

Chapter 14 LAND USE*

***Cross reference(s)**--Buildings and building regulations, Ch. 6; parks, recreation and public buildings, Ch. 18; sewers, Ch. 24; streets, sidewalks and other public places, Ch. 25; vegetation, Ch. 29.

State law reference(s)--Planning, zoning and development, 30 M.R.S.A. Sec. 4501 et seq.

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ARTICLE I. IN GENERAL

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ARTICLE II. PLANNING BOARD*

*Cross reference(s)--Administration, Ch. 2; boards generally, § 2-31 et seq.; limitation on term of service on boards, commissions, § 2-32 et seq.

Sec. 14-16. Created.

There is hereby created a planning board.
(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-17. Composition.

There shall be a planning board of seven (7) members. Members of the planning board shall be residents of the city and shall not be officers or employees of the city or any other agencies or department.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-18. Appointment; terms.

The members of the planning board shall be appointed by the city council for terms of three (3) years. Such members shall serve until their successors are duly elected and qualified. Such terms shall be staggered so that the terms of not more than three (3) members shall expire in any calendar year; providing, however, such service shall not extend to over one hundred twenty (120) days after expiration of their term.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79; Ord. No. 277-83, 11-7-83)

Sec. 14-19. 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.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-20. 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.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-21. Compensation.

Members of the planning board shall serve without compensation.

(Code 1968, § 601.1; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 149-79, § 1, 8-6-79)

Sec. 14-22. Chair and vice-chair.

(a) The members of the planning board shall annually elect one (1) of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their number as vice-chair. The chair may administer oaths. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross-examination at hearings.

(b) 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 from time to time be provided by the rules of the planning board.

(Code 1968, § 601.2; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-23. Staff secretary; minutes, public records.

The planning director shall designate a member of his or her staff who shall serve as staff secretary of the planning board and attend all of its proceedings. The staff secretary 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.

(Code 1968, § 601.3; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-24. 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 (4) members, being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned from time to time for a period not exceeding three (3) weeks at any one time. The staff secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

(Code 1968, § 601.4; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 242-76, 5-17-76)

Sec. 14-25. Meetings, hearings and procedures.

(a) 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 (4) members of the board or at the request of the city council. Except as otherwise provided in section 14-26, 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.

(b) 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 staff secretary of the board 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 forty-five (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.

(Code 1968, § 601.5; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75, 12-15-75; Ord. No. 242-76, 5-17-76; Ord. No. 78-89, 8-7-89)

Sec. 14-26. Workshop or informational meetings.

Informal meetings or workshops of the planning board or any of its committees may be held at the call of the board or committee chairperson, as the case may be, for the presentation of information by the planning director, his or her staff, the applicant or others. These meetings will be open for public comment

according to the Rules of the Portland planning board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. (Freedom of Access Act), shall be informational only and shall not be deliberative in nature; shall not be used by the board or committee for the weighing of positions or reasons for or against a proposition; and shall not be used by the board or committee for the formulation of tentative or final decisions on any matter.

(Code 1968, § 601.6; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 227-01, 4-2-01)

Sec. 14-27. Record and decisions.

(a) The minutes of the staff secretary, and the transcript if one (1) is made, and all exhibits, papers, applications and requests filed in any proceeding before the planning board and the decision of the board shall constitute the record.

(b) 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.

(c) The staff secretary shall mail notice of any decision of the planning board to the applicant and any designated interested parties within five (5) business days of such decision.

(Code 1968, § 601.7; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-28. 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 to disqualify the member 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 disqualified.

(Code 1968, § 601.8; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-29. 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.

(Code 1968, § 601.9; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-30. 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, which plan, upon its adoption by the city council, shall be known as the "Land Development Plan of the City of Portland";
- (b) To prepare and recommend to the city council changes in and amendments to the land development 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 disapprove level III site plans, subdivisions and conditional use applications;
- (e) To hear, review and approve or deny applications for subdivision approval;
- (f) To hear, review and offer its recommendations to the city council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance, and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance;
- (g) To review and offer its recommendations to the city council on public projects;
- (h) To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- (i) To prepare and offer its recommendations to the city council with regard to the city's annual capital improvements program;

- (j) To review and approve, conditionally approve, or disapprove urban renewal plans;
- (k) Upon reasonable request, to make its special knowledge and expertise available to any official, department, board or agency of the city, county, state or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- (l) To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;
- (m) To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper; provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes from time to time by the city council;
- (n) To hear, review and offer its recommendations to the city council on petitions for street vacations and discontinuances.
- (o) To hear, review and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the planning authority.

(Code 1968, § 601.10; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 86-88, 7-19-88; Ord. No. 137-03/04, 1-21-04; Ord. No. 278-09/10, 7/19/10)

***Editor's Note**--Ord. No. 86-88, adopted July 19, 1988, amended this section by adding subsection (14) 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. 86-88.

Sec. 14-31. Committees.

The chair of the planning board shall from time to time 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.

(Code 1968, § 601.11; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75)

Sec. 14-32. Notice.

(a) Applications:

1. *Level I, level II and level III site plans.* All public notices will be sent according to the section 14-525 of article V (site plan) of this chapter.
2. *Subdivision, Zoning Map Amendments.* When an application for subdivision or a request for a zoning map amendment is received or generated by the planning authority, it shall give a dated receipt to the applicant and shall notify, by mail, the following, where applicable.
 - a. All property owners within five hundred (500) feet of the proposed subdivision and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision. In addition, the planning authority shall notify a public drinking water supplier if the subdivision is within its source water protection area;
 - b. All property owners within five hundred (500) feet of the proposed subdivision or proposed zone change site, except that for subdivisions within industrial zones or proposed map amendments for a site within an industrial zone the notice range shall be one thousand (1000) feet;
 - c. All property owners within the limits of the proposed zoning map amendment and all property owners five hundred (500) feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be one thousand (1000) feet.

The notice hereunder shall include a brief description of the application, the address or location of the property involved and a telephone number at the City where additional information may be obtained. The cost of said notice shall be charged to the applicant.

(b) Workshops and hearings:

Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), the planning authority shall give notice of public workshops and hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such workshop or hearing, a brief description of the application and the address or location of the property involved. Where notice by mail is required, such notice shall be mailed at least ten (10) calendar days in advance of the workshop or hearing date by regular United States mail. The cost of said noticing shall be charged to the applicant.

1. Subdivision:

- a. *To the general public.* In the case of workshops and public hearings, notice as described above shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two (2) times, the date of the first publication to be at least ten (10) calendar days prior to the hearing.
- b. *To the applicant and the owners of the subject property, and other property owners;* In the case of workshops and public hearings, notice shall be sent by regular United States mail to the applicant, to the owner(s) of the subject property and to all owners of property located within five hundred (500) feet of the subject property, except that for subdivisions within industrial zones the notice range shall be one thousand (1000) feet.

2. Zoning Map Amendment:

- a. *To the general public:* Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), the notice of public hearing for zoning map amendments must be posted in the municipal office at least 13

days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least twelve days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing.

