




## Planning &amp; Urban Development Department

Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

TO: Chair and ZBA members 

FROM: Marge Schmuckal, Zoning Administrator

SUBJECT: Interpretation Appeal at 20 Marginal Way

DATE: September 26, 2014

This memo is a follow up on my original determination letter. The Property was developed as a drive-thru car wash in 1982. In 2006 the use was made legally nonconforming by the new B-7 zone that was placed upon this Property and other properties in the vicinity. Legal nonconforming uses are allowed to continue even when a zone change makes them nonconforming.

The B-7 zone specifically defines the drive-thru component as an accessory use under section 14-295(e)1. The current principal use of the Property is a car wash facility. It is pointed out that this section states that accessory uses are customarily incidental and subordinate to the location, function and operation of permitted uses. The drive-up or drive-thru is not a specific permitted use on its own. If the principal use is discontinued, the accessory use(s) do not have standing to remain without the principal use. This zone and section go on to limit when and how the accessory use of a drive-up is allowed with in it.. It is only allowed where permitted in this B-7 zone. The drive-up function is only allowed under permitted conditional uses, as an accessory use for banking. There are further listed conditions that must be met prior to approval for banking. It is the Planning Board that would review the listed conditions.

I have never indicated that the Northern Pride Auto Wash must be demolished if the car wash use was discontinued. It is the owner of the Property that wants to change the use to either a restaurant use or a bank. Clearly a change of use to a retail use without a drive thru is allowable as is the bank without a drive thru. The choice of changing the use to a bank with drive-up facilities is also allowable with conditional use approval. The Bank with drive-up services use must also meet the listed conditions given. Please note that it is not the Zoning Administrator who needs to make a final determination on a banking use with the accessory drive-thru, it is the Planning Board who makes the final decision under this conditional use allowance.

I also contend that the drive-up/drive-thru can easily be closed up on both ends of the existing structure that is now being used for a car wash. With that done, along with interior alterations, I contend that the building use can be changed to many of the permitted uses listed in the B-7 zone, such as offices, retail, restaurant, personal services, business services, and offices of business trades-people. All the listed uses are equally weighted. There is no highest and best use according to zoning. The building does not need to be torn down. The nonconformity section of the Ordinance even gives rights to rebuild within the same footprint and volume. And actually the B-7 zone allows a certain amount of footprint expansion



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without triggering the minimum height requirements and the maximum front setback requirement. I am not aware that current building is legally nonconforming for any other dimensional requirement.

I also respectfully disagree that a car wash would be allowed in the I-M zone under the performance-based use as outlined in 14-248. I am not convinced that a car wash meets listed requirements. It has been stated that a car wash was similar in nature to an automotive repair. Although both functions involve cars, they are different functions. Car repairs take a significant amount of time to accomplish whereas car washes are an in-out function. The selling of cars would also not be allowed under performance based used. Just because cars are involved, it doesn't automatically grant a use right.

I further respectfully disagree that the applicant does not have to give supportive evidence to defend their assertion that any use (a car wash in this case) meets the requirements of the Ordinance as written (in this case section 14-248, Performance Based Uses). Because there is no specific list of uses and instead bases approvals on given standards, it certainly behooves an applicant to supply supporting evidence. At this time, I am not convinced that the performance base allowances have been met.

I still support my decision on how the Ordinance would not allow a drive-thru using the nonconforming sections.

Attached are copies of the B-7 zone, the Nonconformity section, and the I-M section of the Ordinance.

- Sec. 14-290. Reserved.**
- Sec. 14-291. Reserved.**
- Sec. 14-292. Reserved.**
- Sec. 14-293. Reserved.**

DIVISION 17. B-7 MIXED DEVELOPMENT DISTRICT ZONE

**Sec. 14-294. Purpose.**

The purpose of the B-7, mixed development district zone is to establish a zoning district for urban areas in which the city has adopted master plans for redevelopment. Certain districts, 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. Utilization of transportation, other than the automobile 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 twenty-four (24) hour urban vitality and shared parking infrastructure.

The following regulatory framework is intended to promote the mixed-use development pattern envisioned on Portland's peninsula. District-specific design standards and overlay maps can be found at the city planning and development office. (Ord. No. 201-05/06, 4-19-06)

**Sec. 14-295. Permitted uses.**

The following uses are permitted in the B-7 zone:

(a) *Commercial:*

1. Professional, business, and general offices;
2. Restaurants and other eating and drinking establishments;
3. Hotels, inns, and bed and breakfasts;

4. Craft and specialty shops, including the on-premises production of handcrafted goods;
5. Retail and retail service establishments, excluding those with fuel pumps;
6. Theaters, concert halls, dance halls, meeting facilities, and exhibition halls;
7. Banking services, excluding vehicular drive-up services (see also conditional use section, [c][3]);
8. Cabinetry and carpentry and mill working shops;
9. Indoor amusement and recreation centers;
10. Personal services;
11. Business services;
12. Billiard parlors;
13. Offices of business trades-people;
14. Miscellaneous repair services, excluding all types of automotive repair.
15. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-297 (prohibited uses);

In addition, building mounted telecommunications antennae, discs, transmitting and receiving equipment and the like shall adhere to the following criteria. Such roof-mounted equipment shall be:

- a. No taller than fifteen (15) feet above the highest structural steel of the building roof; and
- b. Set back no less than fifteen (15) feet from the building perimeter; and
- c. Integrated into the architecture of the

building as described in the City of Portland Design Manual.

