimensions.

C. The lot is a lot of record that conformed to the applicable lot size, lot width, and street frontage requirements as of June 5, 1984, and can meet the applicable 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 setback dimensions; and (v) 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-2 zone shall have a minimum area of 6,500 SF unless it is served

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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 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.

F. 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. 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.

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 any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would

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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 subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from

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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~~75.00 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** | Shoreland Zone |
| | Floodplain Management |
| | RPZ Resource Protection |

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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**

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|---|---|
| **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; and to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula. |
| **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 redevelopment (underutilized) or 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:<br>A. An IR-3 zone should have a minimum land area of 20 acres;<br>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;<br>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;<br>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<br>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**

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|---|---|
| **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 variety, sites, and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 zone. 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 (uses which have market areas which are primarily dependent on the regional highway network or serve a regional or larger market), 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. The B-6 zone encourages this district to acquire a distinctly urban form through~~o 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 as recommended in the Eastern Waterfront Master Plan for redevelopment. The B-6 zone promotes a mixed-use development pattern envisioned for urban land on Portland's peninsula. |
| **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. The B-7 zone promotes a mixed-use development pattern envisioned on Portland's peninsula. |

**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 STATEMENT~~S~~**

| | |
|---|---|
| ~~**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. The Recreation Open Space zone may include parcels of public property and private property legally restricted from intensive use or development through deed, covenant, or otherwise. |

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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~~A to 6-F~~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 or a series of such units in the R-3 zone and horizontally or vertically attached dwelling units in the R-5/R-5A zone, or a series of such dwelling units, 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 | ◐ | ◐ | ● | ◐ | |
| | Educational facilities (including seasonal camps) | ◐ | ◐ | | | |
| | Governmental uses | ◐ | ◐ | ● | ◐ | 6.5.6.F[6] |
| | 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 | ◐ | ◐ | ● | ● | |

1 All uses within the IR-3 permitted only within a PUD with a minimum total area of 20 acres of contiguous land.
2 Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.
3 With greater than two but no more than nine rooming units~~s~~.
4 Permitted on Peaks Island only.
5 Maximum 50 rooms.
6 The standards of 6.5.6.F~~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.F~~G~~ only if the total land area of the use is two acres or more.

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## 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 offices (<5,000 SF) | ● | ● | ● | ● | ● | ● | ● | 6.4.6 |
| | General offices (>5,000 SF) | | ● | ● | ● | ● | ● | ● | |
| | General services (<5,000 SF) | ● | ● | ● | ● | ● | ● | ● | 6.4.6 |
| | General services (>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 |
| | 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 |
| | Retail (>25,001 SF) | | ● | ● | ● | ● | ● | ● | 6.4.14 |

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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 |
|---|---|---|---|---|---|---|---|---|---|
| | 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 (~~<2,001~~ 7,000 SF plant canopy) | | | | ● | | | | |
| | Printing and publishing | | ◐[9] | ● | ● | ● | ● | ◐ | |
| | Repair services | | ● | ● | ● | ● | ● | ● | |
| Industrial | Studios for artists and craftspeople | ● | ● | ● | ● | ● | ● | ● | |
| | Tow lots | | | | ● | | | | 6.4.16~~5~~ |
| | Warehousing, storage, and distribution | | ◐[10] | | ● | ●[10] | ◐[10, 11] | ◐[10, 11] | 6.5.6.E |
| | Marine uses | | | | | ● | ● | | 6.4.11~~2~~ |
| | Correctional pre-release facilities | | | | ● | | | | 6.4.7 |
| | Off-street parking | | | ●/◐[12] | | ● | ◐ | ◐ | 6.5.6.H |
| | Parks and open spaces | ● | ● | ● | ● | ● | ● | ● | |
| | Solar energy system (minor) | ● | ● | ● | ● | ● | ● | ● | 6.4.15~~4~~ |
| | Solar energy system (major) | | | | ◐ | | | | |
| Other | 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 as a conditional use in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in the B-2b and B-2c zones.
[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] Permitted in the B-2/B-2b/B-2c as a conditional use if 10,000 SF or less. Self-storage permitted in the B-4 zone. Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage not permitted in the B-2/B-2b/B-2c, B-6, and B-7 zones.
[11] Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment and occupies less than 15,000 SF.
[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 | | ● | |
| | 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 of at least three acres of contiguous land subject to the standards of ~~6.9.3~~Article 14.

[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 offices (<5,000 SF) | ●[4] | ● | | | |
| | General offices (>5,000 SF) | ●[4] | ● | | | |
| | General services (<5,000 SF) | | | | ● | |
| | General services (>5,000 SF) | | | | ● | |
| | 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 cultivation facility (<2,000 SF plant canopy) | ● | ● | ● | | 6.4.10 |
| | Marijuana cultivation facility (2,001-7,000 SF plant canopy) | | ● | ● | | |
| | Marijuana cultivation facility (>7,001 SF plant canopy) | | | ● | | |
| | Marijuana manufacturing facility | ● | ● | ● | | |
| | Marijuana testing facility | ● | ● | ● | | |
| | Printing and publishing | ● | ● | ● | | |
| | Recycling and solid waste disposal facilities | | ●[6] | ●[6] | | |
| | Studios for artists and craftspeople | ● | ● | | | |
| | Telecommunication towers (ground-mounted) | | ● | ● | | |
| | Tow lots | | ● | ● | | 6.4.16 |
| | Warehousing, storage, and distribution facilities | ●[7] | ● | ● | | |
| | Correctional pre-release facilities | | ●[8] | ●[8] | | 6.4.7 |
| | Marinas | ● | | | | |

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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 |
|---|---|---|---|---|---|---|
| | Off-street parking | | | | ● | |
| Other | 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 or boarding 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~~OPEN SPACE ZONE**

| | R-OS[1] | ~~RPZ~~ | Use Standards |
|---|---|---|---|
| Cemeteries | ● | | |
| Educational, scientific, or interpretive facilities | | ~~●~~ | |
| Marinas | ● | | |
| Parks and open space | ●[2] | ~~●[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] Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Section 6.5.7.
[2] Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas.
~~[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 under Section 6.5.7.

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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~~ 14 and 1~~5~~4. Also as set forth in Articles 14~~3~~ and 1~~5~~4, 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. No beverage container redemption centers shall be permitted. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 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:

B. ~~no~~ No unaccompanied minors under the age of 18 shall be permitted in the facility;

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

D. 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

E. 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

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wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana related facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.

C. Supplemental standards

1. Marijuana-related uses may only be permitted within a fully enclosed building.
2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
3. No drive-through service is permitted for marijuana-related uses.
4. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises where sold.
5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that at a minimum addresses 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;

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boat storage; and seafood processing, packing, and distribution for human consumption; and

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

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

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

B. In the R-5 zone, the maximum number of units in a multiplex building shall be six.

~~F.~~C. No dwelling unit shall have less than 600 SF of floor area, exclusive of common hallways and storage in basement and attic;

### 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

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transportation system, including docking facilities, exists or will be provided.

G. Adequate provision for off island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the project: compaction and reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

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

I. The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (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.

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N. The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife, botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

O. If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this 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 existing landscape and minimize removal of vegetation to the extent possible.

F. Where any part of the proposed solar energy system (including associated facilities) is within an historic district, such development shall be reviewed and approved by the Planning Authority in accordance with Article 17. Where any part of the proposed solar energy system (including support structures and associated facilities) is within 100 feet of any designated landmark, historic district, or historic landscape district, such development shall meet the

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standards of Article 14, regarding compatibility with the landmark or historic district.

G. Solar energy systems shall minimize impacts resulting from construction and maintenance of the solar energy system, including lighting, security measures, traffic, and grid connections.

H. Solar energy systems shall be located away and screened from public ways and nearby residential/institutional uses to the extent possible.

I. Where permitted in residential zones, and in the B-1, B-2, B-3, B-7 and waterfront zones, all solar energy systems shall be co-located with other land uses.

J. Major solar energy systems shall be located on areas already paved or built upon, or where other development is documented to be unlikely due to local conditions.

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

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

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

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

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

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

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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 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 landscape district, any historic cemetery, any historic district, except the Congress Street Historic District where it coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark, which shall include Portland Observatory, Cathedral of Immaculate Conception, St. Dominic's Cathedral, St. Luke's Cathedral, State Street Church, and City Hall.

~~M.~~N. Wind energy systems within ROS zones are allowed only where they are co-located within public industrial or utility facilities.

~~N.~~O. Systems shall be screened with a vegetated buffer from public areas and residential buildings.

## 6.5 CONDITIONAL USES

### 6.5.1 Conditional use review procedure

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

1. All conditional use applications in the B-3/B-3b/B-3c, B-5/B-5b, B-6, and B-7 zones;
2. All conditional use applications associated with projects that are otherwise before the Planning Board; 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

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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 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.

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### 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 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

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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. 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.

~~1.~~2. For the use of any building designed or constructed for residential use, which was in use as a residence on April 18, 1984, or thereafter:

~~a. 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.~~

a. A professional office shall not be located within 500 ft. of another as measured along the street line to the respective property lines.
b. A building with one or more professional offices shall have at least 50% of the total floor area of the building devoted to residential uses.
c. The total number of individuals working in a building of professional offices shall not exceed the equivalent of four full time employees.
d. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new building shall be compatible with the architectural character of the surrounding area.

~~2.~~3. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.

D. High-tech manufacturing

1. A minimum of one-third of the total square footage devoted to manufacturing shall be conducted in a laboratory environment, in

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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/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 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;

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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.
4. In the B-6 zone: No brew pubs or microbreweries east of Waterville Street shall be permitted within 50 ft. of Fore Street.

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 areas; 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 alcoholic beverages shall meet the minimum lot size requirement for places of assembly greater than 10,000 SF;
7. Post-secondary schools in the R-2 zone shall only be permitted on a collector or arterial road.

~~7.~~8. In the case of a post-secondary school within the R-5 zone and not including the USM Overlay Zone, such school may build principal structures to a height of 55 feet if the following standards can be met:
   a. Minimum lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.

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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.~~9. 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

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:

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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. In the R-6 zone: Off-street parking shall be for passenger cars for uses permitted in the R-6 zone.

~~2.~~3. 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.

b. The Planning Board may waive 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-

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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.~~4. Surface parking in the B-3, B-6, and B-7 zones:

a. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.

b. Surface parking, including parking aisles, shall be located at least 35 feet from a street. The 35-foot setback 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.

c. In the B-7 zone, surface parking that does not meet the 35-foot parking setback shall be permitted as a conditional use, provided that:

i. All or a portion of the 35-foot setback area had a gravel surface on September 29, 2015;

ii. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015;

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iii. The parking spaces provide parking to a principal building on the same lot and or a principal building on a contiguous lot;

~~iii.~~iv. One of the buildings described in (iii) above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 square feet or greater;

~~iv.~~v. The total number of spaces within 35-foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required;

~~v.~~vi. The proposed parking spaces meet the landscape and buffer requirements of 6.8.8; and

vii. Parking spaces within the 35-foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided.

I. Preschool facilities

1. The facility shall be located in a structure in which there is one or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory to the principal nonresidential use;
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;

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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.

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 and supervision 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

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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.~~

### 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

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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 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~~18.2.3.
    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.

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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-2b/-B-2c zones, B-3/B-3b/B-3c zones, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Subsection 6.5.2 and the following additional review standards:

1. In general:
   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

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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-2/B-2b/B-2c zones, drive-throughs shall only be permitted when accessory to a pharmacy or banking facility use. Drive-throughs shall not be permitted for restaurant, bakery, or other food or beverage service uses. Drive-throughs are only permitted in buildings of three or more stories where a majority of the upper stories is devoted to three or more dwelling units. The drive-through shall be screened as much as practical from the front of the building and shall be no closer than 40 feet from abutting residential zones and 25 feet from the street line.

~~2.~~3. In the B-3/B-3b/B-3c zones, drive-throughs shall only be permitted when accessory to a bank. Drive-throughs shall be subject to the Downtown Urban Design Guidelines.

~~3.~~4. In the B-6 zone, drive-throughs shall only be permitted when accessory to a bank and located in the interior of parking structures. Drive-up vehicle circulation shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

~~4.~~5. 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;

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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. **Heliports.** Heliports shall meet the following minimum specifications:

1. Roof heliport:
   a. Take-off area (min.): 200 feet x 250 feet
   b. Parking area (min.): 30 feet x 90 feet
2. Ground heliport:
   a. Take-off area (min.): 300 feet x 700 feet
   b. Parking area and station building shall be located out of flight area.
3. Elevation of operational area above street (max.): 100 feet
4. Clearance from lateral obstruction (min.): 100 feet
5. Width of approach and departure path (min.): 500 feet at landing area, tapering outward 15 degrees on each side to a width of 1,000 feet
6. Slope with emergency landing areas: 1:8
7. Slope without emergency landing areas: 1:20
8. Curved approach: Minimum radius to turn, 650 feet
9. Approach zone transition area slope: Slope, 1:2

F. Home occupations

1. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.
2. Home occupations must be conducted entirely within the dwelling unit by one or more persons residing within the dwelling unit.
3. In connection with the operation of a home occupation, , the following requirements shall be met:
   a. A home occupation shall not occupy more than 500 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,

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but shall not constitute a dominant part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;

d. Exterior signs shall be limited to one non-illuminated sign not exceeding a total area of two 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~~ Hairstylists (limited to no more than two hair dryers);

o. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;

p. Interior ~~decorators~~designers;

q. Lawyers, justices of the peace, and notary publics;

r. Licensed family day care home or babysitting services;

s. Musicians or music teachers, including group instruction not to exceed six students at any time but not including performances or band rehearsals, which shall meet the following additional requirements:

i. Electronic amplification is prohibited;

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ii. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;

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

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

u. Photographic studios;

v. Professional counseling and consulting services;

w. Professional research services;

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

y. Small appliance repair;

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

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

bb. ~~Stenographic and other c~~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.

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

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

H. **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

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tasting rooms accessory to food production is produced or manufactured off-site.

I. **Solar energy generation**. Roof-mounted, building-integrated, or small-scale ground-mounted solar energy systems~~arrays~~ shall be permitted as accessory uses within all zones except the Stream Protection zone and within cemeteries. ~~,~~ Accessory solar energy systems are only permitted within the Recreation Open Space zone where co-located with public industrial or utility infrastructure and are subject to historic preservation review when such systems are either located within or less than 100 feet from an identified historic district or~~,~~ historic landscape~~s~~ district.~~;~~ All accessory solar energy systems are subject to the following conditions~~.~~:

1. Accessory solar energy systems shall comply with all general use standards for solar energy systems as stated under 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.

J. **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.~~1. There shall be not more than two rooms per dwelling unit occupied for such use; and
~~3.~~1. 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.

K. **Wind energy generation.** Freestanding and roof-mounted wind energy systems shall be permitted as accessory uses within all zones except the Stream Protection zone, within historic districts except where the Congress Street Historic District coincides with the B-3 zone, within historic cemeteries or historic landscape districts, or within 1,000 feet of any designated historic landmark (Portland Observatory, Cathedral of Immaculate Conception, St. Dominic's Cathedral, St. Luke's Cathedral, State Street Church, and City Hall), subject to the following conditions:

1. Accessory wind energy systems shall comply with all general use standards for wind energy systems as stated under Subsection 6.4.17 of this article.
2. Freestanding wind energy systems shall measure no higher than 45' feet in height, except within the downtown historic district, where the height maximum of the underlying zoning shall supersede.~~.~~
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

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shall minimize changes to existing topography and natural vegetation which would result from construction or maintenance of the system.

## 6.7 TEMPORARY USES

### 6.7.1 In general

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

### 6.7.2 Standards for specific temporary uses

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

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

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

D. Temporary stands

1. No premises shall be used for business purposes consisting of temporary stands, booths, platforms or vehicles intended for the sale of merchandise or other mercantile purposes, if any part of such stand, booth, platform or vehicle is proposed to be located nearer than 125 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

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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) 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

A. In the B-3 zone, all development, all building and site alterations, and all provision of landscaping or other pedestrian amenities shall be consistent with the Downtown Urban Design Guidelines.

~~1.~~B. In the B-7 zone, all buildings shall have a minimum of one operable public pedestrian entrance facing the street frontage of the lot. Such building entrances shall comply with the B-7 Design Standards.

### 6.8.2 Development in the R-OS zone

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

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

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

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

D. Buildings and structures shall be sited to avoid obstructing significant scenic views presently

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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 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~~17. The exterior design of proposed or renovated structures located adjacent to historic districts or historic resources shall be subject to historic preservation requirements of Article ~~13~~14.

### 6.8.8 Landscaping and screening

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

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

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### 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.

~~A.~~B. For any noise generated by a use in the B-5/B-5b, B-6, B-7, I-L/I-Lb, I-M/I-Mb, and I-H zones, sound shall be~~,~~ measured at or within the boundaries of any residential zone. For any noise generated by a use in the B-1, B-2/B-2b/B-2c, I-B, R-P, O-P, A-B, and IS-FBC zones, sound shall be measured at lot boundaries. For any noise generated by a use in the B-3/B-3b/B-3c, sound shall be measured at lot boundaries or within publicly accessible pedestrian open space. And for any noise generated by a use in the B-4 zone, sound shall be measured off premises at the source of complaint.~~.~~

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

~~C.~~D. 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.

**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.

Measurements shall be made at all major lot lines of the site, at a height of at least 4 feet above the ground surface. In measuring sound levels under this subsection, sounds with a continuous duration of less than 60 seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of 60 seconds or more shall be measured on the basis of the energy average sound level over a period of 60 seconds (LEQ1).

E. Wind energy systems

1. Where the underlying zone is residential and does not specify sound requirements, or where the system will be within 100 feet of a residential building, the audible sound levels generated by the wind energy system* shall not exceed forty-five (45)

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decibels on the A scale between the hours of 9:00 p.m. and 7:00 a.m., and fifty (50) decibels on the A scale between 7:00 a.m. and 9:00 p.m., as measured at the nearest property line in accordance with this provision and technical standards set out in the City of Portland Technical Manual.

2. For any system over 45 feet in total height not in the recreation open space, resource protection or island transfer station zones, the maximum sound levels allowed by this ordinance shall not be exceeded at the nearest property boundary and at the nearest point vertically above the property line that coincides with the maximum building height allowed in the abutting zone.
3. Any system located within the recreation open space, resource protection or island transfer station zones and more than 100 feet from a residential building shall not exceed fifty-five 955) decibels on the A scale as measured 50 feet from the base of the tower.
4. Audible sound levels of wind energy systems shall include sounds generated in all conditions including low and high winds (furling, yawing, and flutter) and power outages (freewheeling). If after installation, the system is determined to be operating at levels above these limits (as measured at the property lines in accordance with this provision and applicable technical standards, the owner shall take (at the owner's cost) remedial action to ensure compliance with these limits. Required action may include relocation or removal of the system.

D. F. Exemptions

1. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth above 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

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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 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

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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 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

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that the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a conforming or lawfully nonconforming dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life safety codes, provided that the owner demonstrates to the Building Authority that:

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

### 6.8.12 Outdoor storage

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

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

[1] Does not apply to airports.

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### 6.8.13 Relocation of displaced residents

In the B-3, B-3b, and B-3c zones, any development which results in the displacement of residents of dwelling units currently located on the development site shall meet the requirements of Article ~~17~~18.5.

### 6.8.14 Smoke

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

**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 and A-B zones | |
| IS-FBC | 20% |

### 6.8.15 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.

### 6.8.16 Traffic

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

### 6.8.17 Waste disposal

A. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed, covered containers or receptacles. In all non-residential zones with the exception of the industrial zones, such containers or receptacles shall be within designated, screened areas. In industrial zones and the B-4 zone, outdoor storage of refuse, debris, or previously used materials awaiting reuse shall either be in an appropriate container or located within a designated, screened area. 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.

### 6.8.18 Vibration

A. In any mixed-use zone, the O-P, and the R-P zones, vibration inherently and recurrently generated shall be imperceptible without

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instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.

~~B.~~ In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a vibrograph or similar instrument at the property boundaries.

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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 or structured or engineered surfaces.~~.~~

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

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

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

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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~~courses 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[7,8] | R-6A[1] |
|---|---|---|---|---|---|---|---|---|---|---|
| Lot ~~a~~Area (min.) | Governmental | | 15,000 SF | 10,000 SF | 6,500 SF | 6,000 SF | 6,000 SF | | | |
| | Hospital | | | | 10 ac. | | 5 ac. | | 2 ac. | |
| | Intermediate or long-term, extended care facility | | 3 ac. | 3 ac. | 2 ac. | | 2 ac. | 1.5 ac. | 1 ac.[9] | |
| | Lodging house | | | | | | 9,000 SF | | 2,000 SF | |
| | Multiplex | | | | | 9,000 SF | 9,000 SF | | | |
| | Place of assembly | <10,000 SF | 1 ac. | 1 ac. | 1 ac. | 15,000 SF | .5 ac. | | 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. | | 2,000 SF | |
| | Elementary, middle, and secondary school | | 2 ac. | 2 ac. | 2 ac. | 30,000 SF | 30,000 SF | | 30,000 SF~~c~~ | |
| | 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~~ SNIDU (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. in height.: 10 ft. |
| | 2 stories | | 14 ft. | 14 ft. | 14 ft. | 14 ft. | 12 ft. | 14 ft. | | |
| | 2.5 stories | | 16 ft. | 16 ft. | 16 ft. | 16 ft. | 14 ft. | 16 ft. | | >45 ft. in height: 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[1] | R-6A[1] |
|---|---|---|---|---|---|---|---|---|---|
| **Stepbacks** (above 35 ft. when property line abuts a residential zone)(min.) | | | | | | | | 10 ft. from side property line and 15 ft. from rear property line[11] | |
| **Structure Height** (max.) | | 35 ft. | 35 ft. | 35 ft. | 35 ft. | 35 ft. | 35 ft. | 45 ft.[12] | 65 ft. |
| | **Detached Accessory** | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | |
| | ~~**Building width** (max.)~~ | | | | | | | ~~1- and 2-family: 30 ft.[13]~~<br>~~3+ family, 3 stories: 60 ft.[13]~~<br>~~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~~the front facade, whichever is greater, and in no case more than 20 ft. | |

[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 additional standards that apply to these uses. ~~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.
~~[10]~~[8] 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.
~~[8]~~[9] 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]~~[10] Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.
[11] Does not apply on side streets.
[12] Except as provided under the Fort Sumner Park Height Overlay and 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.~~

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## TABLE 7-B: PRUD DIMENSIONAL STANDARDS

| | R-3 | R-5 | R-5A[3] |
|---|---|---|---|
| **Gross Lot Area** (min.) | 3 ac. | 2 ac. | 2 ac.[4] |
| **Net Land Area per Dwelling Unit** (min.) | 6,500 SF | 3,000 SF | 1,600 SF[4, 5] |
| **Units/Building** (max.) | PRUD < 5 ac.: 2<br>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.<br>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.<br>4 or more D.U. in building: 35 ft. | Bldg. Length 100 ft. or less: 25 ft.<br>Bldg. Length >100 ft.: 35 ft. | Bldg. Length 100 ft. or less: 25 ft.<br>Bldg. Length >100 ft.: 35 ft. |
| **Distance between detached PRUD Dwelling Units** (min.) | 16 ft. | | |
| **Common 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 a minimum, a contiguous area of 6,000 SF with a minimum dimension of 50 ft. shall be provided which shall at least be usable as a multi-purpose field. 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; or contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.
[2] The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

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## TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

| | | | IR-1 | IR-2 | IR-3 | I-B[10] *Served by Public Water & Sewer* | I-B[10] *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 rooming units, plus 5,000 SF/additional rooming unit | 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] | |
| | | <10,000 SF | 15,000 SF | 15,000 SF | | | |
| | PRUD/PUD (gross lot area) | | 5 ac.[13] | 5 ac.[13] | 20 ac. | | |
| | Raising of Animals | | 3 ac. | | | | |
| | Residential | | 40,000 SF[1,2,3] | 20,000 SF[3,2] | 42,500 SF[6] | 20,000 SF | 20,000 SF |
| | Restaurant | | | | 35,000 SF | 10,000 SF | 20,000 SF |
| | Retail | | | | 35,000 | None | 20,000 SF |
| | Seasonal Camps | | 10 ac. | | 35,000 SF | | |
| | Schools/Educational Facilities | | 40,000 SF | 20,000 SF | 35,000 | 20,000 SF | |
| | All other uses | | | | 35,000 SF | 20,000 SF | |
| Lot Area per Dwelling Unit (min.) | | | None[4] | None[4] | 42,500 SF[7,8] | | |
| Street Frontage (min.) | | | 100 ft.[5] | 70 ft.[5] | 70 ft.[8,9] | 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.[9,10] | 20 ft. or avg. depth of adjacent front yards | |
| Rear Setback (min.) | | | 30 ft.[5] | 25 ft.[5] | 25 ft.[9,10] | 10 ft. | |
| | Detached Accessory Ground Coverage < 250 SF | | 10 ft.[5] | 10 ft.[5] | 10 ft.[9,10] | | |

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

| | | IR-1 | IR-2 | IR-3 | I-B[10] *Served by Public Water & Sewer* | *Not Served by Public Water & Sewer* |
|---|---|---|---|---|---|---|
| Side Setback (min.) | | 20 ft.[5] | 20 ft.[5,] | 20 ft. [9~~10~~] | 10 ft. | |
| | Detached Accessory Ground Coverage < 250 SF | 15 ft.[5] | 15 ft. [5] | 15 ft. [9~~10~~] | 10 ft. | |
| | On Side Street | 20 ft.[5] | 20 ft.[5,] | 20 ft. [9~~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~~3~~] PRUDs shall consist of detached dwellings.
[2~~4~~] 60,000 SF if not served by public water.
[3~~3~~] For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.
[4] 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.~~
[2~~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.
[8~~9~~] Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.
[9~~10~~] When adjoining any external property boundary.
[10] All I-B standards apply for lots served by public water and sewer and lots not served by public water and sewer unless otherwise indicated.
[11] In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.

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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. | | 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 |
| **Length of Undifferentiated Blank Wall Along Publicly Accessible Way** (max.) | | | | 30 ft., except 15 ft. within PAD Overlay | | | | |
| **Structure Height** (max.) | | On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above[1]<br><br>Off-Peninsula: 35 ft. | 45 ft., except: 50 ft. if first floor is in commercial use and 65 ft. in B-2 and B-2c on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft. | 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 B-6 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]<br>Restaurants (public area): 2,000 SF<br>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<br>Exhibition and meeting halls: 20,000 SF | |
| **Lot coverage** (max.) | | | 25% of site area for portions of structures exceeding 125 ft. in height[4] | | | | |
| **Impervious Surface Ratio** (max.) | 90% | Residential: None<br>Other uses in B-2 and B-2c: 80%<br>Other uses in B-2b: 90% | | 80% | | | |

[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~~Subsection 7.5.1, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St., as described above. shall exceed a height of 62 ft as measured from average grade of the building at its foundation.
[6] 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~~ area east of the Fore Street Connector shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.
[8] For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft. Buildings in the area east of the Fore Street Connector shall not be subject to this requirement.

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

| | | O-P | R-P[1] |
|---|---|---|---|
| **Lot Area** (min.) | | 1.5 ac. | 6,000 SF |
| **Street Frontage** (min.) | | 100 ft. | 60 ft. |
| **Lot Width** (min.) | | 150 ft. | 60 ft. |
| **Front Setback** (min.) | | 50 ft. | 20 ft., or avg. depth of adjacent front yards[2] |
| **Rear Setback** (min.) | **Principal** | 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 dimensional requirements of the nearest residential zone.
[2] The front yard of a lot existing as of April 4, 1988, which lot is less than 100 ft. deep, need not be deeper than 10% of the depth of the lot.

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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~~ Area (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.)[3] | 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 Ratio (max.) | | .5 | ~~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 ~~ADDITIONAL~~ SUPPLEMENTAL DIMENSIONAL STANDARDS

### 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.

### Fences

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

A.

B.

### Solar energy systems

**Setbacks.**

1. Solar energy systems shall be located in side or rear yards, wherever possible.
2. Minor solar energy systems shall be setback 50 feet from residential, R-P, B-1 and B-2 zones.
3. Major solar energy systems shall be setback 75 feet from residential, RP, B-1 and B-2 zones.

**Height.**

1. ~~G~~round-mounted solar energy systems. Where the total height of the support structure plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall be 20 feet above the

ground as measured from the base of the support.

2. Roof-mounted solar energy systems:. The maximum height for all solar energy systems shall be as specified in the dimensional requirements of the underlying zone. Where the total height of the support structure/building plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall be:

   a. For all residential and R-P zones: 5 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

   b. For B-4 and Industrial zones: No limit

   a.c. For all other zones: 8 feet above the roof and set back from the edge of the roof by 1 foot for every 1 foot of solar energy system height.

### Swimming pools

A. Outdoor swimming pools as accessory uses shall be

B. subject to the following dimensional standards:

No swimming pool shall be sited in the front yard.

No part of any swimming pool shall be located closer than ten feet from the principal

A. structure, nor closer than ten feet from side or rear lot lines.

### Wind energy systems

Setbacks.

1. Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the system is located. Where setbacks vary, the largest setback shall apply. All parts of the wind energy system, including associated facilities and guy wires, shall be at least 10 feet from the property line (except where connecting to the grid), any utility line (in any direction) or other easement/right-of-way. The setback from utility lines, easements and right-of-way lines may be reduced where the owner/benefitted party provides written permission.
2. Roof-mounted wind energy systems shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than four times the height of the system as measured from the roof surface at the point of attachment. For systems in and adjacent to waterfront zones, 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

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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~~s with a~~ B 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.

~~5.~~6. In Residential zones, the B-1 zone, I-B zone and R-P zone, where the lot is less than 0.5 acres, any vertical element of the wind energy system (tower/pole) shall be located in the rear yard or on the rear half of the existing building. Wind energy systems and associated facilities shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and existing natural vegetation which would result from construction or maintenance of the system.

Height

1. Maximum height above grade. Wind energy systems, permitted as either freestanding or roof-mounted structures shall be permitted conditionally with structure heights as follows:

| Zone | Height |
|---|---|
| RPZ | 10 ft. |
| Residential Zones[1], R-P, B-1 and I-B | 25 ft. |
| Historic Districts[2] and within 1,000 ft of designated landmarks | 45 ft |
| EWPZ, WPDZ, WCZ, B-2, B-5 and B-6 | 65 ft. |
| B-3, B-4, B-7, and O-P | 85 ft. |
| ROS, I-M, I-Mb, I-H and A-B | 160 ft. |

1. Permitted up to 65 ft within USM Overlay Zone or on other sites with institutional uses measuring over 5 acres.
2. Permitted up to 85 ft in B-3 part of Downtown Historic District

2. Roof-mounted wind energy systems shall measure no higher than 10' feet above the highest part of the roof.

## 7.5 SPACE AND BULK EXCEPTIONS

### 7.5.1 Height

A. **In the B-3/B-3b/B-3c zones.** Minimum height provisions as depicted on the Downtown Height Overlay Map shall not apply to:

1. Accessory building components and structures such as truck loading docks covered parking, mechanical equipment enclosures and refrigeration units;
2. Information kiosks and ticketing booths;

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3. Public transportation facilities of less than 10,000 square feet, or additions of less than 5000 square feet to existing public transportation facilities provided that the cumulative additions as of June 4, 2007 do not exceed 10,000 SF;
4. Additions to buildings existing as of June 4, 2007 provided that the cumulative additions since June 4, 2007 do not exceed 10% of the building footprint on June 4, 2007, except building additions on those portions of the lot located closer to the street line than the building footprint existing as of June 4, 2007 shall not be included in this 10% limitation;
5. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
6. Additions to and/or relocation of designated historic structures or structures determined by the historic preservation committee to be eligible for such designation;
7. Parking attendant booths or bank remote teller facilities;
~~6.~~8. Structures accessory to parks and plazas; and
9. Buildings or building additions of less than 2,500 SF footprint, on lots or available building sites of less than 3,000 SF.

B. **In the B-6 zone.** Minimum height provisions as depicted on the B-6 Building Height Overlay and Building Envelopes map shall not apply to:

1. Buildings located in the area east of the Fore Street Connector;
2. Parking attendant booths;
3. Information kiosks and ticketing booths;
4. Parking garages;
5. Public transportation facilities;
6. Additions to buildings existing as of December 8, 2004 provided that the cumulative additions since December 8, 2004 does not exceed 25% of the building footprint on December 8, 2004 except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of December 8, 2004;
7. Buildings or building additions of less than 2,000 SF footprint, on lots or available building sites of less than 2,000 SF;
8. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures; and
9. Additions to and/or relocations of designated historic structures.

C. **In the B-7 zone.** Minimum floor provisions as depicted on the Bayside Height Overlay Map shall not apply to:

1. Accessory building components such as truck loading docks, mechanical equipment enclosures and refrigeration units;
2. Information kiosks and ticketing booths;
3. Parking garages;

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4. Public transportation facilities;
5. Additions to buildings existing as of March 9, 2005 provided that the cumulative additions since March 9, 2005 do not exceed 50% of the ground floor building footprint on March 9, 2005 except that such restriction shall not apply to those portions of the building addition(s) that are constructed closer to the street line than the building footprint existing as of March 9, 2005;
6. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
7. Additions to and/or relocation of designated historic structures or structures determined by the historic preservation committee to be eligible for such designation; and
8. Portions of buildings more than 50 feet from the street line.

~~A.~~D. In the Bayside Gateway Urban Height District

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

1. Such buildings shall be reviewed by the Planning Board as conditional uses under Section 6.5 of this Land Use Code.
2. Such buildings shall be sited to minimize encroachment into designated view corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced in the Bayside Height Study Map and the B-7 design standards; 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

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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:

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

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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.~~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.

~~C.~~F. **Wind energy systems.** Wind energy systems may be erected above the height limitation ~~for principal buildings~~ within the underlying zone, except where wind energy systems are permitted in historic districts, where the height limitations set by the underlying zoning shall supersede.

~~D.~~G. **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~~21, shall not be subject to the height limitations within the underlying zone.

~~E.~~H. **Rooftop appurtenances.** ~~Rooftop~~ Unless otherwise noted, rooftop appurtenances for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, deck railings,

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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.

~~F.~~I. **Telecommunication towers.** Where permitted, g~~G~~round-mounted telecommunication towers may be erected above the height limitations within the underlying zone.

C.

### 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~~ 17 shall be exempt from the building wall requirement.

### 7.5.3 Lot area

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

**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

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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 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 SF or less is completely surrounded by ~~rights-of-way,~~

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streets or alleys, the lot coverage may be increased 20%.

### 7.5.5 Setbacks

A. **Setbacks in residential and R-P zones.** In any residential zone and the R-P zone, the width of one side setback may be reduced one foot for every foot that the other side setback is correspondingly increased, but no side setback shall be less than the minimum required for a one-story building.

B. **Setbacks in the O-P zone.** The Planning Board may reduce by up to 50 % the minimum setback if another yard within the lot is correspondingly increased so that the combined minimum yards on all four sides equal 150 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 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-1 zone, building additions are encouraged but not required to meet fron setbacks.
3. In the B-2/B-2b/B-2c zones:
   - Building additions do not have to meet maximum front setback requirements.
   - 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.
   - If a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no maximum setback is required.
   - 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

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frontage, then no maximum setback is required.

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.~~4. In the B-3/B-3b/B-3c zones: The Planning Board may require or approve an additional setback to comply with the design standards of Article ~~13~~ 14 and the *City of Portland Design Manual.*

~~4.~~5. In the B-6 zone: For lots fronting on more than one street in the B-6 zone, the front setback can be increased more than 10 feet if all of the following conditions are met:

The increased setback occurs at the intersection of the streets;

The increased setback area is the primary pedestrian entrance to the building;

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

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.~~6. In the B-7 zone.

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.

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.

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

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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.

F. In the case of a lot having frontage on Marginal Way and I-295, the property edge along I-295 shall not be considered street frontage.

G. 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.

H. 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).

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,

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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. 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.

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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 be less than the following:

| | |
|---|---|
| R-1, R-2 | 12 ft. |
| R-3. R-5 | 8 ft. |
| R-4, R-5A | 10 ft. |

~~I. Setback exceptions for purposes of exterior egress. Notwithstanding any other provision of 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

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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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# 8 OVERLAY ZONES

## 8.1 COMPACT URBAN RESIDENTIAL OVERLAY (R-7)

### 8.1.1 Purpose

The purpose of the R-7 Compact Urban Residential Overlay Zone is to encourage and accommodate compact residential development on appropriate locations on the Portland peninsula, pursuant to the *New Vision for Bayside* and housing plans of the City of Portland. Suitable sites should be within walking distance of downtown or other work places, shopping and community facilities, and have access to public or private off-site parking or transit service. The intent of this zone is to foster increased opportunities for compact living for owners and renters representing a variety of income levels and household types.

Locations for siting the R-7 Zone are intended to be located on the peninsula of Portland, in the area encompassed in the *New Vision for Bayside* plan, and other peninsula R-6 locations characterized by moderate- to high- density multi-family housing in a form and density exceeding that allowed in the R-6 zone and where infill development opportunities exist; and areas on the peninsula with mixed business and residential zoning and uses which can accommodate higher density infill residential development without negatively impacting the existing neighborhood or adjacent properties. It may be appropriate in some cases to apply the R-7 overlay through conditional or contract zoning to ensure that the new development is architecturally appropriate and compatible with the surrounding neighborhood.

### 8.1.2 Permitted Uses

Permitted uses in the R-7 Compact Urban Residential Overlay Zone shall be the uses permitted in the R-6 zone.

### 8.1.3 Dimensional standards

Residential uses shall comply with the dimensional requirements in Table 8-A. All other uses in the R-7 Zone shall observe the dimensional requirements of the R-6 Zone.

**TABLE 8-A: R-7 DIMENSIONAL STANDARDS**

| | | |
|---|---|---|
| | **Lot area** (min.) | None |
| | **Street frontage** (min.) | None |
| **Setbacks** (min.) | **Front** | None |
| | **Rear and side** | 5 ft. |
| | **Side yard on side street** | None |
| | **Lot coverage** (max.) | 100% |
| | **Lot area per dwelling unit** (min.) | 435 SF |
| | **Structure height** (max.) | 50 ft. |
| | **Dwelling unit size** (min.) | 400 SF |

### 8.1.4 Design Standards

Development shall comply with the *City of Portland Design Manual.*

## 8.2 DOWNTOWN ENTERTAINMENT OVERLAY

### 8.2.1 Purpose

The purpose of the Downtown Entertainment Overlay Zone is to regulate the location of businesses with entertainment licenses in order to maintain and improve public safety and the quality of life of Portland residents by preventing an over concentration of businesses with entertainment licenses, particularly those which also have liquor licenses, and the public safety problems that have

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and will be experienced when too many of these businesses are located too close to each other. These problems include large late-night crowds within which fights and assaults, disorderly conduct and other breaches of the peace occur and that are difficult to effectively police and that expose not only innocent bystanders but also police officers to danger and personal injury.

### 8.2.2 Applicability

For the purposes of this section, the Downtown Entertainment Overlay Zone includes and is defined by the boundaries of the following zones as shown on the Downtown Entertainment Overlay Zone map: B-3, B-3(c), and WCZ zones. Any property that lies partly within the Downtown Entertainment Overlay Zone shall be subject to the regulations of the overlay.

### 8.2.3 Dispersal requirement

A business with an entertainment license as required or authorized by Section 4-51(a) of the City of Portland Code of Ordinances within the Downtown Entertainment Overlay Zone may not be located within 100 feet of another business with an entertainment license, as measured along or across public ways from the main entrance or entrances of each.

### 8.2.4 Exemption

**A.** A business with an entertainment license located in the Downtown Entertainment Overlay Zone on or before January 3, 2006 shall not have to comply with the requirements of this section and if located within 100 feet of another licensee shall be considered a non-conforming use controlled by Article 4. Such a business is considered an entertainment business for the purpose of calculating dispersion requirements under Subsection 8.2.3 for a new or relocating entertainment business in the Downtown Entertainment Overlay Zone.

**B.** A business with an entertainment license that does not allow amplified entertainment shall not have to comply with the dispersal requirement of Subsection 8.2.3.

### 8.2.5 Separate business entities

Where two or more entertainment businesses operate on one site, and where each business entity requires or has a separate business license, or displays in a manner visible from public property separate business trademarks, logos, service marks or other mutually identifying names or symbols, each business entity shall be counted as a separate entertainment business for the purpose of this section.

### 8.2.6 Conditions

Following a hearing held pursuant to Chapter 15, Section 15-10 of the City of Portland Code of Ordinances, the clerk may impose conditions to maintain or improve public safety on the food service license of any business in the Downtown Entertainment Overlay Zone that operates between 1:00 a.m. and 4:00 a.m., following a written recommendation from the Portland Police Department that such conditions are necessary. The clerk's decision may be appealed to the City Manager pursuant to Section 15-9 of the City of Portland Code of Ordinances. Nothing in this section shall be construed to limit the clerk's authority in Chapter 15 to deny, suspend, or revoke any license pursuant to the standards and process in that chapter.

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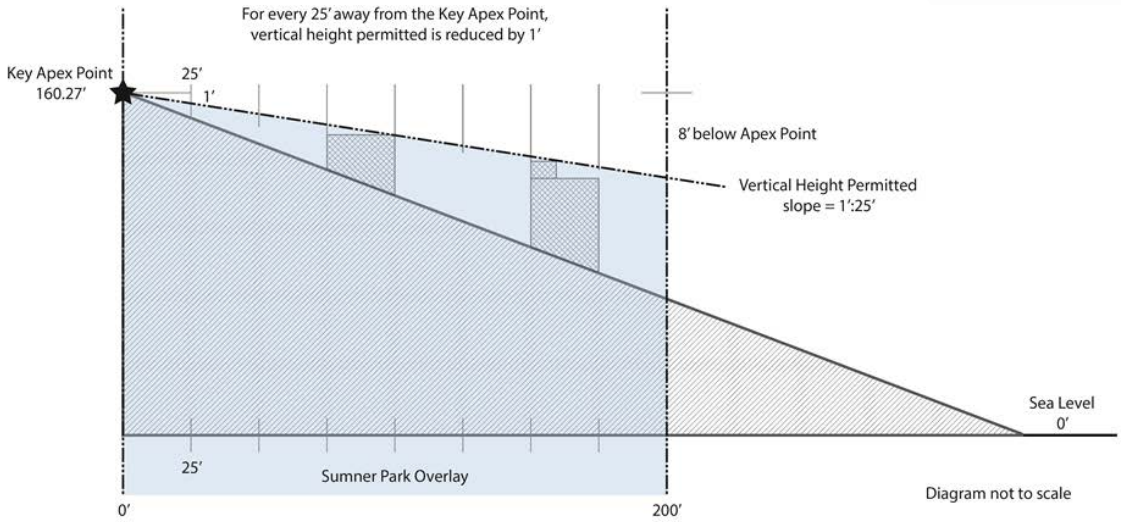


FIGURE 8-A: FORT SUMNER PARK OVERLAY PERMISSIBLE HEIGHT

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## 8.3 FORT SUMNER PARK HEIGHT OVERLAY

### 8.3.1 Applicability

The Fort Sumner Park Height Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40' 2.3359"N. 70° 15' 4.3687"W. The Fort Sumner Park Height Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

### 8.3.2 Standards

Notwithstanding any other section of this Land Use Code, development in the Fort Sumner Park Height Overlay shall be subject to the following additional provisions:

A. The top of structures, including rooftop appurtenances, within the overlay shall not exceed the baseline vertical height of the apex point (160.27' City of Portland Datum (Mean Tide)). For each 25' radially away from the apex point, the vertical height permitted in the overlay is reduced by 1 foot (see Figure 8-A); and

B. The minimum building setback from the park property shall be 15 feet.

### 8.3.3 Review process

Any project within the Fort Sumner Park Overlay shall go before the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Fort Sumner Park.