- b. *To property owners within the proposed area proposed for rezoning:* Except for notice of public hearings concerning conditional or contract zoning (which notice is governed by section 14-61), in the case of workshops and public hearings on zoning map amendments, notice shall be sent by regular United States mail to all property owners within the area proposed for rezoning and all property owners five hundred (500) feet beyond said area, except that rezoning to industrial zone designations the notice range shall be one thousand (1000) feet.

3. Zoning Text Amendment.

- a. *To the general public:* Notice of any zoning text amendment shall be published in a newspaper of general circulation in the City of Portland at least seven days prior to the public hearing on the proposed amendment.

(c) Required Neighborhood Meeting

An applicant for (a) the subdivision of five or more units or lots or (b) for level III site plan review or (c) a private applicant for rezoning that would permit a Level III development as defined in Section 14-523 (required approvals and applicability), shall conduct a neighborhood meeting according to section 14-524 of article V (site plan) of this chapter.

(Code 1968, § 601.12; Ord. No. 158-68, 5-6-68; Ord. No. 671-75, 12-15-75; Ord. No. 79-89, 8-7-89; Ord. No. 00-51, §1, 8-7-00; Ord. No. 227-01, 4-2-01; Ord. No. 278-09/10, 7-19-10; Ord. No. 25 11/12, 8-15-11)

Sec. 14-33. Public hearings.

Public hearings shall be held as required by the various statutes, codes and ordinances pursuant to which matters are brought before the planning board and shall be conducted in accordance with relevant state law, this code and the rules of the board.

Code 1968, § 601.13; Ord. No. 671-75, 12-15-75)

Sec. 14-34. - 14-45. Reserved.

ARTICLE III. ZONING*

***Editor's note**--Ord. No. 109-88, adopted July 19, 1988, provided that Ord. No. 79-88 through Ord. No. 99-88, all adopted July 19, 1988, which amended various sections within this chapter, "shall take effect immediately as an emergency, pursuant to Article II, § 8 of the Portland City Charter, to avoid a gap between the expiration of the moratorium ordinance previously controlling residential development and the implementation of the new development standards and map as adopted" and further provided that "notwithstanding the provisions of 1 M.R.S.A. § 302, this amendment and items 79 through 99 shall be applicable to applications for permits filed on or after July 19, 1988." Ord. No. 99-88 has not been set out herein but is on file in appropriate city offices. The specific amendments effected by Ord. No. 79-88 through Ord. No. 98-88 are too extensive to enumerate herein; for the specific disposition of such ordinances, see the Comparative Table following this Code.

It should be noted that the zoning ordinance, as set out in this article, does not include the text of conditional rezonings enacted as amendments to the zoning map adopted in § 14-49 herein.

Cross reference(s)--Ordinances pertaining to rezoning saved from repeal, § 1-4(13).

State law reference(s)--Zoning ordinances, 30 M.R.S.A. § 4962.

DIVISION 1. GENERALLY

Sec. 14-46. Purpose.

This article, made in accordance with a comprehensive plan, is enacted for the purpose of decreasing congestion in streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city. This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community.

(Code 1968, § 602.1.A)

Sec. 14-47. Definitions.

The following words shall be defined as set forth below for use in this article. Definitions set forth in the building code of the city shall apply to words not herein defined:

Accessory uses: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses.

Adult day care facility: A facility which provides a regular program of care and protection for persons over the age of sixteen (16), for consideration, for any part of the day.

Apartment: See "dwelling unit."

Apartment house: See "multifamily dwelling."

Arcade: A covered passageway, generally occurring at the street level of a building, running parallel and adjacent to the street or as a through-block pedestrian connection, which is intended to provide sheltered access to directly adjoining commercial or other uses. Arcades are provided physical definition by the regular placement of structural elements throughout their length which support enclosed building uses above.

Assembly: A joining together of completely fabricated parts to create a finished product.

Back office use: An office-related use providing support services to a primary or headquarter use, with minimal public visitation and no direct in-person sales or services to the general public. Back office uses may include data processing, or other clerical uses relying heavily on a telecommunications infrastructure and may also include support services to educational institutions or social service agencies as long as no direct in-person services to the general public are provided.

Bed and breakfast: A building in which more than two (2) but not more than nine (9) guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or

indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

Billboard: A structure, either freestanding or attached to a building, the surface of which is available for hire for advertising purposes.

Biotechnology: The use of biological processes, particularly cellular and molecular to solve problems and/or make useful products for applications in medicine, agriculture and environmental management.

Building, height of: The vertical measurement from grade, or the predevelopment grade on the islands, to the highest point of 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.

Business service: Establishments primarily engaged in rendering services to other business establishments on a fee or contract basis such as advertising, mailing services, building maintenance services, employment services, management and consulting services, protective services, personnel services and similar businesses.

Chemical-free night club: An alcohol-free commercial establishment that offers live entertainment, amplified music, and/or dancing, where the primary source of income for such alcohol-free commercial establishment is derived from the entertainment and/or any admission or cover charge.

Clinics: Any establishment where patients are admitted for examination and treatment by one (1) or more professionals such as, but not limited to, physicians, dentists, psychologists or social workers.

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.

Collector or arterial road: A roadway which is classified as a collector or minor, principal or other arterial by the federal functional road classification for Portland, Maine, a map of which is on file with the department of planning and urban development.

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 (1) 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.

Community Hall: A building or portion of an existing building built for institutional or other non-residential uses and 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. In the R-6 residential zone only, the building can also be used for a farmer's market pursuant to chapter 21 of this code and the requirements set forth therein.

Community living arrangements: A state approved, authorized, certified or licensed group home for eight (8) or fewer mentally handicapped or developmentally disabled persons.

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 (1) 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 fifty-five (55) years of age or older and their spouses and/or disabled persons and their spouses.

Day care facility: A facility which provides a regular program of care and protection for children under the age of sixteen (16), for consideration, for any part of the day.

Drinking establishment: Means and includes 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.

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

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

Dwelling: A building or portion thereof used exclusively for

residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes.

Dwelling, one-family: A detached building used exclusively for occupancy by one (1) family.

Dwelling, two-family: A single building containing two dwelling units used exclusively for occupancy by two (2) families living independently of each other.

Dwelling, multifamily: A building or portion thereof containing three (3) or more dwelling units.

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

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

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

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

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.

Fabrication: Manufacturing, excluding the refining or other initial processing of basic raw materials such as metal ores,

lumber or rubber. Fabrication relates to stamping, cutting, or otherwise shaping the processed materials into useful objects.

Family: Not more than sixteen (16) individuals living together in a dwelling unit as a single nonprofit housekeeping unit. A group occupying a hotel, fraternity house or sorority house shall not be considered as a family. The family may include necessary servants.

Family amusement centers: Any structure, open to the public, which may contain coin-operated games and similar entertainment and amusement devices.

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 as defined herein.

Floor area: A floor space enclosed by exterior or standard fire walls, exclusive of vent shafts and courts.