16. Brew pubs and microbreweries without associated bottling facilities, and brewpubs and microbreweries with associated bottling facilities limited to five-thousand (5,000) bottles per year output;
17. Studios for performance or training in dance, music, or similar pursuits;
18. Electronic data storage;
19. Research and development including laboratories;
20. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, cabinet makers, dancers, graphic artists, and silk screeners and musicians;
21. Health clubs, martial arts personal health and wellness facilities;
22. Registered medical marijuana dispensaries.
23. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
  - a. All applicable provisions of Article V of this chapter shall be met.
  - b. Parking shall be provided in compliance with Division 20 of this Article.
  - c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
  - d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
  - e. The building shall meet the applicable

occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

24. Surface parking existing as of March 9, 2005 and in continuous existence thereafter, including the reorganization of parking spaces and maneuvering aisles. This section shall apply to surface parking accessory to a principle use and a parking lot as a principal use. Existing surface parking that does not comply with the standards of sec. 14-299 (f) may continue, provided that any modifications to the site layout, development constituting a site plan, or building renovations exceeding a value of thirty (30) percent of the assessed value of the building on file at the City of Portland Assessor's Office, shall require the parking to be upgraded to meet the standards of sec. 14-299 (f) to the extent practicable.
25. Surface parking created after March 9, 2005, provided that the spaces (and newly created maneuvering aisles) are thirty-five (35) feet or greater from a street and further that the standards below (a to c) are also met. This section shall apply to surface parking accessory to a principal use or a parking lot as principle use. The thirty-five (35) foot setback need not apply in the case of a property in which eighty (80%) of the property frontage has a building within ten (10) feet of the property frontage and or a driveway located perpendicular to the site. The parking area shall meet the standards of sec. 14-299 (f).
  - a. No surface parking shall be encumbered by lease or other use commitment to an off-site use exceeding twenty-four month term; and
  - b. For surface parking areas of twenty- thousand (20,000) square feet or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than twenty-four (24) month

terms; and

- c. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking or convert surface parking to structured parking as long as the replacement parking is located a reasonable distance from the associated use.

(b) *Residential:*

1. Attached housing including row houses, condominiums, two-family and multifamily dwellings but not planned residential unit developments;
2. Handicapped family units;
3. Lodging houses;
4. Combined living/working spaces, including but not limited to artist residences with studio space;

(c) *Public:*

1. Utility substations, including wastewater collection and pumping stations, transformer stations, telephone electronic equipment enclosures, electric transmission and distribution substations and other similar structures, provided such facilities occupies up to one-hundred (100) square feet (see also conditional use section);
2. Museums, art galleries, and educational exhibition space;
3. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;
4. Pedestrian and multi-use trails;
5. Emergency or safety facilities;
6. Municipal offices;
7. Active recreation parks and facilities, including

but not limited to ball fields, skateboard parks,  
and basketball courts.

(d) *Institutional:*

1. Public or private schools;
2. Medical and mental health clinics but not methadone or other controlled substance addiction treatment centers;
3. Places of assembly;
4. Colleges, universities, or trade schools;
5. Governmental buildings and uses;
6. Nursery and pre-schools, kindergartens, and child day care facilities or home babysitting services;
7. Educational, research, and laboratory facilities;
8. Adult day care center.

(e) *Other:*

1. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. All drive-up services for all retail or drive-up repair facilities are prohibited except that bank drive-up services, where permitted, area conditional use.
2. Intermodal transportation facilities.
3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 201-05/06, 4-19-06; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 240-10/11, 6-6-11; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12)

**Sec. 14-296. Conditional uses.**

(a) The following uses shall be permitted as conditional uses in the B-7 zone as provided in section 14-474 (conditional uses),



provided that, notwithstanding section 14-474 (a) or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority:

1. *Commercial use:*

- a. Meeting, convention and exhibition halls limited to a total of twenty-five thousand (25,000) gross square feet of interior floor area.
- b. Wholesaling, providing that the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of the facility occupies a building gross floor area of less than fifteen thousand (15,000) square feet.
- c. Drive-up banking provided that:
  - i. The drive-up is accessory to a banking service occupying a minimum floor area of four thousand (4,000) square feet; and
  - ii. The drive-up is attached to or included within a building with a minimum floor area of twenty thousand (20,000) square feet; and
  - iii. All drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street right-of-way line; and
  - iv. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicular or pedestrian circulation on adjoining streets; and
  - v. Drive-up vehicle circulation shall not be located between the building and any adjacent public streets; and
  - vi. The drive-up shall be limited to two vehicle drive-up lanes; and

- vii. The location of any drive-up shall be limited to the geographic area between Somerset Street/I-295/Franklin Arterial/Forest Avenue.
- d. The expansion of automotive repair facilities existing as of March 9, 2005, but in no case shall such expansion over the life of the building exceed fifty percent (50%) of the gross floor area existing on March 9, 2005.