## 8.4 HELISTOP OVERLAY

### 8.4.1 Purpose

The intent of the Helistop Overlay is to allow for helicopter landing areas on individual sites in addition to those uses permitted in the underlying zone. The purpose of this zone is to protect the public health and safety by allowing helicopters serving medical needs to land in certain areas, while protecting surrounding areas from any negative effects associated with such a use.

### 8.4.2 Helistop standards

A. High volume helistops (more than five landings per month)
   1. All take-off, landing, and parking areas shall be surfaced with grass or with a dust-proof material.
   2. Each landing pad shall be set back at least 200 feet from any residence, school or church. Each landing pad shall be set back at least 50 feet from any commercial or industrial structure. All setbacks shall be measured from the edge of the landing pad.
   3. The area in which a landing pad is located shall be enclosed by a fence or other barrier of not less than three feet in height or shall be secured by a locked gate, as approved by the Fire Department.
   4. All high-volume helistops shall be subject to review under the site plan ordinance.

B. Low-volume helistops (five or fewer landings per month)
   1. All low volume helistops shall be subject to approval by the Building Authority and the Fire Department.

## 8.5 INSTITUTIONAL OVERLAY (IOZ)

### 8.5.1 Purpose

The Institutional Overlay Zone (IOZ) designation provides a regulatory mechanism available to the city's four major medical and higher education campuses where an improved regulatory structure is needed to facilitate a consistent, predictable, and clear growth management process. The purposes of the Institutional Overlay Zone are to:

A. Acknowledge that the city's major academic and medical institutions play a prominent role in the health and well-being of the local and regional community, and in order to sustain that role, these institutions need flexibility to change and grow;
B. Encourage proactive planning for institutional change and growth which identifies and addresses likely long-term institutional needs and cumulative impacts while leveraging potential benefits at the neighborhood, city, and regional level;
C. Ensure that institutional change and growth both complements and, as appropriate, integrates adjacent or surrounding neighborhoods through carefully planned transitions;
D. Support the formation and continuation of mutually beneficial public-private cooperation;
E. Support an ongoing public engagement process that benefits both the institutions and nearby neighborhoods;
F. Reflect Comprehensive Plan and other policy objectives; and
G. Provide a consistent regulatory approach to all major institutions which allows unique regulatory requirements that balance the particular needs of institutions with the needs of the surrounding neighborhood and wider community.

### 8.5.2 Location and applicability

The city's four primary medical and higher education institutions are eligible to apply for designation as Institutional Overlay Zones. The Eligible Institutions are the two major hospital institutions of Maine Medical Center and Mercy Hospital and the two major academic institutions of University of Southern Maine and University of New England, their successors and assigns. Designation as an IOZ is the preferred mechanism where the

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Eligible Institution's proposed development is inconsistent with the existing zoning.

### 8.5.3 Establishment

A. **Application for an Institutional Overlay Zone.** Where the Eligible Institution seeks designation as an IOZ, they shall submit a zone change application consisting of two components:
   1. An Institutional Development Plan (IDP) in accordance with Subsection 8.5.4.
   2. A Regulatory Framework in accordance with Subsection 8.5.5 that would, when and if adopted, be the text and map amendment to the City's Land Use Code and Zoning Map.

B. **Required public involvement**. At least two neighborhood meetings shall be required. The first shall be held prior to the formal submission of a zone change application for an Institutional Overlay Zone and the second shall be held during the City's review. Meetings shall identify the concerns, if any, of affected residents and property owners, and inform the development of the Institutional Development Plan (IDP) and Regulatory Framework. Meetings shall be held in a convenient location proximate to the institution. The applicant shall provide written notification to property owners of record within 500 feet of the proposed IOZ boundary at least ten days prior to the meeting dates and maintain written records of the meetings.

C. **Required scoping meeting.** The Eligible Institution shall meet with the Planning Authority after the first required neighborhood meeting and prior to submission of the zone change application to confirm the focus of the Institutional Development Plan (IDP) and Regulatory Framework, including associated study areas that may be outside of the proposed IOZ boundary. The IDP and Regulatory Framework will vary in detail and focus depending on the Eligible Institution and its particular context. The content requirements in Subsections 8.5.4 and 8.5.5 and the comments from neighborhood meeting(s) shall provide direction for the content of the IDP. The Planning Authority or Planning Board may require additional information or modify content requirements as is relevant to the Eligible Institution.

D. **Reviewing authority.** The Planning Board shall review the zone change application, including the IDP and Regulatory Framework. At least one public workshop and a public hearing before the Planning Board are required. Upon recommendation of the Planning Board, the City Council shall review and consider adoption of the Institutional Overlay Zone and the accompanying Regulatory Framework as an amendment to the city's code of ordinances.

E. **Future institutional development.** All new development by the Eligible Institution within the boundary of the IOZ shall be compliant with the IOZ and accompanying Regulatory Framework, consistent with the IDP, consistent with the Comprehensive Plan, and meet applicable site plan standards, unless such standards are superseded by the Regulatory Framework. Any use/development proposed by the Eligible Institution outside the IOZ boundary that complies with the zoning for permitted uses in that location shall be reviewed under the standards of that zone. Any use/development proposed by an Eligible Institution outside of the IOZ boundary

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that is proposed in a residential zone and is functionally related to the operations within the IOZ shall be addressed by the IDP and require an amendment to the IDP.

### 8.5.4 Institutional Development Plan (IDP)

A. **Purpose.** Any use conducted by an Eligible Institution and any construction by an Eligible Institution in an Institutional Overlay Zone shall be consistent with an Institutional Development Plan (IDP) approved by the Planning Board in accordance with this ordinance. The purpose of the IDP is to establish baseline data about institutional land uses, facilities, and services and measure, analyze, and address the anticipated or potential impacts of planned institutional growth and change. The IDP shall serve as a background document that supports the proposed Regulatory Framework and frames subsequent site plan review(s).

B. **Planning horizon.** An IDP shall provide the city and abutting neighborhoods with a clear outline of the anticipated or potential growth and change of the Eligible Institution for the short- to medium-term (e.g. 1-5 and 5-10 years respectively), as well as a conceptual growth plan for the long-term (e.g. 10 years or more); however, the specific planning horizons for each institution will be determined as part of the IDP approval process.

C. **Content.** The IDP submission shall address the following elements unless specifically modified by the Planning Authority or Planning Board, with the scope and level of detail to be clarified at the required Scoping Meeting:

1. Context information, including:
   a. The institution's adopted mission, vision, or purpose statement;
   b. A summary of relevant baseline data on the institution, including:
      i. A neighborhood context plan;
      ii. An inventory of current programs and services;
      iii. A current census of the number of people using the institution (e.g., employees, enrollment, patients), with an indication of maximums and minimums over time;
      iv. An inventory and/or plan of all existing property holdings within the main campus and within the City of Portland, including an indication of functional land use links between off-campus properties and the main campus (e.g. remote parking); and
      v. An inventory and/or plan of existing facilities, including data on use, floor area, and any existing functional connections between facilities; and
   c. A summary of the baseline characteristics of the existing campus and context of the institution, based on identified study areas, including:
      i. A summary of existing resources, such as historic, open space, and natural resources;
      ii. A summary of the existing transportation system, including vehicular, pedestrian, transit, bicycle, and parking supply, demand, and utilization;

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iii. A summary of existing public infrastructure supporting the institution, including demand, utilization and any capacity issues; and

iv. Relevant municipal plans, projects, and studies that may influence the IDP study area and opportunities for integrating institutional growth; and

d. A summary of public involvement in the development of the IDP, including major areas of public concern.

2. Assessment of future institutional growth and change, including:

a. A description of institutional needs and areas of future institutional growth and change, with;

i. A projected census of users (e.g., enrollment /employment/patient/ visitor figures and anticipated variations over time);

ii. Institutional objectives for property both within and outside the IOZ boundary (e.g. acquisition and/or disposition), including an indication of any functional land use connection for sites outside the IOZ boundary to the main campus; and

iii. A Development Plan addressing anticipated or potential institutional needs and physical improvements, including the proposed boundary of the IOZ and any phasing of the development; and

b. Analysis and associated plans that address the following elements in terms of anticipated growth or potential impacts within the identified study area, and support the development parameters as set out in the Regulatory Framework, including:

i. Transportation and access, with;

a. An analysis of the projected changes in parking demand, supply, and impacts to the off-street and on-street parking capacity, including an explanation of the proposed parking plan;

b. An analysis of the projected changes in vehicular, pedestrian, transit, and bicycle access routes and facilities, their capacity, and safety; and

c. A transportation, access, and circulation plan, representing the synthesis of the analysis, and including a program of potential improvements or set of guidelines to address access deficiencies to and within the IOZ. The plan should outline proposed mechanisms and potential strategies to meet transportation objectives, including transportation demand management, phasing, and when a Traffic Movement Permit (TMP) may be required; and

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ii. Environment, with;
   a. An analysis of potential cumulative impacts on natural resources and open spaces;
   b. An analysis of projected energy consumption, hazardous materials generation, noise generation, and similar issues as relevant; and
   c. An environmental plan, representing the synthesis of the analysis and including a proposed program or set of guidelines for future preservation, enhancement, conservation, and/or mitigation; and
iii. Infrastructure, with;
   a. An analysis of projected public utility demand and the capacity of associated infrastructure;
   b. An analysis of projected public safety needs and projected impacts to the capacity of these services; and
   c. An infrastructure plan, representing the synthesis of the analysis and including a proposed program or set of guidelines to support sustainable growth; and
iv. Design, with;
   a. An analysis of projected impacts to neighboring properties and public spaces, including potential shadow, wind, and lighting impacts, impacts of height and massing, and impacts to historic resources;
   b. An analysis of transition areas between the institution and adjoining neighborhoods, including identification of key character defining components of the surrounding context;
   c. An analysis of existing Crime Prevention Through Environmental Design issues and identification of how these principles would be addressed as part of the proposed campus development; and
   d. A conceptual built environment/public realm plan, representing the synthesis of the analysis and including a set of guidelines for urban design, landscape, open space, and streetscape treatments, with particular attention to the treatment of edges (both within and abutting the IOZ boundary) to achieve compatible transitions; and
v. Neighborhood Engagement, with;
   a. A plan for ongoing community engagement that represents best practices, promotes collaborative problem solving around community concerns, fosters transparency, and identifies mechanisms for neighborhood feedback and institutional accountability;

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b. A property management framework that identifies the institution's process for handling operational property issues with neighbors;
c. Strategies for assuring communication pertaining to property acquisition and disposition in surrounding neighborhoods; and
d. A set of construction management principles to apply to all institutional construction, that represent best practice, aim to minimize short- and long-term construction impacts on surrounding residents and businesses, and ensure a clear communication strategy is in place in advance of construction.

D. **Standards of review.** The IDP shall:

1. Address all content requirements, unless explicitly modified by the Planning Authority or Planning Board;
2. Reflect the issues/topics identified in the required public process;
3. Demonstrate consistency with the city's Comprehensive Plan and the purpose of this ordinance;
4. Demonstrate how the property ownership, proposed growth, and requested Regulatory Framework relate to the institution's mission;
5. Demonstrate that traffic and parking impacts have been anticipated and that the proposed parking provision is justified as based on an assessment of options for reducing traffic and parking demands;
6. Outline an approach to open space, natural, and historic resources that supports preservation and enhancement.
7. Demonstrate that potential cumulative environmental impacts have been anticipated and can be minimized or satisfactorily mitigated;
8. Demonstrate that utility impacts have been anticipated and can be minimized or satisfactorily mitigated;
9. Reflect a comprehensive design approach that ensures appropriate transitions with the existing or future scale and character of the neighboring urban fabric;
10. Promote compatibility with existing or future uses in adjacent neighborhoods, maintain housing, and support local amenities;
11. Anticipate future off-site improvements that would support the integration of the institution into the community and city-wide infrastructure;
12. Conform with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within 100 feet of designated landmarks, historic districts, or historic landscapes, the IDP shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity; and
13. Incorporate strategies to support clear communication and ongoing public

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engagement between institutions and nearby neighbors.

E. **Approval.** Upon finding that an Eligible Institution's IDP meets the standards of review, the Planning Board shall approve, approve with conditions, or deny an IDP.

F. **Monitoring.** The IDP shall establish a schedule for reporting on IDP implementation at regular intervals of not more than ten years from the date of approval of the initial or amended IDP, and identify thresholds for IDP amendments;

G. **Amendments.** An approved IDP shall guide campus development unless and until amended. If at any time the Eligible Institutions request minor amendments to an approved IDP, the Planning Authority may approve such minor amendments, provided that they do not constitute a substantial alteration of the IDP and do not affect any condition or requirement of the Planning Board. The applicant shall apply with a written statement of the proposed amendment and proposed amended IDP to the Planning Authority, whose decision as to whether the amendment is minor shall be final. Major amendments shall be reviewed by the Planning Board. When the IDP is amended, the baseline data in the IDP shall be updated as appropriate.

### 8.5.5 Regulatory Framework

A. **Purpose.** The Regulatory Framework translates the IDP into a set of clear and specific zoning requirements for the IOZ that constitute the text and map amendments to the City's Land Use Code and Zoning Map. The zoning requirements are anticipated to include parameters that guide the growth and change of the institution as well as broad strategies to address potential impacts, with plans and details to be developed under site plan review.

B. **Applicability.** The Regulatory Framework shall apply only to properties that are within the IOZ boundary and to which the Eligible Institution holds right, title, or interest. For these properties, the Institutional Overlay Zone shall supersede the underlying zoning, and all new institutional development shall be conducted in compliance with the Regulatory Framework and the approved Institutional Development Plan. Properties located within the Institutional Overlay Zone not subject to right, title, or interest of the Eligible Institution shall continue to be governed by the regulations of the underlying zoning designation.

C. **Uses.** Institutional uses, including hospitals and higher education facilities, shall be permitted, as shall uses that are functionally integrated with, ancillary to, and/or substantively related to supporting the primary institutional use, consistent with the applicable approved IDP.

D. **Content.** The Regulatory Framework shall reflect the information and analysis of the IDP. The content shall be tailored to address the particular issues associated with the institution and its neighborhoods. The Regulatory Framework should be succinct and use tables and graphics as possible to address the following, if applicable:

1. Zoning boundary of the IOZ: The area to which the regulations apply, as shown on the zoning map, subject to other provisions of this ordinance (i.e. the map amendment to the City's Zoning Map);
2. Phasing and schedules: Requirements that relate to particular proposed phases; a chart showing the schedule or thresholds

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for submitting an amended IDP (or elements of an IDP, such as a Transportation Demand Management (TDM) Plan);

3. Uses: Clarification, as necessary, on permitted uses;
4. Dimensional Requirements: Graphics, sketches, or standards, including details for transition zones within the IOZ boundary;
5. Transportation: Elements such as Transportation Demand Management Plan (TDM) trip reduction targets or contribution to area-wide TDM measures; broad parameters for ensuring pedestrian, vehicular, bicycle and transit access and safety; parking ratios and management strategies; thresholds for access improvements;
6. Environment: The approach to the inclusion of open space and preservation of environmentally-sensitive areas;
7. Mitigation measures: The broad approach to identified mitigation measures, which would be addressed in greater detail in the site plan review process; thresholds for addressing deficiencies; goals for preservation/protection;
8. Design: Graphics and standards to clarify building placement and envelope (height and massing); guidelines for integration of site features; required treatments for transition zones and treatment for all edges (both within and abutting the IOZ boundary); guidelines for establishing campus identity;
9. Neighborhood Integration: Thresholds and strategies for neighborhood engagement; mitigation of impacts on neighboring properties, including construction impacts; buffering requirements; objectives for pedestrian linkages and safety; other requirements that address community concerns; and
10. Monitoring: A schedule for regular monitoring reports on IDP implementation in accordance with the IDP.

E. **Standards of review:** The Regulatory Framework shall:

1. Be consistent with the Comprehensive Plan and the Institutional Development Plan;
2. Provide a clear zoning framework, using graphics and tables as appropriate, to apply to future site plan reviews;
3. Provide specific regulatory statements as appropriate that respond to concerns raised during the required public involvement; and
4. Outline measurable goals and thresholds for improvements or other actions identified in the IDP to be advanced in subsequent site plan applications.

F. **Approval/adoption.** The Planning Board shall review the proposed Regulatory Framework against the standards of review and make a recommendation on the institution's IOZ designation and Regulatory Framework to the City Council for adoption as part of this zoning ordinance.

G. **Amendments.** A Regulatory Framework and IOZ boundary as adopted by the City Council shall remain in force unless and until amended. Amendments to a Regulatory Framework and/or IOZ boundary may be brought forth by the city or Eligible Institution. Proposed amendments to the IOZ boundary or

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Regulatory Framework shall be reviewed by the Planning Board and adopted by the City Council subject to the provisions of this ordinance.

### 8.5.6 Maine Medical Center Institutional Overlay Zone Regulatory Framework

A. **Applicability.** All development proposed by Maine Medical Center (MMC) within the boundary of the MMC Institutional Overlay Zone (IOZ) shall be consistent with the approved Institutional Development Plan (IDP), consistent with the Comprehensive Plan, and meet applicable standards of the Land Use Code, unless such standards are superseded by the following Regulatory Framework. This Regulatory Framework shall govern future development by MMC within the IOZ unless amended by the Portland City Council upon formal application of MMC. The MMC Institutional Overlay Zone shall have the boundaries depicted in Figure 8-B, below, and shall include the properties listed in Table 8-B.

B. **Updates and amendments**

1. It is intended that the IDP will be updated on a regular basis to ensure that the data is current and that the document remains accurate. Accordingly, monitoring reports will be filed every three years and shall include a summary of progress on IDP implementation and of acquisitions and divestment since the date of IDP approval. At the time of the submission of the monitoring report, MMC shall identify any updates to the IDP which may result from updated master planning, changes in baseline information, or changes in the adjacent neighborhoods which affect MMC, to allow the IDP to remain current. Updates and minor amendments not described below shall be reviewed administratively by the Planning Authority. Minor amendments that impact phasing of the long-term development blocks or change the approach to parking, transportation, neighborhood engagement or design shall be reviewed by the Planning Board for consistency with the objectives of the IDP. In addition to consistency with the objectives of the IDP, review of phasing and development program amendments shall focus on integration with the campus and impacts on transportation or infrastructure. This review may occur simultaneously with the site plan review of an anticipated project.
2. Major amendments shall be reviewed by the Planning Board and are required under the following circumstances:
   a. A change to the Regulatory Framework is required;
   b. The IDP is no longer representative of the institutional mission or approach to community as a result of redevelopment in the area or City upgrades to neighborhood planning (such as roadway changes, infrastructure upgrades, community design, lighting); or
   c. Development proposed by MMC is inconsistent with the master facility plan, transportation plan intent, design plan intent, or environment and infrastructure plan intent identified in the IDP.
3. Annual monitoring reports will be submitted for MMC's Transportation

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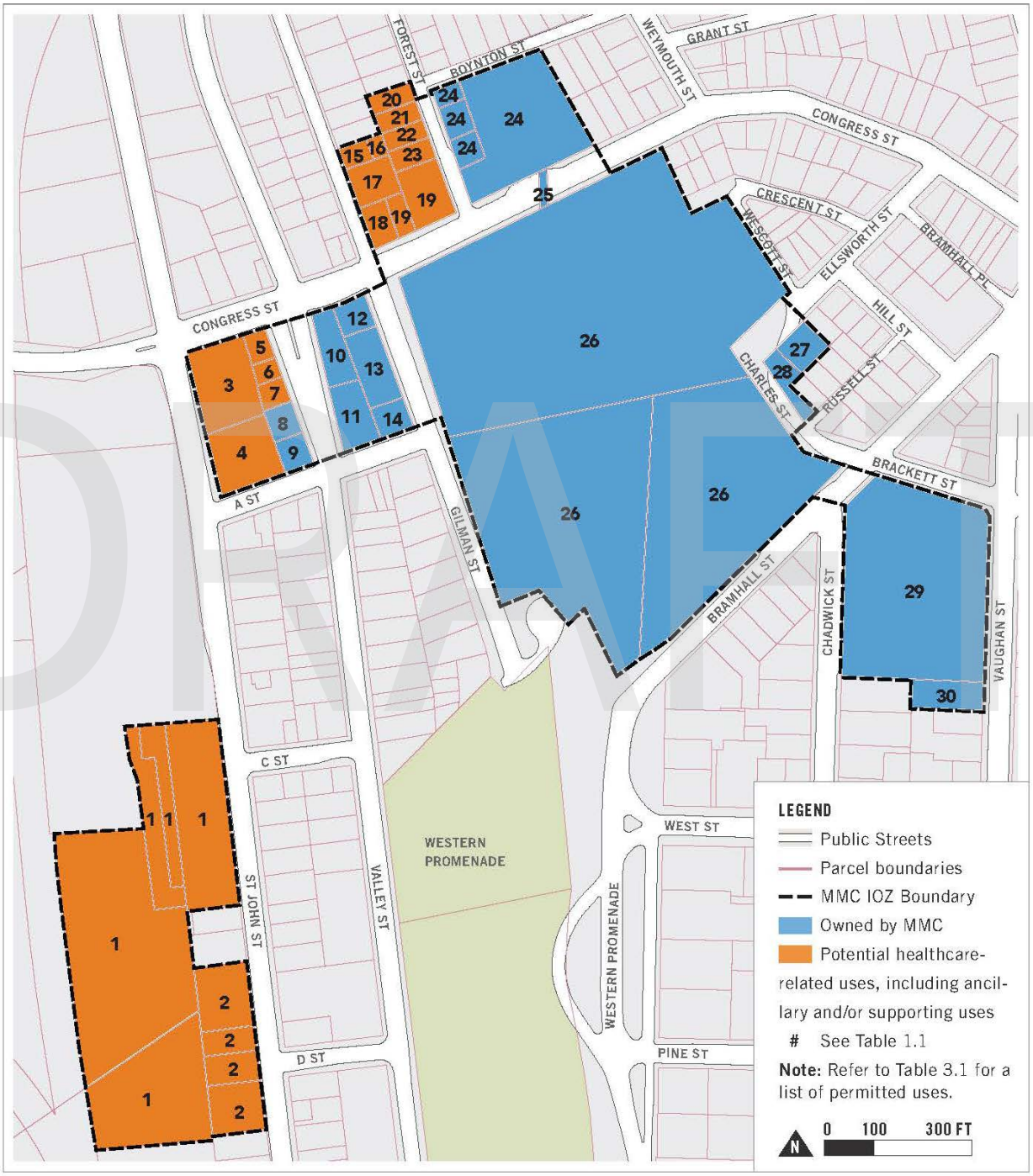


FIGURE 8-B: MMC IOZ BOUNDARY

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**TABLE 8-B: LIST OF PROPERTIES INCLUDED IN THE MMC IOZ**

| Map# | Legal Description | Address | Acreage | Ownership |
|---|---|---|---|---|
| 1 | 64-A-2-8-9-11 74-A-7 / 75-A-6 | 222 St John St | 4.6516 | Owned by others |
| 2 | 68-D-1-3-13-14-16 | 180 St John St | 0.9494 | Owned by others |
| 3 | 65-G-1 | 950 Congress St | 0.4628 | Owned by others |
| 4 | 64-B-1 | 275 St John St | 0.4163 | Owned by others |
| 5 | 65-G-2 | 942 Congress St | 0.0659 | Owned by others |
| 6 | 65-G-3 | 940 Congress St | 0.0482 | Owned by others |
| 7 | 65-G-4 | 274 Valley St | 0.0667 | Owned by others |
| 8 | 65-G-5 | 268-270 Valley St | 0.0978 | MMC |
| 9 | 64-B-2 | 262-266 Valley St | 0.0895 | MMC |
| 10 | 65-H-1 | 932 Congress St | 0.1864 | MMC |
| 11 | 65-H-9 | 261 Valley St | 0.2185 | MMC |
| 12 | 65-H-2 | 930 Congress St | 0.1040 | MMC |
| 13 | 65-H-5 | 52 Gilman St | 0.2384 | MMC |
| 14 | 65-H-8 | 44 Gilman St | 0.1128 | MMC |
| 15 | 65-E-22 | 85 Gilman St | 0.0565 | Owned by others |
| 16 | 65-E-32 | 85 Gilman St | 0.0282 | Owned by others |
| 17 | 65-E-24 | 81 Gilman St | 0.1653 | Owned by others |
| 18 | 65-E-28 | 919 Congress St | 0.1059 | Owned by others |
| 19 | 65-E-29-30 | 909 Congress St | 0.3233 | Owned by others |
| 20 | 65-E-19 | 22 Forest St | 0.0826 | Owned by others |
| 21 | 65-E-21 | 18 Forest St | 0.0831 | Owned by others |
| 22 | 65-E-23 | 14 Forest St | 0.0826 | Owned by others |
| 23 | 65-E-25 | 12 Forest St | 0.0883 | Owned by others |
| 24 | 53-I-1-2-3-12 | 887 Congress St | 1.3400 | MMC |
| 25 | 53-X-1 | Congress St Pedestrian Walkway | --- | MMC |
| 26 | 53-D-7 54-H-1 64-C-1 | 22 Bramhall St | 12.563 | MMC |
| 27 | 54-C-6 | 34 Ellsworth St | 0.1341 | MMC |
| 28 | 54-C-10 | 40 Ellsworth St | 0.1155 | MMC |
| 29 | 54-I-1 | 308 Brackett St | 2.5200 | MMC |
| 30 | 63-B-8 | 214 Vaughan St | 0.1983 | MMC |

Notes:
Properties owned by MMC are listed under MMC or MMC Realty Corp.
MMC will not extend its functionally-related Bramhall campus hospital operations beyond the boundary of the IOZ within the City of Portland without further amendment to the IDP. This includes any expansion of functionally-related operations that displace residential uses outside of the IOZ boundary. A functional relationship is defined as uses or activities that are traditionally or customarily linked to the day-to-day operations of the MMC Bramhall Campus that would relocate a significant proportion of the total employee population or activities.

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4. Demand Management (TDM) Plan. TDM monitoring reports shall include a summary of progress toward targets established in the TDM Plan.

C. **Uses.** In addition to the uses permitted in the underlying zone, the uses in Table 8-C are permitted as a matter of right. In recognition that MMC is part of a mixed-use area of the City, with important existing services and businesses that serve the local and wider community, healthcare facility development fronting onto Congress Street and St. John Street shall activate the public realm, to the extent able, with uses such as service and retail/restaurant, landscaping, active building entrances, pocket parks, etc., on the ground or other publicly accessible level, consistent with the design intent contained in the approved IDP. In areas identified in the IDP as "Priority zone for commercially oriented/retail uses," usable ground floor retail, restaurant, or comparable community-oriented use that provides services to local residents and employees both during the day and evening hours is required. In areas labeled "Street activation through location of windows, entrances, etc.," usable ground floor retail, restaurant, or community-oriented use is encouraged to the extent practicable. Such uses, where constructed or facilitated as part of a healthcare related development, are expressly permitted whether ancillary or supporting the healthcare facility or not, and shall be open and welcoming to the general public in addition to employees or visitors of MMC.

D. **Dimensional requirements.** The MMC Institutional Overlay Zone shall have the dimensional requirements listed in Table 8-D and depicted in Figures 8-C and 8-D.

**TABLE 8-C: PERMITTED USES**

| Healthcare facilities, including but not limited to the following ancillary and/or supporting uses: |
|---|
| • Hospital |
| • Medical Office/Clinic |
| • Laboratory Center / Services |
| • Research and Development (R&D) Laboratory or Facility |
| • Educational Facility / Conference Center |
| • Administrative / Business Office |
| • Accessory Service or Trade Uses |
| • Guest House |
| • Multi-family Housing for Healthcare Staff and Students |
| • Rehab / Skilled Nursing Facility |
| • Retail |
| • Restaurant/Cafe |
| • Employee Service Amenities |
| • Day Care Center |
| • Fitness Center or Gymnasium |
| • Parking Lot or Garage |
| • Bicycle Storage |
| • Heliport |
| • Antenna Station |
| • Outdoor use areas, such as green areas, parks, gardens, art installations, and other active and passive non-commercial recreation spaces |

E. **Design.** New buildings within the IOZ shall adhere to the Design Guidelines set forth in Chapter 5: Design of the IDP and the site plan standards of the City of Portland.

F. **Signs**

1. At the time of first site plan review following IDP approval, a unified campus-wide Signage Plan shall be submitted for review and approval by the Planning

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Authority. Any update to such plan due to a change in name or logo shall not require amendment to the IDP.

2. Signs shall be designed in accordance with the campus-wide Signage Plan. All signs shall be designed in proportion and character with building facades and adjacent street typology. All signs shall be coordinated with the building and landscaping design and be constructed of appropriate permanent, high quality materials and finishes.

G. Transportation

1. Transportation Demand Management (TDM):
   a. At the time of the first site plan review following IDP approval, MMC shall submit a campus- wide TDM Plan substantially in accordance with those TDM objectives and strategies identified in the approved Institutional Development Plan. The TDM Plan may be phased into short-,mid-, and long-term actions to allow for progressive implementation over time.
   b. The TDM Plan shall be designed to provide transportation choice with the goal of reducing parking demand and single-occupancy vehicle trips to and from MMC by employees and visitors.
   c. The TDM Plan shall establish parking and trip reduction targets associated with the short-term (0-2 years), mid-term (2-5 years), and the long-term (5+ years), as well as a data collection plan.
2. Parking:
   a. Parking requirements in the IOZ shall be established at the time of site plan review based on a parking study that includes a campus-wide analysis of demand and supply. The parking demand study shall determine parking requirements and shall be sufficient to alleviate parking pressure on surrounding neighborhoods.
   b. Parking studies developed by MMC shall integrate parking and trip reduction achievements and data contained in the TDM Plan.

H. **Environment.** Development proposed by MMC shall be designed to integrate with the surrounding context, including open space and pedestrian networks and infrastructure.

I. **Mitigation measures.** MMC shall mitigate site plan impacts to off-premise infrastructure in a manner proportionate to those impacts. Mitigation may include financial or in-kind contributions to existing or planned City projects focused on mitigating the impacts of MMC development. Mitigation contribution shall be determined based on the City's standard procedure in effect at the time of site plan review.

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**TABLE 8-D: DIMENSIONAL REQUIREMENTS**

| | |
|---|---|
| **Max. Building Heights** | Max. building heights for new buildings within the IOZ shall be governed by the Maximum Building Heights Map, or by the Transition Zones clause of this table (see below) for those buildings located in Transition Zones. Refer to IDP "Chapter 5. Design" for methodology on determining heights. |
| **Minimum Building Heights** | Three stories, except in transition zones, where the minimum building height shall be two stories. Minimum building heights shall not apply to building awnings, associated kiosks, pavilions or similar building components. |
| **Maximum Building Length** | Length of proposed parking garage at 222 St John St shall not exceed 500 feet as measured roughly parallel to St John St. |
| **Minimum Building Setbacks** | Minimum building setbacks shall be governed by the Minimum Setbacks Map. Additional requirements are listed in the Transition Zones and Congress Street Build-to-Zone sections of this table. |
| **Congress Street Build-to-Zone[1]** | A Build-to-Zone is identified for some properties that abut Congress Street. See Minimum Setbacks Map for the location of Build-to-Zone.<br>i. The Congress Street Build-to-Zone extends between 0 to 40 feet from the right-of-way boundary.<br>ii. Buildings located in these parcels must have a minimum of 70% of the façade facing Congress Street located within the Build-to-Zone. |
| **Transition Zones** | Transition zones are identified inside the IOZ boundary in areas where the IOZ abuts or is located across a public right-of-way from a residential zone or a historic-designated district. See Maximum Building Heights Map for location of transition zones.<br>iii. Transition zones shall extend 50 feet into the parcel from the parcel boundary.<br>iv. Transition zones that abut a Residential zone with or without an intervening public right-of-way shall have a maximum height limit that matches the maximum height permitted within that Residential zone.<br>v. In areas where the IOZ abuts a Residential zone without an intervening public right of way, minimum side and rear yard requirements of the abutting Residential zone apply within the IOZ boundary, unless noted otherwise in Minimum Setbacks Map. |

[1]A "build-to zone" is the area on the lot where all or a portion of the street-facing building facade must be located, measured as a minimum and max. yard (setback) range from the public right-of-way boundary.

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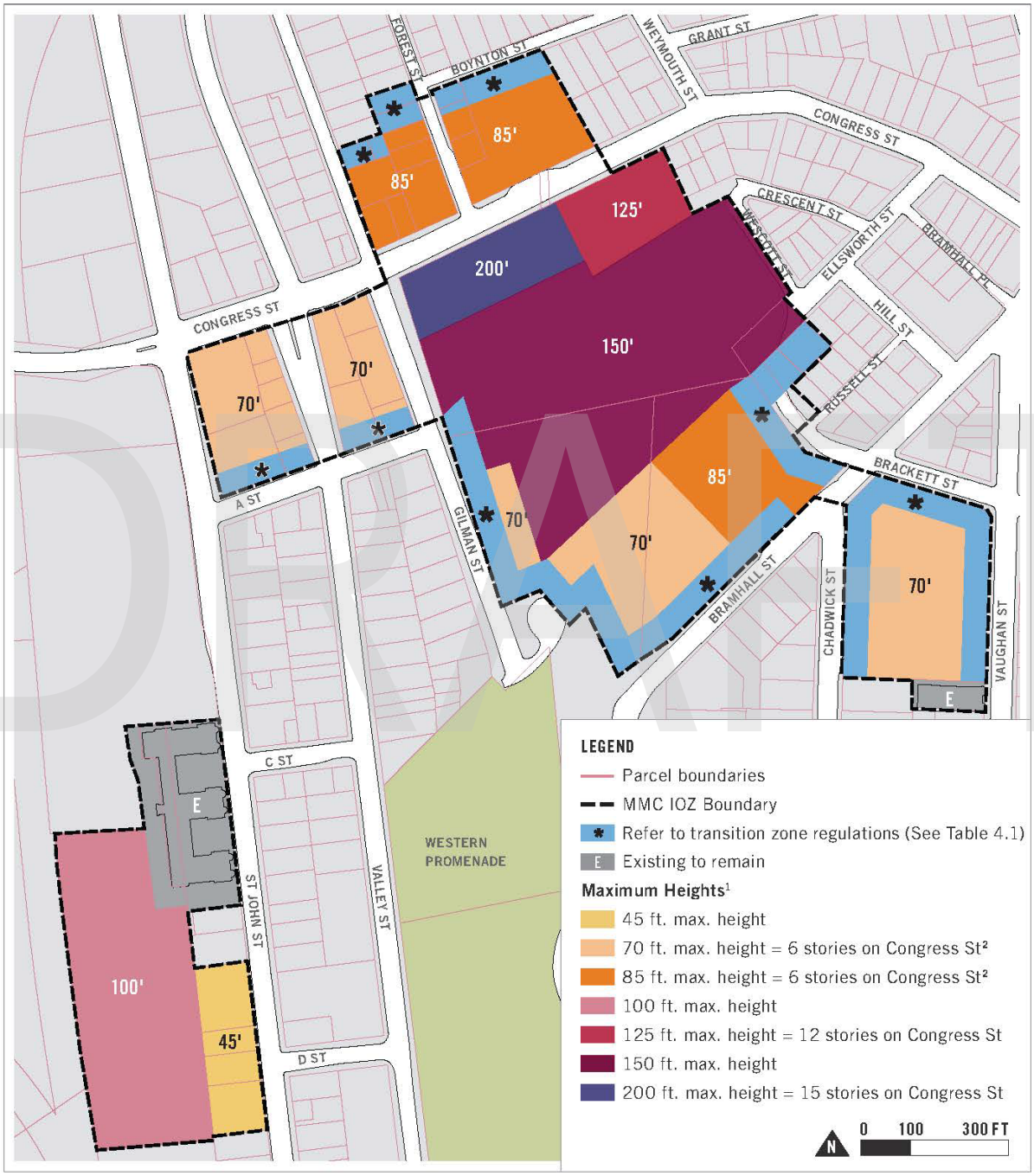


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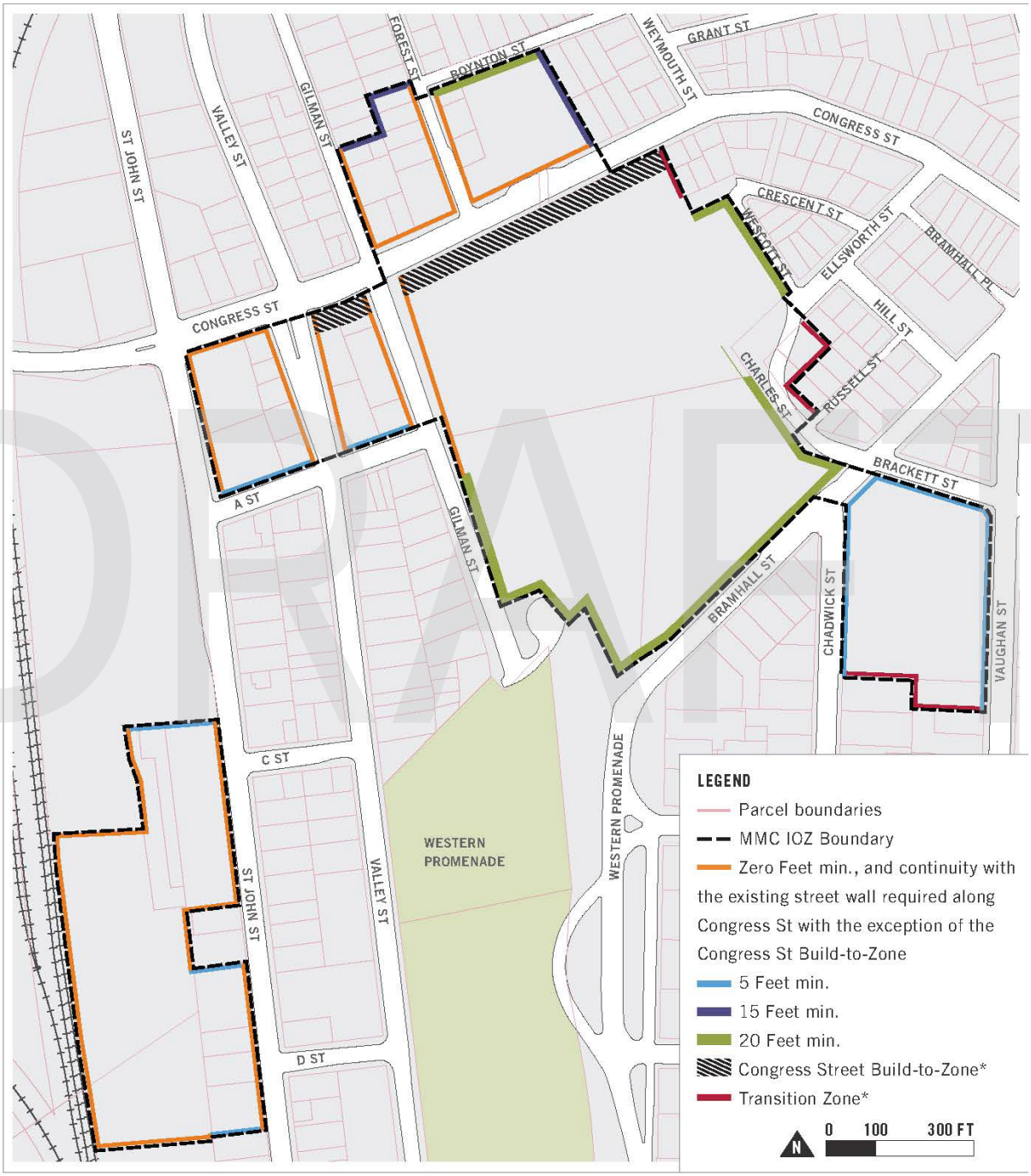
**Notes:** 1. Minimum building heights also apply. Refer to Table 8-D.
2. For buildings with residential use above the ground floor, the following height maximums apply: 70 ft. maximum height = 7 stories, and 85 ft. maximum height = 8 stories.

**FIGURE 8-C: MAXIMUM BUILDING HEIGHTS**

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***** Refer to Table 8-D Dimensional Requirements.

**FIGURE 8-D: MINIMUM SETBACKS**

J. Neighborhood Integration and engagement.

1. For the purpose of keeping surrounding residential areas appraised of its future development plans, and to address any neighborhood issues related to the operations of the MMC Bramhall campus, MMC shall adhere to the ongoing community engagement principles identified in the approved Institutional Development Plan.
2. MMC shall conduct ongoing community engagement, including the formation of a Neighborhood Advisory Committee comprised of representatives of MMC, the Parkside neighborhood, the West End neighborhood, the Western Promenade Neighborhood Association, the St. John Valley neighborhood, the Libbytown neighborhood, and the City.

K. Construction management.

1. At the time of site plan review, MMC shall submit a Construction Management Plan substantially in accordance with those construction management principles identified in the approved Institutional Development Plan for review and approval by the Planning Authority.
2. The Construction Management Plan shall include a construction schedule, as well as strategies for managing neighborhood communication and noise, air quality, traffic, and parking impacts associated with the construction as set forth on the Construction Management Template developed by the City and attached and incorporated to the IDP as Appendix A.

L. Other requirements.

1. Helipad. MMC shall be governed by the provisions of the Helistop Overlay Zone with the following exceptions:
   a. Setback requirements of Subsection 8.4.2.A.2; and
   b. Fencing requirements of Subsection 8.4.2.A.3.
2. Snow Ban Parking. When the City of Portland declares a Snow Parking Ban, MMC shall make parking available to neighbors in a designated parking area on or near its campus upon the following condition:
   a. Hours: Due to the patterns of patient flow in the hospital, the hours of snow ban parking for registered vehicles during an announced City of Portland Snow Parking Bans are 6:00 p.m. until 6:00 p.m. Vehicles that are not moved out of these parking areas by the applicable time each morning are subject to towing at the owner's expense.
3. Healthy Communities. Recognizing that a stable residential and commercial environment is key to the health of any neighborhood, MMC commits to supporting its existing and future neighbors in the St. John Valley, Parkside, West End, Western Prom and Libbytown neighborhoods. Accordingly, MMC shall implement and participate in the healthy communities programs as described below.