Floor area ratio: The proportion of total floor area in a development to the total land area. The ratio is calculated as follows:

$$\frac{8,000 \text{ square feet (total floor area)}}{20,000 \text{ square feet (total land area)}} = .040 \text{ floor area ratio}$$

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 (10) or more contiguous acres or of less than ten (10) 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 (10) acres or of less than ten (10) 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.

Gross area: Square footage of land area excluding areas of special flood hazard as defined in section 14-450.5 of this chapter.

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

Handicapped person: A person with a physical or mental impairment which substantially limits one (1) or more of such person's major life activities, a person with a record of having such an impairment, or a person who is regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. ' 802.

Health care practitioner: A professional providing medical, therapeutic or other services relating to the diagnosis, treatment or prevention of physical or psychological disabilities.

High impact industrial uses: 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.

Home occupation: A home occupation is a secondary and incidental use of a dwelling unit, conducted entirely within the dwelling unit by one (1) or more persons residing in the dwelling unit.

Hospital: An institution providing health services, primarily for in-patients, and medical or surgical care of the sick or injured, including as an integral part of the institution, such

related facilities as laboratories, out-patient 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. No owner operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined by this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hostel, hotel, inn, lodging house, motel or tourist home.

Hotel: A building used for more or less temporary occupancy of individuals who are lodged with or without meals, having ten (10) or more guest rooms. No owner, operator, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

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

Impervious surface ratio: The proportion of a site covered by impervious surfaces. Landscaping islands of strips of two hundred (200) square feet or less shall be included in the calculations as impervious surfaces. The ratio is calculated as follows:

$$\frac{5,000 \text{ square feet (impervious surfaces)}}{10,000 \text{ square feet (gross land area)}} = 0.50 \text{ impervious surface ratio}$$

Indoor amusement and recreation centers: Facilities which limit admission either to members or to persons paying an entrance fee and which offer one (1) or more of the following activities: indoor athletics, including exercise and practice facilities, or games of skill or games of chance licensed either by the city or by the State of Maine.

Inn: A building used for more or less temporary occupancy of individuals, who are lodged with or without meals, having ten (10) but no more than fifty (50) rooms. Guest rooms shall not contain separate kitchen facilities. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

Intermediate care facility: A facility which provides, on a regular basis, health-related care and services to 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.

Light manufacturing use: The fully enclosed assembly or fabrication of materials but excluding basic processes such as smelting, refining, distilling, forging, brewing, and similar processes involving converting raw materials to a finished or semifinished product.

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

Lodging house: A house, building or portion thereof containing two (2) or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

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 twenty-four (24) or more consecutive hours, to nine (9) 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; 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.

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

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

Low impact industrial uses: Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished

products from previously prepared material, including but not limited to the following: bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, 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 compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses because of the level of traffic generated, emissions levels, lighting and odors generated.

Major auto service station: A business selling gasoline, diesel or propane fuel, with more than two (2) pump islands or with a capacity to fuel more than eight (8) vehicles simultaneously or providing repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities.

Minor auto service stations: A business selling gasoline, diesel or propane fuel with not more than two (2) pump islands, provided that no more than a total of eight (8) vehicles may be fueled simultaneously. Repair services including but not limited to tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities shall be permitted provided that there shall be no more than two (2) service bays. Such businesses shall not include car washes or vacuums.

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 (2) 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 (1) or more

sections, which in the traveling mode are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

- (b) Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and regulations, meaning structures, transportable in one (1) 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.

Marina: 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.

Minor business: A business with not more than two (2) pump islands, provided that no more than a total of eight (8) vehicles may be fueled simultaneously. Such businesses shall not include car washes or vacuums. Repair services shall be permitted, provided that there shall be no more than two (2) service bays.

Motel: A building or group of attached or detached buildings containing guest rooms or dwelling units most of which have separate outside entrances and parking space hereby intended to be used principally by automobile transients for compensation. Motels include tourist courts, motor lodges or cabins. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

Multiple-component manufactured housing: Manufactured housing which is constructed and transported in two (2) 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.

Nanotechnology: The creation of functional materials, devices and systems through control of matter on the nanometer scale.

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. A neighborhood center is

10,000 square feet or less.

Net land area: Net land area, as set forth in sections 14-90, 14-120 and 14-130 of this article, shall be calculated by subtracting from gross area the square footage of the following:

- (a) **Reserved.**
- (b) Existing watercourses, as defined in this section, measured by the area between the top of the banks at the normal high water mark, as defined in this section.
- (c) **Reserved.**
- (d) Wetlands, as defined in this section;
- (e) **Reserved.**
- (f) Slopes of twenty-five (25) percent or greater. Where a slope of twenty-five (25) percent or greater was altered to less than twenty-five (25) percent within the two (2) years immediately preceding the submission of the application for development, such slope shall also be subtracted from the gross area;

Noncommercial 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 counted in computing 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 (10) 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.

Normal high water mark of inland waters: That line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups--water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups--upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rockslides, ledges, rapidly eroding or sloping banks), the normal high water mark shall be estimated, from places where it can be determined by the above method.

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

On-peninsula: Includes all land located south of I-295.

Off-peninsula: Includes all land located north of I-295.

Personal service: Establishments engaged in providing services involving the care of the person or his apparel, such as laundries, dry cleaning establishments, photographic studios, beauty and barber shops but not including commercial or industrial laundries.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high water line or within a wetland:

- (a) *Temporary:* Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.
- (b) *Permanent:* Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Place of assembly: A building or portion of a building used as a community hall, neighborhood center, private and 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 fifteen (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.

Pre-development grade. Pre-development grade is defined as average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.

Principal building: The building occupied by the chief or principal use on the premises. When a garage is attached to the principal building in a substantial manner as by a roof or common wall, it shall be considered as a part of the principal building.

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

Processing: Any operation changing the nature of material or materials such as chemical composition or physical qualities. Does not include operations described as fabrication.

Professional office: The office of a doctor, dentist, optometrist, psychologist, accountant, lawyer, architect, engineer or similar professional.

Recent flood plain soils: Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Medomak
Charles	Ondawa
Cornish	Podunk
Fryeburg	Rumney
Hadley	Saco
Limerick	Suncook
Lovewell	Winooski

Recreation facilities: Any establishment designed or equipped for the conduct of sports or indoor leisure-time recreational activities.

Registered medical marijuana dispensary: "Registered medical marijuana dispensary" or "dispensary" means a not-for-profit entity registered under 22 M.R.S.A. section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use, and the registered primary caregivers of those patients.

Registered medical marijuana cultivation facility: "Registered medical marijuana cultivation facility" means a facility registered under 22 M.R.S.A. section 2428 that cultivates and manufactures marijuana or related supplies for a "registered medical marijuana dispensary" under common management and operating under the same state and local license(s).

Restaurant: Any food service establishment, as defined by section 11-16 of this Code, with indoor seating capacity for ten (10) or more patrons.

Retail: Sale to the ultimate consumer for direct consumption and not for resale; however, retail, combined with gasoline, diesel or propane fuel sales shall be considered a single use for zoning purposes and shall constitute a major or minor auto service

station.