2. *Industrial uses:*

- a. High technology manufacturing of biotechnology, pharmaceutical, and nanotechnology products, including accessory warehousing, provided that:
  - i. A minimum of one-third of the total square footage devoted to manufacturing is 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; and
  - ii. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary; and
  - iii. 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 six-hundred (600) feet of the principle use referenced above.
- b. Breweries including associated bottling activities;
- c. Bakeries, coffee roasters, and commercial kitchens having no retail sales within the principal structure;
- d. Printing and publishing establishments having no retail sales within the principal structure;
- e. Machine and tool and die shops;

All industrial uses listed above must also conform to the following additional requirements. Where redundant or contradictory performance standards exist, the more restrictive standard applies:

- a. Glare, radiation, fumes, noise or smoke shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries; and
  - b. The building footprint devoted to industrial use shall not exceed fifteen thousand (15,000) square feet of contiguous building space except for uses contained in 14-296(2)(a); and
  - c. The use shall be operated within a completely enclosed structure; and
  - d. No materials or wastes shall be stored outside; and
  - e. Truck loading and access shall be located in the rear or side yard where possible; and
  - f. Industrial uses shall conform to the performance standards of the I-L zone; and
  - g. Industrial uses shall conform to the B-7 mixed development district design standards.
3. *Structured parking provided that:*
- a. Parking structures located in the B-7 zone shall adhere to the following conditions:
    - i. The first floor of any parking structure shall contain one or more permitted uses (not conditional uses) found in §14-295 along all primary street frontages (excluding frontage dedicated to entrances, lobbies, and stair towers). Such first floor space shall be provided with a minimum of nine (9) foot floor to ceiling clearance height and a minimum twenty-five (25) foot depth (measured from the exterior building wall); or

- ii. The parking structures shall be set back at least thirty-five (35) feet from the primary street right-of-way. The land located between the parking structure and the street right-of-way may not be occupied by surface parking, and shall be designated for future use development. Such land between the garage and the street shall not by lease or other prohibition be encumbered against future development. The land shall be provided with all stubbed utilities and other provisions needed to accommodate further development; or
  - iii. The parking structures shall be designed with a façade (to a height of the first two floors) that enhances the pedestrian experience as described in the City of Portland B-7 bayside design standards.
4. *Utility substations including wastewater collection and pumping stations, water pumping stations, transfer stations, telephone electronic equipment enclosures, electrical transmission and distribution substations and similar structures larger than one-hundred (100) square feet of floor area are permitted provided the following standards are met:*
- a. Notwithstanding sec. 14-298 (maximum setback) utility substations shall be setback no less than thirty-five (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 thirty-five (35) foot setback is met along Marginal Way; and
  - b. The applicant demonstrates that the structure is as small in size as practicable; and
  - c. The remainder of the lot not consumed by the utility substation and its related access; and shall be designed and designated for future development; and
  - d. The substation equipment is fully enclosed within a structure.

5. *Buildings in the bayside gateway urban height district A greater than one-hundred twenty-five (125) feet but no more than one-hundred sixty-five (165) feet in height provided that:*
  - a. 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
  - b. Portions of such buildings higher than one hundred twenty-five (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 at least to the extent that the ratio of building height to width of adjacent streets, trails and open spaces is equivalent to 1.5 to 1 except that the Planning Board may modify this requirement as provided for in Section 14-526(d)(9)(viii); and
  - c. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least ten (10) percent of the building lot area; and
  - d. 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 ten (10) percent open space requirement. Buildings over one hundred and twenty-five (125) feet in height that are being reviewed as separate phases of a Master Development plan shall be entitled to meet the ten (10%) percent open space requirement of Section 14-296(a)(5)(c) in aggregate for all such buildings over one hundred and twnty-five (125) feet in height, provided that the open space shall not fall below ten (10%) percent at any built phase or combination of built phases; and

- e. Such development shall comply with all other zoning requirement and B-7 urban design standards as required by this article.