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a. Caring Community Grants- MMC shall develop an annual grant program with available funds of up to $30,000. Goals, priorities, eligibility requirements, program guidelines and allocation approach will be developed by the MMC Neighborhood Council, as described in Chapter 6 of the IDP approved on September 26, 2017. Neighborhood associations or other entities located or operating in the St. John Valley, Parkside, West End, Western Promenade and Libbytown neighborhoods may apply for grant funding relating to the following initiatives:
   i. Neighborhood investment and Infrastructure: Focused on creating strong, safe, accessible and vibrant neighborhoods;
   ii. Quality of life: Focused on improving access to recreation, arts or cultural experiences in the neighborhoods;
   iii. Diversity and inclusion: Focused on fostering the building of relationships and understanding among diverse groups, including capacity building and outreach activities;
   iv. Public Safety: Focused on supporting public safety programs through training programs, equipment or other means in the neighborhoods; and
   v. Environmental sustainability: Focused on preventing waste, increasing recycling or supporting other programs that work to improve the environment.

b. Healthy Neighborhoods Program. MMC shall initiate and adopt a memorandum of understanding (MOU) by and between the MMC, the City of Portland, an identified Community Housing Development Organization and any other community partners that may be identified later establishing a Healthy Neighborhoods program. Such a program shall be designed to fund and execute housing and community improvement and development programs in St. John Valley and the other neighborhoods surrounding MMC's Bramhall Campus.

## 8.6 ISLAND TRANSFER STATION OVERLAY

### 8.6.1 Purpose

The purpose of the Island Transfer Station Overlay Zone is to establish a location for a transfer station for municipal solid waste and municipal public works activities. This zone shall be established through a conditional rezoning process in order to ensure the imposition of appropriate conditions for the protection of neighboring properties.

### 8.6.2 Permitted uses

A. Municipal solid waste facilities, including compactors and storage bins, provided that the compactor shall be located within a fully enclosed structure.

B. Recycling facilities, provided that all recycling areas shall be buffered and screened from neighboring properties.

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C. Municipal garages, material storage, and parking for vehicles.
D. Maintenance of municipal vehicles and equipment.
E. Minor wind energy systems co-located with public industrial or utility facilities, subject to the standards of Section 6.4.

### 8.6.3 Conditions

Requirements for setbacks and any operational limitations shall be established as part of the conditional rezoning process.

## 8.7 MUNJOY HILL NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

The residential neighborhoods on Munjoy Hill are experiencing specific development pressures related to its location and the nature of the existing building stock, further documented in work by the City's Planning & Urban Development Department in the winter of 2018. In order to address the negative impacts of these pressures and create a positive framework for investment in the area, there shall be a Munjoy Hill Neighborhood Conservation Overlay District (the "District").

### 8.7.1 Area of effect

This District will apply in the highlighted area depicted on the map (Figure 8-E) and includes all properties in the R-6 zoning district in an area east of Washington Avenue and Mountfort Street, north of Fore Street, and west of the Eastern Promenade.

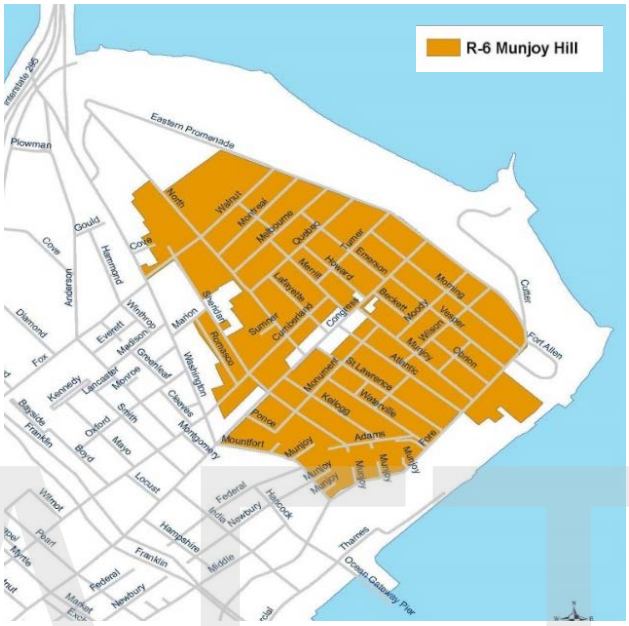


FIGURE 8-E: MUNJOY HILL NEIGHBORHOOD CONSERVATION DISTRICT BOUNDARIES

### 8.7.2 Effect of the district

In addition to the standards contained in this Land Use Code that are applicable to properties in the R-6 zone, all properties within this District shall meet the standards of Section 8.7. Where this section imposes a standard that differs from the standards contained in Articles 6, 7, 14, and 15 of this Land Use Code, the *City of Portland Design Manual* or *City of Portland Technical Manual,* the standards in this section shall control.

### 8.7.3 Dimensional standards

Within the District, the dimensional requirements in Table 8-E supersede those dimensional standards outlined elsewhere in this Land Use Code.

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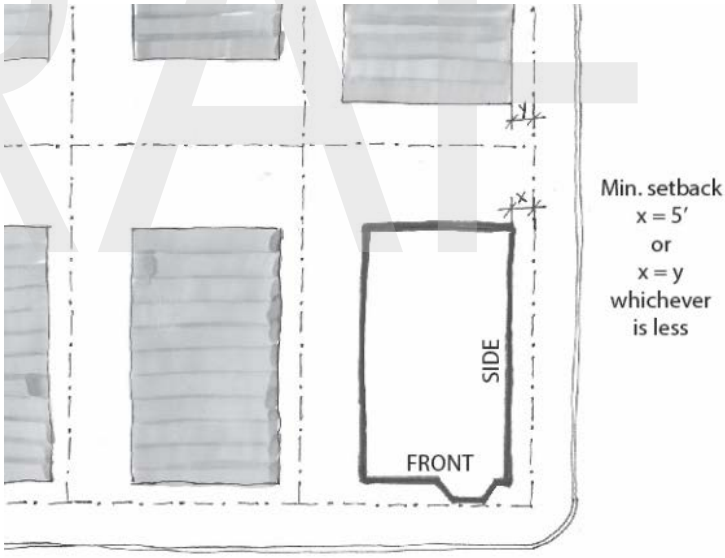
**TABLE 8-E: MUNJOY HILL NEIGHBORHOOD CONSERVATION DISTRICT DIMENSIONAL REQUIREMENTS**

| | | |
|---|---|---|
| **height** (max.)[1] | | 35 ft.<br>45 ft. for developments of 3 or more units on lots over 2,000 SF that include at least one workforce housing unit[2] |
| **Setbacks** (min.) | **Rear** | Buildings up to 35 ft. in height: 10 ft.<br>Buildings over 35 ft. in height: 15 ft.<br>As measured from rear decks, porches, or similar unenclosed space: 7.5 ft.<br>As measured from accessory structures with a ground coverage of 250 SF or less: 5 ft. |
| | **Side** | Buildings up to 35 ft. in height: As per underlying zone<br>Buildings over 35 ft. in height: 10 ft. for all side yards, except that a side yard no less than 5 ft. is permitted when used to continue a documented built pattern of the surrounding streetscape, in which case a proportional increase in another side yard must be provided. |
| | **Side yard on side street** | 5 ft. or the minimum depth of the immediately abutting street-facing yard, whichever is less.<br>None when demonstrated that reduced setbacks are necessary to facilitate the provision of underground parking.<br>  |
| **Stepbacks** (min.) | | None |

[1] Rooftop appurtenances other than chimneys shall not exceed permitted heights, except that HVAC equipment is permitted for up to 5' above these maximum heights if (a) out of view from public rights-of-way, screened adequately, and integrated with the building design and (b) set back at least 5' from the building edge. In addition, height limits and placement of alternative energy equipment is permitted as specified in Articles 6 and 7.

[2] Unit can be for sale or rent, as defined in Article 3. Workforce units shall be no smaller than 50% of the average size of the other units in the development, must meet the definition for such units and only be sold or rented to a household at or below the applicable income levels. These requirements shall be deed restricted for affordability for the longest term possible under state and federal law.

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### 8.7.4 Design review

A. **Design standards.** In addition, the following design standards shall apply in the Munjoy Hill Neighborhood Conservation District and shall supersede any conflicting design standards:

1. All buildings shall use simple, traditional roof forms as illustrated in Figure 8-F, except that flat roofs are permitted in buildings of three or more units. This requirement may also be modified through Subsection 8.7.4.B below. Dormers and cross gables are allowed but where readily visible from the public right-of-way shall be clearly subsidiary to the primary roof form (see Figure 8-G);

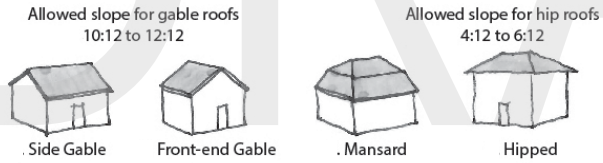


FIGURE 8-F: ROOF FORMS

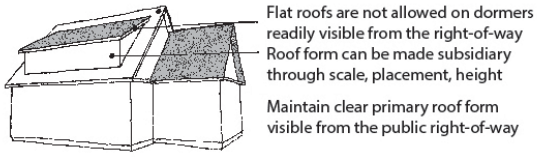


FIGURE 8-G: DORMERS AND SUBSIDIARY ROOFS

2. The first floor shall contain active living space, such as a living room or bedroom, with windows for at least 50% of the width of the front façade in total (see Figure 8-H). Active living space does not include space intended primarily for circulation or storage;

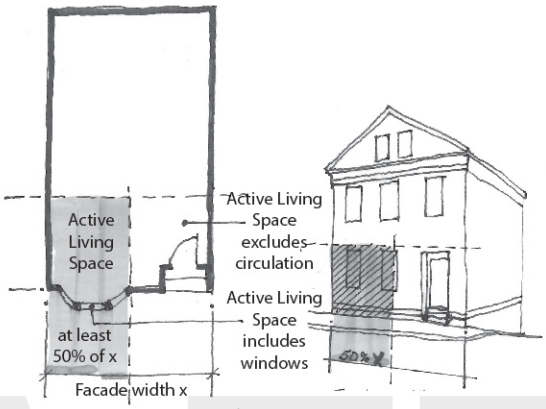


FIGURE 8-H: FRONT FACADE - ACTIVE LIVING SPACE

3. Use of tandem spaces to meet desired parking levels, consistent with the built pattern of the neighborhood, is strongly preferred. Parking shall be located on the side or in the rear of a building, and not within the front 10 feet of depth of the building. The only exception shall be for lots smaller than 2,000 SF, which shall be permitted one garage door on the front façade no wider than 30% of the building width, but no less than nine feet. In that case, the garage door shall:
   a. Be of high quality design, consistent with the character and pattern of the

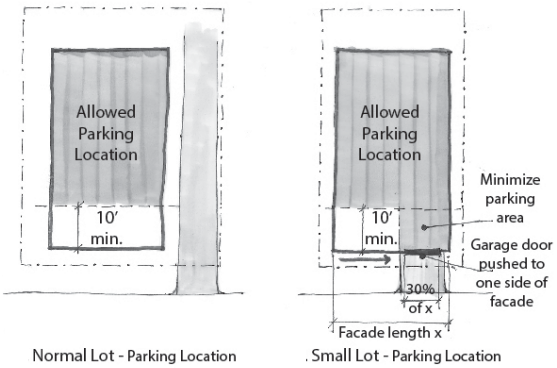


FIGURE 8-I: PARKING LOCATIONS

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rest of the façade, including windows as appropriate; and

b. Be located on one side of the façade (see Figure 8-I).

B. **Alternative Design Review.** Within the District, developments are only eligible for the R-6 "Alternative Design Review" as outlined by the following process, which shall supersede the process in the *City of Portland Design Manual* in cases of conflict:

1. Any use of Alternative Design Review must be approved by a majority of the Historic Preservation Board after a required public hearing;
2. Alternative Design Review does not permit waivers of the additional design requirements in Subsection 8.7.4.A above except as explicitly stated; and
3. Alternative Design Review is a privilege and is granted at the discretion of the Historic Preservation Board. The applicant has the burden of demonstrating that their proposal meets the criteria for Alternative Design Review Design Certificate.

### 8.7.5 Demolition Review

A. **Purpose.** The purpose of this subsection is to preserve and protect buildings within the District that contribute significantly to one's understanding and appreciation of the architectural, cultural, and/or social history and development pattern of Munjoy Hill and which are outside any designated historic district ("Preferably Preserved Buildings"), encouraging owners of such Preferably Preserved Buildings to explore alternatives to demolition. To achieve this purpose, the issuance of demolition permits for Preferably Preserved Buildings is regulated and may be delayed as provided below.

B. **Definitions.** For the purposes of this sub-section, the following words and phrases shall have the meanings set forth below:

1. Demolition: Removal of more than 10% of the front façade of any building, removal of the primary roof line, or removal of 50% or more of the building surface, determined cumulatively over a three-year period. In kind replacement or similar replacement (such as new windows or siding that may differ from the original) is not considered demolition.
2. Preferably Preserved Building: Any building which is determined to be in the public interest to be preserved or rehabilitated rather than demolished based on findings that the building meets the following criteria:
   a. It was constructed prior to 1930;
   b. It is representative of a building type and/or architectural style that contributes to the identifiable historic visual character of Munjoy Hill; and
   c. It retains sufficient integrity of design, materials, condition and craftsmanship that adaptive reuse is a viable option.
3. Voluntarily Demolished: Any act(s) done by design or intention, which is proposed, intended, or not accidental, that result in demolition. Results of weather events or natural hazards are not considered voluntary demolition. For the purposes of this subsection, the destruction of a preferably preserved building for failure to

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properly secure it or by neglect shall be considered voluntary demolition.

C. **Exclusions.** This subsection shall not apply to:
   1. Any building either individually designated as a local landmark or located within the boundaries of any designated historic district;
   2. Accessory structures with a ground coverage of 250 SF or less;
   3. Buildings that the Building Authority has determined are dangerous to life or property due to fire, accidental catastrophic damage, or a natural disaster; and
   4. Buildings that have received a previous determination that they are not Preferably Preserved.

D. **Procedure.** When the Building Authority receives a demolition permit application for a building within the District, the Building Authority shall, within three business days, notify the Planning Authority in writing that a demolition permit application has been received.
   1. Initial Determination: The Planning Authority shall make an initial written determination as to whether the building that is the subject of the demolition permit application is a Preferably Preserved Building within thirty days of receiving a copy of the application. In making this determination, the Planning Authority may request additional information from the applicant, including photos of the existing building and the surrounding context or other data that may be relevant to making an initial determination. If the Planning Authority determines that the building is not Preferably Preserved, this determination shall be transmitted to the Building Authority and the applicant of record. The applicant will not be required to take any further steps and the permit may be reviewed by the Building Authority under the standards in Chapter 6 of the City of Portland Code of Ordinances.
   2. If the Planning Authority makes an initial determination that the building is Preferably Preserved, it shall notify the Building Authority and the applicant.
   3. If the Planning Authority fails to act in accordance with this subsection or within the prescribed time periods, the Building Authority may grant the demolition permit, provided that the applicant has met all other required by Chapter 6 for a permit, and shall notify the Planning Authority that the permit has been granted.
   4. Right to Appeal Planning Authority Determination: After the Planning Authority's initial determination that a demolition permit application involves a Preferably Preserved Building, the applicant for a demolition permit may appeal the determination to the Historic Preservation Board with any background information regarding the structure and its context that may be deemed relevant to or appropriate for that review. Such material shall include plans for any replacement use of the parcel that may assist in making a determination. Such appeal must be made within thirty days of the initial determination.
   5. Public Hearing: The Historic Preservation Board shall conduct a hearing on the

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appeal and the initial determination within forty-five days of the Planning Authority's initial determination. The Board shall give the public notice of the hearing at least fourteen days prior to the hearing. The Board shall also mail a notice of the public hearing to the applicant, the building owner and all property owners within 100 feet of the subject property at least ten days prior to the hearing.

6. Final Determination of Preferably Preserved Building: Within 21 days following the date of the public hearing, the Historic Preservation Board shall file a final determination with the Building Authority. If the Board determines that the demolition of the building would be detrimental to the architectural, cultural, or social heritage of Munjoy Hill, it must uphold the initial determination of the Planning Authority of a Preferably Preserved Building. In a case where the initial determination of the Planning Authority is not appealed, that determination shall be considered a final determination upon lapse of the appeal period in Subsection 8.7.5.D.4., above, in which case the Planning Authority shall forward a final determination to the Building Authority.

E. Upon the final determination of Preferably Preserved status, the Building Authority shall not issue a demolition permit for a period of up to 12 months except as specified in (2) below. During this period, the applicant and the owner should actively pursue alternatives to demolition of the Preferably Preserved Building. Should the Historic Preservation Board determine that the building is of sufficient historic and/or architectural significance that it should be designated a landmark or otherwise gain historic designation, that process will proceed as it would for any other building.

1. Upon a determination of Preferably Preserved status, the owner shall be responsible for properly securing the building.
2. Notwithstanding the preceding, the Building Authority may issue a demolition permit for all or any portion of subject building at any time upon authorization from the Planning Authority in the event the Historic Preservation Board approves a development for the site as consistent with the Historic Resource Design Standards as applied to a new building prior to the conclusion of the 12-month delay period. Examples of such proposals may include but are not limited to:
   a. Demolition of a portion of the building while maintaining the principal structure and/or most architecturally significant portion of the building;
   b. Demolition of the Preferably Preserved Building but with a replacement proposal that is acceptably contextual in the surrounding neighborhood. In this case, the Board may condition demolition on construction of a project substantively consistent with the approved replacement proposal, and any substantive variation from that plan would be treated as a violation under (G) below; or

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c. Notwithstanding the initial determination, demonstration by the applicant, substantiated by the written opinion of a licensed engineer with experience in renovation, restoration or rehabilitation and confirmed by the Building Authority, that the structural condition of the building is so severe as to make it infeasible to rehabilitate.

F. **Emergency demolition.** Nothing in this article shall interfere with the ability of the Building Authority to permit demolition of buildings determined dangerous to life or property due to a condition that pre-dates the effective date of this section or is the result of fire, accidental catastrophic damage, or a natural disaster.

G. **Enforcement.**

1. The Planning Authority and Building Authority are each specifically authorized to institute any and all actions and proceedings, in law or in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this section, or to prevent a threatened violation thereof.
2. No building permit shall issue for a new building on any premises where a significant building is voluntarily demolished in violation of this ordinance for a period of two years after the date of demolition.

H. **Reporting.** A demolition review shall be reported to the City Council annually as a communication.

## 8.8 PEDESTRIAN ACTIVITIES DISTRICT (PAD) OVERLAY

The following restrictions shall apply in the Pedestrian Activities District (PAD) Overlay Zone, which shall include street frontages as delineated on the PAD Overlay Zone map.

### 8.8.1 Permitted uses

At least 75% of the street level frontage of a building on a street located within the PAD Overlay Zone must be occupied, and, at minimum, the floor area to be occupied shall be 75% of the street level frontage multiplied by a 20 foot depth, by:

A. Retail as permitted in the B-3 zone;
B. General services;
C. Hotels;
D. Restaurants as permitted in the B-3 zone;
E. Bars;
F. Theaters and performance halls, provided that only ticket and refreshment sales, lobbies, lounges and entrances shall be located within this area;
G. Cultural facilities;
H. Governmental uses;
I. Studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
J. Other uses where the applicant can demonstrate to the Building Authority that the proposed use will not differ substantially from a required ground floor retail use in its effect on the continuity of pedestrian-oriented use and that the proposal establishes a ground floor use that generates pedestrian interest and activity.

For those buildings which have frontage on more than one street located within the PAD overlay

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zone, the street level area of each such frontage shall meet the above requirements.

### 8.8.2 Conditional uses

Any use permitted in the B-3 and B-3b zone may be authorized as a conditional use subject to the floor area requirements of Subsection 8.8.1, provided that the Planning Authority shall be substituted for the Board of Appeals as the reviewing authority. Such uses shall meet the following conditions and standards:

A. The applicant can prove by competent evidence (including but not limited to reliable documentation of advertising, real estate brokerage efforts, and other sales mechanisms) that the space has been actively marketed, and, in the case of new construction, available for permitted uses in the PAD Overlay Zone for a period of six months and that it has been unable to market the space for a permitted use in accordance with Subsection 8.8.1; and

B. The approval of any conditional use under this subsection shall be for the specific tenant proposed for the conditional use approval and shall not run with the space to subsequent tenants. A conditional use approval shall expire at the end of each tenant's use, and a new approval shall be required for new tenants. However, where a conditional use has been approved under this subsection and the term of the effected tenancy is five years or less, the tenant may sublet the area for the approved conditional use which approval may run with said lease but may not be extended without review by the Planning Authority; and

C. The Planning Authority may impose reasonable conditions concerning the design, appearance, use and extent of use of the space along the street frontage to ensure maximum pedestrian compatibility and interest; and

D. Notwithstanding the above, the Planning Authority may authorize a reduction in the percentage of required ground floor pedestrian-oriented uses where the physical limitations of an existing building so require. Any such reduction shall be the least necessary to provide relief and shall include mitigating design factors.

E. The Planning Board shall adopt rules and regulations governing the Planning Authority's review of an applicant's marketing efforts under this subsection.

### 8.8.3 Prohibited uses

In no event shall any required retail frontage area be used for any of the following:

A. Storage;

B. Service entrances, including loading docks, dumpsters and compactors, except as provided in Subsection 8.8.4; or

C. Food preparation areas, unless such preparation areas are visually oriented toward pedestrians on streets located within a PAD Overlay Zone.

### 8.8.4 Exceptions

For those buildings which have 40 feet or less of frontage on a street within the PAD Overlay Zone, the ground floor area requirements for permitted uses under Subsection 8.8.1 shall be reduced to 50% of the frontage where required to accommodate a service entrance. For buildings which have frontage on more than one street located within a PAD Overlay Zone, only one such frontage shall be permitted to reduce the required retail area to 50% of the frontage.

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## 8.9 STREAM PROTECTION OVERLAY

### 8.9.1 Purpose

The purpose of the S-P Stream Protection Overlay Zone is to preserve and protect significant streams outside of the Shoreland Zone by providing a buffer from land development activities in order to conserve stream channel capacity and to minimize siltation and stream bank erosion.

### 8.9.2 Applicability

The S-P Stream Protection Overlay Zone includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream as shown on the City of Portland Zoning Map. These standards apply only to areas within the S-P Stream Protection Overlay Zone. Streams within the Shoreland Zone are subject to the provisions of Article 12.

### 8.9.3 Development Standards

A. **Minimum building setback from normal high-water line of stream:** 75 feet. Notwithstanding this requirement, when a lot is a lot of record under 4.3.1 or cannot otherwise meet the setback requirement of this subsection due to physical limitations of the site, the Planning Board may approve a reduction of the setback requirement for a principal structure to the least amount necessary to achieve a building dimension of 28 feet, provided that the setback is not reduced to less than 40 feet. Structures in existence on June 15, 1992 may be expanded once during the lifetime of the structure up to 25 feet toward a stream or tributary stream, provided that the setback is not reduced to less than forty 40 feet and the floor area or volume is not increased by more than 30%.

B. **Filling of material.** Filling of material within a stream protection zone shall require site plan review under the provisions of Article 12.

C. **Minimum parking setback from normal high-water line of stream:** 75 feet. Notwithstanding this requirement, the Planning Board may reduce the parking setback where the required setback cannot be met to the least extent necessary, provided that such setback shall not be less than the setback of the principal structure from the stream.

## 8.10 UNIVERSITY OF SOUTHERN MAINE OVERLAY

### 8.10.1 Purpose

The intention of the University of Southern Maine Overlay Zone is to establish an overlay zone in which an existing university campus can be continued and reasonably expanded within defined boundaries, in addition to those uses permitted in the underlying zone or zones. The purpose of this section is to recognize the unique qualities of a university campus while at the same time protecting the value and integrity of established neighborhoods.

### 8.10.2 Location and applicability

The University of Southern Maine Overlay Zone is intended to encompass and define the University of Southern Maine campus west of Forest Avenue. Properties in the University of Southern Maine Overlay Zone shall continue to be governed by the regulations applicable to the underlying zone except as specifically modified by this section.

### 8.10.3 Permitted uses

A. In addition to the permitted uses allowed in the underlying zones and notwithstanding anything

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to the contrary in the use regulations for the underlying zones, post-secondary schools and university uses are permitted in the University of Southern Maine Overlay Zone, including, but not limited to:

1. Classrooms;
2. Laboratory and research facilities;
3. Student unions;
4. Dining halls;
5. Bookstores;
6. Auditoriums;
7. Concert and lecture halls;
8. Gymnasiums;
9. Libraries;
10. Outdoor use areas, such as "quads", greens, parks, gardens, art installations, and other active and passive noncommercial recreation spaces;
11. Faculty and student housing;
12. Parking lots and garages;
13. Community meeting spaces;
14. Administrative and faculty offices;
15. Transportation facilities;
16. Maintenance facilities;
17. Utility buildings;
18. Student health services;
19. Daycare facilities, nursery schools and kindergartens operated in conjunction with university programs or serving students, faculty or employees of the university and their families, with associated outside play areas; and
20. Other buildings, structures and uses customarily incidental to a university.

B. On lots fronting on Chamberlain Avenue and Exeter Street, university uses shall be limited to faculty housing, graduate student housing, faculty offices and administrative offices, and buildings containing such uses shall be designed and maintained so as to complement the residential character of the street. as required in Subsection 8.10.9

C. No change of use permit shall be required for any of the above uses in actual existence as of the date of enactment of the University of Southern Maine Overlay Zone.

### 8.10.4 Conditional uses

The following uses are permitted as provided in Subsection 6.5.1:

A. Minor wind energy systems, subject to the standards of Subsection 6.4.17.

### 8.10.5 Dimensional requirements

University buildings and structures shall be subject to the dimensional requirements of the underlying zone, except as follows:

A. **Minimum setbacks.** Minimum setbacks shall be the same as in the underlying zone, except as shown on the University Campus Overlay Setback Map, incorporated herein by reference. Side and rear setbacks shall not be required between buildings on contiguous lots owned by the university on the condition that such contiguous lots shall be considered merged and shall not be separately conveyed unless required setbacks in the underlying zones are provided.

B. **Maximum building height.** Maximum building height shall be the same as in the underlying zone, except as shown on the University Campus Overlay Height Map, incorporated herein by reference.

C. **Minimum building height.** All new freestanding buildings in height zone B and height zone C must be built to a height of at

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least 35 feet or designed and constructed so that they can be expanded to 35 feet or higher. As used in this paragraph, the term "new freestanding building" means any building which is not an addition to or expansion of a building which existed on the date of enactment of the University of Southern Maine Overlay Zone.

D. **Maximum impervious surface ratio**. A maximum of 66% of the total land area within the University of Southern Maine Overlay Zone, exclusive of public streets, shall be impervious.

E. **Maximum coverage by buildings**. 40% of the total land area within the University of Southern Maine Overlay Zone, exclusive of public streets, shall be covered by building footprint.

### 8.10.6 Parking

The amount of parking required for any university building or building addition shall be determined by the Planning Board during site plan review, based on an analysis of campus-wide parking demand and supply, pursuant to a comprehensive university parking management plan, and treating all contiguous land (including land on opposite sides of the street) owned by the university as one lot. In determining the amount of parking required for any university building, the Planning Board may take into account such factors as:

A. The availability of off-campus parking and shuttle transportation to and from such off-campus facilities;

B. The ratio of commuter students to resident students;

C. The use of centrally located on-campus parking facilities so situated that students, faculty, staff and visitors arriving on campus can reasonably be expected to park in the central facilities and walk to their various on-campus destinations during the course of a school day;

D. Shared use of a single parking facility by two or more buildings when the peak parking demand period for such buildings do not overlap;

E. Development and implementation of a parking management plan which discourages on-street parking. On-street parking shall not be used to satisfy the university's parking demand; and

F. Development and implementation of programs designed to reduce the number of automobiles parking on campus, such as ride share programs and incentives for use of bicycles and public transportation.

### 8.10.7 Loading

The amount of loading area required for any university building shall be determined by the Planning Board during site plan review, based on a campus-wide analysis, treating all contiguous lots owned by the university as one lot. In determining the amount of loading space required for any university building, the Planning Board may take into account such factors as:

A. The use of centrally located on-campus loading facilities so situated that vehicles making deliveries can load and unload in the central facilities, provided no single location is overburdened with loading facilities;

B. Shared use of a single loading facility by two or more buildings; and

C. Impacts of the loading area on adjacent uses outside the University of Southern Maine Overlay Zone.

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### 8.10.8 Signage

Signs shall comply with the requirements of Article 20, except as those regulations are modified or augmented below:

A. Signs shall be designed in accordance with signage standards promulgated by the university, providing for a unified and ADA-compliant campus-wide system for identification, orientation, and regulatory signage.

B. Banners are allowed as follows:
   1. Generic banners containing the logo and colors of the university, used for decorative purposes.
   2. Banners used for advertising university events, which can be displayed for a maximum of four weeks prior to and one week following the event.

### 8.10.9 Design principles and standards

All development in the University of Southern Maine Overlay Zone is subject to the requirements contained within the *City of Portland Design Manual*.

### 8.10.10 Campus housing

For any development requiring major site plan review, the university shall submit to the Planning Board a campus housing analysis. The analysis shall include a description of housing demand and supply at the time of the application, a projection of housing demand expected to arise from the proposed development and/or as a result of program changes anticipated to occur concurrently with the proposed development, and a description of how the university intends to meet any increased housing demand through on-campus housing, off-campus housing developed by the university, and/or off-campus housing developed by others.

### 8.10.11 Required review for change of use, additions, and renovations

In the case of properties fronting Chamberlain Avenue, Exeter Street, and the northerly side of Bedford Street from Surrender Street to Deering Avenue, minor site plan review shall be required of all changes of use and all building additions and renovations affecting an area equivalent to 25% or more of the existing floor area of a structure, unless major site plan review is otherwise required under Article 14.

## 8.11 WAYNFLETE SCHOOL OVERLAY

### 8.11.1 Purpose

The intent of this section is to establish a Waynflete School Overlay Zone which protects the value and integrity of established residential neighborhoods, establishes clearly defined boundaries beyond which residential conversions cannot occur and results in no net loss of dwelling units, while allowing Waynflete School an existing private day school, to continue and reasonably augment its existing uses and programs, thereby maintaining compatible development at medium densities appropriate to the existing neighborhood patterns. As used in this section, the term "Waynflete School" includes any successor institution that operates as a private day school.

### 8.11.2 Location and applicability

The Waynflete School Overlay Zone, as shown on the zoning map, is intended to encompass and define Waynflete School's principal campus on the Portland peninsula. Properties in the Waynflete School Overlay Zone shall continue to be governed

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by the regulations applicable to the underlying zone except as specifically modified by this section.

### 8.11.3 Sub-districts

The Waynflete School Overlay Zone consists of two sub-districts. Except where otherwise specified in this Section 8.11, all provisions of this Waynflete School Overlay Zone apply in both sub-districts. The sub-districts, as shown on the Waynflete School Overlay Zone sub-district map, incorporated herein by reference, are as follows:

A. The Campus Core sub-district defines the interior core of the campus and is intended to allow compact development of school uses, with specific space and bulk regulations designed to accommodate school uses.

B. The Campus Edge sub-district is intended to preserve residential character along the streets bordering the campus, by limiting the amount of residential space which can be converted to school uses, by maintaining a number of dwelling units within the sub-district which equals the number of dwelling units existing in the sub-district at the time of enactment of this Overlay Zone and by encouraging mixed use building s along the street frontages. The space and bulk regulations of the R-4 zone continue to apply within the Campus Edge sub-district.

### 8.11.4 Permitted uses

In addition to the permitted uses allowed in the underlying zones and notwithstanding anything to the contrary in the use regulations for the underlying zones, the following uses are permitted in the Waynflete School Overlay Zone:

A. **School uses.** Elementary, middle and secondary school uses including, but not limited to, the following:

1. Classrooms;
2. Laboratory facilities;
3. Dining halls;
4. Auditoriums;
5. Concert and lecture halls;
6. Gymnasiums;
7. Libraries;
8. Outdoor use areas, such as "quads", greens, parks, gardens, art installations, and other active and passive recreation spaces;
9. Parking lots and structures;
10. Community meeting spaces;
11. Administrative and faculty offices;
12. Transportation facilities;
13. Maintenance facilities;
14. Utility buildings;
15. Student health services;
16. Bookstores; and
17. Accessory uses which are customarily incidental and subordinate to the location, function and operation of a private day school.

B. **Residential uses.** Faculty or staff housing, which shall be considered a residential use, and not a school use, for all purposes under this overlay zone.

### 8.11.5 Prohibited uses

A. Boarding schools

B. Dormitories

### 8.11.6 Residential conversions prohibited

A. Conversions of existing residential buildings within the Waynflete School Overlay zone shall be prohibited.

B. The existing houses at 11 Fletcher Street, 3 Storer Street, 305 Danforth Street, and 299 Danforth Street shall not be relocated from

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their locations existing as of January 20, 2010. This provision shall not apply to garages.

C. At no time shall the number of dwelling units within the Waynflete School Overlay Zone be reduced below four (the number existing at the time of enactment of this Overlay Zone).

### 8.11.7 Dimensional requirements

Buildings and structures in the Waynflete School Overlay Zone shall be subject to the applicable dimensional requirements of the underlying zones, except as follows:

A. Minimum setbacks shall be the same as in the underlying zone, except that side and rear setbacks shall not be required between buildings on contiguous lots owned or occupied by Waynflete School on the condition that such contiguous lots shall be considered merged and shall not be separately conveyed unless required yard dimensions in the underlying zones are provided.

B. Minimum street frontage shall be the same as in the underlying zone, except that all the land within the Waynflete School Overlay Zone owned or occupied by Waynflete School shall be considered a single lot for the purpose of complying with minimum street frontage.

C. Maximum coverage by buildings shall be the same as in the underlying zone, except that in the Campus Core sub-district the maximum coverage by buildings shall be 40% and all the land within the Campus Core sub-district owned or occupied by Waynflete School shall be considered a single lot for the purpose of calculating maximum coverage by buildings.

### 8.11.8 Parking

The amount of parking required for any change of use, new building, or building addition within the zone shall be determined during site plan review, based on an analysis of school-wide demand and supply, pursuant to a comprehensive school-wide Transportation Demand Management Plan (TDM), and treating all land owned by Waynflete School within the Waynflete School Overlay Zone as one lot. Any existing parking management or TDM plan approved as part of a previous approval shall remain in effect until revised or updated pursuant to this section. In determining the amount of parking required for any building within the Waynflete School Overlay Zone, the Planning Authority or the Planning Board may take into account such factors as:

A. The use of centrally located on-campus parking facilities so situated that students, faculty, staff and visitors arriving on campus can reasonably be expected to park in the central facilities and walk to their various on-campus destinations during the course of a school day;

B. Shared use of a single parking facility by two or more buildings when the peak parking demand periods for such buildings do not overlap;

C. Development and implementation of a parking management plan which discourages on-street parking;

D. Development and implementation of a TDM plan subject to the review and approval of the Planning Authority or the Planning Board. The TDM plan shall employee elements such as public transit initiatives, parking cash-out, car sharing, car and van pooling incentives, provision of bicycle and pedestrian commuting accommodations, guaranteed ride home programs, employee surveys, newsletters and alternative transportation information sharing

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and other such strategies that reduce single occupancy vehicle trips to and from Waynflete school. Waynflete School shall follow the standards and guidelines for developing a TDM plan found in the TDM section of the City of Portland Technical and Design Standards and Guidelines.

### 8.11.9 Loading

The amount of loading area required for any building within the Waynflete School Overlay Zone shall be determined by the Planning Board during site plan review, based on a campus-wide analysis, treating all land owned by Waynflete School within the Waynflete School Overlay Zone as one lot. In determining the amount of loading space required for any building within the Waynflete School Overlay zone, the Planning Board may take into account such factors as:

A. The use of centrally located on-campus loading facilities so situated that vehicles making deliveries can load and unload in central facilities, provided no single location is overburdened with loading facilities;
B. Shared use of a single loading facility by two or more buildings; and
C. Impacts of the loading area on adjacent uses outside the Waynflete School Overlay Zone.

### 8.11.10 Signage

Signs shall comply with the requirements of Article 20.

### 8.11.11 Restrictions

Notwithstanding the conditional use provisions for institutional uses within the R-4 or R-6 zones, Waynflete School cannot locate a school use listed in Subsection 8.11.4 on any lot in the R-4 or R-6 Districts outside the boundaries of the Waynflete School Overlay Zone that was occupied by a residential use or structure on or after January 20, 2010. This restriction does not prevent Waynflete School from seeking a conditional use permit for a school use, where otherwise allowed by the zoning regulations, on lots outside the Waynflete School Overlay Zone that were not occupied by a residential use or structure on or after January 20, 2010.

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# 9 FORM-BASED ZONES

## 9.1 INDIA STREET FORM-BASED ZONE

### 9.1.1 Purpose

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-Based Code Zone is to establish a zone that encourages a vibrant, walkable, mixed-use urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The goal of the India Street Form-Based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design. The components of the form-based code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

### 9.1.2 General guiding principles

The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone:

A. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.

B. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.

C. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept away from the street. 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.

D. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the subdistrict which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.

E. Respect historic character. If a property is within the India Street Historic District, Article 17 is applicable. New construction, BUILDING ADDITIONS, or alterations in the India Street Historic District shall reflect and complement the character-defining features and elements of the existing historic development to which it is visually related.

### 9.1.3 Applicability

A. The requirements set forth in this Section 9.1 shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN.

B. A partial waiver of the requirements listed below may be granted if it can be demonstrated to the satisfaction of the

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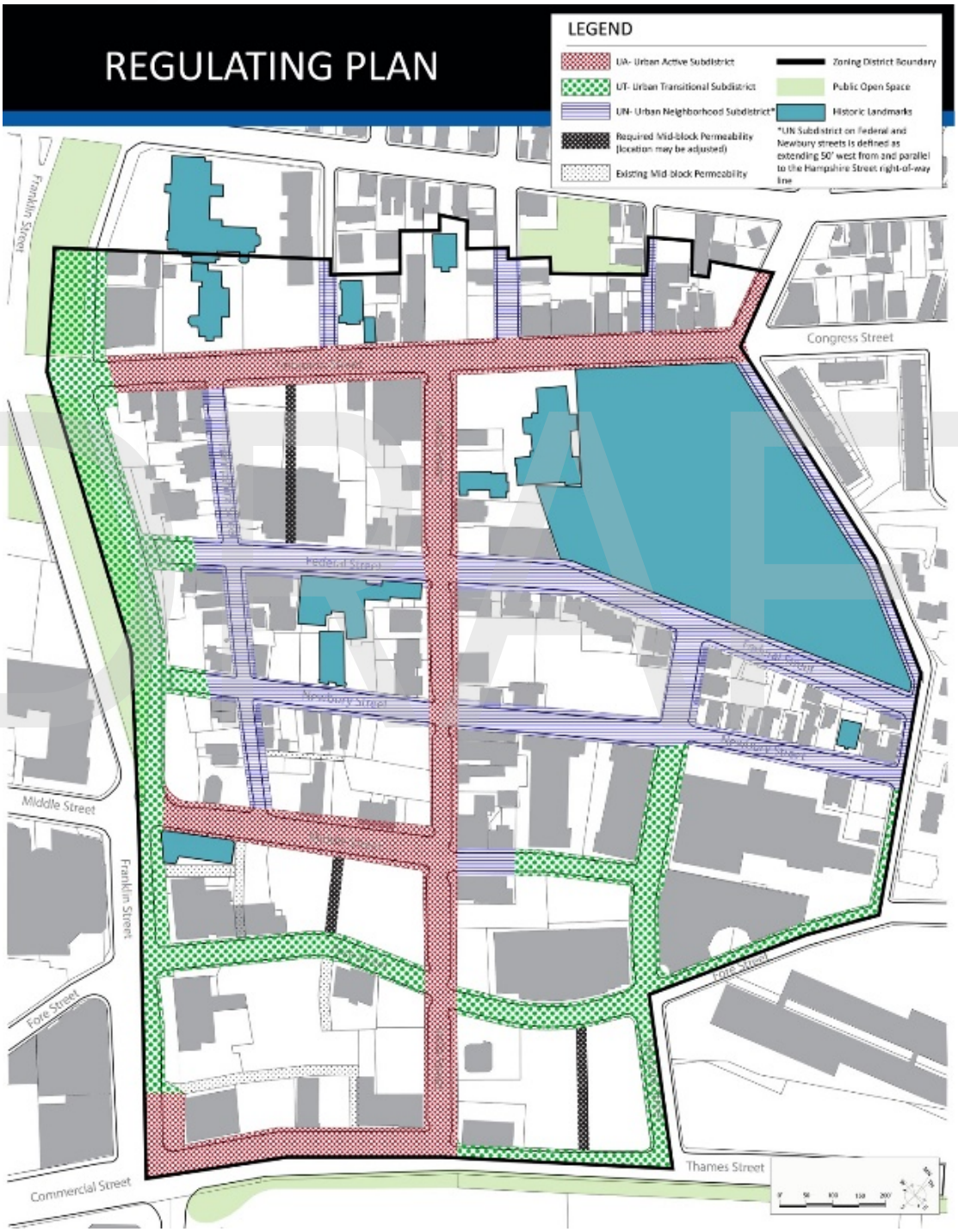


**FIGURE 9-A: IS-FBC REGULATING PLAN**

Planning Authority that the requirements in 9.1.3.C below have been met:

1. Building orientation;
2. BLANK FAÇADE length (max.);
3. Fenestration, ground floor facade area;
4. Building entry frequency, orientation, or elevation;
5. Garage door setback or width; and/or
6. Additional Building Length – ground floor partition or module requirements.

C. A partial waiver request must meet the following requirements:

1. The intent of the ISFBC zone as stated in Subsection 9.1.1 and Subsection 9.1.8;
2. Be the least adjustment necessary to satisfy the practical, programmatic, or functional needs of the proposed development; and
3. At least one of the following applies:
   a. The proposed zoning alternative better achieves the zone and subdistrict intent;
   b. The zone or subdistrict intent will not be met by applying the requirement in this particular circumstance;
   c. There is a legal or practical necessity or unique conditions; or
   d. Unique site factors make the zoning requirement impractical or cost prohibitive.

### 9.1.4 Establishment of subdistricts

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts:

A. Urban Neighborhood (UN) Subdistrict;
B. Urban Transitional (UT) Subdistrict; and
C. Urban Active (UA) Subdistrict.

### 9.1.5 Regulating Plan

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.

### 9.1.6 Definitions

Terms used throughout this India Street Form-based Code Zone may be defined in Article 3 or in Article 7. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this section and those in Article 3, or any sections of Article 7, Article 15, or any other local land use ordinances, rules, or regulations, those of this India Street Form-based Code Zone shall take precedence. For reference, terms are illustrated in Figure 9-B.

**Building, accessory.** A detached 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 structure.

**Building, principal**. The main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building.

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

**Building Design Standard (BDS)**. The basic design parameters governing building form, including

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intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

**Elevation.** An exterior wall of a building not along a frontage line.

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

**Façade.** Any exterior wall of a structure exposed to public view from a public right-of-way.

**Façade, blank.** A building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

**Green roof.** A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

**Mid-block permeability**. A continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

**Party wall.** Any partition wall common to two adjacent or attached buildings.

**Regulating plan**. A zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

**Stepback.** A building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground and excludes the minimum necessary housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy.

**Yard, side.** A yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards.

**Zero lot line.** The location of a structure on a lot such that one or more of the structure sides rests directly on a lot line.