Retail establishment: Means (1) any food service establishment as defined by section 11-16 of this Code, with indoor seating capacity for nine (9) or fewer patrons; or (2) any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, but does not include temporary freestanding stands in either case; however, retail establishments combined with gasoline, diesel or propane fuel sales shall be considered a single use for zoning purposes and shall constitute a major or minor auto service station.

Rooming unit: A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms. In a suite of rooms, each room which provides sleeping accommodations shall be counted as one (1) rooming unit for the purpose of this article. Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily basis. There shall be no more than two (2) persons residing in each rooming unit.

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

Setback: The required distance and the land resulting therefrom between a street line and the closest possible line of conforming structure.

Sheltered care group home: A facility which, in addition to providing food and shelter to a defined population, provides guidance or counseling services. Such services are 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.

Shoreland zone: The land area located within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream.

Sign: Signs shall be as defined in section 14-367.

Single-component manufactured housing: Manufactured housing which is constructed and transported in one (1) section that is a habitable dwelling unit. 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.

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

Sports complex: One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least six thousand (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. Stockpiles shall be considered structures for purposes of dimensional requirements under the Land Use Code.

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

Storm water retention area: A pond or basin used for the permanent storage of stormwater runoff.

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 (4) feet above the floor does not exceed two-thirds of the floor area of the story immediately below it and which does not contain an independent apartment or dwelling unit. A story which exceeds eighteen (18) feet in height shall be counted as two (2) 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.

Stream: A free-flowing body of water from the outlet of the confluence of two (2) 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 a street and the abutting land.

Structure: Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground.

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.

Temporary wind anemometer tower: A temporary structure which may be installed for no more than two (2) years for data collection purposes and which supports devices for measuring wind speed, direction and other characteristics to assess wind energy potential and design issues for any permanent wind energy installation; often termed "meteorological towers" or "met towers".

Theaters: Any establishment devoted to showing motion pictures, or for dramatic, musical or live performances.

Tourist home: A building in which more than one (1) but not more than nine (9) guest rooms are used to provide or offer overnight accommodations for transient guests. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential

guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

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 fifteen (15) days out of any sixty-day period.

Tributary stream: means 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.

Truck terminal: A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

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 maximum spring 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 (6) meters approximately.

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, 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 public utility.

Vegetation: All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one-half (4 1/2) feet above ground level.

Warehousing: The storage of goods, wares and merchandise in a warehouse.

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 associated with shoreland zones: a freshwater or coastal wetland.

Wetlands: Those areas which have two (2) 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.

For purposes of this definition, "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), a copy of which is on file with the planning authority.

Wholesale: Sale for resale, not for direct consumption.

Yard: 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 permitted in this article. In determining the front, rear or side of any accessory building, the orientation of the principal building shall be controlling. In measuring a yard, the building line shall be deemed to mean a line parallel to the lot line drawn through the point of a building or the point of a group of buildings nearest to such lot line. This measurement shall be taken at right angles from the building to the nearest lot line.

Yard, front: A yard adjoining 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.

Yard, rear: A yard adjoining 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.

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.

(Code 1968, § 602.27; Ord. No. 625-70, 12-21-70; Ord. No. 499-74, § 11, 8-19-74; Ord. No. 276-77, 5-16-77; Ord. No. 431-82, §§ 3, 4, 2-22-82; Ord. No. 610-82, § 3, 7-7-82; Ord. No. 94-83, 8-3-83; Ord. No. 540-84, 5-7-84; Ord. No. 259-84, § 1, 12-17-84; Ord. No. 548A-85, § 1, 5-6-85; Ord. No. 33-85, §§ 1--3, 7-15-85; Ord. No. 385-87, 4-6-87; Ord. No. 363-88, 5-4-88; Ord. No. 300-88, 5-31-88; Ord. No. 87-88, § 1, 7-19-88; Ord. No. 129-88, 9-7-88; Ord. No. 311-89, 1-30-89; Ord. No. 164-89, 12-11-89; Ord. No. 199-89, 12-18-89; Ord. No. 33-90, § 1, 1-23-91; Ord. No. 33A-91, § 1, 4-17-91; Ord. No. 15-92, § 1, 6-15-92; Ord. No. 168-93, § 1, 1-4-93; Ord. No. 252-94, § 1, 4-4-94; Ord. No. 39-96, § 1, 10-7-96; Ord. No. 164-97, § 1, 1-6-97; Ord. No. 125-97, § 1, 3-3-97; Ord. No. 46-97, § 1, 8-4-97; Ord. No. 164-97, § 1, 12-1-97; Ord. No. 232-99, §1, 3-15-99; Ord. No. 81-99, §2, 10-18-99; Ord. No. 94-99, 11-15-99; Ord. No. (Substitute)189-00, §1, 4-24-00; Ord. No. 295-01, § 1, 6-4-01; Ord. No. 187-01/02, § 1, 4-17-02; Ord. No. 77, § 3, 10-21-02; Ord. No. 96-04/05, 11-29-04; Ord. No. 144-05/06, 1-4-06 emerg. Passage; Ord. No. 149-05/06, 1-18-06; Ord. No. 300-05/06, 7-17-06; Ord. No. 296-08/09, 6-15-09; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 283, 09/10, 7-19-10 emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 77-10/11, 12-6-10, emergency passage; Ord. No. 149-10/11, 3-7-11; Ord. No. 279-09/10, 6-6-11; Ord. 53-14/15, 9-15-2014; Ord. 209-14/15, 5/4/2015; Ord. 276-14/15, 6-15-2015)

***Editor's note--**Ord. No. 87-88, adopted July 19, 1988, amended the definitions for gross area, intermediate care facility and principal building to read as herein set out and added definitions for net land area, stormwater detention area and stormwater retention area. The definition of net land area was subsequently amended by Ord. No. 129-88, adopted Sept. 7, 1988, to read as herein set out. See the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 87-88.

The amendments passed in Order 144-05/06, 1-4-06 applies retroactively to yard measurements made under the Portland Land Use Code at any time after June 5,

1957, and applies notwithstanding any adverse order or decree.

Cross reference (s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

- (a) R-1 Residential zone
- (b) R-2 Residential zone
- (c) R-3 Residential zone
- (d) FH Flexible housing zone
- (e) R-4 Residential zone
- (f) R-5 Residential zone
- (g) R-5A Residential zone
- (h) R-6 Residential zone
- (i) R-7 Residential zone
- (j) IR-1 Island residential zone
- (k) IR-2 Island residential zone
- (l) IR-3 Island residential zone
- (m) Island transfer station overlay zone
- (n) R-P Residence-professional zone
- (o) R-OS Recreation and open space zone
- (p) B-1 and B-1b Neighborhood business zones
- (q) B-2 and B-2b Community business zone
- (r) A-B Airport business zone
- (s) B-3, B-3b and B-3c downtown business zones

- (t) I-B Island business zone
- (u) B-4 Commercial corridor zone
- (u-1)B-5 Urban commercial mixed use zone
- (v) O-P Office park zone
- (w) I-L and I-Lb Industrial zones
- (x) I-M, I-Ma and I-Mb Industrial zones
- (y) I-H and I-Hb Industrial zones
- (z) B-6 Eastern Waterfront Mixed Zone
- (aa) Reserved
- (bb) Waterfront central zone
- (cc) Waterfront port development zone
- (dd) Reserved
- (ee) R-P Resource protection zone
- (ff) Helistop overlay zone
- (gg) Shoreland zone
- (hh) Flood plain
- (ii) S-P Stream protection zone.