(b) The following use shall be permitted only upon the issuance of a conditional use permit subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:

1. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
  - a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
  - b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
  - c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
  - d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and
  - e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of

any part of the temporary wind anemometer tower; and

- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

2. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 201-05/06, 4-19-06; Ord. 29-09/10, 8-3-09, emergency passage; Ord. No. 240-10/11, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 175-12/13, 4-22-13)

**Sec. 14-297. Prohibited uses.**

Uses which are not enumerated as permitted or conditional uses in the B-7 zone are prohibited. Prohibited uses include, without limitation:

- (a) Ground-mounted telecommunication towers, antennas, discs, transmitting and receiving equipment and the like;
- (b) Waste, scrap, and/or byproduct storage and processing facilities;
- (c) Major or minor auto service stations including all

types of automotive repair except that automotive repair facilities existing as of March 9, 2005 are permitted;

- (d) Drive-up facilities, except banking drive-up services, as allowed in the conditional use section 14-296.
  - (e) Major telecommunication substations over five-thousand (5000) square feet.
- (Ord. No. 201-05/06, 4-19-06)

**Sec. 14-298. Dimensional requirements.**

In addition to the provisions of article III, division 25 of this code, lots in the B-7 mixed use urban district zone shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Yard dimensions:*

1. Minimum yards in the B-7 zone:

*Front setback:* None required except as provided in 2 below.

*Side setback:* Non required.

*Rear setback:* None required.

2. *Maximum street setback:* 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 setbacks contained herein. The following maximum street setbacks shall otherwise apply in the B-7 zone:

- a. Ten (10) feet. The setback can be increased more than ten (10) feet if all of the conditions below are met:



- i. Seventy-five (75) percent of the total building wall length of an individual building facing the abutting streets is setback no greater than ten (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 is not used for surface parking.
- b. For a corner lot having frontage on two (2) 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 free-standing 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.
- c. In the case of a lot having frontage on two (2) 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 (3) 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).
- d. In the case of a lot in which a minimum seventy-five (75) percent of the total lot frontage has a building within ten (10) feet of the street, other buildings may be

located on the lot more than ten 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.

- e. 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 fifty (50%) of the building wall(s) abutting street(s) is within 20 feet of the street.
  - v. Additions to parking garages existing as of March 9, 2005.
- f. Additions to buildings existing as of March 9, 2005 that re 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 fifty percent (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 Sec. 14-298(c)(2)(e).

- g. 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 fifteen (15) feet nor shall the maximum setback exceed twenty (20) feet. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.
  - h. 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.
- (d) Minimum length of building wall required to be located long street frontage of lot except that additions to and relocations of designated historic structures or structures determined to be eligible by the historic preservation committee shall be exempt from this subsection.
- 1. Minimum seventy-five percent (75%) of lot street frontage within ten (10) feet of the street; or
  - 2. Minimum twenty-five percent (25%) of building perimeter within ten (10) feet of the street.
- (e) *Maximum building lot coverage:* One-hundred percent(100%).
- (f) *Maximum residential density:* None
- (g) *Maximum building height:* As detailed on the bayside height overlay map on file in the planning and development department office.
- (h) *Minimum building height:* Newly constructed buildings

shall have the required minimum of floors as provided by the bayside height overlay map within fifty (50) feet of any street frontage. Such floors shall be occupiable or habitable and above the average grade of the abutting street.

This minimum floor provision 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.
4. Public transportation facilities.
5. Additions to buildings existing as of (March 9, 2005) provided that the cumulative additions since (March 9, 2005) does not exceed fifty percent (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.
8. Portions of buildings more than fifty (50) feet from the street line.

(Ord No. 201-05/06, 4-19-06; Ord. No. 240-10/11, 6-6-11)

**Sec. 14-299. Performance standards.**

All uses in the B-7 mixed development district zone shall comply with the following standards. Standards 14-299(a), (f), (j), (m), (n) and (o) below shall be reviewed by the Planning Authority.

- (a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least six feet in height. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. 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 forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area. All dumpsters shall be screened on all four (4) sides by a minimum six (6) foot high solid fence or shall otherwise be fully enclosed as approved by the planning board or the planning department.

(b) *Noise:*

1. *Definitions:*

- a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.
- b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with duration of less than one (1) second.

2. *Measurement:* 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 four (4) feet above the ground surface. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (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 sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ<sub>1</sub>).

3. *Maximum permissible sound levels:* The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as follows:
  - a. Sixty (60) dBA between the hours of 7:00 a.m. and 10:00 p.m.
  - b. Fifty (50) dBA between the hours of 10:00 p.m. and 7:00 a.m., as measured at or within the boundaries of any residential zone.

In addition to the sound level standards established above, all uses located within this zone shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sound cannot be prevented, to minimize the impact of such sounds in residential zones.

4. *Exemptions:*
  - a. 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 in subsection (a)3 of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day shall not exceed fifty (50) dBA.