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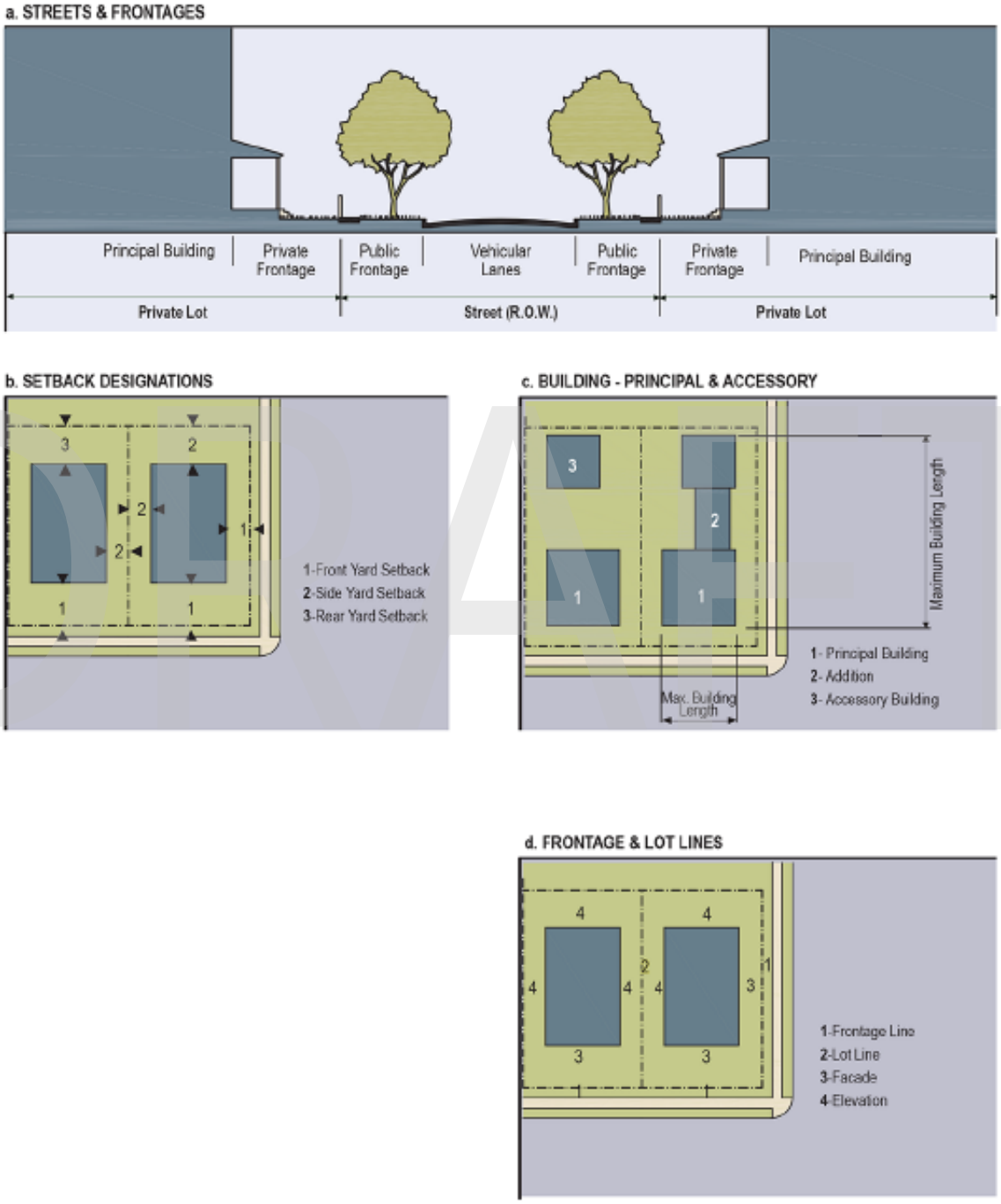


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FIGURE 9-B: IS-FBC TERMS ILLUSTRATED

### 9.1.7 General development standards

**A. Prohibited uses**

1. Correctional pre-release facilities;
2. Funeral homes;
3. Drive-through facilities;
4. High-impact industrial uses,
5. Auto service stations;
6. Truck terminals;
7. Recycling and solid waste disposal services; and
8. Storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

**B. Siting standards**

1. MID-BLOCK PERMEABILITY
   a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200 feet in street line length of lot, a full break between structures of at least 20 feet in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (See Figure 9-G.)
   b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
   c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one additional story of up to 12 feet in height under the provisions of Subsection 9.1.7.C. Public access shall be defined through a legal agreement such as an easement or license.
   d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.
2. Frontage requirements
   a. Minimum street frontage: 30 feet
   b. Building length measurement shall not include porches, decks, or balconies that are appended to the principal structure.
   c. In the case of a corner lot or lot bounded by at least three streets, maximum building lengths may not be exceeded in order to meet front yard setbacks.
   a. Additional building length is allowed beyond the maximum building length under the following circumstances and according to Table 9-A.

**TABLE 9-A: ADDITIONAL BUILDING LENGTH**

| Subdistrict | ATTACHED BUILDINGS | Ground Floor Partitions | Massing Variation | Structured Parking Exception |
|---|---|---|---|---|
| UN | unlimited run | Not allowed | Not allowed | Not allowed |
| UT | unlimited run | 200' max. length; 2 modules | 200' max. length | 200' max. length |
| UA | unlimited run | 150' max. length; 3 modules | Not allowed | 150' max. length |

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i. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30 feet of street-facing building length is allowed. A PARTY WALL condition is required at least every 30 feet and for the entire height of each building (see Table 9-A Additional Building Length – ATTACHED BUILDINGS).

ii. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met (see Table 9-A Additional Building Length – Ground Floor Partitions):

a) Partitions must extend from the FAÇADE at least 2/3rds of the building depth.

b) Partitions must be architecturally expressed on the building exterior.

c) Each module created by partition must have at least one functional, street-facing entry.

d) Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.

e) In the UA subdistrict, number of modules are required based on building length. In a building with a length greater than 50 feet but less than 100 feet, at least two modules are required. In a building with a length greater than 100 feet but less than or equal to 150 feet, at least three modules are required.

f) Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back at least 20' feet (see Table 9-A Additional Building Length – Massing Variation).

g) Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

3. Setbacks

a. Lots with a street frontage of less than 35 feet are exempt from providing side yards but only where required yard is perpendicular to the frontage that is less than 35 feet.

b. Where new construction or BUILDING ADDITIONS creates a side yard of less than five feet, a maintenance easement is required where a combination of the side yard and easement must be at least five feet. PARTY WALL conditions are exempt from providing a maintenance

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easement. Corner lots may only apply the side yard reduction to one required side yard.

c. Building FACADES within 10 feet of a corner are exempt from setback requirements in order to allow special corner architectural treatments.

d. Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side setbacks at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and screening

a. Surface parking areas shall be screened from view from sidewalks, public rights-of-way, and public open spaces using landscaping, walls, fencing, or a combination thereof.

b. Walls and fences shall meet the dimensional requirements in Table 9-B.

**TABLE 9-B: WALL/FENCE DIMENSIONAL REQUIREMENTS**

| Location | Height | Visual Permeability |
|---|---|---|
| **Within front yard** | 6' max. | Required above 2' from sidewalk grade |
| **Side or rear yard** | 8' max. | n/a |

1. BUILDING ADDITIONS

a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 SF shall be subject to major site plan review.

b. Exemptions

i. A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a legally non-conforming length. In such an instance, a BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition (see Figure 9-G).

ii. BUILDING ADDITIONS are exempt from story minimums or maximums in order to match existing building in number of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

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**TABLE 9-C: HEIGHT BONUSES**

| Sub-district | Max. Pre-bonus Height | MID-BLOCK PERMEABILITY[1] | Res. Density | GREEN ROOF | Afford. Housing | Max. Height w/ Bonus | Min. Bonus Floor Stepback[2] |
|---|---|---|---|---|---|---|---|
| UN | 45' and 4 stories | n/a | n/a | n/a | 1 story up to 12' | 57' up to 5 stories | 15' |
| UT | 65' and 6 stories | 1 story up to 12' | 1 story up to 12' | 1 story up to 12' | 1 story up to 12' | 77' up to 7 stories | 15' |
| UA (Congress Street only) | 50' and 4 stories | 1 story up to 12' | 1 story up to 12' | 1 story up to 12' | 1 story up to 12' | 62' up to 5 stories | 15' |

[1] Must be publicly accessible.
[2] Measured from the ground floor building edge facing any public right-of-way

C. Height standards

1. Height bonus applicability
   a. If a frontage faces a UT street, UN street, or Congress Street, then the portion of the building facing that street is eligible for a height bonus. For lots with multiple frontages where a frontage faces an ineligible street, bonus story must be stepped back at least 35 feet from ineligible street line (see Subsection 9.1.8.D).
   b. Only one height bonus may be applied per structure.
2. One additional story of up to 12 feet in height is allowed if one of the following provisions is met:
   a. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor);
   b. For any development providing a GREEN ROOF, where:
      i. At least 50% of the cumulative lot area is pervious; and
      ii. At least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.
   c. For residential development where 20% of the units meet the definition of either "Workforce Housing Unit for Sale" or "Low-income Housing Unit for Rent" as per Article 3.

D. Parking standards

1. Parking shall be provided as per Article 19.
2. Structured parking must meet the Building Design Standard for Structured Parking (see *City of Portland Design Manual*).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

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## 9.1.8 Subdistrict dimensional requirements

### A. Urban Neighborhood (UN) subdistrict

The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets tend to be narrow.

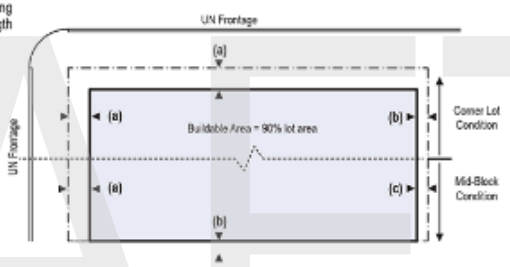
**UN**

| | |
|---|---|
| **SITING STANDARDS** | |
| Orientation - Principal Frontage | determined by applicant |
| Lot Coverage | 90% max |
| **FRONTAGE REQUIREMENTS** | |
| Building Length - Principal facade | 50' max. |
| Building Length - Secondary fac. | 50' max. |
| BLANK FACADE length (max) | 15' |
| Additional Building Length | (see also Table 14.275.7) |
| ATTACHED BUILDINGS | unlimited run |
| Ground Floor Partitions | not allowed |
| Massing Variation | not allowed |
| Structured Parking Exception | not allowed |
| **SETBACKS** | |
| **Principal Building** | |
| (a) Front Yard | 5' max. |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback |
| (b) Side Yard* | 5' min. - May be reduced provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard | 10' min. |
| **Accessory Building** Front Yard | 5' min. |
| Side Yard | 5' min. |
| Rear Yard | 5' min. |
| **BUILDING ENTRIES (SEE ALSO BDS)** | |
| Frequency at frontage | at least 35' |
| Principal Entries | |
| Orientation | any orientation allowed |
| Elevated Stoop (> 1 step) | allowed |
| **HEIGHT STANDARDS** | |
| **Principal Building** | |
| Building Height Min. | 25', at least 2 stories |
| Building Height Max. | 45', up to 4 stories |
| **Accessory Building** | |
| Building Height Max. | 25' |
| **PARKING STANDARDS** | |
| Surface Parking Location | 35' min. setback from street |
| Within Side Yard | 20' max in width per lot; may not exceed 50% of frontage length |
| **Garage at frontage (attached or detached)** | |
| Garage Door Setback (min) | 5' |
| Garage Door Opening (max) | 9' up to 40% of facade length |
| | 20' max. limit |
| Notes and Exceptions | |

* Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

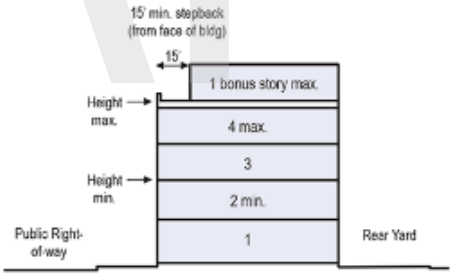
**SITING STANDARDS**

1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



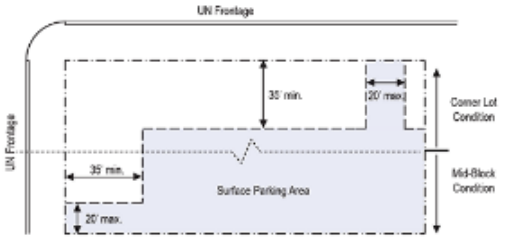

**HEIGHT STANDARDS**

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.




**PARKING STANDARDS**

1. Surface parking areas may be provided within the shaded area shown.

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## B. Urban Transitional (UT) subdistrict

The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

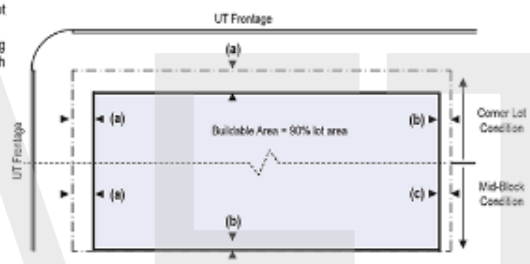
# UT

| SITING STANDARDS | |
|---|---|
| Orientation - Principal Frontage | determined by applicant |
| Lot Coverage | 90% max |
| **FRONTAGE REQUIREMENTS** | |
| Building Length | 100' max. |
| BLANK FACADE length (max) | 30' |
| Additional Building Length | (see also Table 14.275.7) |
| ATTACHED BUILDINGS | unlimited run |
| Ground Floor Partitions | 200' max., 2 modules |
| Massing Variation | 200' max. |
| Structured Parking Exception | 200' max. |
| **SETBACKS** | |
| **Principal Building** | |
| (a) Front Yard | 10' max. |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback |
| (b) Side Yard* | 10' min.-May be reduced provided that the cumulative side yards are not less than 20' |
| (c) Rear Yard | 10' min. |
| (d) STEPBACK (adjacent to UN) | 10' min. stepback after 45' height |
| **Accessory Building** Front Yard | 5' min. |
| Side Yard | 5' min. |
| Rear Yard | 5' min. |
| **BUILDING ENTRIES (SEE ALSO BDS)** | |
| Frequency at frontage | at least 95' |
| Principal Entries | |
| Orientation | any allowed |
| Elevated Stoop (>1 step) | allowed |
| **HEIGHT STANDARDS** | |
| **Principal Building** | |
| Building Height Min. | 3 stories |
| Building Height Max. | 65', up to 6 stories |
| Ground Story Height | n/a |
| **Accessory Building** | |
| Building Height Max. | 25' |
| **PARKING STANDARDS** | |
| Surface Parking Location | 35' min. setback from street |
| **Garage at frontage (attached or detached)** | |
| Garage Door Setback (min) | 10' |
| Garage Door Opening (max) | 9' up to 40% of facade length |
| | 20' max. limit |
| Notes and Exceptions | |

* Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

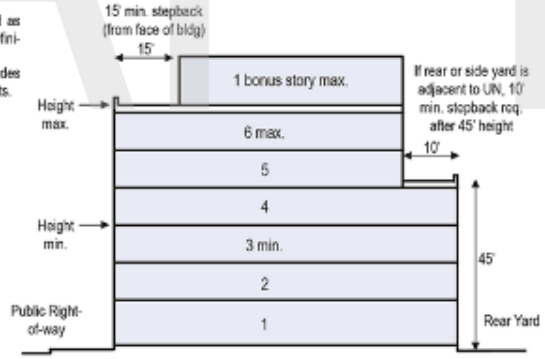
**SITING STANDARDS**

1. The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



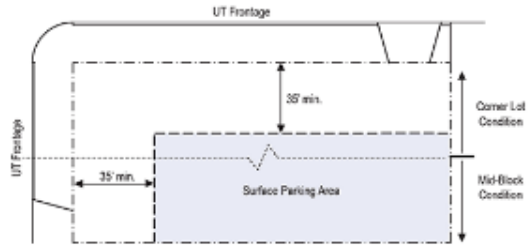

**HEIGHT STANDARDS**

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.




**PARKING STANDARDS**

1. Surface parking areas may be provided within the shaded area as shown.

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## C. Urban Active (UA) subdistrict

The intent of this subdistrict is to maintain and promote a moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

# UA

### SITING STANDARDS

| | |
|---|---|
| Orientation - Principal Frontage | face a UA street |
| Lot Coverage | 90% max |

### FRONTAGE REQUIREMENTS

| | |
|---|---|
| Building Length | 50' max. |
| BLANK FACADE length (max) | 15' |
| Additional Building Length | (see also Table 14.275.7) |
| ATTACHED BUILDINGS | unlimited run |
| Ground Floor Partitions | 150' max., up to 3 modules |
| Massing Variation | not allowed |
| Structured Parking Exception | 150' max. |
| Fenestration, ground floor | 60-90% (see BDS) facade area |

### SETBACKS

| | |
|---|---|
| **Principal Building** | |
| (a) Front Yard* | 5' max. |
| Setback Applicability (see Table 14.275.7 c.) | 75% of total building length must meet front yard setback |
| (b) Side Yard** | 5' min. - May be reduced provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard | 10' min. |
| **Accessory Building** Front Yard | 5' min. |
| Side Yard | 5' min. |
| Rear Yard | 5' min. |

### BUILDING ENTRIES (SEE ALSO BDS)

| | |
|---|---|
| Frequency at frontage | at least 40' |
| Principal Entries | |
| Orientation | at least 1 facing UA street or corner |
| Elevated Stoop (>1 step) | not allowed |

### HEIGHT STANDARDS

| | |
|---|---|
| **Principal Building** | |
| Building Height Min. | 3 stories |
| Building Height Max. | 50', up to 4 stories |
| **Accessory Building** | |
| Building Height Max. | 25' |

### PARKING STANDARDS

| | |
|---|---|
| Surface Parking Location | 35' from street |
| **Garage at frontage (attached or detached)** | |
| Garage Door Setback | 20' min. from street |
| Garage Door Opening (max) | n/a |

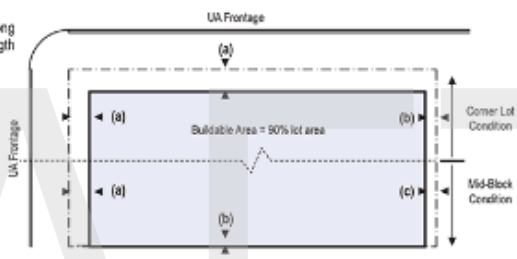
Notes and Exceptions

* Up to 10'0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

** Reduced side yards and zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

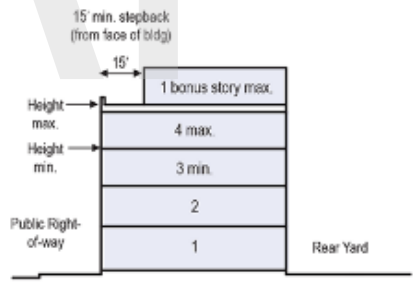
**SITING STANDARDS**

1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



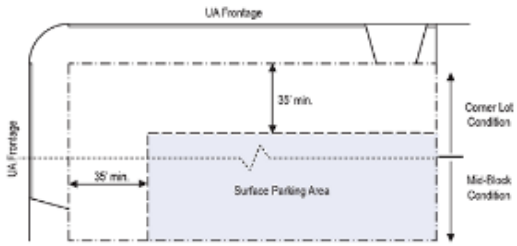

**HEIGHT STANDARDS**

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.




**PARKING STANDARDS**

1. Surface parking areas may be provided within the shaded area as shown.

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## D. Corner conditions

For corner lots where two subdistricts intersect at a street corner, the Dimensional Requirements and Building Design Standards of the "dominant" subdistrict shall apply 35 feet deep into the lot measured from the dominant lot line along its associated street frontage or public ways including required mid-block permeability. Otherwise, Dimensional Requirements shall be according to the subdistrict onto which the building FAÇADE faces.

# CORNER

### ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street*

### SETBACKS

| | |
|---|---|
| (a) Front Yard | according to subdistrict |
| (b) Side Yard | according to subdistrict |

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

### UA INTERSECTS UT

| | |
|---|---|
| Dominant Subdistrict (35' deep) | UA |
| Orientation - Principal Frontage | UA street |
| Dominant Building Design Standards (applicable 35' deep) | |
| Entry, Frequency at frontage | at least 40' |
| Entry, Orientation | at least 1 facing UA street or corner |
| Entry, Elevated Stoop (>1 step) | not allowed on principal UA entry |
| BLANK FACADE, max. length | 15' |
| Fenestration, ground floor | 60-90% (see BDS) facade area |

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

### UA INTERSECTS UN

| | |
|---|---|
| Dominant Subdistrict (35' deep) | UA |
| Orientation - Principal Frontage | UA street |
| Building Length - UN FACADES | 100' max. |
| Dominant Building Design Standards (applicable 35' deep) | |
| Entry, Frequency at frontage | at least 40' |
| Entry, Orientation | at least 1 facing UA street or corner |
| Entry, Elevated Stoop (>1 step) | not allowed on principal UA entry |
| BLANK FACADE, max. length | 15' |
| Fenestration, ground floor | 60-90% (see BDS) facade area |

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

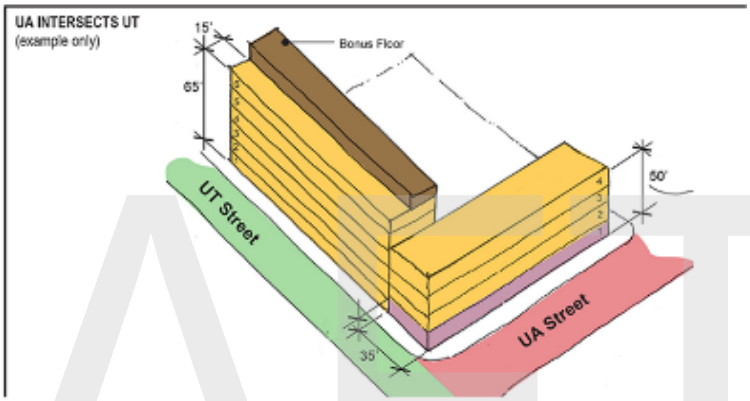
### UT INTERSECTS UN

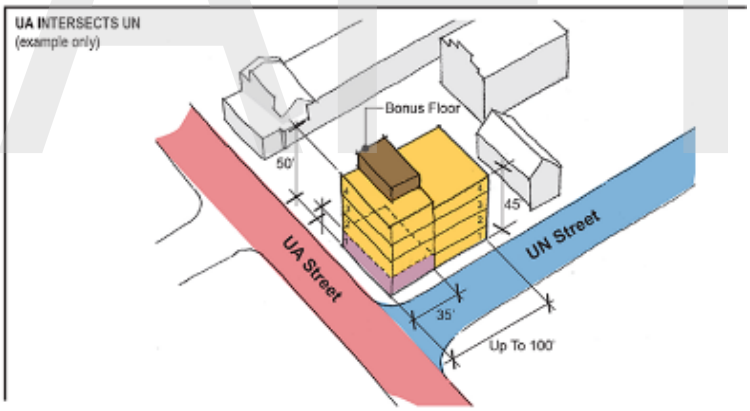
| | |
|---|---|
| Dominant Subdistrict (35' deep) | UN |
| Orientation - Principal Frontage | determined by applicant |

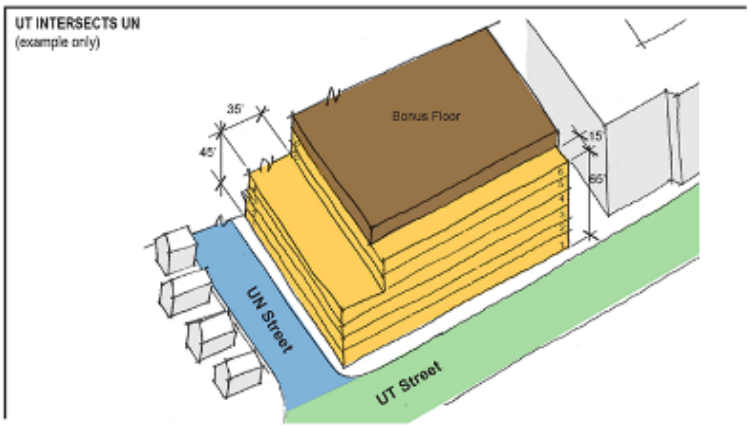
- Corner lots shall be treated as having street frontage on all streets regardless of building orientation

### Notes and Exceptions

* Does not have to correspond to legal building address

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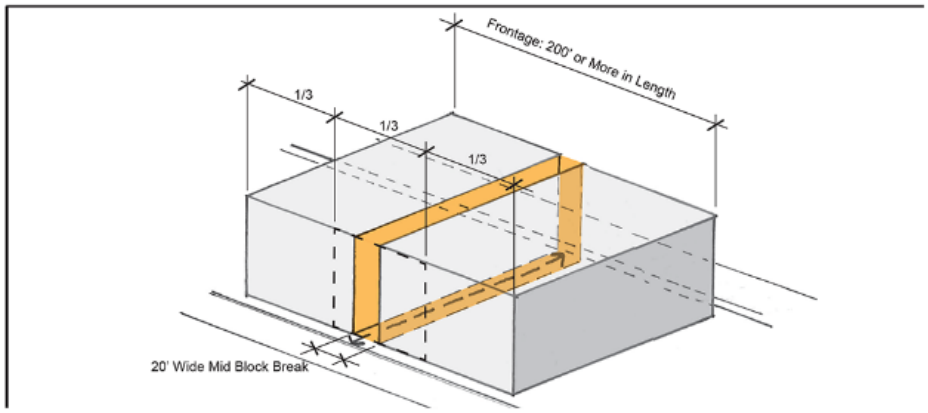
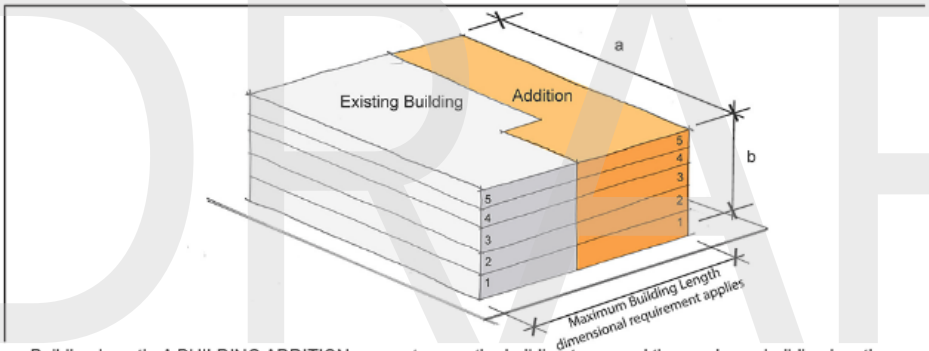
a. MID-BLOCK PERMEABILITY

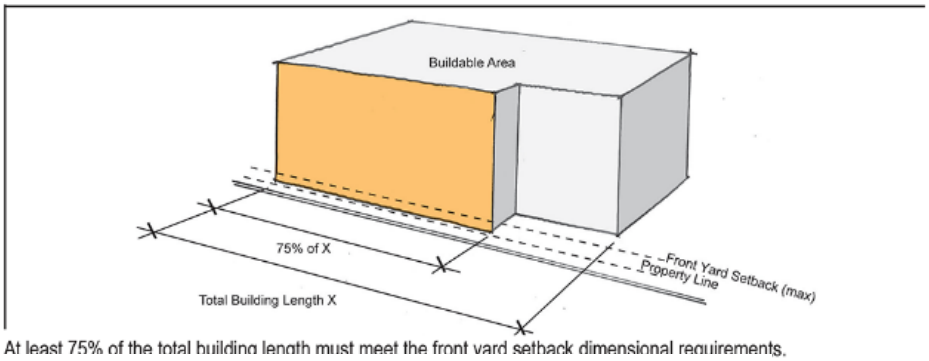



b. BUILDING ADDITION EXEMPTIONS




**a** - Building Length: A BUILDING ADDITION may not cause the building to exceed the maximum building length requirement except in the case that the BUILDING ADDITION is located between a street frontage and an existing building with a non-conforming length. In such an instance, a BUILDING ADDITION length may match but not exceed the legally non-conforming length of the existing building to which it is an addition.
**b** - Building Height in Stories: BUILDING ADDITIONS are exempt from story minimums or maximums in order to match existing building in number of stories. All other Subdistrict Height Standards shall apply including height minimum and maximums in feet.

c. BUILDING LENGTH




At least 75% of the total building length must meet the front yard setback dimensional requirements.

**FIGURE 9-G: DIMENSIONAL REQUIREMENTS ILLUSTRATED**

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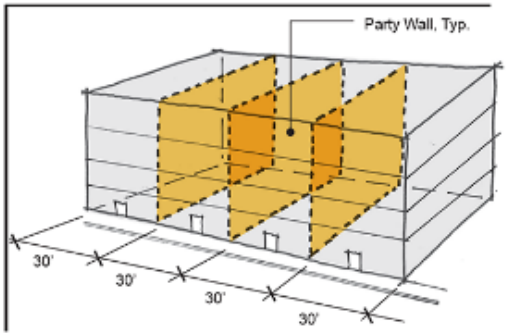
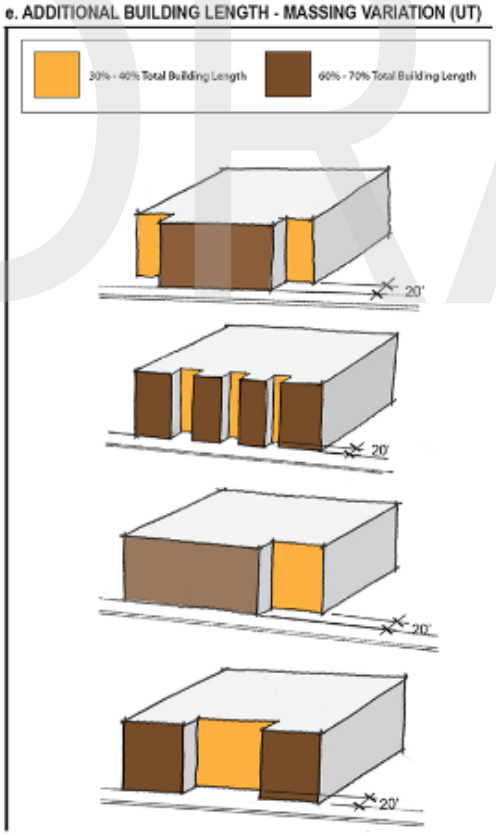
**d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS**




An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

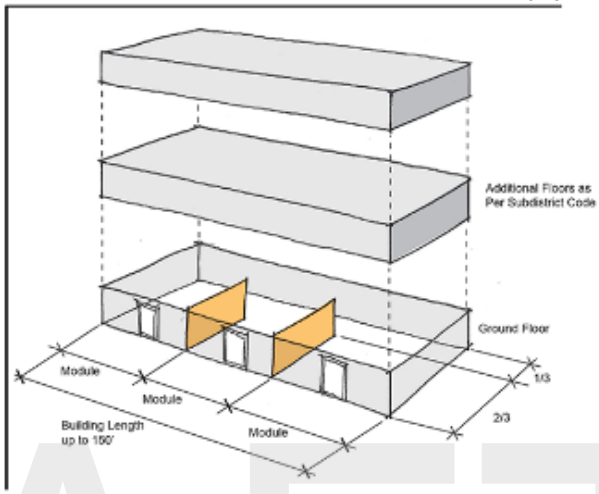
A PARTY WALL condition is required at least every 30' and for the entire height of each building.

**e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)**




Additional building length is permitted where at least 30% and up to 40% of the total building length is setback at least 20'.

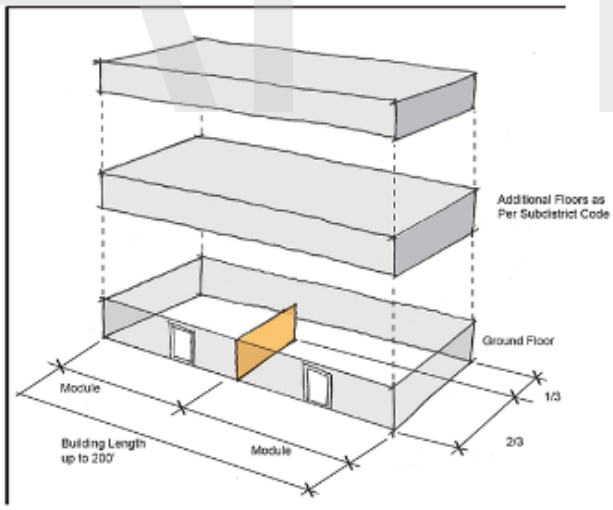
**f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)**




Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

See General Development Standards and BDS for additional requirements.

**f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)**




Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

**FIGURE 9-G (CONT.): DIMENSIONAL REQUIREMENTS ILLUSTRATED**

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# 10 WATERFRONT ZONES

## 10.1 IN GENERAL

Portland's waterfront zones were developed to support a wide range of industries unique to the City's maritime environment that rely upon access to the working waterfront. Competing demands for limited access require a more exhaustive use list, specialized performance standards, and a unique set of dimensional restrictions that are unlike those of other zones. Given this high degree of specialization, Article 10 should generally be viewed in isolation from other articles within the Land Use Code, with the exception of waterfront-specific definitions, listed within Article 3. Uses specific to Article 10 may feature some degree of overlap with other defined uses allowed elsewhere within the City. However, in such instances, the use as referenced within this article shall control.

## 10.2 EASTERN WATERFRONT PORT ZONE

### 10.2.1 Purpose

A. The Eastern Waterfront Port Zone is created to nurture deepwater dependent activity within the context of the established waterfront. The transport of goods and passengers by water is an important component of both the local and regional economies and this transport and other forms of marine industry are dependent upon land and piers with direct access to Portland Harbor. Given the existing pier infrastructure, proximity to deep water, and urban context, Portland's Eastern Waterfront is uniquely situated to support a wide range of water-dependent industry and commerce through a variety of marine activities.

B. The support and expansion of Portland's marine industry requires piers, uplands, and circulation consistent with the transportation purpose and use of marine facilities. The growth of Portland's marine passenger industry also requires supporting services and activities to provide a safe, convenient, and enjoyable travel experience for users of marine passenger facilities. Non-marine uses that complement the marine passenger industry, are compatible with existing and future water-dependent uses, and provide opportunities for residents and visitors alike to enjoy the Eastern Waterfront throughout the year, are encouraged.

C. The primary use of the deep-water resources must be for the berthing and support of large vessels. Non-marine uses that complement and support the deepwater infrastructure and do not conflict or compete for limited space with existing or anticipated deepwater-dependent uses are encouraged. Existing and future pier infrastructure and upland support areas should be designed and maintained to support a variety of marine uses and be responsive to future technologies and trends in the marine industry.

D. Given the need to nurture and support deepwater-dependent uses and the need for non-deepwater dependent uses to complement the marine passenger industry and to support the maintenance and repair of pier infrastructure, the Eastern Waterfront Port Zone recognizes the following hierarchy of uses:

1. The first priority of this zone is to protect and nurture existing and potential deepwater dependent uses (those uses requiring a minimum of 15 feet of water depth);

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2. The second priority is to allow shallow water-dependent and other permitted marine uses, so long as they do not interfere with deepwater dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure; and
3. Other uses specified herein are allowed only if they do not interfere with and are not incompatible with higher priority uses.

### 10.2.2 No adverse impact on marine uses

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed non-water dependent component of a development will have an impermissible adverse impact if it will result in any one or more of the following:

A. The proposed use will displace an existing water-dependent use;
B. The proposed use will reduce existing commercial vessel berthing space;
C. The proposed use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
D. The siting of a proposed use will substantially reduce or inhibit existing public access to marine or tidal waters.

### 10.2.3 Permitted uses

Subject to a determination that the proposed use meets the standards of Subsection 10.2.2, , the following uses are permitted in the Eastern Waterfront Port Zone:

A. Marine passenger
   1. Intermodal marine passenger facilities;
   2. Cruise ship home port and port-of-call berthing and support;
   3. International and domestic ferries
B. Marine commercial
   1. Transient and long-term commercial berthing;
   2. Marine-related warehousing;
   3. Marine related construction, manufacturing, fabrication, salvage and repair;
   4. Storage and repair of fishing equipment;
   5. Ship and other marine vessel construction, building, servicing, and repair;
   6. Boat and marine equipment storage;
   7. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
   8. Public, non-profit, or commercial marine transportation and excursion services, including captained charter services, sport fishing and water taxis;
   9. Ship and off-shore support services, including but not limited to tug boats, pilot boats, and chandleries;
   10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
   11. Marinas located east of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February

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1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26;

12. Marine office, including but not limited to offices of owners of marinas, wharves or their agents, and naval architects, and seafood brokers.

C. Commercial

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.
2. ***Editor's Note**—On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of Subsection 10.2.4 below.
3. Temporary events, subject to the conditions listed below.
   Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:
   a. Temporary events occupying more than 10,000 SF of building or outdoor space shall not exceed a combined total of 60 days between May 1st to October 31st;
   b. No temporary event may continue for more than 14 days of continuous operation;
   c. Any temporary event that anticipates more than 5,000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the public works authority at least 60 days prior to the first day of the event.
4. Festivals subject to City license.
5. Street vendors licensed pursuant to Chapter 19 of the City of Portland Code of Ordinances.

D. Public

1. Fire, police and emergency services;
2. Governmental agency emergency operations/crisis centers;
3. Research, military and visiting attraction vessel berthing;
4. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails.

E. Other

1. A facility for non-profit organizations whose facility may include offices, classrooms, equipment, equipment rentals, storage, and bathrooms for the public.

### 10.2.4 Conditional uses

A. The following uses shall be permitted as conditional uses in the Eastern Waterfront Port Zone, provided that, notwithstanding Subsection 6.5.1, or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority, and provided further that in addition to the provision of Subsection 6.5.2, such uses will not impede or preclude existing or potential water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and meet all additional standards set forth below:

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B. Conditional use standards

1. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity, as required by Subsection 10.2.8 (N) and (O); and
2. Parking and traffic circulation:
   a. Parking and traffic circulation plan: All applications for conditional use in the EWPZ shall submit a parking and circulation plan for review and approval by the planning board. The parking and circulation plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the EWPZ.

C. Conditional uses

1. Marine:
   a. Marine products, wholesaling and retailing;
   b. Ice-making services;
   c. Marine freight facilities providing service for, and/or intermodal transfer of, container and breakbulk freight;
   d. Marine educational facilities;
   e. Seafood retailing, wholesaling, packaging and shipping;
   f. Seafood processing for human consumption;
   g. Commercial marinas serving commercial and recreation boats located west of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26, provided that such facilities are located in areas that do not conflict with the navigation and handling of deepwater dependent vessels accessing existing or potential deepwater berthing;
   h. Fish byproducts processing, provided that:
      (1) Any fish byproducts processing facility has a valid rendering facility license under chapter 12 of the Portland city code; and
      (2) Any fish byproducts facility shall employ current and appropriate odor control technology to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the IM zone (Subsection 6.8.9); and
      (3) The processing other material wastes or byproducts shall not be deemed a lawful accessory use permitted herein.
2. Commercial:
   a. Structured parking available to the general public;
   b. Professional, business, government and general offices uses in upper

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floors of structures constructed after September 18, 2006;

c. Passenger support services supporting a marine passenger use listed under Subsection 10.2.3.A. The total ground floor area occupied by any combination of the following uses (regardless of ownership) shall not exceed 35% of the gross floor area of the principle associated marine passenger use and no more than 35,000 SF cumulative within the EWPZ:

d. Retail;

e. Restaurants/food service other than street vendors;

f. Retail service;

g. Passenger information services.

3. Industrial: The following industrial uses are permitted provided that such uses shall conform to the IM zone performance standards set forth in Subsection 6.8 in addition to the performance standards of Subsection 10.2.8. Where redundant or contradictory performance standards exist, the more restrictive standard applies.

a. Non-marine related warehousing in structures existing as of September 18, 2006;

b. Facilities for combined marine and general construction;

c. Low impact industrial uses as permitted in the IL zone in structures existing as of September 18, 2006, excluding all auto repair service facilities.

4. Public:

a. Utility substations: Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps and telecommunication switching stations, are permitted under the following conditions:

(1) The facility is located more than 100 feet from the water's edge;

(2) The facility occupies no more than 50 SF of structure above ground;

(3) The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise useable and made available for marine related uses, including but not limited to parking, travel ways, and/or storage; and

(4) The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

b. Maritime museums, limited to 5,000 SF of ground floor footprint.

c. Parking for non-marine uses: Notwithstanding Subsection 19.1.6 and Article 14 of this Land Use Code, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water-dependent uses

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that are permitted by Subsection 10.2.3 and 10.2.4 which are or may be located on the subject property (see editor's note below). The remainder of parking required, if any, for such non-marine uses shall be provided off-site.

*Editor's Note—Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water-dependent use elsewhere on the subject property or on a comparable property.

D. The following use shall be permitted only upon the issuance of a conditional use permit subject to the provisions of Subsection 6.5 (conditional uses), and any special provisions, standards or requirements specified below:
   1. Minor wind energy systems.
   2. Minor solar energy systems.

### 10.2.5 Prohibited uses

Uses, whether floating or fixed to land, which are not enumerated in either Subsection 10.2.3 or 10.2.4. as permitted or conditional uses are prohibited. Those uses that are specifically prohibited shall include, without limitation:

A. Residential uses;
B. Amusement/theme parks;
C. Bulk freight facilities;
D. On-site gambling casinos not accessory to and located aboard either a ferry or inter-port cruise ship.

### 10.2.6 Contract or conditional rezoning.

In addition to those marine and non-marine uses authorized in Subsection 10.2.3 and 10.2.4 an applicant may apply to locate a non-marine use not otherwise permitted, if the reviewing body finds the applicant has met the standards of Subsection 10.2.2 (no adverse impact), the performance standards of Subsection 10.2.8(A-O), and the applicable standards of contract/conditional rezoning contained in Subsection 5.3 and conforms to the following requirements:

A. Standards for contract or conditional rezoning:
   1. All non-marine uses are either permitted or conditionally permitted in the B-5 zone, and are not specifically prohibited in Subsection 10.2.5 (prohibited uses) above. Any hotel, inn, or other similar transient lodging establishment proposed must be located landward of the spring tide line and westerly of the extension of the India Street right-of-way; and
   2. The aggregate ground floor area of any development permitted hereunder located within 100 feet of the pier edge or working edge of the hardened shoreline shall be occupied by at least 50% of one or more marine uses set forth in Subsections 10.2.3 (permitted, marine uses) and 10.2.4 (conditional marine uses). Note: the circulation areas and areas occupied for accessory parking serving marine uses shall not be used as the basis for calculating the 50% provision above; and
   3. The development is consistent with the Comprehensive Plan and without the non-marine use component authorized herein, the site could not otherwise support an economically viable water-dependent use; and
   4. The project's public benefits outweigh its potential negative impacts, provided that such public benefits include one or more of the following: protection of existing

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water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public; and

5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as an undue increase of winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns; and
6. The rezoning contains adequate provisions and/or conditions to ensure that on-site water-dependent infrastructure remains occupied by commercial marine use(s) listed in Subsections 10.2.3 (permitted uses) and 10.2.4 (conditional uses) and that said use is not abandoned after the project is developed; and

B. Notwithstanding Subsection 10.2.8(H) (performance standard "Parking") and off-street parking standards of Article 14 (Site Plan), all on-site parking constructed or used for non-marine uses allowed only by contract or conditional rezoning shall be subject to the conditional use provisions Subsection 10.2.3 (E) (parking for non-marine uses). Additionally, the total amount of parking shall be established by the city council in the conditional or contract rezoning agreement after consideration of the planning board's recommendation on the same.