(jj) IS-FBC India Street Form-based Code zone.

(Code 1968, § 602.1.B; Ord. No. 499-74, § 1, 8-19-74; Ord. No. 536-74, § 1, 8-19-74; Ord. No. 334-76, § 1, 7-7-76; Ord. No. 15-92, § 2, 6-15-92; Ord. No. 101-93, 9-20-93; Ord. No. 164-97, § 2, 1-6-97; Ord. No. 156-01, §1, 1-17-01; Ord. 184-14/15, 6-1-2015; Ord. 83-15/16, 11-2-2015)

***Editor's note--**Although not expressly amended by the ordinances enacted subsequent to 1976 which created the several classes of zones, § 14-48 has been expanded to encompass all zoning classifications in the city at the discretion of the editor in consultation with the corporation counsel.

Sec. 14-49. Zoning maps.

The zones in section 14-48 are shown upon a map entitled "City of Portland, Maine, Zoning, dated December 2000 and produced by the City of Portland's Department of Planning and Urban Development and the GIS Workgroup" and filed in the office of the Director 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 article and incorporated in and made a part of this article.

(Code 1968, § 602.1.C; Ord. No. 213-84, 10-1-84; Ord. No. 15-92, § 3, 6-15-92; Ord. No. 156-01, §2, 1-17-01)

Sec. 14-50. 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. Unless otherwise shown, lines within blocks less than two hundred (200) feet wide are median lines between their sides, and lines within blocks two hundred (200) feet or more wide are one hundred (100) feet distant from the less restricted side of the block.
- (b) The depictions of the shoreland zoning districts and stream protection districts 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 from the normal high water line of the water body or the upland edge of wetland vegetation. Where such measurement is not the same as the location of the boundary on the Shoreland Zoning Maps, the measurement shall control, unless the Shoreland Zoning Map indicates that the zone boundary shall follow an existing property line.

(Code 1968, § 602.20.A; Ord. No. 15-92, § 4, 6-15-92)

Sec. 14-51. 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 article for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided that the lot has at least twenty (20)

feet of street frontage in the less restricted 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 residence zone, no frontage on a street other than the principal business street in the less restricted 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.

(Code 1968, § 602.20.B; Ord. No. 35-89, 6-28-89)

Sec. 14-52. Conformity required.

No building or structure shall be erected, altered, enlarged, rebuilt, moved or used, and no premises shall be used unless in conformity with the provisions of this article.

(Code 1968, § 602.1.D)

Sec. 14-53. Minimum requirements established.

In interpreting and applying the provisions of this article, they shall be held to be minimum requirements for the promotion of health, safety, convenience and welfare of the citizens of the city; for reducing the danger from fires; and for improving the city.

(Code 1968, § 602.1.E)

Sec. 14-54. Zone change/zone map fees.

(a) One or more of the following fees will be charged by the city for applications for changes of zone according to the following major zoning classifications and pertinent data relating to the specific zone change:

- (1) Zoning Map Amendments: \$2,000.00
- (2) Zoning Text Amendments: \$2,000.00
- (3) Combination Zoning Map and Text Amendments: \$3,000
- (4) Conditional Rezoning: \$3,000.00
- (5) Applicant shall pay a fee to cover the professional and administrative costs for review and analysis associated with the zoning amendment, including but not limited to planning, legal, engineering or other services. The fee shall be based on the hours of review and processing time

and prevailing hourly rate for reimbursement of city costs. The city shall periodically invoice the applicant for such costs incurred by the city, which invoice shall be paid promptly by the applicant.

- (6) Applicant shall assume payment of cost of all notices, including newspaper publication.

All ordinances that would cost more than the maximum to publish should be printed in separate pamphlet form and advertised only by reference.

- (7) *Waiver of fees:* The fee for zone change applications may be waived or reduced by the Planning Authority in the case of an application submitted by any governmental body or where an applicant can establish financial hardship.

- (8) *Withdrawal of application:* If a zone change application is withdrawn by an applicant prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of one-half of the amount of the application fee will be made to the applicant by the city provided that all costs incurred by the city have been paid in full by the applicant.

(b) The following schedule of fees will be charged by the City for zone maps:

Paper maps:	Large \$20.00 per sheet	Small (11X17) \$5.00 per sheet
Digital Zone Map	\$20.00	

(Code 1968, § 602.1.F; Ord. No. 589-75, § 1, 10-20-75; Ord. No. 590-75, § 1, 11-19-75; Ord. No. 693-81, 5-18-81; Ord. No. 523-87, 5-18-87; Ord. No. 327-98, § 2, 5-18-98; Ord. No. 328-98, § 1, 5-18-98; Ord. No. 227-00, § 1, 5-15-00; Ord. No. 119-01/02, § 2, 12-3-01; Ord. No. 222-09/10, 5-17-10)

Sec. 14-55. Relation to other ordinances.

This article shall not repeal the provisions of any other ordinance relating to the use of buildings or premises; provided, however, that where this article imposes greater restrictions, it shall control.

(Code 1968, § 602.26.A)

Sec. 14-56. Enforcement.

The building authority 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 this article; provided, however, that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this article.

(Code 1968, § 602.26.C)

Sec. 14-57. Violations.

Any person being the owner or occupant of, having control of or the use of any building or premises or part thereof, who violates any of the provisions of this article, shall be guilty of an offense.

(Code 1968, § 602.26.D; Ord. No. 157-76, 4-21-76)

Sec. 14-58. Reserved.

Sec. 14-59. Reserved.

DIVISION 1.5. CONDITIONAL OR CONTRACT ZONING

Sec. 14-60. 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 division shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

(Ord. No. 31-85, 7-15-85; Ord. No. 88-88, 7-19-88; Ord. No. 62-89, 7-17-89)

Sec. 14-61. Notice and hearing.

The Planning Board shall conduct a public hearing prior to any property being rezoned under this division. Notice of this hearing shall be posted in the city clerk's office at least fourteen (14) days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two (2) times, the date of the first publication to be at least seven (7) 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.

(Ord. No. 31-85, 7-15-85)

Sec. 14-62. Conditions and restrictions.

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

(Ord. No. 31-85, 7-15-85)

Sec. 14-63. 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.

(Ord. No. 96-04/05, 11-29-04)

Sec. 14-64. Reserved.

Sec. 14-65. 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 thirty (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.

(Ord. No. 96-04/05, 11-29-04)

DIVISION 2. R-1 RESIDENTIAL ZONE*

***Editor's note**--Ord. No. 532-84, adopted May 7, 1984, repealed Div. 2, s;§ 14-66--14-69, and enacted a new Div. 2, §§ 14-66--14-71. The division was formerly derived from Code 1968, § 602-2.2A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; Ord. No. 610-82, § 1, adopted July 7, 1982; and Ord. No. 88-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-66. Purpose.