- b. The following uses and activities shall also be exempt from the requirements of subsection (a)3 of this section:
  - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
  - ii. Traffic noise on public roads or noise created by airplanes and railroads.
  - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
  - iv. Emergency construction or repair work by public utilities , at any hour.
  - v. 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 parades, sporting events, and fireworks displays.
- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.
- (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) *Storage of vehicles:* Outdoor storage of any unregistered automotive vehicles on the premises for more than ten (10) days, and outdoor storage of any used automotive tires on the premises shall not be permitted.
- (f) *Off-street parking and loading:* Off-street parking is required as provided in division 20 (off-street

parking) of this article. Division 21 (off-street loading) of this article shall not apply. Surface parking shall meet the following standards:

1. None of the spaces shall occupy all or a portion of a sidewalk within a street right-of-way.
  2. Driveway entrances shall meet the City of Portland Technical Manual standards.
  3. The parking area shall meet the landscape and buffer standards of the City of Portland Technical and Design Manuals.
- (g) *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 division 26 and/or division 26.5
- (h) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.
- (j) *Materials or wastes:* Any permitted 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 one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. Any areas used for permitted outdoor storage of materials shall be screened from view of any adjoining properties and public rights-of-way. NO outdoor storage shall be permitted between the front of any building on the site and the street.
- (k) *Odor:* Uses in the B-7 zone shall adhere to the odor



regulations of the IL zone.

- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty percent (40%) or number two (2) on the ringelman chart.
- (m) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or surface drain, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or the harbor, 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.
- (n) *Lighting:* All 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 and as otherwise governed by the site lighting standards of the City of Portland Technical Manual.
- (o) *Building entrances:* All buildings shall have a minimum of one (1) public pedestrian entrance facing the street frontage of the lot. Such building entrances shall also be reviewed under the B-7 bayside design standards.

(Ord. No. 201-05/06, 4-19-06; Ord. No. 240-09/10, 6-21-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 140-10-11, 6-6-11)

DIVISION 17.5. EASTERN WATERFRONT PORT ZONE\*

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**\*Editor's Note-** Order No. 297-05/06 adopted on September 18, 2006, implemented a new Eastern Waterfront Port Zone for the Maine State Pier and Portland Ocean Terminal. The proposed changes for the Portland Ocean Terminal and the Maine State Pier would allow for a wider range of uses for the piers and properties of the Portland Ocean Terminal.  
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**Sec. 14-300. Purpose.**

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

(a) Notwithstanding any other provision of this article, adult business establishments shall be permitted only in the B-2 and B-3 zones, provided that such establishments, but for this division, would otherwise be permitted therein, and subject to the following special requirements:

1. Such establishment shall be at least one thousand (1,000) feet from any other adult business establishment, and at least five hundred (500) feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects;
2. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

(b) Except as expressly provided herein, nothing in this division shall be construed to waive or otherwise affect any other provision of this article.

(Ord. No. 187-81, § 602.16A(3), 9-21-81; Ord. No. 356-82, 1-18-82; Ord. No. 54-85, 6-17-85; Ord. No. 164-97, § 11, 1-6-97)

**Sec. 14-376. - Sec. 14-380. Reserved.**

DIVISION 23. NONCONFORMING USE AND NONCONFORMING BUILDINGS

**Sec. 14-381. Continuation.**

Any lawful use of buildings, structures, premises or parts thereof, existing on June 5, 1957, and made nonconforming by the provisions of this article or any amendment thereto may be continued although such use does not conform with the provisions of this article or amendment thereto.

(Code 1968, § 602.17.A)

**Sec. 14-382. Increase in nonconforming use of structure or alterations to nonconforming structures limited.**

(a) A lawful nonconforming non-residential structure may be maintained, repaired, or reconstructed in kind within a one (1) year period or within a two (2) year period for a nonconforming residential structure, but no alterations, modifications or additions shall be made to it, except as provided in this division.

(b) A building whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the degree of nonconformity.

(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 such building, unless such part was clearly arranged and designed for such nonconforming use prior to June 5, 1957, or 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 that may not technically be in violation but 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) Alteration, modification or addition may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity. 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 subsection (f) of this section.

(e) Except as expressly provided herein, any alteration, modification or addition permitted under this section shall be in compliance with all other applicable sections of this chapter. Nothing within this section shall be construed to permit an increase in the number of nonconforming 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.

(f) *Expansions.* A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with the sections below.

1. 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 thirty (30%) percent or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of section 14-382, 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 thirty (30%) percent in floor area and volume since that date.

2. 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 (3) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with section (f) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
3. 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 (Rules), or that a new system can be installed in compliance with state law, such rules, and all applicable sections of this Code. 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, 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:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than fifty (50%) percent of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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.

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

(Code 1968, § 602.17.B; Ord. No. 271-89, 2-22-89; Ord. No. 96-89, § 2, 9-18-89; Ord. No. 15-92, § 26, 6-15-92; Ord. No. 284-99, §1, 5-17-99, enacted as an emergency; Ord. No. 296-08/09, 6-15-09; Ord. No. 139-12/13, 2-4-13)

**Sec. 14-383. Extension of nonconforming use of land prohibited.**

A lawful nonconforming use existing on premises outside of a building shall not be extended to or allowed to occupy any part or parts of such premises outside of the building.