### 10.2.7 Dimensional requirements.

In addition to the provisions of Section 7.5 of this Land Use Code, lots in the EWPZ shall be subject to the following requirements:

A. Minimum lot size: None
B. Minimum frontage: None
C. Minimum yard dimensions:
   1. Front setback: None
   2. Side setback: None
   3. Rear setback: None
   4. Setback from pier line: Notwithstanding the above requirements, a minimum setback of 25 feet from the edge of any pier, wharf or working edge of the hardened shoreline shall be required for any structure, provided that marine offices, as defined in Section 10.2.3(B)(12), may be located up to five feet from the edge of any pier, wharf or working edge of the hardened shoreline. The setback area may be utilized for water-dependent uses and public uses and activities, subject to the provisions of Subsections 10.2.2 (no adverse impact) and 10.2.4 (conditional use provisions), and shall not be utilized for restaurant, drinking, or other non water-dependent uses or for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).
D. Maximum impervious surface: 100%
E. Maximum building height: 45 feet, except as follows:
   1. For purposes of this section only, moveable elements such as cranes and gantries, connection devices such as conveyors or bridges, and floating vessels shall not be subject to the space and bulk

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requirements, but shall be subject to a determination by the Federal Aviation Administration that the location of such equipment will not create a hazard to air traffic.

2. Rooftop appurtenances may exceed the maximum height limits of 45 feet providing that their design and placement is either fully screened or integrated into the architecture of the structure on which they sit.
3. The applicant must provide a determination from the Federal Aviation Administration that structures and equipment in excess of 45 feet will not exceed the applicable height guidelines for the runway approach and will not create a conclusive evidence that the proposed development will not create a hazard.

### 10.2.8 Performance standards

Development in the Eastern Waterfront Port Zone shall comply with the following standards:

A. **Outdoor storage of materials.** Outdoor storage of commodities and materials accessory to normal conduct of business shall be entirely contained, including runoff contaminants and residual material, within a designated area.

B. **Noise.**

1. The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the EWPZ between the hours of 7:00 p.m. and 7:00 a.m. from facilities or operations commenced on or after July 1, 1988, shall not exceed 55 decibels on the A scale at or within the boundaries of any residential zone, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices, and maritime navigation signals.
2. In measuring sound levels under this section, 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).
3. In addition to the sound level standards otherwise established, facilities or operations established or built in the EWPZ on or after July 1, 1988, shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones. Tonal sound is defined as a sound wave usually perceived as a hum or which because its instantaneous sound pressure varies essentially as a simple sinusoidal function of time. Impulse sounds are defined as sound events characterized by brief excursions of sound

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pressure, each with a duration of less than one second.

C. **Vibration.** 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.

D. **Federal and state environmental regulations**. All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this code are more stringent.

E. **Discharges into harbor areas.** No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the Department of Public Works in accordance with Chapter 24, Article III 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, Article II of the City of Portland Code of Ordinances and federal and state environmental statutes and regulations regarding wastewater discharges.

F. **Storage of vehicles.** Storage of any unregistered automotive vehicle on the premises for more than 10 days shall not be permitted.

G. **Landfill of docking and berthing areas.** Landfill of docking and berthing areas shall be governed by 38 M.R.S. § 471-478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of public works and shall be accomplished in accordance with the provisions of Article 7, Section 7.5 (space and bulk exceptions) and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

H. **Off-street parking and loading**. Off-street parking is required as provided in Article 19.

I. **Shoreland and flood plain management regulations.** Any lot or a portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of Articles 11 and 12.

J. **Lighting.** All lighting on the site shall be shielded such that direct light sources shall not interfere with vessels transiting the harbor, nor have an unreasonable adverse impact on adjacent residential zones, and shall be complaint with the Site Lighting Standards of the City of Protland Technical Manual.

K. **Signs.** Signs shall be permitted as set forth in Article 20.

L. **Storage of pollutants and oily wastes**. On-premises storage of pollutants and oily wastes shall not be permitted for more than 45 days.

M. **Compatibility of non-marine uses with marine uses.** Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel

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berthing or other access to the water by existing or potential marine uses.

N. **Functional utility of piers and access to the water's edge.** All development, whether for marine or non-marine uses, must anticipate current and future needs of water-dependent uses to functionally access the water's edge for the transfer of goods, materials, and passengers between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods, materials, and passengers must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development.

## 10.3 WATERFRONT CENTRAL ZONE

### 10.3.1 Purpose

A. The Waterfront Central Zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in the present and into the future in an environment and area dedicated to this purpose. The following priority of uses is recognized:

1. The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;
2. The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
3. Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure.

B. Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hourso f operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted in the Waterfront Central Zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in thezone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

C. Commercial Street is recognized as an important economic center for the city and region. Marine compatible uses are

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encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

### 10.3.2 Definitions

For the purposes of the Waterfront Central Zone only, the following terms shall have the following definitions:

A. **Common circulation drives**. Private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the Waterfront Central Zone providing access from/to the public street network.

B. **Lot.** Any abutting property under common ownership.

C. **Commercial Street Overlay Zone (CSOZ).** The Commercial Street Overlay Zone (CSOZ) is a portion of the Waterfront Central Zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under Subsection 10.3.3(B), subject to the standards and use limitations provided in Subsection 10.3.7(B). The geographic limits of the CSOZ are defined by parcels of land and piers within the Waterfront Central Zone located on the landward side of a line established 125 feet south ofthe southerly sideline of Commercial Street and modified as follows: the seaward limit of the CSOZ extends to a line 300 feet south of the southerly sideline of Commercial Street in the area between the easterly and westerly sideline of Long Wharf. Additionally, all areas subject to this provision are set back landward at least 25 feet from the average high tide line of Portland Harbor and associated coastal wetlands. Where the 125 foot offset intersects with the footprint of a building existing as of May 2019 and such intersection leaves 75% or more of the building within the CSOZ, the entire building shall be considered included in the CSOZ. All offset distances are measured horizontally. All applicants for development within the CSOZ are responsible for demonstrating their location within CSOZ according to the findings of a site specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the CSOZ shall be shown on all site plans and subdivision plats for proposed development within the CSOZ.

D. **On-site.** That portion of any lot included within or directly impacted by a proposed development.

### 10.3.3 Permitted uses

Subject to a determination that the proposed use meets the standards of Subsection 10.3.7, as applicable, the following uses listed under Subsection 10.3.3 (A), (B), (C) and (D) are permitted anywhere in the Waterfront Central Zone. Uses listed under Subsection 10.3.3 (E) are only permitted in the CSOZ.

A. **Marine.**

1. Marine products, wholesaling distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;

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7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included as a conditional use );
11. Seafood processing and retailing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of a maximum of 50 linear feet per pier. A non-commercial berth may not displace a commercial berth. Parking for any non-commercial berthing is subject to the provisions of Subsection 10.3.7(D)8.
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;
24. Bait sales and processing;
25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol and Coast Guard.
26. Commercial parking for water-dependent use business owners and employees.

B. Non-marine commercial and industrial uses. Non-marine uses permitted by this section are subject to the standards listed in Subsection 10.3.7.

1. Professional, business, government, and general offices, except for offices for health care practitioners or health clinics which are only permitted in the CSOZ;
2. Cabinet and carpentry shops, studios for artists and crafts people;
3. Intermodal transportation facilities;
4. Cold storage facilities;
5. Commercial kitchens; and
6. Outside accessory activities.

C. Public

1. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

D. Other

1. Accessory uses:
   a. Interior accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in Subsection 10.3.3 (A)(1), (A)(7), (A)(11) or (A)(22); that such uses do not

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exceed 2,000 SF in total floor area of the building, or 25% of the total floor area of the building, whichever is less, and that each individual accessory use does not exceed 1,000 SF in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the provision of Subsection 10.3.7(A); and

b. Interior meeting or classroom space accessory to uses permitted in Subsection 10.3.3(A)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b, but shall only be permitted as accessory uses if the total of all support uses, including interior meeting or classroom space, does not exceed 3,000 SF in total floor area per building, or 15% of the total floor area per building, whichever is less.

E. **Uses permitted only within the Commercial Street Overlay Zone.** Uses permitted by this section are subject to the standards listed in Subsection 10.3.7(B).

1. Retail and service establishments, including craft and specialty shops;
2. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
3. Banking services without drive-up services;
4. Museums and art galleries;
5. Street vendors licensed pursuant to chapter 19.
6. Offices of health care practitioners or health care clinics.
7. Personal service establishments.

### 10.3.4 Conditional use

The uses listed herein shall be permitted as conditional uses in the Waterfront Central Zone, provided that, notwithstanding Section 6.5, or any other provision of this code, the planning board shall be substituted for the Board of Appeals as the reviewing authority, and further provided that in addition to the provisions of Subsection 6.5.2, they shall also meet the applicable Waterfront Central Zone development standards in section 10.3.7:

A. **Commercial marine conditional uses**

1. Fish by-products processing, provided that:
   a. Any fish by-products processing facility has a valid rendering facility license under Chapter 12 of the City of Portland Code of Ordinances;
   b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available odor control technology) to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the I-M zone; and

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c. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

2. Boat rack storage facilities, provided that:
   a. Parking shall be provided for 100% of the demand generated by the use (nothwithstanding Subsection 6.5.7(D)(8), performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.
   b. Boat rack structures shall not exceed 10,000 SF of building footprint.

B. **Utility substations.** Public utility substations, including but not limited to electrical transformers, sewage, and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:
   1. The facility is located more than 100 feet from the water's edge;
   2. The facility occupies no more than 50 SF of structure above ground;
   3. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available for marine uses, including but not limited to parking, travel ways, and/or storage; and
   4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

C. Minor wind energy systems; and

D. Minor solar energy systems.

### 10.3.5 Prohibited uses

Uses which are not enumerated in either Subsection 10.3.3 or 10.3.4 as permitted or conditional uses are prohibited. Uses enumerated in Subsection 10.3.3 (E) shall be considered prohibited uses outside of the CSOZ. Those uses that are prohibited shall include, without limitation:

A. Residential uses;

B. Hotels, motels, hostels, bed and breakfasts, inns, lodging houses, tourist homes, short-term rentals or boatels;

C. Auditoriums, civic centers, convention centers or other meeting facilities not accessory to an otherwise permitted use;

D. Drinking establishments, private clubs, or non-profit social and recreational clubs;

E. Ground mounted telecommunication towers, antennas, and/or disks; and

F. Drive-up services for any use other than a permitted use listed under Subsection 10.3.3(A) or 10.3.4(A)(1).

G. Major and minor auto service stations;

H. Laundry and dry-cleaning services;

I. Convenience stores with gas pumps;

J. Commercial parking for non-marine uses.

### 10.3.6 Dimensional requirements

In addition to the provisions of Section 7.5 of this Land Use Code, lots in the Waterfront Central Zone shall be subject to the following requirements:

A. Minimum lot size: None

B. Minimum frontage along Commercial Street: 75 feet

C. Minimum lot width within the CSOZ: 50 feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the CSOZ.

D. Minimum yard dimensions:

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1. Front setback: None
2. Side setback: None
3. Rear setback: None
4. Setback from pier edge: Notwithstanding the above requirements, a minimum first-floor setback of 10 feet from the edge of any pier, wharf or bulkhead shall be required for any structure, exclusive of structurally necessary posts supporting upper floors, and deck mounted equipment for loading and unloading vessels. The edge of any pier, wharf or bulkhead shall include any attached apron(s). Floats, rafts, and/or barges not structurally integral to the pier, wharf or bulkhead may not be used to exempt portions of structures from the required first-floor setback. Parking for non-marine uses shall not occupy the 10-foot setback.

E. Maximum lot coverage: 100%

F. Maximum building height: 50 feet. Except as provided in (H) below, a structure in the Waterfront Central Zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

G. Minimum ground floor clearance: Any new building proposed to be larger than 300 SF, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than 15 feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than 300 SF or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.

H. New non-marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (F) and (G) above, for new non-marine use buildings permitted within the CSOZ, four usable floors are allowed and ground floor clearance minimums do not apply.

### Development standards

A. **Standards for non-marine uses located outside of the CSOZ.** Non-marine uses listed above in Subsection 10.3.3(B) and 10.3.4(B) that are located outside of the CSOZ shall be subject to the performance standards listed in Subsection 10.3.7(D) as well as the following standards:

1. 55% marine use required on ground floors: At least 55% of the leasable ground floor area of all buildings on a lot (defined in Subsection 10.3.2 above) , shall be occupied by marine uses, as listed under Subsection 10.3.3(a) or 10.3.4(a)(1).
2. 55% marine use required for all open areas: After subtracting areas used for common circulation drives (defined in Subsection 10.3.2 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under Subsection 10.3.3(a) or 10.3.4 (a)1.
3. Ground floor vacancies and change of occupancy offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the CSOZ shall not be filled with any non-marine use

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without adequate opportunity for marine uses to occupy the space.

a. Ground floor vacancy and change of occupant outside of the CSOZ advertised to marine users: In any lot or portion of lot outside of the CSOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space, along with any associated parking spaces to be vacated, must be made available to new marine occupants. Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a 180 day period in targeted media and by other means reasonably calculated to reach marine users (e.g. local marine trade publications, marine trade websites, waterfront bulletins.) Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the CSOZ.) The property owner may stop advertising sooner than the end of the 180-day period if a lease is signed with a marine user. Should no marine user apply by the end of the 180-day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use occupancy maximum of 45% of the ground floor area or open area.

b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the Planning Authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

c. Prior to changes of occupancy and/or as part of applications for new development outside of the CSOZ, the property owner or applicant shall provide proof of compliance with the requirements of this section as a condition of approval.

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding any provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to Subsection 10.3.3(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet

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of water depth at mean low water, to a minimum setback line of at least 10 feet from the edge of the pier, builkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in Subsection 10.3.3(A)) or 10.3.4(B). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

B. **CSOZ standards**. Non-marine uses listed under Subsection 10.3.3(B), 10.3.3 (E) and 10.3.4 located within the NMUOZ, as defined in Subsection 10.3.2, shall be subject to the performance standards listed in Subsection 10.3.7(D) as well as the following standards:

1. Vessel access: Non-marine uses allwed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Subsection 10.3.7(D).
2. Maximum setback for new development on lots with 75 or more feet of Commercial Street frontage: Any new non-marine development constructed subject to this provision which is located on a lot with 75 or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than 35 from the southerly sideline of the Commercial Street right-of-way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street. Non-marine development subject to this provision on lots with fewer than 75 feet of frontage along the Commercial Street right-of-way, changes of use within existing buildings, and/or building additions of less than 5,000 SF of new development to existing buildings are exempt from the maximum setback provisions established herein.
3. Investment in marine infrastructure: All applicants for site plan review or a change of use permit for non-marine development in the CSOZ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed $250,000. The value of the investment shall benot less than 5% of total project costs over $250,000 for constructing non-marine space and associated site improvements in the CSOZ. Required investment may occur by one or both the following methods:
   a. Direct investment in marine infrastructure located on the same lot: Investment shall be for the benefit of marine uses listed in Subsection 10.3.3(A) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine

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infrastructure investment shall be submitted to the Planning Authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.

b. Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.

### 10.3.8 No contract or conditional rezoning permitted

A. This section is intended to accomplish goals from Portland's Plan 2030. Specifically, these changes will:

1. Prioritize and promote Portland's unique mix of water-dependent, marine-related and compatible non-marine uses.
2. Recognize and reinforce the respective roles of the Eastern, Central and Western waterfronts; and
3. Celebrate, promote and protect Portland's lobster and fishing industry as a foundation of the region's economy and a feature of civic pride.

B. In light of these goals and the significance of the central waterfront to the City's future, no contract or conditional rezoning applications may be approved in the Waterfront Central Zone.

### 10.3.9 Performance standards

All uses in the Waterfront Central Zone shall comply with the following standards:

A. **Outdoor storage of materials.** Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of 45 feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

B. **Noise**. The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the Waterfront Central Zone shall not exceed 75 decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, 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).

C. **Vibration.** Vibration inherently and recurrently generated shall be imperceptible without

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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.

D. **Discharges into harbor areas**. No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with Chapter 24, Article III 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, Article II of the City of Portland Code of Ordinancesand federal and state environmental statutes and regulations regarding wastewater discharges.

E. **Storage of vehicles**. Storage of any unregistered automotive vehicle on the premises for more than 60 days shall not be permitted.

F. **Landfill of docking and berthing areas**. Landfill of docking and berthing areas shall be governed by 38 M.R.S. § 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the Department of Public Works and shall be accomplished in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

G. **Off-street parking and loading.** No off-street parking or loading shall be required under Article 19.

H. **Lighting**. All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.

I. **Storage of pollutants and oily wastes**. On-premises storage of pollutants and oily wastes shall not be permitted for more than 45 days.

J. **Urban design**. Construction of new structures located within 35 feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within 100 feet of the water. Such structures that are also located within 100 feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

K. **Pier and wharf expansions.** In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the Waterfront Central Zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

L. **Public view protection.** Any new development in the Waterfront Central Zone shall perform a public view impact analysis for review and approval by the planning board or Planning Authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland

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Comprehensive Plan, 2002)to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement. The planning board or Planning Authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

M. Operations and Access Management Plan. Any new development, including changes of use or expansion of uses in the Waterfront Central Zone shall submit a scaled plan and accompanying narrative that demonstrates waterfront access and functional accommodation for water-dependent use~~r~~s. In accordance with Portland's Plan 2030, the plan shall demonstrate consistency with the hierarchy of waterfront uses, as further detailed in Subsection. 10.3.1 (Purpose), with non-marine and marine-related uses being subordinate in placement and disposition to water-dependent uses, and designed so as not to impede access to the pier edge and vessel berthing nor interfere with marine operations.

1. Submission Requirements. The plan shall, at a minimum, illustrate the following information:
   a. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Subsection 10.3.2, access-ways, sidewalks, pier edges, floats and docks, showing the entire lot in the context of its respective pier.
   b. Existing and proposed off-street parking, labeled with associated uses.
   c. Facilities for the loading and unloading of goods and materials.
   d. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.
   e. Signage showing parking use, wayfinding, and posted operational restrictions.
   f. Plan narrative detailing how the standards listed below are achieved, tenant/landlord communication protocols, private enforcement actions to be employed to ensure plan compliance, and the responsible parties representing the property owner.
2. The Operations and Access Management Plan shall be reviewed by the Planning Authority.
3. Review Standards. In addition to the information above, the plan shall demonstrate compliance with the following standards:

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a. Off-street parking is subject to the limitations described in Subsection 10.3.7 (A)("55% Rule"). Off-street parking spaces intended for use by water-dependent uses shall be sited as close as reasonably possible to associated vessels and/or ground-floor lease area.
b. Proposals for new non-marine parking, accessory to an otherwise permitted use in the WCZ, shall submit a parking analysis for all uses on the subject lot, justifying the number of non-marine spaces based upon the proposed use and demonstrating sufficient parking supply for marine uses. If sufficient parking is not available to marine uses, off-street parking for non-marine uses shall not be permitted.
c. Off-street parking, loading facilities and access ways designated for water-dependent uses shall be exclusive to such uses, except that, if not being occupied by water-dependent tenants, such parking may be made available to non-marine uses between the hours of 5:00 p.m. and 2:00 a.m. Any such shared parking arrangements shall be documented in the Operations and Access Management narrative described above, and clearly signed on-site.
d. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.
e. Facilities for the loading and unloading of goods shall account for the frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.
f. Provisions for the storage and movement of goods and materials shall be designed into all pier edge development. Circulation routes must be maintained or otherwise provided as an element of all development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.
g. Non-marine uses shall provide a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.

## 10.4 WATERFRONT PORT DEVELOPMENT ZONE

### 10.4.1 Purpose

Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River and Portland Harbor. The Port of Portland is integral to the city's economic, cultural and fiscal health. This zone exists to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the similar performance standards as other industrial zones, are primarily limited to those uses which are dependent upon deep water and

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which contribute to port activity. Nonmarine activity may be allowed to the extent it will not have any adverse impact on marine uses.

### 10.4.2 No adverse impact on marine uses

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development. A proposed development will have an impermissible adverse impact if it will result in any one or more of the following:

A. The proposed non water-dependent use will displace an existing water-dependent use;
B. The proposed use will reduce existing commercial vessel berthing space;
C. The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
D. The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

### 10.4.3 Permitted uses

Subject to a determination that the proposed use meets the standards of Subsection 10.4.2 (no adverse impact on marine uses), the uses in Table 10-A are permitted in the Waterfront Port Development Zone.

### 10.4.4 Conditional use standards

Conditional uses shall be permitted in the Waterfront Port Development Zone, provided that, notwithstanding Subsection 6.5.2 or any other provision of this Code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority. In addition to the provisions of Section 6.5.2 such uses will:

A. Not impede or preclude existing or potential water-dependent development on other lots;
B. Allow for adequate access to the water;
C. Be compatible with water dependent and marine uses;
D. Operationally support one or more water dependent use(s), or be located in a building or structure that is physically adaptable or relocatable to make way for future development of water-dependent uses; and
E. Meet any additional performance and dimensional standards set forth below.

### 10.4.5 Prohibited uses

Uses which are not enumerated in Table 10-A as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

A. Residential uses;
B. Hotels, motels, or boatels;
C. Auditoriums, civic centers, convention centers or other meeting facilities;
D. Restaurants and drinking establishments;
E. Marinas, including marina associated boat storage facilities; and
F. Truck terminals.

### 10.4.6 Dimensional requirements

In addition to the provisions of Article 7 of this Land Use Code, lots in the Waterfront Port Development Zone shall be subject to the requirements of Table 10-B.

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**TABLE 10-A: WPDZ PERMITTED AND CONDITIONAL USES**

| | | |
|---|---|---|
| Marine | Marine repair services and machine shops | ● |
| | Tugboat, fireboat, pilot boat, and similar services | ● |
| | Harbor and marine supplies and services and ship supply, such as fueling and bunkering of vessels | ● |
| | Shipbuilding and facilities for construction, maintenance, and repair of vessels | ●/◐[1] |
| | Marine cargo handling facilities, including docking, loading and related storage | ●/◐[1] |
| | Boat repair yards | ●/◐[1] |
| | Facilities for marine construction and salvage | ●/◐[1] |
| | Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices | ● |
| | Marine retail and wholesale sales, including yacht brokerage | ◐ |
| | Boat storage facilities | ●/◐[1] |
| | Seafood processing | ◐ |
| | Seafood packing and packaging | ◐ |
| | Fabrication, storage, and repair of fishing equipment | ◐ |
| | Ice-making services | ◐ |
| | Fabrication of marine-related goods | ◐ |
| | Fish by-products processing, provided that:<br>i. Any fish by-product processing facility has a valid rendering facility license under chapter 12; and<br>ii. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article. | ◐ |
| | Commercial berthing | ● |
| Industrial | Intermodal transportation facilities principally for vessels with regularly scheduled destination service or for railroad transportation service | ●/◐[1] |
| | Marine cargo container and chassis maintenance and repair | ● |
| | Facilities for combined marine and general construction | ◐[1] |
| | Cold storage facility, warehousing, and storage of goods which are awaiting shipment via cargo carriers | ◐[1] |
| | Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, manufacture of products, assembly of electrical components, tool and die shops, and the packaging of food, provided that such uses shall be subject to the performance standards of the I-M zone | ◐ |
| Public | Public uses including pedestrian and bicycle trails | ● |
| | Utility substations, including sewage collection and pumping stations, water pumping stations, transfer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than 100 feet from the water. | ◐ |
| | Off-street parking lots, excluding parking structures | ◐ |
| Other | Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses[2] | ● |
| | Minor solar energy systems | ● |
| | Minor wind energy systems | ◐ |

● = Permitted ◐ = Conditional

1 Uses that may be located in buildings that exceed the maximum permitted height. Uses marked ●/◐ will be considered permitted uses when occupying buildings with a maximum height equal to or less than the maximum applicable height allowable under the permitted use dimensional standards, and conditional Uuses when above that height.

2 Food service establishments, including food trucks and other similar retail and service support uses shall only be permitted as accessory uses if all such uses do not exceed 2,000 SF in total floor area of the building and each individual use does not exceed 1,000 SF in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

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**TABLE 10-B: WPDZ DIMENSIONAL REQUIREMENTS**

| | Permitted Use Dimensional Standards | Conditional Use Dimensional Standards |
|---|---|---|
| Setbacks (min.) | N/A | N/A |
| Lot Size (min.) | N/A | 5 acres, limited to 1 building greater than the maximum applicable height allowed under the permitted use dimensional standards. |
| Setback from Pier Line, wharf, or bulkhead, including any attached aprons (min.)[1] | 5 ft. | 5 ft. |
| Lot Coverage (max.) | 50% east of a line projected due south from the centerline intersections of W. Commercial Street and the easterly most Cassidy Point Drive.<br>100% west of a line projected due south from the centerline intersections of W. Commercial Street and the easterly most Cassidy Point Drive. | 50% east of a line projected due south from the centerline intersections of W. Commercial Street and the easterly most Cassidy Point Drive.<br>100% west of a line projected due south from the centerline intersections of W. Commercial Street and the easterly most Cassidy Point Drive. |
| Building Height (Inclusive of Roof Forms and Rooftop Appurtenances)(max.)[2] | 55 ft. east of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive and west of Casco Bay Bridge.<br>60 ft. west of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.<br>In no case may any permitted heights exceed 50ft within 100ft of W.Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.[5] | 60 ft. west of the Casco Bay Bridge[7], except as follows:<br>75 ft. in the area east of a line projected due south from the centerline intersections of W. Commercial Street and the easterly most Cassidy Point Drive and west of Casco Bay Bridge, on lots 5 contiguous acres or larger.[4]<br>130 ft. for bulk storage[3] facilities west of the projection of the westerly most Cassidy Point Drive segment.<br>In no case may any conditionally permitted heights exceed 50ft within 100ft of W. Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.[5] |
| Building Length (max.)[6] | 450 ft,<br>300 ft. within 100 ft. of W. Commercial Street and all area of the WPDZ east of the Casco Bay Bridge. | 450 ft.<br>300 ft. within 100ft of W. Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.<br>300 ft. for buildings or portions of buildings exceeding the maximum applicable height allowed under the permitted use dimensional standards. |

[1]The setback area may be used for activities related to the principal uses in the structure, but shall not be used for off-street parking.
[2]Buildings and/or structures shall be limited to an absolute height measured from average grade with no portion of the structural roof system or roof top appurtenances exceeding the limits set forth under Table 10-B with the exception of moveable elements or connection devices as listed under Subsection 10.4.7
[3]Bulk storage dedicated to materials delivered or awaiting transportation to a site by waterborne transportation.
[4]A projection of the street centerline shall consist of an extension of the centerline to the water side boundary of the WPDZ.
[5]Height limitations east of the Casco Bay Bridge are intended to protect vistas of the harbor from public open space.
[6]As measured by a line parallel with the southern edge of the West Commercial Street right-of-way.
[7]Only those conditional uses so designated in Note 1 of the Waterfront Port Development Zone Use Table 10-A may be located in buildings taller than 60 feet.

### 10.4.7 Additional bulk, height, and location standards.

A. For structures exceeding the maximum applicable height allowed under the permitted use dimensional standards:

1. Moveable elements such as cranes and gantries, and connection devices such as conveyors or bridges shall not be subject to the space and bulk requirements, but shall be subject to a determination by the Federal Aviation Administration that the location of such equipment will not create a hazard to navigation.

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2. The applicant must provide a determination from the Federal Aviation Administration that structures and equipment will not exceed the applicable height guidelines for the runway approach and will not create a hazard to navigable airspace. Such a determination shall be accepted as conclusive evidence that the proposed development will not create a hazard.
3. For each lot, at least one view corridor of at least 90 feet in width shall be left unbuilt to preserve a clear line of sight between West Commercial Street and the water.

### 10.4.8 Performance standards

Proposals in the Waterfront Port Development Zone that qualify for Site Plan review shall submit, in addition to site plan submission requirements (if applicable), an impact mitigation narrative summarizing how the project intends meets the applicable performance standards. All uses in the Waterfront Port Development Zone shall comply with the following standards:

A. **Outdoor storage of materials.** Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of 45 feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

B. **Noise.**
   1. The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the Waterfront Port Development Zone between the hours of 7:00 p.m. and 7:00 a.m. from industrial facilities or operation commenced on or after July 1, 1988, shall not exceed 55 decibels on the A scale at or within the boundaries of any residential zone, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices.
   2. In measuring sound levels under this section, 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).
   3. In addition to the sound level standards otherwise established, facilities or operations established or built in the Waterfront Port Development Zone on or after July 1, 1988, shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones. Tonal sound is defined as a sound wave usually perceived as a hum or which because its instantaneous sound pressure

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varies essentially as a simple sinusoidal function of time. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with a duration of less than one second.

C. **Vibration.** 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.

D. **Federal and state environmental regulations.** All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.

E. **Discharges into harbor areas.** No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with Chapter 24, Article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of Chapter 24, Article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.

F. **Storage of vehicles.** Storage of any unregistered automotive vehicle on the premises for more than 60 days shall not be permitted.

G. **Landfill of docking and berthing areas.** Landfill of docking and berthing areas shall be governed by 38 M.R.S. § 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

H. **Off-street parking.** Off-street parking is required as provided in Article 19.

I. **Shoreland and flood plain management regulations.** Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of Articles 11 and 12.

J. **Lighting.** All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.

K. **Signs.** Signs shall be permitted as set forth in Article 20.

L. **Storage of pollutants and oily wastes.** On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.

M. **Compatibility of nonmarine uses with marine uses.** Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing

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or other access to the water by existing or potential marine uses.

N. **Design.** Design and visual character shall:

1. In building design, including placement and screening of mechanical equipment, take into consideration long views to minimize negative visual impact and provide visual interest, and architecturally integrate exposed industrial systems and equipment where practical;
2. Organize massing to emphasize certain parts of the building such as entries, corners, or different uses;
3. Treat all facades, including the roof, with equal level of detail, and articulation;
4. Vary and articulate building facades to add scale and avoid large monotonous walls. Treatments such as texture, color, material changes, or shadow lines or murals must be used to add visual interest and avoid dull, flat, repetitive facades; and
5. Use a scaling or articulation element such as stepback, canopy, or fenestration, as required for any street-facing façade within 50 feet of West Commercial Street.

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# 11 SHORELAND ZONE

## 11.1 PURPOSE

The purpose of this article is to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect fish spawning grounds, aquatic life, bird and other wildlife habitat; protect buildings and lands from flooding and accelerated erosion; protect archaeological and historic resources; protect commercial fishing and maritime industries; protect freshwater and coastal wetlands; control building sites, placement of structures and land uses; conserve shore cover and visual as well as actual points of access to inland and coastal waters and natural beauty, as appropriate in an urbanized environment; and to anticipate and respond to the impact of development in shoreland areas.

## 11.2 APPLICABILITY

A. This article applies to all land areas, uses, structures, and land use activities within:
   1. 250 feet, horizontal distance, of the normal high-water line of any river;
   2. 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal actions;
   3. 250 feet, horizontal distance, of the upland edge of a freshwater wetland; or
   4. 75 feet, horizontal distance, of the normal high-water line of a stream.

B. This article also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body, meaning for the purposes of this article any river or stream, or within a wetland.

C. For the purposes of this article, wetlands shall include coastal and freshwater wetlands as defined in Article 3.

D. The regulations and controls of this article apply to all land areas, uses, structures, and land use activities cited within this subsection in all zones of the city.

## 11.3 REVIEW PROCEDURE

Development activities within the Shoreland Zone are reviewed by the Building Authority for compliance with the requirements of Section 11.4. Submission of plans for such development activity shall be prepared by qualified professionals, based upon a boundary survey.

## 11.4 USE-SPECIFIC LAND USE STANDARDS

### 11.4.1 Principal and accessory structures

A. All principal and accessory structures shall be set back at least 75 feet horizontal distance from the normal high-water line of water bodies, the upland edge of a wetland, or associated tributary streams within a Shoreland Zone, except that in the following zones the setback shall be as indicated below:
   1. B 3, B-5, B-5b, I-L on-peninsula, and I-M on-peninsula: 25 feet.
   2. WCZ, WPDZ, I-B, EWPZ: No setback required. However, pier edge setbacks apply in the EWPZ, the WCZ, and the WPDZ.

B. For principal structures, setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey, as adopted on the City of Portland Zoning Map.

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C. Notwithstanding this requirement, when a lot is a lot of record as defined in Subsection 4.3.1 or cannot otherwise meet the setback requirement of this section due to physical limitations of the site, the Planning Board may approve a reduction of the setback requirement for a principal structure to the least amount necessary to achieve a building dimension of 28 feet, provided that the setback is not reduced to less than 40 feet. Structures in existence on June 15, 1992, may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland, stream or tributary stream, provided that the setback is not reduced to less than 40 feet and the floor area or volume is not increased by more than 30%. In no event shall the setback from a coastal wetland be reduced to less than 75 feet, except as set forth in Subsection 11.4.1.A, above.

D. In all cases, accessory detached structures of less than 100 square feet of floor area shall be permitted with no setback, provided that such structures shall be used only for the storage of fish, bait, and related equipment. No setback shall be required for piers, docks, retaining walls, or any other structures which require direct access to the water as an operational necessity.

E. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

F. Notwithstanding the requirements of this section, stairways or similar structures may be allowed with a permit from the Building Authority to provide shoreline access in areas of steep slopes or unstable soils, provided that:

1. The structure is limited to a maximum of four feet in width;
2. The structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, unless permitted by the Department of Environmental Protection pursuant to 38 M.R.S. § 480 C; and
3. The applicant demonstrates that no reasonable access alternative exists on the property.

### 11.4.2 Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line of a water body or within a wetland

A. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion;

B. The location shall not interfere with existing developed or natural beach areas;

C. The facility shall be located so as to minimize adverse effects on fisheries;

D. The facility shall be no larger in dimension than necessary to carry on the activity and shall be consistent with surrounding character and uses;

E. New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the National Resources Protection Act, 38 M.R.S. § 480-C. Permits may also be required from the Army Corps of Engineers and Board of Harbor Commissioners if located in navigable waters.

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F. Except in the WCZ, EWPZ, WPDZ, and I-B zones, no new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity;

G. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any zone.

### 11.4.3 Clearing or removal of vegetation

A. In all shoreland areas in Resource Protection zones, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that zone.

B. The clearing or removal of vegetation standards of this subsection shall not apply to the following zones: EWPZ, WCZ, WPDZ, B-3, B-5, B-5b, B-6, B-7, I-L (on-peninsula) and I-M zones (on-peninsula).

C. The clearing or removal of vegetation standards of this subsection shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas in these locations shall be limited to the minimum amount necessary.

D. Other than cutting or removal of vegetation as provided for in this subsection, timber harvesting shall not be permitted. For purposes of this section, timber harvesting is defined as the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two acres within the Shoreland Zone shall not be considered timber harvesting. Cutting or removal of such trees shall be regulated pursuant to this section.

E. For purposes of this subsection, vegetation is defined as all live trees, shrubs and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level.

F. In all areas other than Resource Protection zones, a buffer strip of vegetation shall be preserved, except where clearance is required for development of permitted uses, within a strip of land extending 75 feet, horizontal distance, from the normal high-water or upland edge of a coastal wetland, river, stream or tributary stream within a Shoreland Zone, in accordance with the following:

4. There shall be no cleared opening greater than 250 square feet in the forest canopy or other existing vegetation if a forested canopy is not presented as measured from the outer limits of the tree or shrub crown. Notwithstanding this limitation, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

5. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other vegetation is maintained. For the purposes

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of this subsection, a "well distributed stand of trees" adjacent to a water body, tributary stream or wetland shall be defined as maintaining a minimum rating score of 16 or more in any 25-foot by 50-foot rectangle area as determined by the rating system in Table 11-A. The following shall govern in applying the point system in Table 11-A:

a. The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
b. Each successive plot must be adjacent to, but not overlap a previous plot;
c. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this ordinance;
d. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this ordinance;
e. Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.
For the purposes of this subsection, "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 ½ feet above ground level for each 25-foot by 50-foot rectangular area. If five samplings do not exist, no woody stems less than two inches in diameter can be removed until five samplings have been recruited into the plot. Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any ten-year period.
3. In order to protect water quality and wildlife habitat, existing vegetation under three feet in height and other groundcover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide a footpath or other permitted uses as described in this section.
4. Pruning of tree branches on the bottom one third of the tree is allowed.
5. In order to maintain a buffer strip of vegetation when the removal of storm damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

G. Selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, shall be allowed within any ten-year period at distances greater than 75 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, except to allow for the development of permitted

**TABLE 11-A: SHORELAND TREE STAND RATING SYSTEM**

| Diameter at 4½ ft. above ground level | Points |
|---|---|
| 2 in. ≤ 4 in. | 1 |
| 4 in. ≤ 8 in. | 2 |
| 8 in. – 12 in. | 4 |
| 12 in. or greater | 8 |

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uses. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate 25% percent of the lot area within the Shoreland Zone, including land previously cleared.

H. Legally existing nonconforming cleared openings may be maintained but shall not be enlarged, except as allowed by this article.

I. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

### 11.4.4 Erosion and sedimentation control

A. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan in accordance with Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection and the City of Portland Technical Manual. The plan shall be submitted to the Building Authority for approval and shall include, where applicable, provisions for:

1. Mulching and revegetation of disturbed soil.
2. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
3. Permanent stabilization structures such as retaining walls or riprap.

B. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

C. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed ground area at every phase of construction shall be minimized to reduce the potential for erosion.

D. Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine months of initial exposure. The following standards shall also be met:

1. Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.
2. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
3. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

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E. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in accordance with the City of Portland Technical Manual.

### 11.4.5 Soils

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, either during or after construction. Proposed uses requiring subsurface wastewater disposal and commercial or industrial development or other similar intensive land uses shall require a soils report based on an on-site investigation and prepared by state certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

### 11.4.6 Water quality

No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream or wetland.

### 11.4.7 Archaeological sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the Department of Planning and Urban Development, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the Planning Authority. The Planning Authority shall consider comments received from the commission prior to rendering a decision on the application. Such sites shall also comply with all applicable provisions of Article 17 of this chapter.

### 11.4.8 Installation of public utility service

No public utility of any kind shall install services to any new structure located in the Shoreland Zone unless written authorization attesting to the validity and currency of all local permits required under this Code has been issued by the appropriate municipal authorities. Following installation of service, the public utility shall forward the written authorization to the appropriate municipal authorities, indicating that installation has been completed.

### 11.4.9 Essential services

Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors. The installation of essential services, other than road-side distribution lines and within existing service corridors, is not allowed in a Resource Protection or Stream Protection zone, except where the applicant demonstrates that no reasonable alternative exists. Damaged or

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destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

### 11.4.10 Roads and driveways

A. Roads and driveways shall be setback a minimum of 75 feet from the normal high-water or upland edge of a coastal wetland, freshwater wetland, river or tributary stream within a Shoreland Zone, except:
   1. In the EWPZ, WCZ, WPDZ, B-3, B-5, B-5b, I-L (on-peninsula) and I-M (on-peninsula) roads and driveways shall be setback as established for structures in those zones; as specified in Subsection 11.4.1.A.
   2. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or effective use of additional ditch relief culverts and turnouts place so as to avoid sedimentation of the water body, tributary stream or wetland.

B. Existing public roads may be expanded within the legal road right of way regardless of their setback from a waterbody, tributary stream or wetland.

C. New roads and driveways are prohibited in a Resource Protection zone except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the planning board in a Resource Protection zone, upon a finding that no reasonable alternative route or location is available outside the district. When a roadway or driveway is permitted in a Resource Protection zone the road and/or driveway shall be setback as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of wetland.

D. Road and driveways banks shall be no steeper than slope of two horizontal to one vertical and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection 11.4.4.

E. Road and driveway grades shall be no greater than 10% except segments of less than 200 feet.

F. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope, in width between the outflow point of the ditch or culver and the normal high-water line of a water body, tributary stream or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

G. Ditch relief (cross drainage) culverts, drainage dips and water turnout shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road,

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**TABLE 11-B: DRAINAGE SPACING**

| Grade (%) | Spacing |
|---|---|
| 0-2 | 250 ft. |
| 3-5 | 200-135 ft. |
| 6-10 | 100-80 ft. |
| 11-15 | 80-60 ft. |
| 16-20 | 60-45 ft. |
| 21+ | 40 ft. |

driveway, or ditch. To accomplish this, the following shall apply:

1. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in Table 11-B.
2. Drainage dips may be used in place of ditch relief culverts only where the grade is 10%or less.
3. On sections having slopes greater than ten 10%, ditch relief culverts shall be placed at approximately a 30 degree angle downslope from a line perpendicular to the centerline of the road or driveway.
4. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
5. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

### 11.4.11 Parking areas

Parking areas shall be set back a minimum of 75 feet from the normal high-water or upland edge of a coastal wetland, freshwater wetland, river or tributary stream within a Shoreland Zone except:

A. In the EWPZ, WCZ, WPDZ, B-3, B-5, B-5b, I-L and I-M zones, parking setbacks shall be as established for structures in those zones, as specified in Subsection 11.4.1.A.

B. Where the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream, the board may reduce the parking setback requirement to no less than 50 feet in the R-OS, and I-B zones to the least amount necessary for construction, provided that the applicant proves by a preponderance of the evidence that appropriate techniques will be used to prevent sedimentation of the water body.

### 11.4.12 Septic waste disposal

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the following:

A. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland;

B. A holding tank is not allowed for a first-time residential use in the Shoreland Zone.

### 11.4.13 Stormwater runoff

All new construction and development shall be designed to be in compliance with the City of Portland Technical Manual to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as

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berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwater. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

### 11.4.14 Agriculture

A. All spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S. §§ 4201-4209).

B. Manure shall not be stored or stockpiled within 75 feet, horizontal distance, of water bodies, tributary streams, or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.

C. Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area within the Shoreland Zone shall require a conservation plan to be filed with the Planning Authority.

D. There shall be no new tilling of soil within 75 feet, horizontal distance, from water bodies and coastal wetlands or within 25 feet, horizontal distance, of tributary streams and freshwater wetlands when such new tilling, by itself or combined with all other contiguous tillage, shall exceed 40,000 square feet in surface area. Operations in existence on the effective date of this section and not in conformance with these provisions may be maintained but shall not be expanded. When the new tilling, by itself or combined with all other contiguous tillage, shall total 40,000 square feet or less, the tillage shall be set back a minimum of 25 feet from all water bodies, tributary streams or wetlands.

E. Newly established livestock grazing areas shall not be permitted within 75 feet, horizontal distance, of water bodies and coastal wetlands or within 25 feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with the above setback provisions may continue, provided such grazing is conducted in accordance with a soil and water conservation plan filed with the Planning Authority.