The purpose of the R-1 residential zone is:

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.

(Ord. No. 532-84, 5-7-84)

Sec. 14-67. Permitted uses.

The following uses are permitted in the R-1 residential zone:

(a) *Residential:*

1. Single-family detached dwellings.

2. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff.
3. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
4. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District and until May 1, 1985, on the islands, provided that each unit meets the performance standards listed below:
 - a. More than half of the roof area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.
 - b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
 - c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8)

inches of exposure and sheet metal type siding shall not be permitted.

- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided, however, that this provision shall not be deemed to prohibit additions such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

1. Agriculture, including nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises; a single stand with no more than two hundred (200) square feet in floor area, for the sale of agricultural products produced on the premises shall be permitted;
2. Parking and storage of agricultural equipment used on the premises, but not within any front yard;
3. Reserved;
4. Parks and other active and passive noncommercial recreation spaces;
5. Accessory uses customarily incidental and subordinate to the location, function and operation

of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;

6. Home occupations subject to the provisions of section 14-410 (home occupation) of this article;
7. Municipal uses, excluding those specifically set forth in section 14-68 of this division.
8. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 532-84, 5-7-84; Ord. No. 260-84, § 1, 12-17-84; Ord. No. 34-85, § 1, 7-15-85; Ord. No. 79-88, § 1, 7-19-88; Ord. No. 86A-89, § 1, 8-21-89; Ord. No. 33-91, § 2, 1-23-91; Ord. No. 33-11/12, 1-18-12)

***Editor's note**--Ord. No. 79-88, adopted July 19, 1988, amended this section by adding subsection 14-67(2)g. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 79-88.

Sec. 14-68. Conditional uses.

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

(a) *Residential:*

1. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. 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 one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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.

2. Alteration or construction of a single-family detached dwelling to accommodate an accessory dwelling unit within the building and clearly subordinate to the principal dwelling for the benefit of homeowners or tenants provided that:
 - a. The accessory unit shall be no more than thirty (30) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet; gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit;
 - b. Lot area shall be ten thousand (10,000) square feet for single-family dwellings in existence as of May 1, 1984, and lot area shall be fifteen thousand (15,000) square feet for single-family dwellings constructed after May 1, 1984;
 - c. There shall be no open, outside stairways or fire escapes above the ground floor;

- d. 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 single-family appearance of the building;
 - e. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:
 - i. Any additions or exterior alterations, such as façade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building.
 - ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and
 - g. Parking shall be provided as required division 20 of this article.
- (b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
- 1. Elementary, middle, and secondary school;
 - 2. a. Long-term and extended care facilities;
 - b. Intermediate care facility for thirteen (13) or more persons;

3. Places of assembly;

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion of existing such 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
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010;
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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

iv. A parking management plan is submitted for review and approval by the planning board; and

f. 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 be located on a large lot, as specified in the minimum lot size provisions of this division.

(c) *Other:*

1. Utility substations, including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
2. Cemeteries;
3. Raising of domestic animals, excluding pigs and reptiles, for noncommercial purposes with no animals kept on any lot less than three (3) acres or closer than one hundred (100) feet to any street or lot line, except domesticated chickens as regulated in Chapter 5, and provided that:
 - a. The housing, feeding, exercise, and waste disposal areas of the animals will not create undue odor, noise, nuisance, health, or safety hazards to neighboring properties.
4. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use, a nursery school or a kindergarten, or in a nonresidential structure accessory to the principal nonresidential use.

- b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, a nursery school or a kindergarten, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the

side and rear yards only and shall not be located in front yards;

- iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
 - viii. 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.
5. 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, of the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

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

(Ord. No. 534-84, 5-7-84; Ord. No. 260-84, § 2, 12-17-84; Ord. No. 76-85, § 2, 7-1-85; Ord. No. 79-88, § 2, 7-19-88; Ord. No. 235-91, § 1, 2-4-91; Ord. No. 118-93, § 1, 10-18-93; Ord. No. 133-96, § 1, 11-18-96; Ord. No. 154-96, § 1, 12-16-96; Ord. No. 222-99, §1, 3-01-99; Ord. No. 199-04/05, 4-4-05; Ord. 153-08/09, 2-18-09; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240 09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12)

Sec. 14-69. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 532-84, 5-7-84)

Sec. 14-70. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-1 zone shall meet or exceed the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Fifteen thousand (15,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. 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, or the applicable zoning lot size, whichever is larger.
2. Long-term, extended, or intermediate care facility: Three (3) acres.
3. School: Two (2) acres.

4. Places of assembly:

Large	Two (2) acres
Medium	One (1) acre
Small	Half (1/2) acre

5. Municipal use: Fifteen thousand (15,000) square feet.

6. Animal raising: Three (3) acres.

7. All other uses: Fifteen thousand (15,000) square feet.

Provided that for uses specified in section 14-70(a)2 through 6 above, no minimum lot area shall be required in the following cases:

- a. Uses existing as of June 1, 1983;
- b. Expansion onto land abutting the lot on which the principal use is located;
- c. 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;
- d. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.

(b) *Minimum lot area per dwelling unit:* Fifteen thousand (15,000) square feet.

(c) *Minimum street frontage:* Seventy-five (75) feet.

(d) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:*

Principal or accessory structures: Twenty-five (25) feet.

2. *Rear yard:*

a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

3. *Side yard:*

a. Principal or accessory structures with ground coverage greater than one hundred (100) feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	12 feet
1 1/2 stories	12 feet
2 stories	14 feet
2 1/2 stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent

lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than twelve (12) feet.

b. Accessory detached structure with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

4. *Side yard on side streets:*

a. Principal or accessory structures: Twenty (20) feet.

(e) *Maximum lot coverage:* Twenty (20) percent of lot area.

(f) *Minimum lot width:* One hundred (100) feet.

(g) *Maximum structure height:*

1. Principal or accessory attached structure: Thirty-five (35) feet.

2. Accessory detached structure: Eighteen (18) feet.

(h) *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	9,000 sq. ft.
Small	5,000 sq. ft.

(i) *Maximum floor area for places of assembly not on a collector or arterial road:*

Large	9,000 sq. ft.
Medium	4,500 sq. ft.
Small	2,500 sq. ft.

(Ord. No. 532-84, 5-7-84; Ord. No. 79-88, § 3, 7-19-88; Ord. No. 235-91, § 2, 2-4-91; Ord. No. 118-93, § 2, 10-18-93; Ord. No. 154-96, § 2, 12-16-96; Ord. No.131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage)

***Editor's note--**Ord. No. 79-88, § 3, 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. 79-88.

Sec. 14-71. Other requirements.

Other requirements are as follows:

- (a) *Off street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.
- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 532-84, 5-7-84; Ord. No. 15-92, § 5, 6-15-92)

Sec. 14-72 - 14-75. Reserved.