(Code 1968, § 602.17.C; Ord. No. 354-85, § 3, 1-7-85)

**Sec. 14-384. Change of nonconforming use.**

A lawful nonconforming use in a structure designed for a use permitted in the zone in which it is located shall not be changed to any use other than a use permitted in the zone in which the structure is located. When a nonconforming use in such a structure has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this section, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a permitted use shall have commenced and continued for a period of seven (7) days. Any change of use in violation of this division shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use in a structure not designed for a use permitted in the zone in which it is located 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 residence zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
- (d) In a residence zone, from any use permitted in any other residence zone to any use permitted in a more restricted residence zone. For the purpose of this subsection, an R-6 zone shall be deemed the least restricted and an R-2 zone shall be deemed the most restricted, with the intervening zones restricted in order of zone number.

**Sec. 14-385. Restoration or reconstruction within an existing footprint of damaged nonconforming structure.**

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

- (a) The restoration or reconstruction is of a building which is nonconforming only as to land area, setbacks or any other dimensional requirements; and
- (b) Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and will not create a new nonconformity; and
- (c) Restoration or reconstruction occurs within one (1) year for a nonconforming non-residential structure, or two (2) years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental. Note that for buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of nonconforming structures; and
- (d) Restoration or reconstruction necessitated by decay must be completed within one (1) year of the demolition of the building or the commencement of the restoration or reconstruction, whichever occurs first; and
- (e) Any reconstruction, under this provision, in the residential 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 Planning and Development Design Manual; and
- (f) A nonconforming building located in the R-6 which is destroyed by fire, explosion, flood, riot, act of the enemy, or accident may be rebuilt under the small residential lot development provisions of the R-6 zone as if the lot were vacant as of January 1, 2005 and such reconstruction shall meet the setback requirements

contained therein to the extent practicable; otherwise the building shall be reconstructed within the footprint of the previously existing building such that any nonconformity will not be enlarged.

For the purpose of this section, the footprint of a building is the perimeter of the foundation supporting a structure.

(Code 1968, § 602.17.E; Ord. No. 89-88, 7-19-88; Ord. No. 284-99, §2, 5-17-99, enacted as an emergency; Ord. No.254-05/06, 6-5-06; Ord. No. 61-07/08, 10-1-07; Ord. No. 240-09/10, 6-21-10; Ord. No. 139-12/13, 2-4-13)

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**\*Editor's note**—Ord. No. 89-88, adopted July 19, 1988, amended this section to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 89-88.

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**Sec. 14-386. Discontinuance of use of land for ninety days.**

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

(Code 1968, § 602.17.G)

**Sec. 14-387. Discontinuance of use of property.**

If a legally nonconforming non-residential use is discontinued for a period of twelve (12) months or if a legally nonconforming residential use is discontinued for a period of twenty-four (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 article. In cases of foreclosure or similar situations involving a legally nonconforming residential structure, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five (5) years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. A nonconforming use of land which is incidental or accessory to such nonconforming structure shall be considered as being discontinued at the same time as the nonconforming use of the structure. Note that for buildings in SHoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties.

(Code 1968, § 602.17.F; Ord. No. 499-74, § 9, 8-19-74; Ord. No. 139-12/13, 2-4-13)



**Sec. 14-388. Reserved.**

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\*Editor's Note—Per Council Order 125-09/10 passed on January 4, 2010  
Section 14-388 (Nonconformity as to the area of dwelling) was repealed in its  
entirety.  
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**Sec. 14-389. Nonconformity as to off-street parking.**

A building or structure which is nonconforming as to the requirements for off-street parking shall not be enlarged or altered to create additional dwelling units, or seats as in the case of places of public assembly, or floor area as in the case of industrial, business, manufacturing, institutional or recreational buildings, or accommodations as in the case of hotels, tourist homes and tourist courts, unless required off-street parking is provided for such addition or enlargement.  
(Code 1968, § 602.17.I)

**Sec. 14-390. 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 this article for both the addition or enlargement and the original building or structure.  
(Code 1968, § 602.17.J)

**Sec. 14-391. 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. This provision shall not apply to rooming units.

(b) Approval by Zoning Administrator.