## 11.5 SUPPLEMENTAL SITE PLAN STANDARDS

### 11.5.1 Site plan standards

The Planning Board or Planning Authority shall approve a site plan located within a Shoreland Zone if it finds that the following standards, in addition to the standards set forth in the site plan ordinance, are met:

A. The proposal will maintain safe and healthful conditions;

B. The proposal will not result in water pollution, erosion, or sedimentation to surface waters;

C. The proposal will adequately provide for the disposal of all wastewater;

D. The proposal will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

E. The proposal will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

F. The proposal will protect archaeological and historic resources;

G. The proposal will not adversely affect existing commercial fishing or maritime activities;

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H. The proposal will avoid problems associated with flood plain development and use; and

I. The proposal is in conformance with the standards set forth in this article.

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# 12 FLOOD PLAIN MANAGEMENT

## 12.1 PURPOSE

The City of Portland, Maine, elects to comply with the 42 USC Section 4001 et seq. requirements of the National Flood Insurance Act of 1968, as amended from time to time. The National Flood Insurance Program, established in the aforesaid act, provides that areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency and that flood plain management measures be applied in such flood hazard areas. This article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the city. The purposes of this article are to reduce future flood risks and losses, protect against financial and human loss resulting from flood disasters, and to control the placement of structures, construction materials, and methods used to minimize potential property damage due to flooding.

## 12.2 APPLICABILITY

This article applies to all land areas, uses, structures, and land use activities lying in the special flood hazard areas as identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study — City of Portland, Maine, County of Cumberland," with accompanying "flood insurance rate map" and "flood boundary and floodway map," dated July 17, 1986. This Flood Insurance Study with accompanying maps, and any subsequent amendments thereto, is hereby adopted by reference and declared to be a part of this Land Use Code.

## 12.3 DEFINITIONS

**Area of special flood hazard.** The land in the flood plain having a 1% or greater chance of flooding in any given year as specifically identified in the most recently adopted FEMA Flood Insurance Study for the City of Portland.

**Base flood.** The flood having a 1% chance of being hereof or exceeded in any given year (i.e., a 100-year storm).

**Coastal high hazard area**. The area subject to high velocity waters, including but not limited to, hurricane wave wash or tsunamis. The area is designated on the flood insurance rate map as zone V1 30.

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to, the construction of, alteration to, or addition to any buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.

**Flood boundary and floodway map.** The official map issued by the Federal Emergency Management Agency (FEMA) on which the boundaries of the flood have been designated. This may alternatively be referred to as a flood hazard boundary map.

**Flood insurance rate map.** The official map (FIRM) on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the city.

**Floodproofing.** Any combination of structural or nonstructural additions, changes or adjustments to

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structures which reduce or eliminate flood damage to real estate or improved real estate, to water and sanitary facilities, structures and their contents.

**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated on the flood boundary and floodway map. When not designated on the flood boundary and floodway map, it is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the flood plain, as measured from the normal high-water mark to the upland limit of the flood plain.

**Gross area.** Square footage of land area excluding areas of special flood hazard as defined in this article.

**Lowest floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this division.

**Mean high tide.** The mean height of tidal high waters at a particular point or station over a period of time to such length that increasing its length does not appreciably change this mean. For tidal waters, the cycle of change covers a period of 19 years, and mean high tide is defined as the average of the high waters over a 19 period.

**Mean sea level.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the city's FIRM are referenced.

**Structure.** A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, or manufactured housing. "Principally above ground," as used above, means either that at least 2/3 of its floor to ceiling height is above the average adjoining ground level, or at least 51% of the actual cash value of the structure, less land value, is above ground.

**Substantial improvement**. Any repair, reconstruction, addition to or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

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## 12.4 FLOOD HAZARD AREA DEVELOPMENT PERMIT

### 12.4.1 Permit required

Before any development begins within any areas of special flood hazard, a flood hazard area development permit shall be obtained from the Building Authority. This permit shall be required prior to issuance of a building permit, if one is required, and shall be in addition to any other permit, site plan, and subdivision review which may be required pursuant to the codes and ordinances of the city. If only a site plan is required for a development, the flood hazard area development permit shall be obtained prior to approval of the site plan.

### 12.4.2 Filing of application

The application for a flood hazard area development permit shall be submitted in writing to the Building Authority and shall include the following:

A. A final site plan, where applicable, showing information as required by Article 14;

B. A final subdivision plat, where applicable, providing information as required in Article 15;

C. For any development which does not meet the minimum threshold as a development requiring site plan review, the following information shall be provided:

1. The name, address and phone number of the applicant, owner and contractor;
2. A map with address indicating the location of the development site;
3. A site plan showing the location of existing and proposed development, including but not limited to specific dimensions of existing and proposed structure(s), wastewater disposal facilities, water supply facilities, areas to be developed, and the dimensions of the lot;
4. A statement of the intended use of any structure and/or other development;
5. A statement of the cost of the development including all materials and labor; and
6. A statement of the type of wastewater disposal system proposed.

D. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum for Zone A only, of the:

1. Base flood at the proposed site of all new or substantially improved structures, which is determined in Zones A1-30, AE, AO, AH, V1-30, and VE from data contained in the "Flood Insurance Study — City of Portland, Maine"; or in Zone A, to be the elevation of the ground at the intersection of the flood plain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building;
2. Highest and lowest grades at the site adjacent to the walls of the proposed building;
3. Lowest floor, including basement; and whether or not such structures contain a basement; and
4. Level, in the case of nonresidential structures only, to which the structure will be floodproofed

E. A description of an elevation reference point established on the site of all new or substantially improved structures;

F. Either an elevation certificate (FEMA Form 81 31, 03/97, as amended) completed by a professional land surveyor, registered

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professional engineer or architect; or, for nonresidential structures to be floodproofed, a floodproofing certificate (FEMA Form 81 65, 05/93, as amended) completed by a registered professional engineer or architect. These certificates verify that the elevations shown on the application are accurate;

G. Certifications by a registered professional engineer or architect that structures meet the review standards of Subsection 12.4.5.

H. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;

I. A statement of construction plans describing in detail how each applicable development standard in Subsection 12.4.5 will be met; and

J. Cross section(s) of the site acceptable to the Public Works Authority.

### 12.4.3 Fee

A nonrefundable flood hazard area development permit fee of $50.00 shall be paid to the Building Authority, and a copy of a receipt for the same shall accompany the application.

### 12.4.4 Review procedure

A. Upon determination by the Building Authority that an application is complete, the Building Authority shall coordinate review of the application by the city. No permit shall be issued until the Building Authority finds that the development proposal is in compliance with the standards of this article. Compliance with the provisions of this article shall be required prior to beginning any development as defined herein.

B. The Building Authority shall, when reviewing subdivisions and other proposed developments that require review under federal law, state law, or local ordinances or regulations and all projects on five or more acres, or in the case of manufactured home parks divided into two or more lots, assure that:

1. All such proposals are consistent with the need to minimize flood damage.
2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
3. Adequate drainage is provided so as to reduce exposure to flood hazards.
4. All proposals include base flood elevations, flood boundaries and, in a ravine flood plain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
5. Any proposed development plan must include a condition of plan approval requiring that structures on lots in the development be constructed in accordance with Subsection 12.4.5 of this article. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement. The construction requirement shall also be clearly stated on any map, plat, or plan as part of the approval process.

C. In the review of all flood hazard development permit applications for compliance with the standards herein:

1. The Building Authority shall utilize the base flood data contained in the Flood Insurance Study, Portland, Maine, Cumberland County, as described in

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Section 12.2. In special flood hazard areas where base flood elevation data are not provided in the above cited study, the Planning Authority, or Planning Board as appropriate, shall obtain, review and reasonably utilize any base flood elevation data available from federal, state or other reasonably reliable sources in order to administer this section;

2. Prior to approval of issuance of the flood hazard area development permit, the Building Authority as appropriate, shall determine that all necessary permits have been obtained from those federal, state, and local authorities from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1334 as may be amended from time to time); provided, however, that conditional approval may be granted pending proof of receipt of any required permits, but no flood hazard area development permit shall be finally issued until proof of issuance of all such other permits is received by the Building Authority; and
3. The Building Authority shall notify adjacent municipalities, the Maine Department of Environmental Protection and the Maine Flood Plain Management Program, prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency.
4. The Building Authority shall maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Section 12.6 of this article, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of Sections 12.4 and 12.5.

### 12.4.5 Review standards

A. **All development.** All development shall:
   1. Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
   2. Use construction materials that are resistant to flood damage;
   3. Use construction methods and practices that will minimize flood damage; and
   4. Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water supply.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary sewage systems.** All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

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D. **On-site waste disposal systems.** On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Altered or relocated watercourses.** All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Residential.** New construction or substantial improvement of any residential structure located within:

1. Zones A1-30, AE, and AH shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
2. Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide flood water away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
   a. At least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
   b. At least three feet if no depth number is specified.
4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Subsection 12.4.2.D.2; Subsection 12.4.4.B.4; or Subsection 12.4.4.C.1.
5. Zones V1-30 and VE shall meet the requirements of Subsection 12.4.5.P.

G. **Nonresidential.** New construction or substantial improvement of any nonresidential structure located within:

1. Zones A1-30, AE, and AH shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
   a. Be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
   b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
   c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by Subsection 12.4.2.G and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide flood water away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
   a. At least two feet higher than the depth specified in feet on the

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community's Flood Insurance Rate Map; or

b. At least three feet if no depth number is specified; or

c. Together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Subsection 12.4.5.G.

4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Subsection 12.4.2.D.2; Subsection 12.4.4.B.4; or Subsection 12.4.4.C.1.

5. Zones V1-30 and VE shall meet the requirements of Subsection 12.4.5.P.

H. **Manufactured homes.** New or substantially improved manufactured homes located within:

1. Zones A1-30, AE, and AH shall:

a. Be elevated on a permanent foundation such that the lowest floor is at least two feet above the base flood elevation; and

b. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

i. Over the top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by

ii. Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

iii. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

2. Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide flood water away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:

a. At least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or

b. At least three feet if no depth number is specified; and

c. Meet the requirements of Subsection 12.4.5H.1.b.

4. Zone A shall:

a. Be elevated on a permanent foundation such that the lowest floor is at least two feet above the base flood elevation utilizing information obtained pursuant to Subsection 12.4.2.D.2; Subsection 12.4.4.B.4; or Subsection 12.4.4.C.1; and

b. Meet the requirements of Subsection 12.4.4.B.2.

5. Zones V1-30 and VE shall meet the requirements of Subsection 12.4.5.P.

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I. **Recreational vehicles.** Recreational vehicles located within:
   1. Zones A1-30, AH and AE shall either:
      a. Be on the site for fewer than 180 consecutive days;
      b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only be quick disconnect type utilities and security devices, and has no permanently attached additions; or
   2. Zones V1-30 and VE shall meet the requirements of either Subsection 12.4.5.I.1.a or 12.4.5.I.1.b or Subsection 12.4.5.P.

J. **Accessory structures.** Accessory structures located within Zones A1-30, AE, AO, AH and A, shall be exempt from the elevation criteria required in Subsection 12.4.5.F and 12.4.5.G if all other requirements of Subsection 12.4.5 and all the following requirements are met. Accessory structures shall:
   1. Be 500 SF or less and have a value less than $3,000.00;
   2. Have unfinished interiors and not be used for human habitation;
   3. Have hydraulic openings, as specified in Subsection 12.4.5.L, in at least two different walls of the accessory structure;
   4. Be located outside the floodway;
   5. When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters and be placed further from the source of flooding than is the primary structure; and
   6. Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the special flood hazard area.

K. **Floodways.**
   1. In Zones A1-30 and AE, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in ravine areas, for which a regulatory floodway is designated on the community's Flood Insurance Rate Map or Flood Boundary and Floodway Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
   2. In Zones A1-30 and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Subsection 12.4.5.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
      a. Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and

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b. Is consistent with the technical criteria contained in chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study — Guidelines and Specifications for Study Contractors, (FEMA 37/January 1995, as amended).

3. In Zones A1-30, AE, and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the flood plain as measured from the normal high-water mark to the upland limit of the flood plain. Encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of Subsection 12.4.5.K.2.

L. **Enclosed areas below the lowest floor.** New construction or substantial improvement of any structure in Zones A1-30, AE, AO, AH and A that meets the development standards of Subsection 12.4.5, including the elevation requirements of Subsection 12.4.5.F, 12.4.5G, or 12.4.5.H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not basements;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
   a. Be engineered and certified by a registered professional engineer or architect; or
   b. Meet or exceed the following minimum criteria:
      i. A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      ii. The bottom of all openings shall be no higher than one foot above the lowest grade; and
      iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.
3. The enclosed area shall not be used for human habitation; and
4. The enclosed areas are usable solely for building access, parking vehicles, or storing of articles and equipment used for maintenance of the building.

M. **Bridges**. New construction or substantial improvement of any bridge in Zones A1-30, AE, AO, AH, A, V1-30 and VE shall be designed such that:

1. When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least two feet above the base flood elevation; and

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2. A registered professional engineer shall certify that:
   a. The structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Subsections 12.4.5.K; and
   b. The foundation and superstructure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment walls.** New construction or substantial improvement of any containment wall shall meet the following requirements by zone:
   1. Zones A1-30, AE, AH, V1-30 and VE shall have the containment wall elevated to at least two feet above the base flood elevation; have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by Subsection 12.4.2.
   2. Zones AO and AH shall have adequate drainage paths around containment walls on slopes, to guide flood water away from the proposed walls.
   3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or at least three feet if no depth number is specified.
   4. Zone A shall have the containment wall elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Subsection 12.4.2.D.2; Subsection 12.4.4.B.4; or Subsection 12.4.4.C.1.

O. **Wharves, piers and docks.** New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, A1-30, AE, AO, AH, V1-30, and VE, in and over water and seaward of the mean high tide if the following requirements are met:
   1. Wharves, piers, and docks shall comply with all applicable local, state and federal regulations; and
   2. Commercial wharves, piers, and docks involving fill shall adhere to the design and construction standards contained in the U.S. Army Corps of Engineers' Shore Protection Manual.

P. **Coastal flood plains.**
   1. All new construction located within Zones A1-30, AE, A, V1-30 and VE shall comply with all applicable local, state and federal regulations.
   2. New construction or substantial improvement of any structure located within Zones V1-30 or VE shall be elevated on posts or columns such that:
      a. The bottom of the lowest horizontal structural member of the lowest floor

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(excluding the pilings or columns) is elevated to two feet above the base flood elevation;

b. The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and

c. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

3. New construction or substantial improvement of any structure located within Zones V1-30 or VE shall have the space below the lowest floor:

   a. Free of obstructions; or

   b. Constructed with open wood lattice work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or

   c. Constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

4. A registered professional engineer or architect shall develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA 55/February, 1986).

5. A registered professional engineer or architect shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Subsection 12.4.5.P.2.

6. The use of fill for structural support in Zones V1-30 and VE is prohibited.

7. Human alteration of sand dunes within Zones V1-30 and VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

8. The enclosed areas may be used solely for parking vehicles, building access, and storage.

9. Lobster sheds and fishing sheds located seaward of mean high tide shall be exempt from the elevation requirement in Section 12.4.5.G only upon review and approval by the Planning Authority or Planning Board and if all the following requirements of Subsection 12.4.5.A, 12.4.5.K, and 12.4.5.L are met:

   a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 SF or less and shall not exceed more than one story.

   b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

   c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.

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d. The structure shall have unfinished interiors and shall not be used for human habitation.

e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to two-feet above the base flood elevation.

All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the special flood hazard area. If a flood hazard permit application is granted, the applicant shall be notified in writing that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

### 12.4.6 Permit

Upon determination that the development or substantial improvement plan is in compliance with this article, the Building Authority shall issue one of the following Flood Hazard Area Development Permits based on the type of development:

A. **Two-part Flood Hazard Development Permit for Elevated Structures.** Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the code enforcement officer with a second elevation certificate completed by a professional land surveyor, registered professional engineer or architect based on the Part I permit construction, "as built," for verifying compliance with the elevation requirements of Subsection 12.4.5.F, 12.4.5.G, 12.4.5.H, or 12.4.5.P. Following review of the elevation certificate data, which shall take place within 72 hours of receipt of the application, or as soon as practicable thereafter, the code enforcement officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or

B. **Flood Hazard Development Permit for Floodproofing of Nonresidential Structures.** This permit shall apply for non-residential structures that are new construction or substantially improved nonresidential structures that are not being elevated but that meet the floodproofing standards of Subsection 12.4.5.G.1. The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect; or

C. **Flood Hazard Development Permit.** This permit shall apply for all other developments and building permits that are not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. This includes, but is not limited to: accessory structures as provided for in Subsection 12.4.5.J, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

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## 12.5 CERTIFICATE OF COMPLIANCE

No land in an area of special flood hazard shall be occupied or used in violation of this article, and no structure in such an area which is developed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Building Authority. Said Certificate of Compliance shall be issued only after the Building Authority has received all permits and certificates from the applicant as required by this article. For structures in Zones V1-30 and VE and for floodproofed structures, a written certification by a registered professional engineer or architect shall be provided to the Building Authority stating that the design and methods of construction used are in compliance with the applicable provisions of Subsection 12.4.5. Within 30 working days, the Building Authority shall review the elevation certificate and the applicant's written notification and, upon determination that the development conforms with the provisions of this article, shall issue a certificate of compliance.

## 12.6 VARIANCES

### 12.6.1 Authority

The Board of Appeals may authorize variances from the provisions of this article as authorized in Subsection 2.3.11 except:

A. As otherwise expressly provided in Subsection 2.3.11.E; or

B. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

### 12.6.2 Standards

Subsection 2.3.11 notwithstanding, variances from the requirements of this article shall be granted only upon:

A. A showing of good and sufficient cause; and

B. A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

C. A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and

D. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:

1. That the land in question cannot yield a reasonable return unless a variance is granted; and
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; and
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 a prior owner.

E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

### 12.6.3 Standards for specific variances

A. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of

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historic structures upon the determination that:

1. The development meets the criteria of Subsection 12.6.2; and
2. The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

B. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

1. The criteria of Section 12.6 and Subsection 12.4.5 are met; and
2. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

### 12.6.4 Notice to applicants

A. Any applicant who meets the criteria of this section shall be notified by the Board of Appeals in writing with the signature of the Chair of the Board of Appeals that:

1. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as $25.00 per $100.00 of insurance coverage;
2. Such construction below the base flood level increases risks to life and property; and
3. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a flood plain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a flood plain.

B. The above Subsections 12.6.4.A.1, 2, and 3 shall be included with or on all applications for a variance hereunder, as well as the following statements:

1. The applicant understands and is fully aware of all of the risks inherent in the use of land subject to flooding and understands and agrees that they are fully assuming any potential or actual liability resulting therefrom. Applicant agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use the land located in a flood plain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a flood plain. Applicant further understands and agrees that the city has no responsibility therefore, and in the event a variance is granted to applicant, applicant agrees to inform any purchaser, assignee or other transferee of applicant of the existence of said variance and of this agreement.
2. Applicant shall signify in writing that they have read, understands and agrees to all of

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the stipulations in this Subsections 12.6.4.A and B.

### 12.6.5 Record of variances

The Board of Appeals shall submit to the Building Authority a report of all variance actions, including justification for the granting of the variance and an authorization for the Building Authority to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

## 12.7 RECORDS & REPORTING

A. The Building Authority shall maintain, as a permanent record, copies of all flood hazard area development permits issued, certificates of compliance and data relevant thereto, including reports of the Board of Appeals on variances granted hereunder.

B. The Building Authority shall be responsible for filing such annual reports regarding participation in the National Flood Insurance Program as may be required by FEMA. Said annual reports shall include, but not be limited to, a report on implementation of this article and on any variances granted hereunder. A copy of such annual reports shall also be sent to the Maine Flood Plain Management Program.

C. In addition to any other actions, the Building Authority, upon determination that a violation of this article exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:

1. The name of the property owner and address or legal description of the property sufficient to confirm its identity and location;
2. A declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
5. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

DRAFT

DRAFT

# 13 RESOURCE PROTECTION ZONE

## 13.1 USE

No building shall be erected, altered, enlarged, rebuilt or used, and no premises shall be used, in a Resource Protection zone except for the following uses:

A. Non-intensive recreational uses not requiring structures, such as fishing and hiking;
B. Motorized and non-motorized vehicular traffic on existing roads, trails, and rails, as appropriate;
C. Bikeways, pedestrian trails, and walkways;
D. Fire prevention activities;
E. Wildlife management activities;
F. Soil and water conservation activities;
G. Surveying and natural resource analysis;
H. Emergency operations as defined in Article 3;
I. Harvesting of wild crops;
J. Nonresidential structures for educational, scientific, or nature interpretation purposes, containing a maximum floor area of not more than 10,000 SF;
K. Public and private parks and recreational areas, including one or more structures containing a total maximum floor area of not more than 10,000 SF;
L. Permanent and temporary piers, docks, wharves, bridges and uses projecting into water bodies, as allowed in Subsection 11.4.2;
M. Storehouses for fishermen's gear;
N. Essential services as defined in Article 3 accessory to the uses permitted herein;
O. Signs, as allowed in Article 20;
P. Road construction, in accordance with the provisions of Section 11.4;
Q. Parking facilities for uses permitted under this section; and

Landfill and other earth-moving activity, as allowed in Subsection 11.4.4.

## 13.2 DIMENSIONAL REQUIREMENTS

No building or structure shall be erected, altered, enlarged, rebuilt, or used in a Resource Protection zone which does not comply with the following requirements:

A. **Minimum lot area:** 20,000 SF
A. **Minimum width of lot:** 100 ft.
B. **Minimum lot frontage on street or shoreline:** 100 ft.
C. **Minimum front setbacks:**
   1. Principal building or structure: 25 ft.
   2. Accessory building or structure: 25 ft.
A. **Minimum rear setbacks:** Principal building or structure, other than a boathouse or storehouse for fishermen's gear: 75 ft.
B. **Minimum side setbacks:**
   1. Principal building or structure: 15 ft.
   2. Accessory building or structure: 5 ft.
C. **Minimum side setbacks on side streets:**
   1. Principal building or structure: 20 ft.
   2. Accessory building or structure: 20 ft.
D. **Minimum shoreline setback:** All principal structures other than permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishermen's gear: 75 ft.
E. **Maximum height:**
   1. Principal building or structure: Two stories or 25 ft.
   2. Accessory building or structure: One story or 15 ft.
F. **Maximum building area:** Principal building or group of buildings: 10% of lot area.

DRAFT

### 13.3 OFF-STREET PARKING

Any off-street parking in a Resource Protection zone is required as provided in Article 19.

### 13.4 SHORELAND AND FLOOD PLAIN MANAGEMENT REGULATIONS

Any lot or portion of a lot located in a Shoreland Zone as identified on the city zoning map or in a Flood Hazard Zone shall be subject to the requirements of Articles 11 and 12.

DRAFT

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 19$^{th}$ 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

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Google Groups

# Feedback on RecodePortland

**David Spector** Nov 22, 2019 6:36 PM

Posted in group: **ReCode Portland**

My comment:

While I'm all in favor of improving Portland's Land Use Code, I searched the latest document posted at https://www.recodeportland.me/recode-files-1, the Planning Board Workshop November 7, 2019 report, and the main document at portlandmaine.gov/DocumentCenter/View/18269/Portlands-Plan-2030-with-Appendices, and could find no provision for Open Spaces or Green Spaces in either document (other than the two existing types of resource protection zones, which are underused). Our wonderful parks get only brief mentions here and there. A comprehensive wildlife and wilderness land protection plan seems to be missing.

Frankly, the new Code seems to favor housing development over protection of our tiny bits of wilderness, missing a big piece of what government can do for its citizens now.

Every city needs parks and wilderness areas, places where people can walk in solitude and quiet, away from the incessant sound and air pollution of city life, a natural environment.

In addition, providing living space for wild things, whether mammals, invertebrates, birds, or just a good native variety of trees and bushes, is indispensable. Once our world is all paved over, it will first become boringly uniform and stale, then it will die.

Our national government, through the National Park Service, has recognized the need to set aside 52.2 million acres of land as wild and/or protected national parks. The National Monuments system protects over 2 million acres of public land and water, the majority of that having been established in the last five to ten years.

Portland is a good-sized city, yet seems to have no coherent plan to protect its few small, scattered wild areas, such as Mayor Baxter Woods, Greater University Park, and Oat Nut Park (see https://www.portlandmaine.gov/DocumentCenter/View/1594/List-of-Parks-and-Open-Spaces). Without protection from development, these and similar areas will disappear before most folks even learn that they exist.

We must protect the heritage of our descendants, or they will have nothing but a choked city to live in.

All of this is perhaps obvious, yet seems to be missing from the RecodePortland initiative, which has been in progress for about a year already.

David Spector
56 Yale St
Portland, Maine

PC3

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.

https://www.recodeportland.me/public-input-1

dialogue on the City's Draft Land Use Code

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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

Portland Maine Yes. Google's good here.

**Helen Donaldson <hcd@portlandmaine.gov>**

# Fwd: Draft Recode Provisions

6 messages

**Christine Grimando** <cdg@portlandmaine.gov> Mon, Dec 16, 2019 at 11:43 AM
To: Helen Donaldson <hcd@portlandmaine.gov>, Matthew Grooms <mgrooms@portlandmaine.gov>

Christine Grimando, AICP
Acting Director
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

---------- Forwarded message ---------
From: **Barbara Vestal** <vestal@chesterandvestal.com>
Date: Sun, Dec 15, 2019 at 9:53 PM
Subject: Draft Recode Provisions
To: <planningboard@portlandmaine.gov>
Cc: Christine Grimando <CDG@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <ksnyder@portlandmaine.gov>

Chair Dundon and Planning Board Members:

I have spent a few hours reviewing the ReCode provisions you have scheduled for workshop on 12/17. I must say I am very frustrated that the materials provided to you and to the public are not more transparent about the changes being proposed.

Since it is a complete changeover from current to new draft, it is not possible to prepare a redline version. But it is not too much to ask that where the draft varies from the current, that changes should be flagged by staff. And once it gets into draft form, every change from there on out should be captured in a redline.

MY MAJOR OBJECTION AT THIS TIME IS THAT THERE ARE SUBSTANTIVE POLICY CHANGES BEING MADE BY OMISSION, WITHOUT ANY FLAGGING OF THOSE CHANGES FOR THE BOARD OR THE PUBLIC.

Staff keeps repeating that Phase I is formatting and organizational, and that policy debate and changes will not be made until after Phase I is adopted. Then in Phase II policy changes to bring the zoning into line with the comprehensive plan will be pursued. However, in the draft before you there are substantive changes. I have not done an exhaustive review, nor should it by my job or the job of the public at large to identify all of the changes. The burden should be on staff to flag each of these changes in a memo to be presented to the Planning Board and the public for subsequent discussion.

I primarily only looked at the R-6 draft text. Among the changes I found from the existing R-6 language are the following:

1. For some reason Professional Offices is changed to "General Offices" in the chart, which then refers to notes. At the qualifying note 6.5.6.C, somebody, making a substantive change, has decided to omit the existing language which currently states that professional offices are allowed BUT that category excludes personal services, retail services and veterinarians. The new draft only expressly says that veterinarians are excluded. The list of illustrative examples of permitted professional offices contained in the existing text are omitted in the draft. 14-137(c)(2). I don't know whether somebody has made the judgment that personal services or retail services should be allowed. It has not been flagged as a decision point because there has been a representation that there are no substantive changes.

2. The current R-6 extensive provisions about manufactured housing do not appear in the draft sections. 14-136(a)(4). It is unclear what the intent is for individual manufactured housing units.

3. In the current R-6 zoning, there are requirements that documentation of special needs independent living units must be recorded in the Registry of Deeds. Those provisions are omitted in the current draft. Was there a decision to delete that requirement? 14-136 (b)(7)

4. Only some of the R-6 conditions for hostels are included. It is unclear whether staff intends to house them elsewhere or they have decided not to include them at all. 14-136 (b)(9).

5. The sheltered care group homes in the current R-6 zone are specifically limited to homes that are not serving parolees, persons involved in correctional prerelease programs or current illegal drug users. That restriction is omitted in the draft which is before you. Similarly our current zoning requires that the proposed use provide adequate on-site staffing AND supervision of residents. The draft omits the requirement for adequate supervision.

6. In the dimensional standards, there is an inconsistency between "grade, average" and "grade, predevelopment," with the latter stating it is at the corners of the foundation of the proposed structure. Even if we are putting off until Phase II the critical policy discussion on getting height measured correctly, there seems to be something missing if these "rules of measurement" are supposed to be documenting how it is actually done now.

7. The discussion in 7.5 D rooftop appurtenances fails to acknowledge that there are exceptions to the statement that rooftop appurtenances may exceed the height limitations. At a minimum it should say except as otherwise limited in the Munjoy Hill Conservation Overlay Zone or a similar overlay zone.

These are just some examples of what appear to be substantive changes that have not been flagged as being contained in the materials before you. Admittedly some of them are fairly subtle. But the point is that there are policy choices that are being made by staff, and they are not being held for discussion in Phase II, nor are they being flagged so that you and the public are aware of the shifts. Some of the changes (e.g. personal services vs. professional services, parolees and persons in correctional pre-release programs, adequate supervision, rooftop appurtenances exceeding height limitations, etc.) delete provisions that were there for a purpose and could have a significant impact on how well the proposed uses fit into a dense residential neighborhood.

In addition to these variations from existing language, there are areas that are so different that they cannot even be tracked to see what is being left out. For example, staff needs to explain what they are doing about preschool, day care facilities and home babysitting services. They seem to be lumping them together in some provisions, but the definition of preschool seems to assume a school that might be providing some day care services; it does not seem broad enough to include home babysitting services.

In addition there are obvious errors. It says uses not expressly listed in Tables 6-1 to 6-6 are prohibited. There are no tables 6-1 to 6.6. They are 6-A to 6-F. 6.2.2.

Why aren't waterfront zones included in Article 5? They are geographic zones just like the others.

What happened to the term limits for Planning Board members? They used to exist.

Why such a disproportionate emphasis on signs on the definition section?

While it might be a good idea to have a maximum building width, what is the rationale for the specific new maximum building width standards that are just being introduced in the R-6? How does it apply on a corner lot? Is there a comparable building depth maximum that would apply there? If a lot has frontage on two streets, how does one determine which is the width?

Why aren't the purpose statements imported intact? The purpose statement for the B-6 zone is paraphrased, leaving out language about encouraging a "distinctly urban form" and leaving out a qualifier "as recommended in the Eastern Waterfront master plan for redevelopment." These are in the current purpose statement and are important phrases.

How can this process be made more transparent? It should not be up to lay citizens or a volunteer board to do side-by-side comparisons of existing and proposed draft language. Similarly it is next to impossible to do a good job of making sure concepts do not slip through the cracks when chunks of proposed language are being rolled out in succession.

If this Phase I is being represented as just repackaging without making substantive changes, maybe staff needs to simultaneously be presenting the Planning Board, the public and other reviewers with a marked up copy of the current zoning ordinance indicating where all of the pieces have been moved to (or where they are to appear in future drafts).

Disappearing language may be inadvertent or it may be intentionally held for some future section. The point is we don't currently have this information, it is impossible to do a thorough review without it, and only staff has access to the information to recreate what they have done as they have produced the new draft. Similarly where there are specific policy changes (such as ADUs) staff should be calling them out very clearly as decision points.

Regards,

Barbara Vestal
--
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Google Groups

# Public Comment: Portland ReCode is Slow as Molasses Disaster

**George Rheault** <george.rheault@gmail.com> Dec 17, 2019 11:14 AM

Posted in group: **Planning Board**

I get that Portland's elected officials and city administration are too scared to reform its massively wasteful and climate-change-inducing land-use policies, but hey, it is not 1965 anymore and the planet cannot wait. The trouble with Portland's land use ordinances is not formatting, layout or graphical presentation but substance which the Planning Board refuses to address in any timely fashion.

Below are some links that show that Portland can continue its teeny-tiny baby step moves away from its NIMBY exclusionary suburban sprawl zoning legacy and have very little to show for it for years (like Seattle as outlined in the Sightline article attached) OR it can rev its engines and take the bull by the horns like Bastrop, Texas recently did (also attached).

While Bastrop is only 1/7th the size of Portland's population, its land area is about half Portland's land area (almost 70% of Portland's actual municipal territory is water), so the comparison is relevant.

Portland, like Bastrop, needs to get back to the grid, embrace urbanism, and ELIMINATE wasteful insidious suburban forms like PRUDs, cul-de-sacs and single-family zones.

Better hurry up - the lobsters are already moving to Canada.

https://www.sightline.org/2019/11/15/it-shouldnt-take-a-decade-to-re-legalize-duplexes/

https://www.statesman.com/news/20191125/bastrop-council-adopts-new-development-code

https://www.curbed.com/2019/12/2/20991992/real-estate-grid-infrastructure-urban-planning-bastrop

[NB: Bastrop has already made concessions but at least it is getting something valuable in exchange for its give-aways: https://www.statesman.com/news/20191024/bastrop-council-compromises-with-neighbors-over-lcra-property-zoning ]

https://en.wikipedia.org/wiki/Bastrop,_Texas

# It Shouldn’t Take a Decade to Re-legalize Duplexes

*Loosening zoning to allow more homes is a daunting task for cities. States can help.*

This mid-century triplex in Seattle's West Woodland neighborhood would be illegal to build today under current zoning rules. Photo by Dan Bertolet, used with permission.

This mid-century triplex in Seattle's West Woodland neighborhood would be illegal to build today under current zoning rules. Photo by Dan Bertolet, used with permission.

This month, Seattle city council will take a vote that illustrates how ludicrously difficult it is for cities to change their own rules to welcome more new neighbors.

The vote is one tiny but important step in the dragged-out bureaucratic grind Seattle will have to go through to loosen the stranglehold of zoning that locks up three quarters of the city's residential land for expensive stand-alone houses with big yards.

The council vote would ensure that Seattle's next 20-year plan for growth includes the option—*just the option*—of opening up detached house neighborhoods to "middle housing" such as duplexes and rowhouses. It's a vote to agree to talk about something eventually.

Even if it passes, that growth plan won't be done until four years from now. Enacting the actual changes to zoning—assuming the final plan does end up calling for them—could swallow another two years. That means re-legalizing middle housing likely won't happen until a full decade after Seattle's 2015 affordability plan first recommended it.

In a city with soaring rents, on a planet in a climate emergency, this is utterly insane.

How many families will be forced to the urban fringe by rising rents and prices because Seattle is maintaining its invisible walls of exclusion for an extra ten years? Thousands, if not tens of thousands.

Adding compact homes to job-rich, growing cities like Seattle is also a critical path to reining in climate pollution, by reducing car dependence, and cutting home energy use. And the science tells us that to avoid catastrophic warming, we have 11 years to halve carbon emissions.

It's the same story for most North American cities. They can't get out of their own way and enact reforms that would allow what they badly need: more homes. This failure of local government demands state-level solutions.

So far, one state has stepped up in a big way. Last summer, Oregon legalized fourplexes in all large cities and duplexes almost everywhere in the state. In a move almost as bold, California just legalized two accessory dwellings on every house lot.

Most North American cities won't be lifting their bans on modest housing choices any time soon unless these two state wins become a national trend.

## Exclusionary zoning is no ordinary law

Imagine there was this law commonly on the books that acutely worsens housing affordability, carbon emissions, sprawl, and economic opportunity. And let's say this law was originally conceived to segregate neighborhoods by class and race. And let's say wonks and advocates from across the political spectrum shared a strong consensus on getting rid of this law. And let's say the deep flaws of this law had been covered in lots of major media outlets like the *New York Times*.

One might think city leaders would be rushing to repeal that law. But prohibitions on everything but detached houses on large lots are no ordinary laws. Few cities have touched them, and those that have acted have only scratched the surface. Why?

Part of the problem is self-imposed bureaucracy that turns each zoning change into an excruciating multi-year marathon. Another part is overreliance on public engagement typically dominated by a small minority of wealthier, older, whiter, homeowners. The voices heard most invariably oppose allowing more homes.

The core reason, though, is politicians know that most residents who vote in local elections don't want their neighborhoods to change—it's human nature and there's not much city officials can do about it. In most cities, the depth and pace of zoning reform needed won't happen without intervention from higher levels of government—that is, from states.

## Seattle can't afford ten years to make room for new neighbors

Seattle, as I described above, is on track to squander a decade—or perhaps longer if obstructionists file legal appeals—before re-legalizing small-scale multifamily homes citywide. A groundbreaking city plan instigated by former mayor Ed Murray first proposed it in 2015, but the mayor quickly distanced himself from his own plan's recommendation after it stirred the ire of lawn-and-driveway zoning preservationists.

In 2019, Seattle, after a three-year process, adopted a package of rezones in that included legalization of middle housing in six percent of the city's land zone formerly reserved for single-detached houses. It was a minor change relative to the legislation's other rezones that affected every multifamily area in the city, yet still it was the most controversial piece because it dared to meddle with "single-family" zoning.

Meanwhile, the Seattle Planning Commission in 2018 published an in-depth report making the case for re-legalizing middle housing. But unlike some cities, Seattle's Planning Commission has zero authority to shape policy. Electeds can use it for political cover or ignore it as they see fit.

Seattle's current mayor, Jenny Durkan, has shown little enthusiasm for opening up more neighborhoods to middle housing. To make sure the idea stays alive, Councilmember Teresa Moqueda proposed a budget "proviso" that would deny funding for an upcoming environmental study unless it analyzes rezones that would permit middle housing in single-detached house zones, along with related anti-displacement measures. The environmental study is a prerequisite for a state-mandated update to the comprehensive plan—the city's 20-year roadmap for growth.

In other words, the budget proviso would put the city in a legal bind if officials drag their feet even more on middle housing rezones. It's an insurance policy against can-kicking.

The fact is, failing to consider opening up detached house zones to middle housing in the plan for Seattle's next 20 years of growth would constitute urban planning malpractice.

Still, city council felt the need to wield a funding threat to keep that from happening. Bureaucratic hurdles not only suck up time, but they also make zoning reform all the more vulnerable to obstruction.

Last summer, Seattle adopted the most progressive rules for secondary cottages of any major US city. But it took five years from when Councilmember Mike O'Brien first proposed it! Five years just to enable the gentlest possible incremental neighborhood change in one of the fastest growing, most forward-thinking cities in the nation.

## Other major cities have also been mired, with one exception

Minneapolis is so far the only big US city to authorize middle housing citywide, and the process was exceptionally fast. The alignment of many stars enabled electeds to legalize triplexes after only two years of wrangling. In practice, though, triplex zoning isn't much different from Seattle's recent allowance for two accessory dwellings per house lot.

Portland launched its planning process to re-legalize middle housing in September 2015. A city council vote is expected in early 2020. It's a cutting-edge plan that would permit up to fourplexes on all lots, including crucial size bonuses for projects that create more or cheaper homes. But getting there has already devoured four and a half years.

Vancouver, BC, has long been the North American leader on accessory dwelling policy. In June 2018, the city launched a new effort to open up low density neighborhoods to middle housing. A few months later, it took a first step, re-legalizing duplexes citywide (though only 72 permits for duplexes have been filed). After that, however, officials decided to fold the middle housing effort into a long-range plan that isn't scheduled for implementation until spring of 2022.

In 2012, Austin launched CodeNEXT, a major rewrite of the city's zoning rules. Early proposals for robust middle housing rezones got watered down over the years, and then in August 2018 the city council scrapped the whole thing. Austin has since launched a new code update that proposes allowing duplexes citywide and higher unit-count middle housing near transit.

Atlanta, Washington DC, and Charlotte are contemplating middle housing zoning reform as part of broader planning efforts, but action—if any comes of it—is several years off. And at least one major city—Philadelphia—has been going backwards.

Almost invariably, the process is ridiculously slow, at best. In the vast majority of cities, including exclusive, job-rich suburbs, the conversation is barely happening at all.

## A few smaller US cities have dabbled

In perhaps the best US example of a smaller city taking action, in late 2018, Tigard, Oregon, a Portland suburb, legalized courtyard apartments, cottage clusters and de-facto duplexes on almost every lot, plus fourplexes on almost every corner.

Around the same time Olympia, Washington, demonstrated how absurd things can get. City council adopted a modest set of zoning changes to permit middle housing in more neighborhoods. A local anti-housing group filed an appeal with the state's growth management hearings board, and in July 2019 the board invalidated the new zoning (see correction note, below). In a bizarre twist, a state law passed earlier this year enacted a new ban on such appeals, but since it's not retroactive, Olympia must now re-adopt the exact same zoning ordinance.

In 2008, Grand Rapids, Michigan, passed new rules that permit some middle housing types in low-density areas, but only with special approval. Durham, North Carolina, recently legalized duplexes, but only in neighborhoods near downtown. Kirkland, Washington, Bloomington, Indiana, and Charlottesville, Virginia, have middle housing plans in the works.

## Local control isn't working, but states can step up

Seattle's city council will do right to proactively check the budget proviso box so that middle housing zoning reform doesn't get stalled by a technicality. But a decade to open up neighborhoods to much-needed middle housing options is way, way too long to wait in the face of our dual affordability and climate crises.

Likewise, across North America, city governments that stick their necks out to take on exclusionary zoning struggle mightily to overcome the gauntlet of their own bureaucracy, combined with the fear of neighborhood change that drives stiff political resistance. The challenge is so formidable that most cities don't even bother trying.

As the evidence for intractable local dysfunction piles up, the solution becomes more evident: state legislation.

Oregon showed how it's done last summer by legalizing duplexes and fourplexes. California got part way there this fall by requiring cities to allow two accessory dwellings on every house lot—effectively triplexing the state. Last spring, Washington tried and failed to pass accessory dwelling reform. Just last week, a newly elected member of the Virginia House of Delegates, Ibraheem Samirah, promised state action against exclusionary zoning.

Next state for middle housing, please?

*Seattle city council will vote on the middle housing budget proviso on November 25. Sightline's letter of support is here.*

**Correction 11/18/19:** In the original version of this article I wrote that Olympia's missing middle rezone was invalidated because of a "minor technical flaw in the public process." This was incorrect, as commenters on the article pointed out. The growth management hearings board found inconsistencies with the city's comprehensive plan and flaws in the environmental analysis.

# How a small Texas city rewrote the rules of development

Bastrop, Texas, found that updating the building code meant getting back on the grid

An intersection in downtown Bastrop, Texas. Last month, the city adopted a new building code, known as Bastrop Building Block, or B3, which radically alters how the city will approach development
*Courtesy City of Bastrop, Texas.*

A small town outside Austin, Texas, took a big step toward becoming a more sustainable and walkable community. In many ways, it was as simple as getting back on the grid.