DIVISION 3. R-2 RESIDENTIAL ZONE*

***Editor's note--**Ord. No. 533-54, adopted May 7, 1984, repealed Div. 3, §§ 14-76--14-79, and enacted a new Div. 3, §§ 14-76--14-81. The division was formerly derived from Code 1968, § 602.3.A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; Ord. No. 610-82, § 1, adopted July 7, 1982; and Ord. No. 89-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-76. Purpose.

The purpose of the R-2 residential zone is:

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.

(Ord. No. 533-84, 5-7-84)

Sec. 14-77. Permitted uses.

The following uses are permitted in the R-2 residential zone:

(a) *Residential:*

1. Single-family detached dwellings.

2. Handicapped family unit, as defined in section 14-47 (definitions) of this article for handicapped persons plus staff.
3. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
4. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District and until May 1, 1985, on the islands, provided that each unit meets the performance standards listed below:
 - a. More than half of the roof area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.
 - b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
 - c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
 - d. Each unit shall have the long side of the unit parallel to the street line where the required

street frontage is met.

- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

- 1. Reserved;
- 2. Parks and other active and passive noncommercial recreation spaces;
- 3. Agriculture, including nurseries, greenhouses, and truck gardens, providing that there is no sale of products not produced on the premises; a single stand with no more than two hundred (200) square feet in floor area, for the sale of agricultural products produced on the premises shall be permitted;
- 4. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory uses) of this article;
- 5. Home occupations, subject to the provisions of section 14-410 (home occupation) of this article;
- 6. Municipal uses, excluding those specifically set forth in section 14-78 of this division.

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

(Ord. No. 533-84, 5-7-84; Ord. No. 261-84, § 1, 12-17-84; Ord. No. 35-85, § 1, 7-15-85; Ord. No. 80-88, § 1, 7-19-88; Ord. No. 86A-89, § 2, 8-21-89; Ord. No. 33-91, § 3, 1-23-91; Ord. No. 33-11/12, 1-18-12)

***Editor's note--**Ord. No. 80-88, § 1, adopted July 19, 1988, amended this section by adding subsection 14-77(b)6. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 80-88.

Sec. 14-78. Conditional use.

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

(a) *Residential:*

1. Sheltered care group home, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. 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 one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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.

2. Alteration or construction of a single-family detached dwelling to accommodate an accessory dwelling unit within the building and clearly subordinate to the principal dwelling for the benefit of homeowners or tenants provided that:
 - a. The accessory unit shall be no more than thirty (30) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet; gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit;
 - b. Lot area shall be eight thousand (8,000) square feet for single-family dwellings in existence as of May 1, 1984, and lot area shall be ten thousand (10,000) square feet for single-family dwellings constructed after May 1, 1984;
 - c. There shall be no open, outside stairways or fire escapes above the ground floor;
 - d. 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 single-family appearance of the building;
 - e. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:
 - i. Any additions or exterior alterations, such as

façade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building.

- ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and
 - g. Parking shall be provided as required by division 20 of this article.
- (b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474 (conditional uses) of this article or any other provisions of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
- 1. Elementary, middle, and secondary school;
 - 2.
 - a. Long-term and extended care facilities;
 - b. Intermediate care facility for thirteen (13) or more persons;
 - 3. Places of assembly;
 - 4. College, university, trade school;

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. Any new institutional use shall demonstrate that it has a lot size of sufficient area to accommodate all proposed and foreseeable future activities and programs, including parking, and to absorb the impacts and growth needs of the institution. Such

new use established after April 19, 2012 shall not be eligible for expansion under the provisions of paragraph b below;

- b. In the case of expansion of existing such 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
- c. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- d. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- e. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly (including places of religious assembly, community halls and private club or fraternal organizations) and college, university, trade school, the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- f. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010.
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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
 - iv. A parking management plan is submitted for review and approval by the planning board; and

- g. 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 be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) *Other:*

1. Utility substations, including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
2. Cemeteries.
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care use or home babysitting use, nursery school or kindergarten, or in a nonresidential structure accessory thereto, provided that any such structure that serves more

than twelve (12) children shall be subject to review under article V of this chapter.

- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, home babysitting uses, nursery schools or kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility, home babysitting use, nursery school or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-

street parking) of this article.

vii. The maximum number of children in a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and

viii. 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.

4. 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, of the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

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

(Ord. No. 533-84, 5-7-84; Ord. No. 261-84, § 2, 12-17-84; Ord. No. 76-85, § 3, 7-1-85; Ord. No. 80-88, § 2, 7-19-88; Ord. No. 235-91, § 3, 2-4-91; Ord. No. 118-93, § 3, 10-18-93; Ord. No. 133-96, § 2, 11-18-96; Ord. No. 154-96, § 3, 12-16-96; Ord. No. 222-99 §2, 3-01-99; Ord. No. 199-04/05, 4-4-05; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 131-11/12, 3-19-12)

Sec. 14-79. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 533-84, 5-7-84)

Sec. 14-80. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations) of this article, lots in the R-2 zone shall meet or exceed the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Ten thousand (10,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. 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, or the applicable zoning lot size, whichever is the larger.
2. Long-term, extended, or intermediate care facility: Three (3) acres.
3. School: Two (2) acres.
4. Places of assembly:

Large	Two (2) acres
Medium	One (1) acre
Small	Half (1/2) acre

5. Municipal use: Ten thousand (10,000) square feet.
6. College, university, trade school: Two (2) acres.
7. All other uses: Ten Thousand (10,000) square feet.

Provided that for uses specified in section 14-80(a)2 through 7 above, no minimum lot area shall be required in the following cases:

- a. Uses existing as of June 1, 1983;
- b. Expansion of uses onto land abutting the lot on which the principal use is located;
- c. 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;

- d. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.
- (b) *Minimum area per dwelling unit:* Ten thousand (10,000) square feet.
 - (c) *Minimum street frontage:* Fifty (50) feet.
 - (d) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:*

Principal or accessory structures: Twenty-five (25) feet.

2. *Rear yard:*

a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

3. *Side yard:*

- a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	12 feet
1 1/2 stories	12 feet
2 stories	14 feet
2 1/2 stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than twelve (12) feet.

- b. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

4. *Side yard on side streets:*

Principal or accessory structures: Twenty (20) feet.

(e) *Maximum lot coverage:* Twenty (20) percent of lot area.

(f) *Minimum lot width:* Eighty (80) feet.

(g) *Maximum structure height:*

- 1. Principal or accessory attached structure: Thirty-five (35) feet.
- 2. Accessory detached structure: Eighteen (18) feet.

(h) *Maximum floor area on a collector or arterial road:*

1. Places of public assembly:

Large	Not limited
Medium	9,000 sq. ft.
Small	5,000 sq. ft.

2. College, university, trade school:

Lot area of 6 acres or larger: 24,000 sq. ft.
Lot area of 4 acres to 5.99 acres: 18,000 sq. ft.
Lot area of 2 acres to 3.99 acres: 12,000 sq. ft.

(i) *Maximum floor area not on a collector or arterial road:*

1. Places of public assembly:

Large	9,000 sq. ft.
Medium	4,500 sq. ft.
Small	2,500 sq. ft.