1. Application. Application for validation of such nonconforming dwelling units shall be on a form provided by the Division of Housing and Neighborhood Services, Inspection Services Office. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by: (i) 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 (ii) 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 Zoning Administrator as authorized herein, the Zoning Administrator must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 1995, 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 the National Fire Protection Association Life Safety Code (§16-1) and the National Fire Protection Association 1: Fire Prevention Code (§10-16), as amended.
4. Each of the nonconforming dwelling units complies with provisions of the City's Housing Code or can be made to conform with, as amended, including, but not limited to, the requirements of §6-110, Minimum Standards for Space and Occupancy and §6-111, Minimum Plumbing Standards, and §6-112 Minimum Ventilation Standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5, R-6 or R-7 Zones; or the B-1, B-1(b), B-2, B-2(b) or B-3 Zones.
6. 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, such as the Portland Director), that the conditions of subsections c(1), C(2), c(3), c(4), or c(5) can be met, the Zoning Administrator 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 Zoning Administrator will provide both the owners of abutting properties as well as the owners of property situated within 300 feet of the structure of the essential information contained in the application, along with a notice that they may object to the Zoning Administrator's acting on the application and require the applicant to appeal to the Board of Appeals. The notice shall be in conspicuous type and advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Zoning Administrator within ten (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 Zoning Administrator. The Zoning Administrator shall promptly notify the applicant of receipt of the objection, that the Zoning Administrator 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.

1. The Zoning Administrator may approve the application, provided: (i) the evidence presented satisfies all of the requirements of this section; (ii) the Office of Inspection Services and Fire Prevention Bureau have certified that the nonconforming units conform with or can be made to conform with the applicable codes; and (iii) no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Zoning Administrator.
2. Upon approval of the application and receipt of an additional fee in the amount of \$75.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Zoning Administrator will issue a certificate of occupancy.

- (f) Disapproval of Application. In the event the application is not approved by the Zoning Administrator 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 Zoning Administrator 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 section as an application for a conditional use (§14-474) applying the standards applicable to conditional uses as well as the requirements of this section.
- (h) Dimensional and Parking Requirements. In making decisions under this section neither the Zoning Administrator 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.
1. The provisions of this section shall not apply to rooming units (§14-47), but shall apply to efficiency apartments (§6-110(b)).
  2. 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 section as legal, nonconforming uses, except in strict compliance with each requirement of this section.
- (j) Prior Judicial and Administrative Action. Decisions of any court or administrative body, including but not limited to, the Zoning Administrator, the Planning Board or the Board of Appeals made prior to the effective date of this section and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this section.

(Ord. No. 153-03/04, 02/23/04)

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**\*Editor's note**—Section 4 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed the pre-2004 version of § 14-391, relative to the Board of Appeals permitting temporary nonconforming uses, which derived from Code 1968, § 602.17.K.  
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**Sec. 14-392. - Sec. 14-400. Reserved.**

DIVISION 24. USE REGULATIONS AND EXCEPTIONS

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.

- (k) *Lighting:* All 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.  
(Ord. No. 164-97, § 6, 1-6-97)

**Sec. 14-237. thru 14-245. Reserved.**

DIVISION 14. I-M, I-Ma AND I-Mb INDUSTRIAL ZONES\*

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**\*Editor's note**—Ord. No. 164-97, § 7, passed Jan. 6, 1997, repealed div. 14, §§ 14-246--14-251 of this article and enacted new provisions as herein set out. Formerly, such provisions pertained to the I-2 and I-2b industrial zones and derived from §§ 602.12.A-602.12.F of the 1968 Code as amended by Ord. No. 499-74, § 5, adopted Aug. 19, 1974; Ord. No. 334-76, §§ 2, 3, adopted Jul. 7, 1976; Ord. No. 234-88, adopted Feb. 1, 1988; Ord. No. 330-90, § 2, adopted May 7, 1990; Ord. No. 15-92, § 18, adopted Jun. 15, 1992; Ord. No. 193A-93, § 2, adopted Feb. 17, 1993; and Ord. No. 154-96, § 15, 12-16-96.  
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**Sec. 14-246. Purpose.**

The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist.

The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.

The I-M, I-Ma and I-Mb industrial zones are intended 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 the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.

(Ord. No. 164-97, § 7, 1-6-97)

**Sec. 14-247. Permitted uses.**

The following uses are permitted whether provided by private or public entities in the I-M moderate impact industrial zone, the I-Ma and the I-Mb zone:

- (a) Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, musical instruments, precision instruments, watchmakers, toys and sporting goods, wood products, jewelry, assembly of electrical components, tool and die shops and the packaging of food.
- (b) Research and development and back office uses.
- (c) Building contractors and construction and engineering services.
- (d) Wholesale trade.
- (e) Warehousing and distribution facilities, including outdoor storage.
- (f) Intermodal transportation facilities and transportation terminals.
- (g) Repair services, including all types of automotive repair services.
- (h) Indoor amusement or recreational centers.
- (i) Plant and tree nurseries, including associated recycling activities.
- (j) Lumber yards.
- (k) Commercial kitchens or other food preparation, provided that the food is not prepared for service on the

premises.