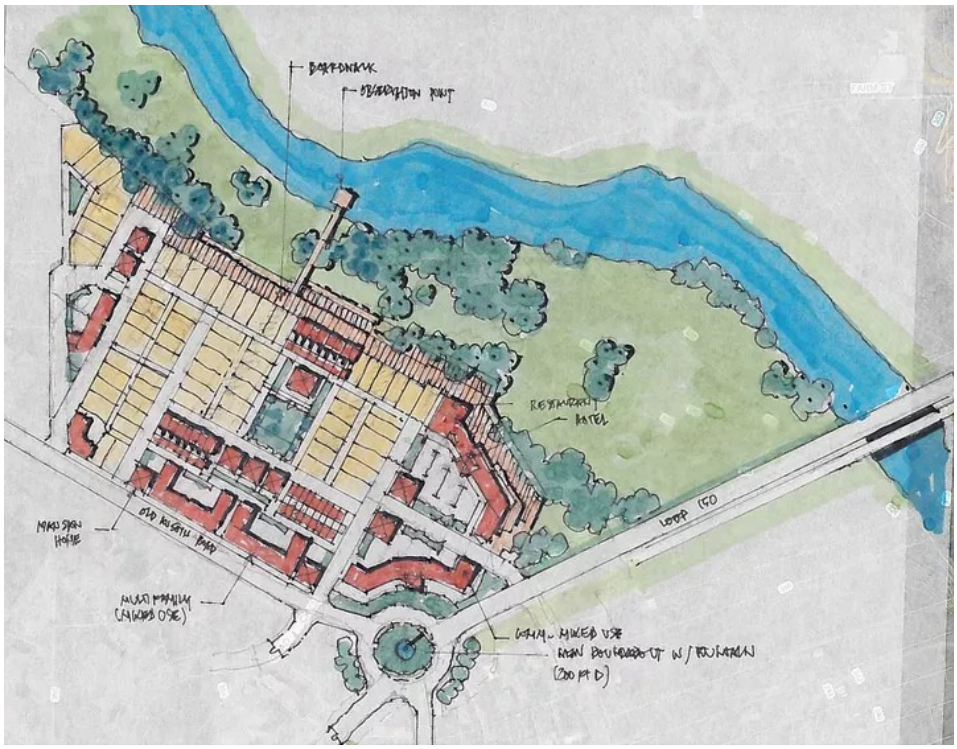
Last month, Bastrop, Texas, adopted a new building code, known as Bastrop Building Block, or B3, which radically alters how the city will approach development. Instead of using the one-size-fits-all approach common to land-use policy, the new flexible system was designed to address three interrelated issues hitting municipalities across the county: population growth, aging infrastructure, and outdated development patterns.

While the details of local zoning code may seem technical, Bastrop's change is far from boring. The shift, according to proponents, may help reshape the city at little to no cost to local government, and even serve as a sustainable model for thoughtful development in a state known for a sprawl-centric development culture. It all starts with water.

*How flooding washed away old planning rules*

Located just 20 minutes east of the booming city of Austin, Bastrop leaders knew that “the growth was coming,” says city manager Lynda Humble. So Bastrop decided to change its policies in the middle of 2018. That May, Humble, who was in the midst of her first year as city manager, told the city council that, under the existing code, new development would exacerbate the city’s flooding problems—the town had faced four FEMA-declared floods from the Colorado River and then Hurricane Harvey in just the past few years—and she couldn’t do anything about it. Since the city is on the hook to maintain flood infrastructure, it could go broke without enforcing smarter, more sustainable development mandates.

The council decided to rewrite the rules. There had already been meetings and discussions around a forthcoming comprehensive plan for the city, and residents had made it clear they wanted managed growth and fiscal sustainability. The challenge to any change was accomplishing these goals while maintaining the feel of Bastrop, a city founded in the early part of the 19th century.




An example of how new development would fit into the B3 model.
*Courtest Bastrop, Texas*

The new B3 code was built around the idea of getting rid of nuisances, not mandating specific types of buildings. That means, for instance, retail has fewer parking minimums (requirements for a certain number of spaces per store) to reflect the shift to online shopping, and each residential lot can add two accessory-dwelling units. The city was also divided up into a series of character districts, new designations that reflected existing buildings and neighborhoods, such as the museum district or university district, as opposed to more formulaic residential or commercial

zones. Within these character districts, new developments needed to be built on gridded streets within Bastrop Blocks, 385-foot-square sections that all have to deal with their own drainage issues, so as to not dump drainage problems onto the city.

Mayor Connie Schroeder had said she wanted to build neighborhoods, not "a sea of faceless subdivisions," and the code allows more flexibility.

*How returning to the grid can save a city*

Part of the process included an analysis of the city by consultants from SimpleCity, based in nearby San Marcos, Texas. Matt Lewis, the company's CEO, and his team conducted a detailed examination of downtown Bastrop, a traditional area filled with small, gridded blocks. In addition to discovering that downtown was the only fiscally sustainable area of Bastrop—based on an analysis of revenue per acre and productivity—the consultants found that zoning alone wouldn't create the change the city wanted. Transportation reform also needed to be included, which meant altering parking rules and the layout of new streets in relation to existing roadways.

"Bastrop didn't want to become anywhere America," says Lewis. "Extracting the gridded street network as a key piece of the code was fundamental to going beyond typical zoning and ensuring this effort would be successful for generations to come."

In 1837, when Bastrop was founded, the streets downtown were measured based on the turn of a wagon wheel. Today, at a time when planners are contemplating an era of autonomous vehicles, these antiquated yet walkable streets still manage foster the kind of economic and social activity that makes street life and commerce thrive. B3 makes grids mandatory.

In keeping with the goal of fiscal sustainability, Mayor Schroeder said that simple math is all that's needed to see that more sprawling developments patterns don't add up. In November of 2017, the city council was analyzing the layout of streets in a new subdivision. Based on the length of the winding roads, the number of homes, and the property value, the city found that it would take 16 years for this development to generate the revenue needed to pay for 5 years of road maintenance. Denser, more closely connected streets mean lower construction and maintenance costs.

In postwar America, most cities left the grid and went with a system that allowed arterial roads, which form the curving and disconnected cul-de-sacs of modern suburbia. Bastrop may be one of the first to return to the right angle roadways.

"Another view of success is clarity and simplicity for the community," says Mayor Schroeder, "to know what they can expect neighbors to build and what they can do on their own property."

Humble says that the plan has proven the potential of planning and community engagement. When the full B3 proposal was adopted in November—a move that rezoned more than 4,700 pieces of property—there wasn't a single protestor at the city council meeting. Residents have been able to

ask for variances, she says, and recent outreach to developers has helped spread the idea that creative projects that “push the envelope” are welcome.

“It’s already gratifying to know development is better based on the conversations we’re having today with developers,” she says.

Why aren’t more cities making similar shifts? Mayor Schroeder says that few are willing to admit they’re going broke, and fewer are willing to challenge existing paradigms of development.

“It’s unnerving to acknowledge that everything you’ve been trained on doesn’t work,” says Humble.

Google Groups

# Somerville gets rid of most parking requirements in new citywide zoning code

**Christian MilNeil** <c.neal.milneil@gmail.com> Dec 17, 2019 3:27 PM

Posted in group: **Planning Board**

Wanted to make sure that everyone sees this:
https://mass.streetsblog.org/2019/12/16/somerville-council-dramatically-curtails-off-street-parking-requirements/

Somerville has roughly the same population as Portland does.

The kicker of this zoning revision is that it sets *maximum* parking ratios for new development in its densest neighborhoods, recognizing that parking garages in downtown neighborhoods a) waste valuable real estate that could otherwise be used for housing or offices; b) increase regional traffic; and c) undermine transit services by subsidizing drive-alone commuters instead.

Developers are working on proposals and projects that will add about 2,500 more parking garage spaces downtown, in Portland Square, the Portland Company site, and on Commercial Street.

For comparison purposes, the 4 lanes of Franklin Street can hold, at most, about 750 passenger cars parked in bumper-to-bumper traffic. There's no way local streets (or I-295, for that matter) can accommodate such a big increase in peak-hour traffic volumes, but the city thus far has no ordinance to regulate this.

ReCode is supposed to be taking a look at improving the city's toothless TDM standards and regulating parking more, but it needs to be done much more urgently before these garage projects completely swamp the city's ability to reduce traffic, and with it, all our chances of meeting regional greenhouse gas reduction goals.

Somerville's new zoning also strives to create more middle-class housing opportunities by doing things like legalizing up to 3 apartments in every residential lot across the city – something else we should be considering here in Portland.

Christian MilNeil
- - - - - - - - - - - - -
double u double u double u dot christianmilneil dot com

Portland Maine Yes. Google's good here.

**Matthew Grooms <mgrooms@portlandmaine.gov>**

## Recode information

**EJ Koch** <ejkoch@gmail.com> Fri, Jan 3, 2020 at 4:31 PM
To: Christine Grimando <cdg@portlandmaine.gov>, recodeportland@portlandmaine.gov

Hello Christine –

I've been trying to make sense of the Recode information put up on the Webpage so far and it feels pretty dense. I am interested in getting copies of your internal informational memos to the Board discussing the provisions and what is intended/what is changed. Is there a strikeout draft? Memos that include charts or other assists to show changes the recode would make to current zoning? Responses to questions from Board members and others?

Anything that highlights the consistencies (or not) with the comprehensive plan?

I am always impressed with the materials staffpeople develop for their Boards/Commissions to facilitate better understanding and help with decision making.

If possible, I'd like to get these materials by the end of next week (January 10) so I'll have some time to digest them.

Many thanks –

Erna Koch
ejkoch@gmail.com
617-818-0882
Vesper St., Portland

PC8

Portland Maine Yes. Google's good here.

**Matthew Grooms <mgrooms@portlandmaine.gov>**

# Form Submission - Contact us Re:Code - ADUs

**Squarespace** <no-reply@squarespace.info> Fri, Jan 10, 2020 at 11:12 AM
Reply-To: mfhutchins@gmail.com
To: recodeportland@portlandmaine.gov

**Name:** Michael Hutchins

**Email Address:** mfhutchins@gmail.com

**Subject:** ADUs

**Message:** As part of the work your committee is doing to make ADUs easier to build, are you revising the definition of a half-story?
A half story cannot contain an independent apartment or dwelling unit according to the current definition.

Thanks.

(Sent via *ReCode Portland*)

Google Groups

# R-6 Design Standards/ Planning Board 12/17/19

**Carol Connor** <balsamique@live.com> Dec 15, 2019 1:40 PM

Posted in group: **Planning Board**

12/14/19
To: Chair and Members of the Portland Planning Board,
Due to the very short public notice regarding the proposed changes in the R-6 zone design standards, I was unable to make the deadline for my letter to be included in the PB packet for the 12/17/19 meeting. I respectively request that my written comments do be noted as part of the public record.
It is deeply concerning to me that there was a public notice on 12/11/2019 announcing that changes to both Recode dimensional standards and R6 Design Standards are being presented at a Planning Board meeting on Tuesday, 12/17/2019. The notice with supporting materials was not sent out until late Friday afternoon 12/13/19 with the PB Workshop just a few days away. With such short notice this does not allow for thoughtful public study and comment.
Where was the opportunity for interested parties to have a detailed explanation of the changes, and be permitted the chance to ask questions about the reasoning and ramifications of those changes? How can such substantive alterations to the design standards be presented without relevant input from the community members who will be most impacted?
Before moving forward with the proposed changes, I hope that the Planning Board will put the brakes on until there have been informational meetings to inform the public and provide a forum to engage input from the people and neighborhood organizations who actually populate this community.
Questions, concerns, comments on the proposed revisions:
(k) (1) Standards
Incorporating the small new residential development lot size to include those over 10,000 square feet is a positive change.
What is the rationale around deleting the exemption for proposals required to obtain a certificate of appropriateness under Portland's historic preservation ordinance?
III. Context
The immediate surrounding architecture of a neighborhood should have the most impact on new construction design choices. The new proposed language would authorize the the planning board to have full power to change the 2 block impact zone which opens a new loophole....thus more inappropriate profit driven projects in the neighborhood. "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."
There is some confusion for me in the newly proposed language relative to typology and use. "Different standards apply depending on building type (single or two family, multi-family, addition)"
What exactly are those different standards and what is the rationale for them?
The suggested revisions to the R-6 Development Design Principles and Standards need more that just a workshop for public input. The community must have an active role in developing its content. This is not something to be rushed through in the busy holiday season, but instead requires a thorough examination by the planning board with stakeholders having more authorship in the document. In addition, such substantive alterations should go before the City Council before enactment.

Respectfully,

Carol M. Connor
12 Montreal Street
Portland, ME 04101
balsamique@live.com 207 232 2265

Sent from my iPad

Google Groups

## Comments on the proposed R-6 design standards changes

**JEAN MC MANAMY** <ninimaine@aol.com> Jan 17, 2020 1:36 PM
Posted in group: **Planning Board**

Chair Dundon and members of the planning board:

I am writing to you about the proposed revisions of the R-6 design standards. At this time, Friday noon, the attachments for the Jan. 21 agenda have not been published and my comments are on the version published for the Dec. 17 meeting.

I support the efforts by the board to reduce the use of alternative design review, and had hoped it would be eliminated entirely. The workload generated by ADR is unnecessary and overwhelming.
While I love contemporary design and find some of the infill buildings on Munjoy Hill to be interesting, compatible, and appropriately matched to the streetscape, most are not. I believe that the reason developers seek ADR is not that contemporary design is impossible, but that they wish to push the envelope by building more units than the existing design standards allow. It is about profit, not about trim details. The current zoning requirements have created a “moral hazard” for developers. So long as the zoning and design standards plus the approval process allow the ADR workaround, the investor side of the development team will—must—push for maximum profit.

As you are aware, the current zoning requirements have enabled a runup in land values and development costs (again, driven by investor goals) which has reduced the housing supply on the Hill for middle class families and those dependent on housing subsidy. There is growing talk of a real estate bubble, which in light of the coming real estate revaluation, could collapse and lead to massive displacement of families on limited incomes on the Hill and further stress on service sector employers downtown. We are heading toward a situation where expensive peninsula schools will have empty seats due to population displacement.

All proposed improvements in the design standards and zoning must further the comprehensive plan’s goals of ensuring housing for all types of households and preserving existing housing units where feasible.

The proposed changes, many of which are laudable, extend substantially beyond support for excellent design. Instead, they establish increased freedom from consistency with neighborhood context for multifamily buildings. There is no evidence that this will lead to improvement in the housing scarcity which is causing disruption for middle class households and local businesses. Instead, evidence predicts it will exacerbate the existing real estate bubble and its social and financial consequences.

Sadly, the proposed revisions would exempt the Munjoy Hill Overlay District from the new standards, leaving in place a much relaxed ADR process whose implementation may occur at staff discretion, on a case by case basis, within the walls of city hall, with no public review. Many of the relaxed requirements have to do with compatibility with contextual scale, size and use as well as streetscape. This is too lax a standard and approval process for any zoning which deals with property rights. And given the seemingly insatiable appetite for redevelopment of Munjoy Hill, doesn’t do much for staff workloads or conservation of the larger neighborhood.

I will save specific language commentary for the workshop, when the public will have access to the newest proposed text. But I am asking the Planning Board to answer the following before proceeding with this work:

1. How does the thrust of the proposal to accelerate the development of large multifamily buildings in each of the affected R-6 nieghborhoods support the comprehensive plan’s goal of housing for all types of households?
2. How does the exemption of Munjoy Hill from ADR, as well as the pullback from contextual compatibility for multifamily housing, meet the conservation goals of the Overlay District?
2. How does the pullback from contextual compatibility for new development—especially with respect to scale, mass, and impact on immediate neighbors—which is designed to encourage replacement housing, meet the comprehensive plan’s goals for preservation of existing structures for social and environmental reasons?

Many Munjoy Hill residents have requested at public meetings in recent years to have further changes in the R-6 zone, only to be repeatedly told by staff that such proposals were premature. We were surprised to see the planning office propose changes almost immediately after we were told at a Planning Board workshop our requests were premature. There has been no neighborhood discussion of these proposals, as we have seen during the excellent dialogues occurring around proposals for a Munjoy Hill HIstoric District and for the Conservation Overlay District.

In order to restore public confidence in the planning process, I urge you to take these proposed changes out to public review, in compliance with the comprehensive plan, through a series of neighborhood meetings in each affected neighborhood.

Thank you for your consideration. I will be providing specific language suggestions when the new draft is made available to

the public.

Jean (Nini) McManamy
10 Willis St.  04101

Nini McManamy
Sent from my iPad

PC1
1

Portland Maine Yes. Google's good here.

**Matthew Grooms <mgrooms@portlandmaine.gov>**

# Fwd: Recode comments, EJ Koch

**Helen Donaldson** <hcd@portlandmaine.gov> Fri, Jan 17, 2020 at 1:56 PM
To: Matthew Grooms <mgrooms@portlandmaine.gov>

---------- Forwarded message ---------
From: **jmy** <jmy@portlandmaine.gov>
Date: Fri, Jan 17, 2020 at 1:53 PM
Subject: Fwd: Recode comments, EJ Koch
To: Helen Donaldson <hcd@portlandmaine.gov>

On Friday, January 17, 2020 at 11:51:11 AM UTC-5, Ejkoch Gmail wrote:

I am writing to express my opposition to much of the proposed "recode," for a number of reasons, including a flawed public input policy, and the negative impact that the recode is likely to have on my neighborhood and others.

The Planning Department seems to be specifically targeting R-6 with proposed design changes. They say they worked with architects last year to make the proposed changes - however many residents were never made aware, nor were the neighborhood organizations which would be immediately affected by the proposed changes, and I'm not aware that there were any neighborhood meetings held.

What is the explanation for this? There was more than adequate opportunity to publicize and hold neighborhood meetings over the past year to explain the changes that would be made, and get feedback from those who would be affected.

This process, and the apparent results, completely contradict the Comprehensive Plan (Page 52) - "***Develop additional resources for neighborhood associations and citizen planners, such as neighborhood planning toolkits and processes to enhance communication between neighborhood groups and City staff, to enrich community input."***

The Planning Dept appears to minimizing residents' concerns by referring to "6 public comments" sent on 12/13/2019 when it was clear to some of us that the Planning Dept proposal made massive R-6 Design changes and then quickly put these changes on the Planning Board agenda for a 12/17/2019 Planning Board workshop. None of this appears to be working to the advantage of the residents of Portland.

Regarding the proposal itself, there are many questions. I and others have found the documentation on the web rather impenetrable, and unclear as to the impacts the planning department would expect from the recode provisions. Without an adequate public information and input policy, this proposal cannot be claimed as legitimate.

The Historic Resources Policy Guide: "Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development."

> **<u>Question #1:</u> How is removing all R-6 Design Standard language that support compatible infill regarding scale/massing and architectural compatibility by removing a 2 block radius requirement and instead using the ambiguous term of "neighborhood" accomplishing the goal of the Historic Resource Policy? The Planning Department proposes removal of ANY requirement of multi units to adhere to scale/massing and architectural compatibility.**
>
> 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."

**<u>Question#2:</u> How could encouraging even more predatory development entailing the removal/demolition of affordable and existing housing, to be replaced with high end luxury condos and high end single family homes be considered increasing "diverse housing stock?"**

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."

**<u>Question#3</u>: How is the Planning Department proposal that encourages demolition and speculation, or the proposed R-6 Design standard language changes going to help the environment? The Carbon footprint of demolishing a building is many times worse for the environment than renovating. Erecting high end "eco-friendly" million dollar condos does not adequately offset the environmental damage of demolition of existing buildings as shown:**
**-https://amp.theguardian.com/cities/2020/jan/13/the-case-for-never-demolishing-another-building**

The Planning Department, instead of adequately enforcing the Current R-6 Design standards will, through the proposed changes, encourage even more predatory development than several neighborhoods already endure under the existing, unenforced design standards. I see no benefit to that.

The policy idea that any addition to the housing stock has the effect of depressing prices and will make the housing stock more affordable is **<u>false</u>**. The opposite is true. From the 2015 Greater Portland COG Workforce Housing Study (before speculative development started to overwhelm our neighborhoods):

- " *At first glance, the construction of luxury housing in any downtown would be considered a boon, not a burden. In the long run, however, neighboring property owners will follow suit, running up sales prices and rents unsustained by real growth in wages, incomes, jobs, or property improvements.*
- *For workers, the consequence is longer commutes from suburbs and rural areas. Others will establish themselves in less expensive urban markets, such as Biddeford, Lewiston, Gardiner, and Bath. Absent a correction by regulation or the market, these forces could take shape, first as a collection of individual choices which then swell into an undeniable movement. And they did happen during the 2000's."*

This is just what is happening now. The proposed Design Standards and other changes will exacerbate this. Is this a good look for a city government that is constantly bleating about the need for workforce and affordable housing?

The Planning Board should require the Planning Department to actually reach out to and truly attempt to inform neighborhood stakeholders BEFORE going to any Planning Board workshop. The proposed R-6 Design changes are not acceptable, and may not be valid due to an inadequate public process.

Thank you.

Erna Koch
Vesper st.
Portland, ME

--
Nell Donaldson
City of Portland Planning Division
(207) 874-8723
hcd@portlandmaine.gov

Google Groups

# Re-Coding & R-6 Zoning Changes

**Wayne Valzania** <Wayne@redhookdesignalliance.com> Jan 17, 2020 5:30 PM
Posted in group: **Planning Board**

Portland Planning Board

City of Portland, Maine

Portland, Maine 04101

Re: January 21, 2020 Workshop – “Recoding” and R-6 Zoning Changes

Dear Members of the Portland Planning Board:

I am writing out of concern regarding both the Re-Code process that is underway and the R6 Zoning rewrite that is currently in process. Over the past few years, my wife Carolyn and I, residents at 27 Merrill Street on Munjoy Hill, have attended numerous workshops and planning board meetings in regard to development on the peninsula and what seems to be a lack of a cohesive development plan that best serves all of the residents of Portland. Having lived in several cities I have had the opportunity to see and experience the results well planned city development and some where city planning hasn't been as successful. My feeling is that the Portland Planning Department is working very hard in an extremely difficult situation. Faced with the demands of economic pressure and an interest in all that Portland has to offer, including living on Munjoy Hill, the decisions before you are life and city altering. I do not suggest that you as planners aren't taking your responsibility seriously, however I do think that the process has accelerated to a point where irreversible mistakes might be made. My suggestion is to slow down, develop the city in collaboration with those who live here, through additional workshops and listening sessions with citizens, rather than just those who are actively developing our city, driven by immediate profit. We have been promised a collaborative rewrite of the R6 and have accepted that promise. Please include us in the conversation, make it a transparent process, and openly explain to us what the changes are and how you expect they will benefit us as property owners and taxpayers. There are many issues that hinge on the outcome of this process, affordable housing being one of them. An analysis of development as it is taking place will show that it negatively effects the ability of people to live and work in Portland. In many regards we have a service economy, populated by restaurant, hotel and inn staff and the many people who work in the shops and stores which contribute so much to the attraction of our city. For the work that they do, and their love of our city, they too should be able to live here among us and enjoy the city to which they contribute.

Thank You for your work, and I look forward to your thoughtful work on behalf of all of us who live here.

Regards,

Wayne Valzania

**Wayne Valzania MS CPM**

**Red Hook Design LLC**

17-C Westfield Street

Portland, ME 04102

Mobile 207-274-4918

RedHookDesignAlliance.com

Portland Maine Yes. Google's good here.

**Matthew Grooms <mgrooms@portlandmaine.gov>**

# Fwd: 1/21/2020- Planning Board Workshop on Recode Input Tool Process Needs Work

**Helen Donaldson** <hcd@portlandmaine.gov> Fri, Jan 17, 2020 at 1:56 PM
To: Matthew Grooms <mgrooms@portlandmaine.gov>

---------- Forwarded message ---------
From: **jmy** <jmy@portlandmaine.gov>
Date: Fri, Jan 17, 2020 at 1:50 PM
Subject: Fwd: 1/21/2020- Planning Board Workshop on Recode Input Tool Process Needs Work
To: Helen Donaldson <hcd@portlandmaine.gov>

Saved to the project file.

On Friday, January 17, 2020 at 12:16:54 PM UTC-5, Karen Snyder wrote:

> Dear Planning Board,
>
> I am concerned as to the non-transparent process of this entire Recode input process that is being used for public comments for the following reasons. The link used is: https://www.recodeportland.me/public-input-1
>
> 1) The Recode process started last February 2019 but the Recode Input Tool was just introduced by the City on 11/22/2019 right before the holidays for the public to comment into.
>
> 2) There is no red-lining of language changes made by the Planning Department when going from the old format to the new format. Note: No red-lining is needed when just moving language to a different format but red-lining the actual language content changes when moving to this standardized format is required.
>
> 3) ALL of the Recode comments made in the Recode Input Tool should REMAIN in the input tool and the Planning Department should only comment on these comments as to how they handled it. Did they use the comment, incorporate the comment or simply ignore it? But by the current process of removing the public comment and burying it an staff memo does not provide continunity and transparency to how the public comments are being handled within this Recode process
>
> Therefore, I recommend the following with the Recode Input tool link: https://www.recodeportland.me/public-input-1
>
> Planning Department needs to please leave all public comments in this input tool and just indicate within each public comment how they handled that comment. This way it provides a fully transparent public comment change process.
>
> Regards,
> Karen Snyder
> Waterville St.

--
Nell Donaldson
City of Portland Planning Division

# Planning Board January 21 Recode Workshop Comments

**Mike Hoover** <chzstk@gmail.com> Jan 17, 2020 11:48 AM
Posted in group: **Planning Board**

Chairman Dundon and Planning Board Members -

I currently live and own property on Munjoy Hill within the R-6 zoning district. I would like to address the Planning Staff development of the recode to date.

While I recognize that the staff have worked hard on this effort, and it is a difficult task, I have serious concerns about the current format and content of phase one of the recode. This document has been described as a reformatting of the code, without changing any of the intent of the code itself. However, there are very specific changes to important zoning criteria for the R-6 zoning district which are currently included in the document. This is not consistent with the stated purpose of this phase of the document development.

These changes have not been identified in the document as specific zoning code revisions. In addition, the document provides no ability for the reader to identify these important changes.

I request that prior to any further consideration of the recode update by the Planning Board, a document should be developed and submitted for review which identifies the specific changes made to zoning codes, and describes the intent for these changes.

Without this information, important changes will be made in a vacuum, without public input or consideration. It is important that this process be transparent and inclusive of public input. At this time, it is not.

Sincerely,

Michael Hoover
40 Melbourne
Portland, ME

Google Groups

# 01/21/2020 PB Workshop - Opposition to Proposed R-6 Design Standards Changes

**Mary Casale** <dirtgirl1@aol.com> Jan 17, 2020 11:53 AM

Posted in group: **Planning Board**

Dear Chairman Dundon and Planning Board Members,
I am in opposition to the changes being presented.
These changes are coming from the Planning Department under the umbrella of the City of Portland Recode .
This is not due process and has not engaged nor notified the residents of R-6 zone of this dismantlement and Re-Write of the design standards.
The wink and nod to Public engagement is alarming .
I attended the September 11, 2017 Munjoy Hill Neighborhood Organization Board of Directors meeting at which Christine Grimando and Nell Doanaldson presented the idea of Re-code ( which is a misleading identifier ) . I identified my concerns as to the lack of standards for demolishing not only single buildings but blocks of buildings, ( among multiple other concerns) and was politely listened to . There were no other community, neighborhood meetings to engage as many stakeholders as possible.
I have spoken to many of my neighbors and they are totally unaware of what is being proposed. Re-Code ? " isn't that some computer programming thing.?"
I request that the Planning Board reach out to the residents of the R-6 so that education on the impacts of such changes are identified and questions are posed , solutions sought , prior to any presentation.
Thank you for the time you devote to our city
Regards
Mary Westort Casale
39 Waterville St

Sent from my iPad

# WESTERN PROMENADE NEIGHBORHOOD ASSOCIATION

March 9, 2015

Portland Planning Board
389 Congress Street
Portland, ME 04101

Re: Proposed Changes to the R-6

Dear Planning Board Members:

I am writing as the President of the Western Promenade Neighborhood Association to provide comments regarding the proposed changes to the R-6 zones in the City.

First, we appreciate and agree with the basic approach of better conforming zoning to the existing development pattern and to allow existing structures more flexibility in meeting the needs of owners. That said, "the devil is in the details" and we have the following comments:

**1) Unintended Consequences** We are very concerned that the proposed significant increase in density will result in the development of even more housing that is unaffordable to the vast majority of Portland residents. In particular, we continue to be concerned about the potential for the smaller, affordable single-family houses to be cut up to small condos for couples.

**2) Focus First** As suggested in a prior email comment, perhaps the focus should first be on "stranded lots", development of which is constrained by existing zoning. Apply the proposed new zoning regime to these lots and see what kind/cost of housing is proposed before making a wholesale change in the entire R-6.

**3) Development and Development Criteria** It is evident that the reduction or functional elimination of many of the R-6 zone limitations is a significant benefit to the development community. The City and its citizens should get something in exchange for the reduction in the limits:

- *Higher Building and Energy Efficiency Requirements* – As a *quid pro quo* for the elimination of many limits on building and/or renovation, the City should adopt its own building code for the R-6 which would, for example, require any new construction and/or major renovations to be done to a LEED standard or the highest energy efficiency standards that can reasonably be met.
- *Provision for Plantings and Planting Requirements* – Trees, shrubs and plantings are visually appealing, but also reflect and absorb heat. An accessible example is the difference between parking one's car on a hot day on a shopping center parking lot, versus a city street with trees and plantings. Studies have been conducted showing a "heat trap" effect in cities without plantings. With the

changes in reduced set-backs, etc., the amount of trees and plantings might be minimal, if left to a developer. The City should mandate a provision for trees and plantings as part of the R-6 revisions.

**4) Impacts.** The R-6 proposals simply lower the restrictions on building. As described above, the City and its citizens should not, as an unintended result, lose what is now an appealing city-scape. Even renovations and conversions have an impact. Additional meters, wiring and non-owner occupations will change the current "feel" of Portland, and likely not in a positive way.

Allowing garage openings of any size in the front façade of new townhouses will bring a undesirable suburban design element to the peninsula and <u>does not in any way reflect the current development pattern</u> of garages or off street parking spots to the side or rear of properties. NO garage opening should be allowed in front facades, period.

The City should consider expanding the Historic District areas to allow oversight on new construction. For example, aesthetically, when previously one started up Congress into Munjoy Hill, the sense was that one was entering a neighborhood. Just the few higher elevation structures recently constructed on Congress Street have changed how that is experienced. Because of the impact of those few buildings, it feels now that one remains in an extension of an urban core area.

Lastly, we add an important general comment. The sentiment expressed by the staff and Planning Board seems to imply that new building in the R-6 will necessarily result in more affordable housing. That idea is misplaced. The most expensive and desirable land, of which there is a scarcity, is on the peninsula. If a developer is going to incur the expense of acquiring such land and building on it, it is not going to be for the purposes of creating affordable housing. It will be to capture the explosive market demand both in the sale and rental market. As Economics 101 seems to indicate that increased density will allow a property owner to set a higher asking price, which would then be spread over the increased number of units. Depending on the market premium the added density provides, it seems unlikely that workforce housing will be produced.

The Western Promenade Neighborhood Association appreciates the early outreach to neighborhoods and encourages the Board to give very careful consideration to the many concerns being expressed by residents.

Very truly yours,

Anne B. Pringle
President

PC17

Google Groups

# Recode Draft

**Judith Cutler** Jan 20, 2020 11:28 AM

Posted in group: **ReCode Portland**

Today, January 20th is the 1st time I saw the Recode Draft. Am only made aware of these issues through the Munjoy Hill Conservation group.
Who IS answerable to the people of Portland?
Judith Cutler
Eastern Promenade

Sent from my iPhone

R-6 January 21, 2020

To: Portland Planning Staff + Chairperson and Members of the Portland Planning Board

From: Rob Whitten

subject: Mass and Scale

CC: Interested Parties

Members of the Planning Staff and Chairperson and Members of the Portland Planning Board,

Good evening. My name is Rob Whitten, I'm an architect with a practice in Portland. I came to Portland to begin my career and found Portland to be a wonderful, welcoming environment. My wife and I repaired and renovated a condemned house at 23 St. Lawrence Street and raised our family. We've been there for forty-three years and plan to stay on the Hill as long as we can.

**R-6:** An R-6 neighborhood is livable city at its best: with a wide mix of housing types whose one to three story residential scale and a mix of housing, open space, transit options, quiet streets, neighborhood parks, local schools, and walk to work employment.

Prior to 2015 Portland' s R-6 zoning provided many opportunities for affordable housing as rentals and possible purchases from older neighbors as they left the community.

One of the most important features of our R-6 neighborhood is the mass and scale of the housing that has evolved over 100 years.

The question to the Planning Department and the Planning Board; what is Mass and Scale? How does one determine contextually appropriate Mass and Scale as specified in the City of Portland's Design Standards.? Is Mass and Scale defined by the width of the structure multiplied by the length of the structure multiplied by the height of the structure?

**Mass and Scale:** I've prepared model to demonstrate and to show the impact of Mass and Scale on an R-6 neighborhood.

Attached are images of a three-dimensional model of a typical R-6 neighborhood. The model is built at a scale of 1" = 20' and it represents a typical R-6 street pattern with 50' by 80' lots of 4000 square feet. The dashed red lines indicate minimum 5' front yards and 5' side yard setbacks and 15' rear yard setbacks.

**See pages 1 and 2.** This is a typical R-6 neighborhood as seen on St. Lawrence Street, Atlantic Street, North Street, Montreal Street, Munjoy Street, Morning Street, or Beckett Street. This is consistent with many existing R-6 neighborhoods in the West End.

The aerial view and street view show the Mass and Scale of housing, open space, and parking. The volume of each structure is labelled = W x L x H = Mass and Scale. The existing structures on the model represent older housing stock with affordable apartments, green space, and off-street parking.

**See pages 3 and 4:** The model proceeds to teardown, infill, and replace the existing structures of 24,000 cubic feet, 40,000 cubic feet , and 56,00 cubic feet with new structures that are the minimum sideboard set back, the minimum rear yard setback, the maximum height including four story setbacks, and the maximum lot coverage. The model proceeds to group single lots as larger parcels, eliminating the space between buildings that bring sun light, fresh air, green space and parking to the neighborhood.

The new structures range from 96,000 cubic feet on a 50 x 80 lot to 213,000 cubic feet on a double lot to 352,000 cubic feet on a triple lot.

**See pages 5 and 6:** The new structures represent the maximum Mass and Scale that can be built on a given lot or group of lots.

The new structures are 400% bigger on a single lot to over 1400% larger on a triple lot

The new structures on the model stand in contrast to the once affordable, existing R-6 neighborhood.

**ReCode and R-6:** R-6 zoning was changed in 2015 to attract affordable housing, and to allow for in-fill development of undeveloped smaller properties, and to the maintain the live-able character the existing R-6 neighborhoods.

The unintended consequence of the zoning change has been the loss of affordable housing, the loss of younger work force families, and new structures designed to serve the luxury, condominium housing market

Over the past five years the R-6 neighbors have attended many Planning Board workshops, Planning Board meetings, and City Council meetings to express concerns about the revised R-6 zone and to speak in opposition to the Mass and Scale of recent R-6 developments.

**See pages 7 and 8:** Is this the vision and goal of the Planning Department and the Planning Board for Portland's R-6 neighborhoods?

Thank you for your time and consideration.

Rob Whitten
23 St. Lawrence Street
Portland, Maine 04101

**Rob Whitten** / Founder & Principal

**Whitten Architects**
207.774.0111 x101
37 Silver Street
Portland, Maine 04101
www.whittenarchitects.com

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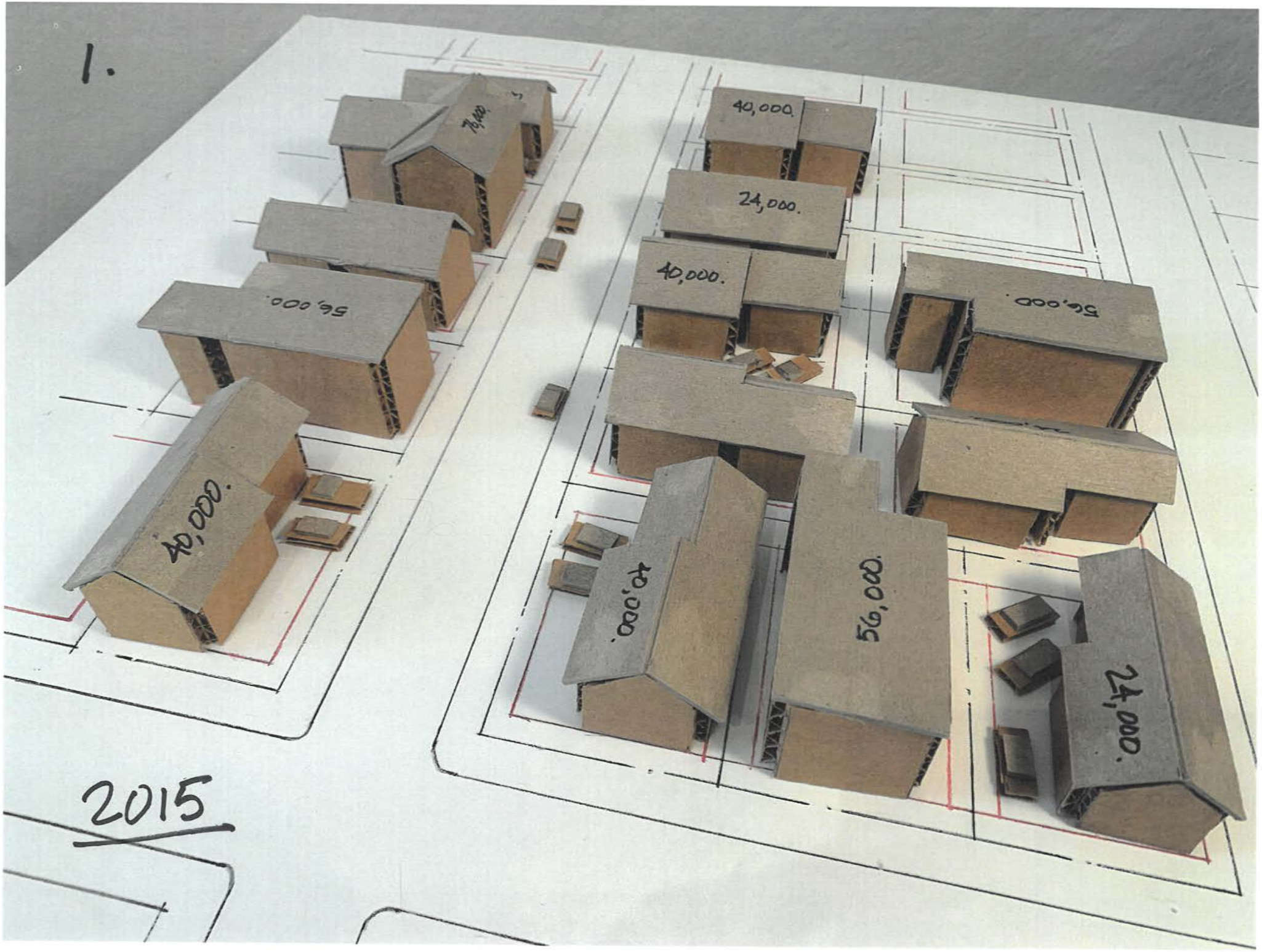
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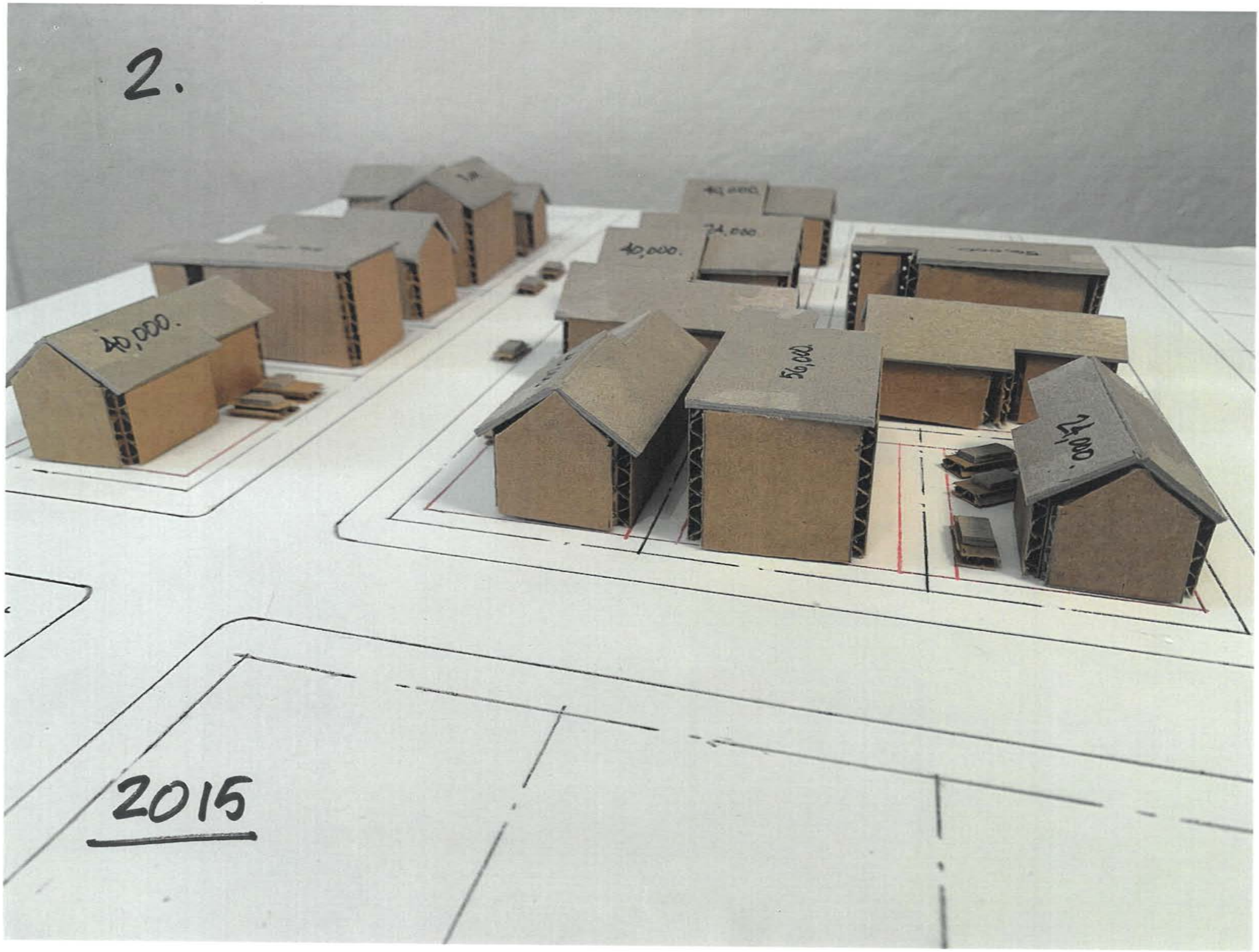
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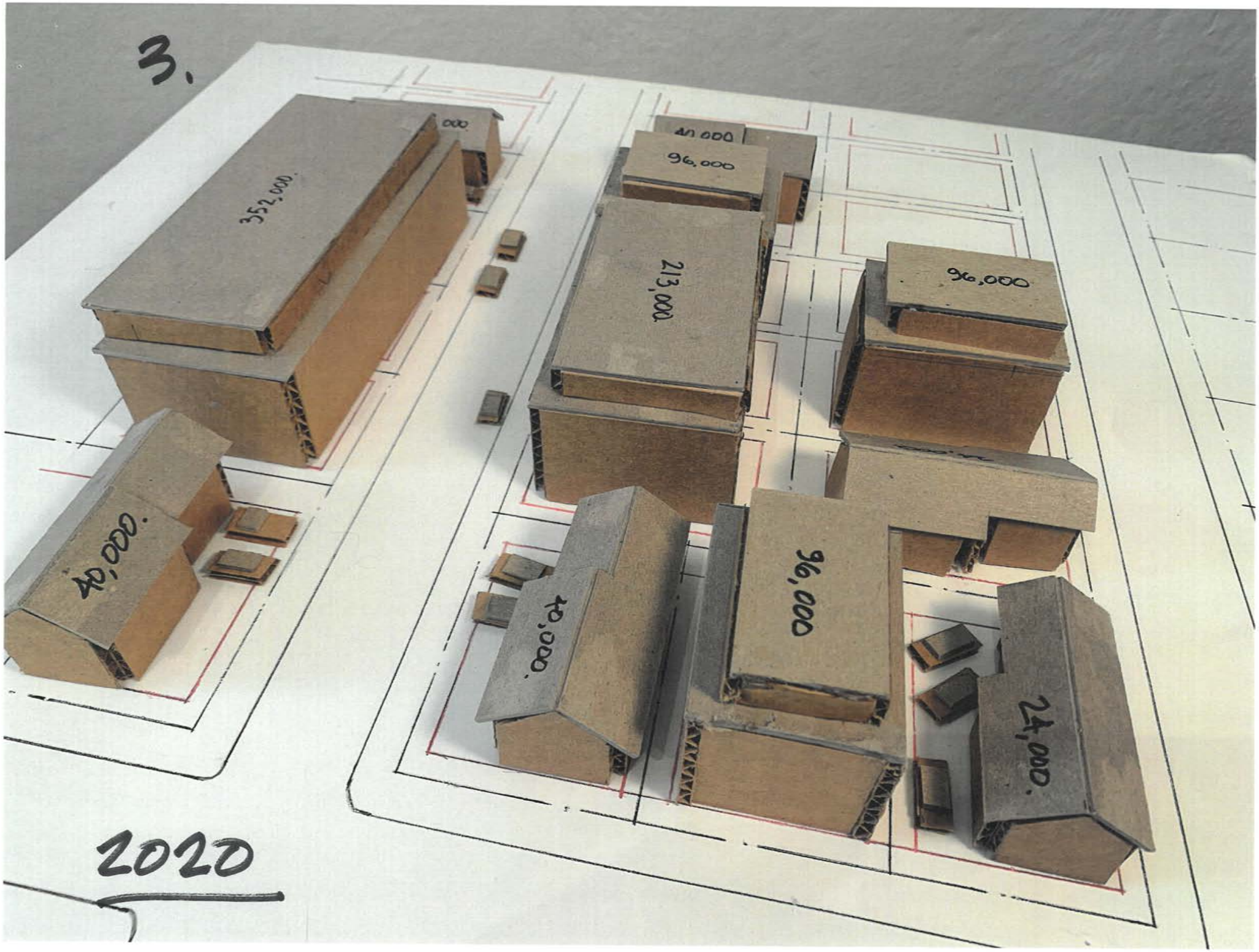