- (l) Recycling facilities, provided that all storage and recycling operations occur within a fully enclosed structure.
- (m) Food and seafood processing for human consumption.
- (n) Municipal or regional solid waste disposal facilities, provided that all disposal activities are carried out within an enclosed structure.
- (o) Day care facilities, provided that:
  - 1. Proof of licensing with the Maine Department of Human Services is submitted to the city prior to issuance of a certificate of occupancy;
  - 2. *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article;
  - 3. Off-street loading shall be located in a safe location;
  - 4. There shall be an on-site outdoor play area with seventy-five (75) feet of land area per child; and
  - 5. The outdoor play area shall be fenced and screened with a landscaped buffer.
- (p) Dairies.
- (q) Utility substations.
- (r) Correctional prerelease facilities for up to twelve (12) persons, plus staff, serving a primary clientele of parolees or persons in correctional prerelease programs, provided that:
  - 1. No correctional prerelease facility shall be located within one thousand (1,000) feet of another, as measured in a radius from the center of the lot;

2. Such facilities shall not be permitted in the I-Ma or I-Mb zones;
  3. 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 (1) staff person for every ten (10) residents or fraction thereof; and
  4. The facility shall provide twenty-four-hour supervision of program participants.
- (s) Incidental accessory uses.
- (t) General, business and professional offices.
- (u) Storage lots for towed or impounded vehicles, provided that such lots are located at least 300 feet from any residential zone or existing conforming residential use. For the purposes of this section, "existing conforming residential use" does not include a legally nonconforming residential use as described in division 23 of this chapter.
- (v) Registered medical marijuana cultivation facilities.
- (w) Wind energy systems, as defined and allowed in Article X, Alternative Energy.
- (x) Street vendors licensed pursuant to Chapter 19.

(Ord. No. 164-97, § 7, 1-6-97; Ord. No. 137-97, § 3, 11-3-97; Substitute Ord. No. 72-01/02, § 1, 10-1-01; Ord. No. 97-06/07, 11-20-06; Ord. No. 240-09/10, 6-21-10; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. No. 33-11/12, 1-18-12; Ord. No. 10-12/13, 7-16-12)

**Sec. 14-248. Performance based uses.**

Uses not expressly permitted as provided in section 14-247 or expressly prohibited in section 14-249 may be permitted if they meet the following conditions and standards:

- (a) The proposed development is consistent with the purposes of this zone.



(b) 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, odor, and any other potential negative impacts of the proposal.

(Ord. No. 164-97, § 7, 1-6-97)

**Sec. 14-248.1. Conditional uses.**

The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:

- (a) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
1. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
  2. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
  3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
  4. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding,

icing impacts and maintenance; and

5. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and
6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
7. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
8. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(b) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

**Sec. 14-249. Prohibited uses.**

Uses that are not expressly enumerated herein as permitted uses are prohibited. Those uses that are prohibited shall include, but are not limited to, the following:

- (a) Residential uses.
- (b) Retail trade that is not ancillary to a permitted use.

- (c) Restaurant uses.
- (d) Junk yards.
- (e) Amusement parks.
- (f) Crematoriums.
- (g) Mining and drilling operations.
- (h) Refining of petroleum or its products, including tar distillation.
- (i) Petroleum tank farms.
- (j) Commercial excavation of building or construction materials other than in the normal course of building or construction or site preparation.
- (k) Distillation of bones; fat rendering; glue, soap, or fertilizer manufacture.
- (l) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse.
- (m) Stockyard or slaughtering of animals.
- (n) Smelting of iron, copper, tin, zinc, or any other ore.
- (o) Manufacture of primary chemicals.
- (p) Manufacture of cement, lime, gypsum, or plaster of paris.
- (q) Manufacture of bleaching powder, matches, paper, or rubber.
- (r) Manufacture of explosives or fireworks. Bulk storage of explosives or fireworks is also prohibited unless such storage is done as an accessory use to a permitted use located on the same site and all required state and local permits have been acquired.
- (s) Tanning, curing or storage of raw hides or skins.

- (t) Coal distillation or coke ovens.
- (u) Creosote treatment.
- (v) Drop forging.
- (w) Steel mills or furnaces.
- (x) Coal- or coke-fired kilns.
- (y) Used tire storage.
- (z) Extraction of raw materials.
- (aa) Concert halls or dance halls.
- (bb) Banquet facilities.

(Ord. No. 164-97, § 7, 1-6-97; Ord. No. 137-97, § 4, 11-3-97; Substitute Ord. No. 72-01/02, § 2, 10-1-01)

**Sec. 14-250. Dimensional requirements.**

(a) *Minimum lot size:*

1. Correctional prerelease facilities: Ten thousand (10,000) square feet.
2. Other uses: None.

(b) *Maximum impervious surface ratio:* I-M and I-Ma zone: Seventy-five (75) percent. I-Mb zone: One hundred (100) percent.

(c) *Maximum building height:* I-M and I-Mb zones: Seventy-five (75) feet. I-Ma zone: Forty-five (45) feet.

(d) *Minimum side yards:* Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone.

Principal and accessory structures in the I-Mb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.