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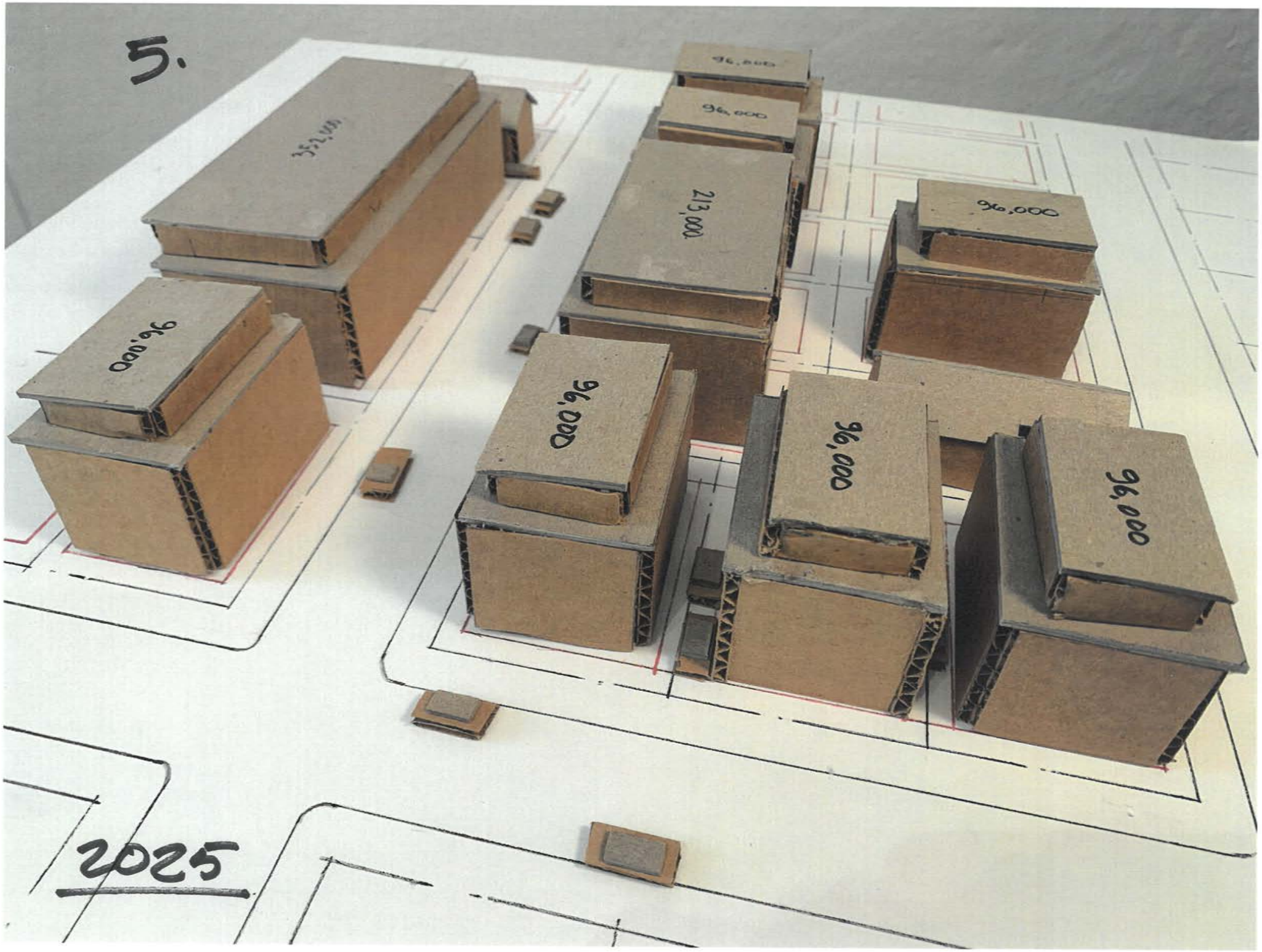
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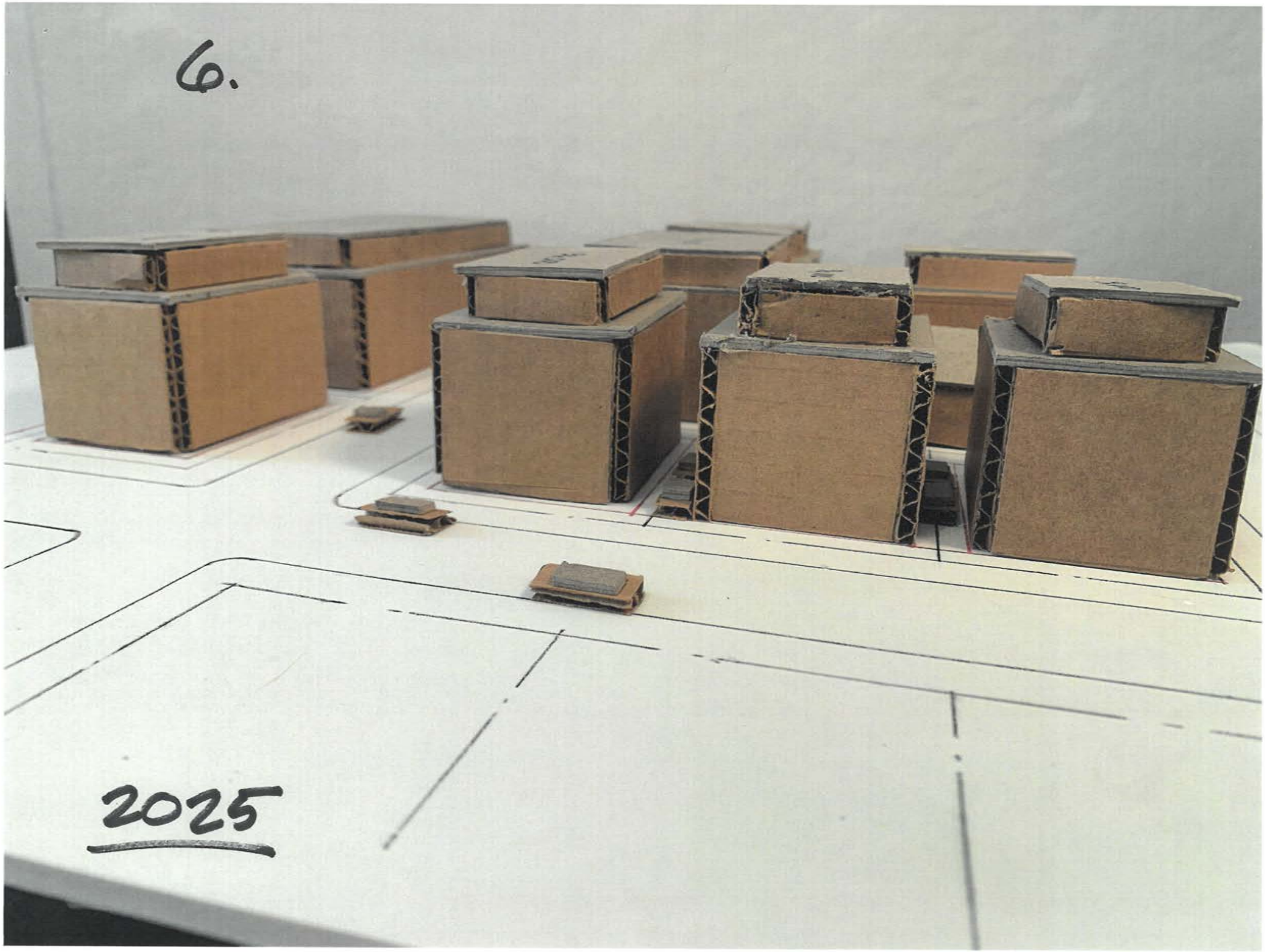
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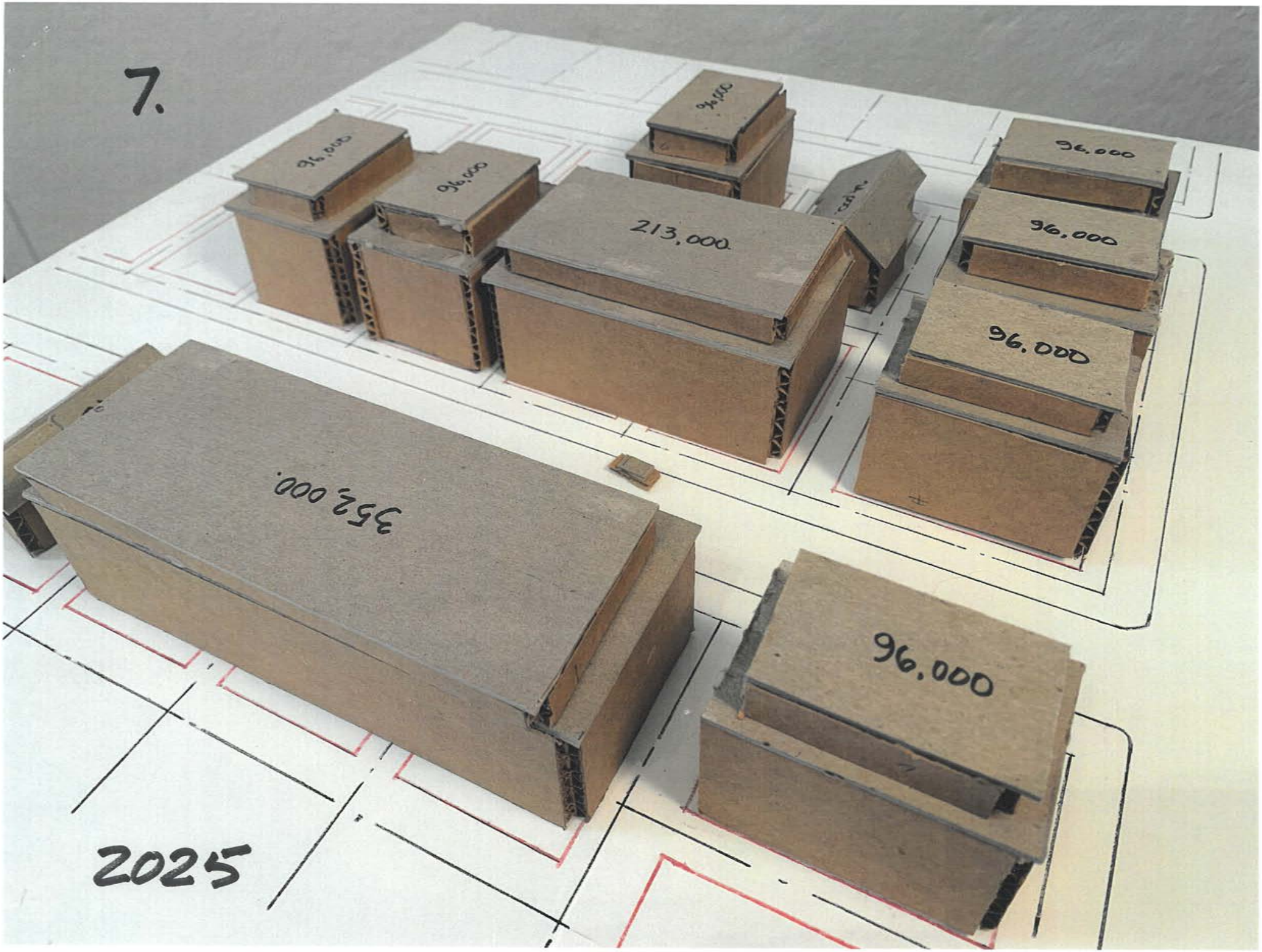
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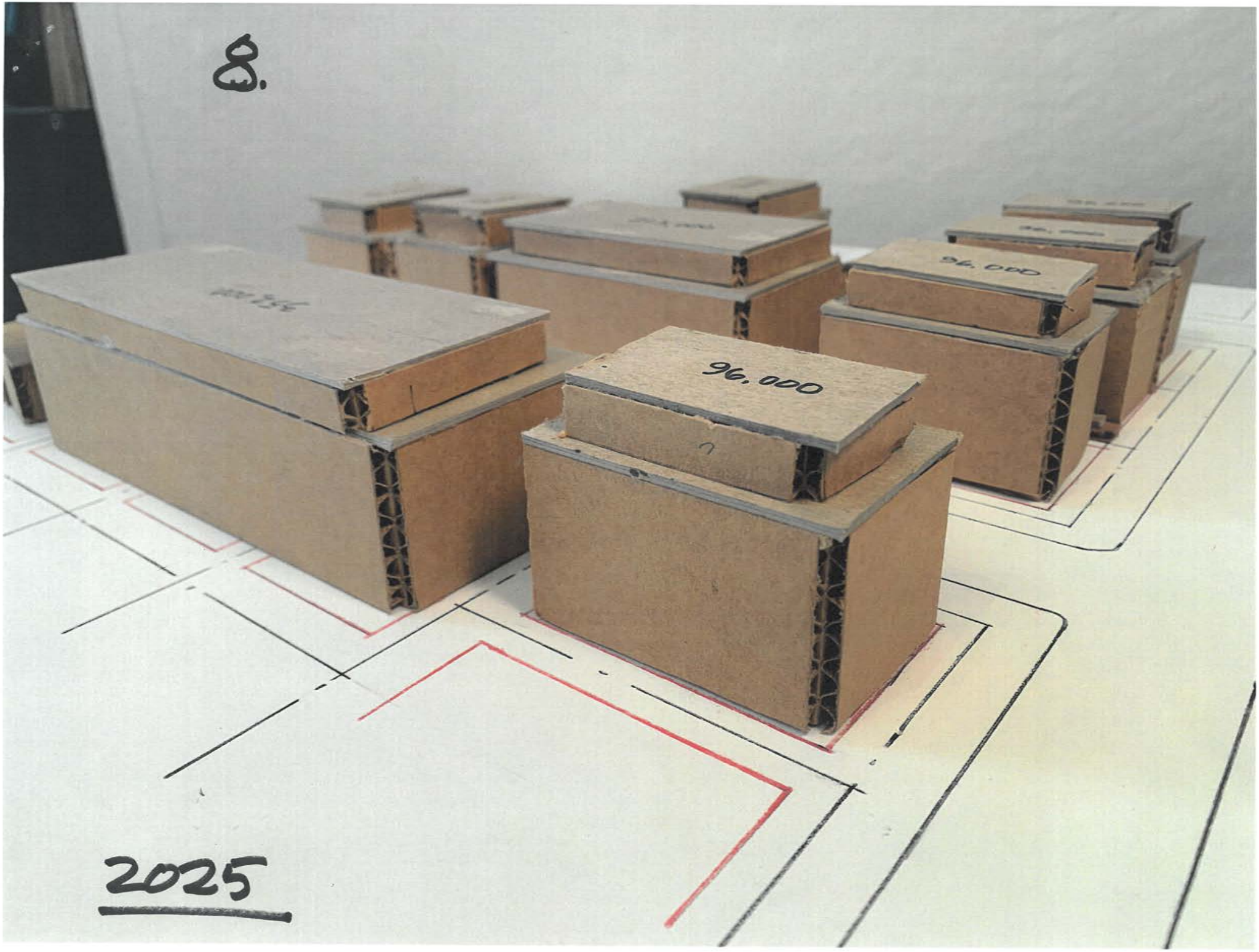
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## Opposition to Proposed R-6 Design Standard Changes

**Michael Englert** <michaeljenglert@gmail.com> Jan 21, 2020 2:02 PM
Posted in group: **Planning and Urban Development**

Dear Planning Board of the City of Portland:

We agree with the Munjoy Hill Conservation Collaborative and other citizens opposing the proposed Recode changes and proposed R-6 Design Changes. The Planning Department did not provide an opportunity for citizens and neighborhood organizations to provide input and did not hold neighborhood meetings regarding these substantial proposed changes to the R-6 residential neighborhoods, even though the Comprehensive Plan emphasizes "neighborhood organization involvement."

Substantively, the proposed design changes would allow developers to build in R-6 without due consideration to abutters or to the streetscapes, and would continue the proliferation of square box luxury condos at the expense of historic, vernacular structures that make Portland such a unique and attractive city. We believe the current R-6 Design Standards are acceptable (although such standards have reportedly been largely ignored by the Planning Board and Planning Department). Moreover, this proposed new language appears to limit abutters' legal standing to seek redress in court.

We therefore urge the Planning Board to table this workshop discussion, and direct the Planning staff to design and implement an appropriate process to assure public participation and community input into any proposed changes to the R-6 Design Manual.

Michael and Linda Englert
193 Sheridan Street
Portland, ME 04101

Google Groups

# Recode and R-6 design standards

**Maggy W** <mswnola@gmail.com> Jan 21, 2020 5:12 AM
Posted in group: **Planning Board**

Dear members of the planning board,
I have been intending to attend today's workshops on the Recode and the revised Design Standards, however I injured my back yesterday and am still unable to walk without great pain today. Therefore I hope my late comments will still make it into today's meetings.

Quite simply, I feel the electronic documents that have been sent out are too sizable and complex for members of the public like myself to understand all of the changes and implications in order to provide feedback and input. I would have hoped that the planning staff would solicit input from the affected neighborhoods by bringing an in-depth presentation to the neighborhood centers and carefully highlighting the proposed changes.
In my case, I have a vision impairment that prevents me from reading anything longer than a short article or email either on a computer screen or on the printed page. But even if I could have read the entire online document, I still would not have known exactly what had been changed without having a side-by-side comparison with the old document.

Sending out an electronic document without highlighting or annotating changes and with a complicated method of providing comments does not meet the definition of engaging the public in the process.

From what I can read, the proposed documents do not address at least two issues causing problems in my R-6 neighborhood:
1- height calculations: we must start consistently measuring average grade from original grade. Measuring from "finished grade" allows a developer to manipulate that grade with retaining walls solely to bypass height restrictions. If they need retaining walls or planters for their design that is one thing, but they should still have to use average original grade for their height measurements. This manipulation of height is one of the practices that has caused the most heartache on the hill and renders meaningless the height limits in the land use definitions. We absolutely need to prevent abuses where a retaining wall allows a developer to build extra high, as in 32 Saint Lawrence, which is a towering 4-story single-family home for 2 people. I think most residents are surprised to learn that the current practice is to measure from finished grade - most people assume that all of Portland uses original grade, which is the standard on the islands.

2- One other point made clear by 32 Saint Lawrence is that buildings above a certain square footage should trigger level 3 site procedures. This just-under-4000 square foot building on a sub-divided lot should have had a neighbors' meeting and a public planning board review. However because it is a single-family dwelling, it bypassed that process, even though it is larger than most of the surrounding multi-family buildings.

Maggy Wolf
28 Saint Lawrence

# R6 Zoning Changes and Design Standard Changes

**R Cousins** <rcousins@hotmail.com> Jan 21, 2020 11:34 AM
Posted in group: **Planning Board**

I won't be able to attend tonight's meeting. But I do want you to know that I totally support the other 6 comments you've received via email. I'm not sure who owns our current Planning Department but it seems the **predator developers** are in control. It feels like we're just turning **'our'** city over to the moneyed interests with total disregard for the current population. I'm not opposed to change and yes there are buildings that may need to be removed and replaced with more habitable structures. But this shouldn't be a free-for-all process driven by fees paid to the city for a laissez-faire development driven by greed.

Without input from those affected by the changes, (and what specifically are the changes? The Planning Dept has the obligation to indicate what is being replaced as well as the new language), then this becomes a non-democratic process. To my knowledge we the taxpayer don't directly choose or drive the development process or the Planning Department goals. Although as already stated in the Comprehensive Plan " *Develop additional resources for neighborhood associations and citizen planners, such as neighborhood planning toolkits and processes to enhance communication between neighborhood groups and City staff, to* ***enrich community input***." Where is this happening within the Planning Dept. for the Zoning Changes and Design Standard Changes?

I looked at the Recode through the provided link and once again it's almost impossible for me as a layman to follow what's changed. I suggest you direct the Planning Department to provide the existing code with red-lined changes and if possible how this will affect the neighborhood I fondly live in.

I suggest you simply send this whole thing back to the department with instructions to 'do-over' the whole thing with involvement from ALL parties per the Comprehensive Plan.

Sincerely,
Mr Rae Cousins
Munjoy Hill Resident

Google Groups

# Recode changes being proposed for R6 design.

**Nancy Machesney** <dmaches101@aol.com> Jan 22, 2020 1:56 AM

Posted in group: **Planning and Urban Development**

Dear Planning Board,

I was just made aware of the workshop held on 1/21/ 20 . I was out of town was not able to attend this meeting.

For the record, I would like to voice my strong opposition to the proposed changes to the R-6 residential zone . These proposed changes ,particularly those to the R-6design, would negatively affect neighbors and give developers unfair advantages. The planning board instead should be enforcing the current rules and listening to their taxpayers concerns.

I happen to live in a development ( Munjoy Heights) where the developer, bent over backwards to be mindful of his abutters, Munjoy Hill and the city. Current developers need to be held to the same standards. Open garages, oversized developments on small on unsafe lots , passes on roadways clearances and green spaces should not be allowed. The planning board needs to keep and impose the law as is it stands for the fairness and safety to all involved.

Thank you,

Nancy Machesney
213 Sheridan Street

Sent from my iPad

Portland Planning
Portland City Council

CC: City Council

January 22, 2020

Hello & Happy New Year,

After December's workshop on this same topic, I walked away seeing a possible path forward. Then, after watching last night's Planning Workshop on R6, next steps for our great City seem clear.

The Planning Board is faced with many intersecting topics in the same season. Revising the R6, reviewing the Conservation Overlay on Munjoy Hill, revamping design documents, finalizing the Recode appear, in total, overwhelming. Add the question of adding a Historic District to Munjoy Hill and the City has a very complex, sometimes overlapping and confusing series of topics on their plate.

The good news is **the Recode rules the day** and is the opportunity the City has to address all of the other needs (both Planning and Citizen based needs.) My advice: Clear your (planning staff's and city council's) plate clean of all distractions except the Recode work. This envelops all other topics & will give your team & Staff focus.

- R6 revamp was an 'olive branch' to the Hill to address the fallout of the poorly constructed (by the City Council) Conservation Overlay District. Clearly, the voices during last night's workshop will not accept this work from Planning staff. Live comments from most in attendance last night were proven incorrect and the belief that the first draft of the new R6 is a 'liberalization of the R6' is preposterous. *Planning Board members, please do NOT support this when it may change in a month or so after implementation due to the Recoding efforts.*

- The Hill Conservation Overlay imposed many unintended consequences and needs to be repealed and addressed via the Recode process. *Planning Board members, please make this part of the Recoding scope.*

- An R6 should be an R6 citywide. The Hill, or any other neighborhood in Portland, does not require its own set of regulations (e.g., overlay or otherwise.) While the Hill has a group of tenacious advocates, please keep in mind they do not represent the entire Hill or the City. The Hill simply does not require special accommodations when compared to other neighborhoods.

- The proposed Historic District is a confused mess of a recommendation that proponents on the Hill believe will address zoning issues like demolition, size of building, etc. It will not. HD on the Hill is a red herring promoted by NIMBYs who attempt to fool others into believing it will address zoning matters. When in reality, it will only increase prices further and push development/housing crisis to other areas of the City. *Planning Board members, please do not support this when adding a 12th district has little-to-nothing to do with the concerns of the citizens &, as documented earlier, has been a process filled with issues.*

**Note: re HD on the Hil, it is worth mentioning that the Historic Staff's memo presented in preparation for the December 10, 2019 Planning Board Workshop cites that criteria has been met for both 14-610 and 14-611.** However, **<u>the memo does not explain how the criterion was met</u>**. Unless the memo is missing significant detail, the information provided does not adequately explain (thus satisfy) that the criterion has been met.

- While the Hill does have historic value to our city (14-610), how is its 'value [a] significant example of cultural, historic, architectural, archeological or related aspect of the heritage? Couldn't this be said about any neighborhood in our City?
- Re 14-611, the Staff memo cites a number of individual buildings as justification for the criteria. If individual buildings, why does the City need a large district? *<u>Why not simply designate those or recommend voluntary national designation or landmark assignments?</u>* It seems a 'stretch' to cite a small number of buildings on various streets as justification to convert a neighborhood.

Finally, as this new year starts, I want to sincerely thank the Planning Board. Witnessing what your team manages in terms of volume of work and public involvement (borderline harassment) is truly mind-boggling. You all deserve awards from tolerating the avalanche of (sometimes misinformed) comments from the same 12 people on each and every topic before you.

Best,

Carle Henry

Google Groups

# Proposed ReCode Changes to R-6 Neighborhood Protections

**Laura S. Underkuffler** <lu27@cornell.edu> Jan 22, 2020 11:28 AM
Posted in group: **Planning Board**

Chair Dundon and Planning Board Members:

I have just become aware of the proposed ReCode changes to existing R-6 neighborhood protections regarding incompatible development. After studying these for several hours, my comments follow.

As an introductory matter, my husband and I own the house at 215 Oxford Street and we have lived there for 11 years. I commute to Ithaca NY where I teach law – in the fields of property, land use, zoning, and related areas – at Cornell University.

I was shocked when I read the proposed changes. The status at the moment is that they take a giant step toward the complete evisceration of existing protections for the Bayside neighborhood of traditional, modest, low- and middle-income homes and residents.

Existing zoning requirements are not simply fluffy requirements that can be changed or ignored when that is deemed to be convenient. Standards and requirements provide vital protections for residents – in this case, those who live in low- and moderate-income neighborhoods, with the affordable housing that the City professes that it wants – from changes that are detrimental to those modest homes and that neighborhood character. We are not arguing against low-income and affordable housing here. We are arguing for its preservation in the face of tear-downs and the building of luxury housing for the wealthy.

The document describing the proposed changes admits that the existing design standards were intended to require that new construction would “maintain the existing character (built character includes scale, form, relationship to the street, material, façade composition).” The proposals express an unabashed and overt rejection of this standard, on the basis that these “current standards are not aligned with or representative of contemporary architecture and development landscape.” This, however, is a complete non-sequitur. Of course the character of modest, traditional neighborhoods is not the same as that of buildings that completely reject that character. The question is how to make contemporarily built buildings *harmonious* with that character. The answer of these proposed changes is simply to discard the rules and the effort to require that. The changes are not designed to determine compatible infill; they are designed, unfortunately, to undermine that requirement altogether.

Nods to “compatibility” (see “Standards,” section (k)(1)), are completely undermined by the specific changes proposed.

The document which presents these changes rightly acknowledges that there is “substantial community discussion around the characteristics and scale of new developments compared with the existing built fabric – [and] 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.” Unfortunately, these proposals completely contradict that statement. The solutions in this document to the incompatibility of existing character and proposed buildings are to simply eliminate the requirement that existing character be maintained.

First, the goal of the changes is stated to be to “remove overly prescriptive [requirements] based on traditional building patterns that are no longer relevant to contemporary living patterns.” Where there were previously “quantifiable standards, there are now references and suggested parameters rather than a strict requirement.” In other words, protective standards are explicitly and unapologetically eliminated in favor of “references” that supply no protection whatsoever. (It is also a

question how “contemporary living patterns” are only created by developers who build large, high-end, incompatible buildings for profit, and not by those who now live in existing housing. The implicit economic-class bias here must be recognized.)

The proposed changes state that “new residential construction within … compact R-6 zones should relate to the predominant character defining features of the neighborhood.” However, the next sentence of the existing regulations – defining this in terms of “the orientation and placement of a building on a site, relationship to the street, and mass, form, and materials” is lined out. In other words, the specific protections and criteria that implement those protections for neighbors are eliminated.

Under existing requirements, the context to be used to determine compatibility is defined as a two-block radius. The proposed changes eliminate this and state that the “Planning Authority shall determine the scope of the neighborhood.” In other words, if the Planning Authority does not want to protect neighbors, if it does not want their needs to impact a permit application, it can simply ignore them by extending the definition of a neighborhood ….. to whatever size it (in its discretion) wishes.

This completely ignores the reason for the two-block radius in the first place. It is there because it is common sense that those who are within that radius will be the most severely impacted by incompatible development. To eliminate the problem of incompatibility by changing the definition of the neighborhood, and thereby dilute or eliminate the voices of those most hurt by the incompatible development, is completely unacceptable.

The proposed changes state that “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.” This – combined with the prior “neighborhood” assertion in the document – is the most transparent statement of what these changes aim to accomplish. If a site is surrounded by small scale, traditional, and mixed income housing, the “neighborhood” can suddenly become larger. In fact, it must become larger to meet this additional criterion. The question is not whether this development proposal is compatible with surrounding properties – it is whether this development proposal is similar to other developments of similar size and bulk. This immediately eliminates any size or bulk constraints. Once one large incompatible building is built, somewhere in the city (the “neighborhood”), the new proposal must simply look like that one. We look to “buildings in the neighborhood [ten blocks away? a half mile away?] of comparable size, scale, and use” to determine the “compatibility” of the new high-end condo complex. The final subversion of any legal protections of the existing neighborhood is obvious.

The impetus for discarding existing requirements is apparently, in part, the desire to eliminate the “Alternative Design Review” process. However, the disinclination to afford process that protects residents and small homeowners is not a reason to discard that process, legally or as a matter of public policy. The demanding process for decision-making about nonconforming buildings is there for a reason. Standards are there for a reason. Standards and requirements provide vital protection for residents – in this case, those in low- and moderate-income neighborhoods – from changes that are detrimental to their modest home and neighborhood character.

I do not fault staff for doing what they were tasked to do. However, there must be a better way to accomplish whatever incremental reforms are needed, without completely eviscerating existing legal protections for the low- and moderate-income neighbors of incompatible developments in Bayside.

Sincerely, ,

Laura Underkuffler

215 Oxford Street

J. DuPratt White Professor of Law

Cornell University

To: Chair Maser and Planning Board Members
For: ReCode Workshop, February 18
Re: Proposed R-6 Dimensional Standard - Maximum Building Width
Date: February 14, 2020

The January 21st planning board meeting provided a spilt format for presentation of changes to the R-6 zone (within a "ReCode – Phase One" workshop) and changes to the R-6 design standards in a separate, second, workshop. This presentation resulted in much confusion and misunderstanding. Since the proposed changes to the R-6 design standards were the only agenda item on a clearly labeled, evening workshop, they were the focus of almost all public testimony and comment. Many did not even notice the few added lines (and most particularly, the related footnote #13), included within the 200 page ReCode document covering Articles 1-7 of the City's revised land use code. Many, like me, were not able to attend both workshops. Some didn't even know that they should. In particular, discussion about the proposed maximum building width dimensional standard in the first workshop was minimal, since it was just one thing among so many, and was abruptly truncated (in relation to footnote 13) during the second workshop. Many people left these workshops more confused, rather than less.

It was therefore alarming to learn that, as a result of this confusion, planning staff made the decision to remove (red-line) the maximum building width dimensional standard from the R-6 zone in the ReCode document presented for review at your February 18 workshop. Having taken the time to watch the video recording of the January 21 ReCode workshop, I note that no planning board member, staff member, or member of the public suggested that this proposed dimensional standard should be removed. This staff decision seems to be based upon the push back from the public regarding proposed changes to the R-6 design standards contained in Appendix 7 of the City's Design Manual. This decision highlights the inter-relationship of these two proposals.

After many subsequent discussions with planning staff, leaders from the most highly impacted R-6 neighborhood associations, and Greater Portland Landmark's Director of Advocacy, Julie Larry, much confusion has become clarified, as follows:

1. Planning staff proposed the maximum building width dimensional standard for the R-6 zone in order to address the numerous controversies that have arisen, over many years, regarding the incompatible scale and mass of new developments in the R-6 zone since the 2015 amendments to that zone.
2. Planning staff proposed these changes NOW, as part of the "ReCode - Phase One" process, because this issue has become acute, and will continue to result in ongoing controversy and confusion until it is adequately addressed.
3. Despite planning staff's best efforts, the ReCode process is extraordinarily cumbersome, confusing and challenging for just about everyone. It could take years to bring to completion. Even "Phase One" will inevitably take longer than currently anticipated to reach final approval and implementation.

As a result of this clarified understanding, I hope that the planning board will consider the following options and requests:

1. **EITHER:**
    a. Pull the proposed R-6 maximum building width standard out of the ReCode process container AND ask planning staff to bring it forward to the planning board as a "stand alone" amendment to the current land use code, in order to facilitate more transparency, combined review with proposed changes to the R-6 design standards and implementation than the ReCode process will allow; **OR**
    b. Reinstate the R-6 maximum building width standard into the "ReCode - Phase One" process;
2. **AND**, please encourage planning staff to meet with R-6 neighborhood association leaders to discuss the two related proposals for changes to R-6 standards and address questions and concerns prior to the next "ReCode – Phase One" or the "stand alone R-6 text amendment" planning board workshop.

I have great appreciation for the efforts of planning staff and planning board member, Maggie Stanley, to bring clarity and focus to this ongoing, acute issue impacting R-6 neighborhoods.

Thank you for your consideration,

Cynthia L. Cochran
17 Hammond Street
East Bayside Neighborhood

(Representing at least 30 East Bayside neighbors)

Google Groups

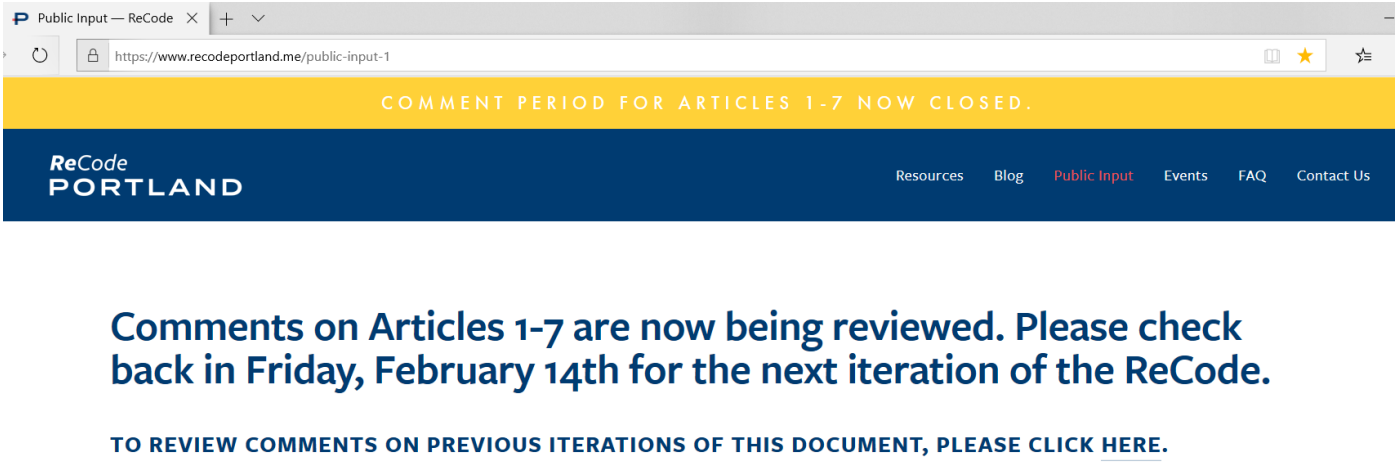
## 2/18/2020- PB Workshop on Recode-Continued Concerns

**Karen Snyder** <karsny@yahoo.com> Feb 14, 2020 11:40 AM
Posted in group: **Planning Board**

Dear Planning Board members,

Based on the last Planning board workshop held on 1/21/2020 on Recode, there are still concerns about the Recode process and certain issues in the following areas:

**Concern #1: There is not an ability to make any public comment on Article 8-12 or add any additional ability to comment on Article 1-7**.
- I have attempted several times this week to enter Recode public comments and I get the below message on the Recode site where we use to be able to enter Recode Public comments.
- In previous PB Recode workshops, if an Article was being addressed, we could add public comment but for this workshop if Articles 8-12 are being addressed, there isn't ability to add public comment.




**Concern #2: It doesn't appear the Planning Staff Recode is reaching out to any Neighborhood organizations to discuss the Recode Process and the Changes.**
-It appears the Planning Staff is expecting the Neighborhood Organizations to reach out to Planning Staff instead of vice versa as I thought the Planning Board members indicated in last PB workshop held on 1/21/2020 should be done.
-How are the residents and Neighborhood organizations suppose to know what is going on in the Recode process if there is no transparency of what the Planning Staff is working on and at what stage unless the Planning Staff reaches out first?
- Interestingly, the Planning Staff appears instead to be reaching out to the "youth" and trying to interconnect this Recode effort with climate change.

FEB 5

## POSTPONED - RECODE/CLIMATE YOUTH EVENT

Wednesday, February 5, 2020
4:00 PM – 5:30 PM
City of Portland (map)

This event is being postponed. We are actively working to reschedule and will be updating the event information in the near future.

Planning Staff are teaming up with the City's Sustainability Coordinator, Troy Moon, to present the relationship between land-use policy and climate change to a group of interested youth. Following a brief presentation, we will be leading an exercise to raise awareness on these connections, gather feedback and promote future engagement in the ReCode project.

**Concern #3: I am not sure what the Recode Committee is being used for except for only discussing ADUs and attempting to exclude parking on proposals near transportation nodes.**
-Why aren't any other substantive changes being addressed in Recode Committee besides the ADU and Parking policy discussion? The last Recode Committee Meeting was back in October 2019. The below are all the Recode Committee agenda topics discussed.

- **Recode Input Tool: 12/1/2019 –** Planning Department opened up Articles 5-8 for public input without highlighting the substantial language changes.
- **Recode Input Tool Announced: 11/22/2019 –** Where Public can input on Article 1-4 changes without highlighting the substantial language changes.
- **Recode Committee Agenda Topics: 10/28/2019** – Recode Timeline, Presenter: Eric Kronburg- Achieving Housing and Sustainability Goals Through Zoning Reforms: Accessory Dwelling Units and Parking Policy; ***Accessory Dwelling Unit*** (ADU) Policy, ***Parking*** Policy, and Definitions
- **Recode Committee Agenda Topics: 9/23/2019** – ***Parking*** Policy, ***ADU***s Policy, Definitions, Coastal Resiliency Initiative
- **Recode Committee Agenda Topics: 6/24/2019** – ***Parking***, ***ADU***s, Public Input
- **Recode Committee Agenda Topics: 2/25/2019** –Recode Timeline, Staffing, Public Input Tools

Source: https://www.portlandmaine.gov/129/Agendas-Minutes

**Concern #4: Why can't in Table 7-A Residential Dimensional Standards, such as dimensional specification "Building Width" be discussed even if it was taken out of Phase 1?**
-Residents and Neighborhood organizations want the ability to ask questions regarding this new dimensional standard labeled "Building Width" which seems to only apply to R-6.
-R-6 residents may be in full support of this new dimensional standard if the following questions could be addressed:
Q4a: How were the building widths developed? What data and resources were used?
Q4b: What if the building is on a corner lot or façade of building is visibly impacted from the public way?
Q4c: Note 13 which is directly tied to Table 7-A Building Width (max) specification as shown below, needs better clarification in the statement:

**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**

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Q4d: Note 13 above should in addition state "whichever is less".
Q4e: What happens if in Note 13, the "Block" includes parcels zoned other than R-6?

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 080 rty line abuts a res ial 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. | 076 075 | 65 ft. |
| Detached Accessory | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | 18 ft. | |
| Building width (max.) | 079 | | 078 | | | | 1- and 2-family: 30 ft.[13] | |
| | | | | | | | 3+-family, 3 stories: 60 ft.[13] | |
| | | | | | | | 077 family, 4 stories: 45 ft. | |
| Lot Coverage (max.) | 20% | 20% | 35% | 30% | 40% | 30% | 60% 074 | 072 |
| Landscaped Open Space Ratio (min.) | | | | | | | 20 | |
| Width of garage opening on front façade (max.) | | | | | | | 9 ft. or 40% of building wid 073 whichever is greater, and in no case more than 20 ft. | |

[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.

I would appreciate if these concerns are addressed in next Tuesday, 2/18/2020 Planning Board Workshop at 4:30 pm on Recode.

In conclusion, I think all these Recode concerns can be simply addressed by the Planning Staff having productive and transparent neighborhood workshop meetings with the residents and Neighborhood organizations prior to go to Planning Board workshops. 2017 was the last time any productive community workshops were given by Planning Staff. That was 3 years ago.

Regards,
Karen Snyder
Munjoy Hill Property Owner