2. College university, trade school:

Not a permitted use.

(Ord. No. 533-84, 5-7-84; Ord. No. 80-88, § 3, 7-19-88; Ord. No. 235-91, § 4, 2-4-91; Ord. No. 118-93, § 4, 10-18-93; Ord. No. 154-96, § 3, 12-16-96; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 131-11/12, 3-19-12)

***Editor's note**--Ord. No. 80-88, § 3, 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. 80-88.

Sec. 14-81. Other requirements.

Other requirements are as follows:

- (a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.

- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 533-84, 5-7-84; Ord. No. 15-92, § 6, 6-15-92)

Sec. 14-82 - 14-85. Reserved.

DIVISION 4. R-3 RESIDENTIAL ZONE*

***Editor's note**--Ord. No. 534-84, adopted May 7, 1984, repealed Div. 4, §§ 14-87--14-90, and enacted a new Div. 4, §§ 14-86--14-91. Formerly, Div. 4 was derived from Code 1968, § 602.4.A--D, and the following ordinances: Ord. No. 49-74, 372-75, 406-75, 34-76, 145-79, 145-81, 303-81, 90-83, and 499-74.

Sec. 14-86. Purpose.

The purpose of the R-3 residential zone is:

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. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.

(Ord. No. 534-84, 5-7-84; Ord. No. 81-88, § 1, 7-19-88)

***Editor's note**--Ord. No. 81-88, § 1, adopted July 19, 1988, amended § 14-86 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. 81-88.

Sec. 14-87. Permitted uses.

The following uses are permitted in the R-3 residential zone:

(a) *Residential:*

1. Single-family detached dwellings.
2. Planned residential unit development (PRUD) consisting of horizontally attached dwelling units or a series of such dwelling units. No dimensional requirements contained in section 14-90 shall apply with respect to such

development, except for those requirements specifically denoted for PRUD. There shall be no open outside stairways or fire escapes above the ground floor. All land shall be owned and used in common and shall be governed and maintained as set forth in section 14-498(i)(3) of article IV (subdivisions) of this chapter. Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter, as now enacted or as hereafter amended.

3. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff.
4. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
5. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District and until May 1, 1985, on the islands, provided that each unit meets the performance standards listed below.
 - a. More than half of the roofed area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.
 - b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material

is installed, the color shall be identical to or compatible with the exterior siding of the unit.

- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboard shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
 - d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
 - e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
 - f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
 - g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.
- (b) *Other:*
- 1. Reserved;
 - 2. Parks, and other active and passive noncommercial recreation spaces;
 - 3. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory uses) of this article;

4. Home occupation, subject to the provisions of section 14-410 (home occupation) of this article;
5. Municipal uses, excluding those specifically set forth in section 14-88 of this division.
6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 534-84, 5-7-84; Ord. No. 262-84, § 1, 12-17-84; Ord. No. 36-85, § 1, 7-15-85; Ord. No. 81-88, §§ 2, 3, 7-19-88; Ord. No. 86A-89, § 3, 8-21-89; Ord. No. 33-91, § 4, 1-23-91; Ord. No. 165-97, § 1, 12-1-97; Ord. No. 33-11/12, 1-18-12)

***Editor's note**--Ord. No. 81-88, §§ 2 and 3, adopted July 19, 1988, amended subsections 14-87(a)2 and (b)5 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. 81-88.

Sec. 14-88. Conditional uses.

The following uses 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) *Residential:*

1. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. 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 one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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.

2. Alteration or construction of a detached single-family dwelling to accommodate one (1) additional dwelling unit for the benefit of homeowners or tenants, provided that:
 - a. The accessory unit shall be no more than thirty (30) percent of the gross floor area of principal building and shall have a minimum floor area four hundred (400) square feet; gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. Any building additions or exterior alterations such as facade materials, building form, or roof pitch shall be designed to be compatible with the architectural style and to maintain the single-family appearance of the dwelling;
 - d. A minimum lot size of six thousand five hundred (6,500) square feet of land area shall be required;

- g. No dwelling unit shall be reduced in size to less than one thousand (1,000) square feet of floor area, exclusive of common areas and storage in basement or attic;
- h. Parking shall be provided as required by division 20 of this article;
- i. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:
 - i. Any additions or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building;
 - ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.
- j. Either the accessory unit or principal unit shall be occupied by the lot owner, except for bona fide temporary absences.

(b) *Commercial:*

- 1. Reserved.

(c) *Institutional:* Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

- 1. Elementary, middle, and secondary school;
- 2. a. Long-term and extended care facilities;
b. Intermediate care facility for thirteen (13) or more persons;

3. Places of assembly;
4. Hospital.

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion of existing such 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
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010.
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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

iv. A parking management plan is submitted for review and approval by the planning board; and

f. 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 be located on a large lot, as specified in the minimum lot size provisions of this section.

(d) *Other:*

1. Off-street parking of passenger cars as provided in section 14-344 (board of appeals may authorize parking in certain residence zones) of this article;
2. Utility substations, including sewage treatment plants, sewage and water pumping stations and standpipes, electric power substations, transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care use, home babysitting use, nursery school or kindergarten, or in a nonresidential structure accessory to the principal nonresidential use.

- b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, home babysitting uses, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;

- iv. A ten-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;
 - v. The minimum lot size for a day care facility, home babysitting services, nursery school, or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and
 - viii. 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.
4. 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.

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

(Ord. No. 534-84, 5-7-84; Ord. No. 262-84, § 2, 12-17-84; Ord. No. 76-85, § 4, 7-1-85; Ord. No. 36-85, § 2, 7-15-85; Ord. No. 67-87, § 1, 11-2-87; Ord. No. 81-88, § 4, 7-19-88; Ord. No. 235-91, § 5, 2-4-91; Ord. No. 118-93, § 5, 10-18-93; Ord. No. 133-96, § 3, 11-18-96; Ord. No. 154-96, § 5, 12-16-96; Ord. No. 222-99, §3, 3-01-99; Ord. No. 199-04/05, 4-4-05; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12)

Sec. 14-89. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 534-84, 5-7-84)

Sec. 14-90. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-3 zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Sixty-five hundred (6,500) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. 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 zoning lot size, whichever is larger.
2. Alteration of a detached single-family dwelling to a two-family dwelling: Ten thousand (10,000) square feet.
3. Long-term, extended, or intermediate care facilities: Two (2) acres.
4. School: Two (2) acres.

5. Places of assembly:

Large	Two (2) acres
Medium	One (1) acre
Small	Half (1/2) acre

6. Municipal use: Sixty-five hundred (6,500) square feet.
7. Hospital: Ten (10) acres.
8. Planned residential unit development (PRUD): Three (3) acres gross area, as defined in section 14-47 (definitions) of this article, of continuous land.
9. All other uses: Sixty-five hundred (6,500) square feet.

Provided that for uses specified in section 14-90(a)3 through 8 above, no minimum lot area shall be required in the following cases:

- a. Uses existing as of June 1, 1983;
 - b. Expansion onto land abutting the lot on which the principal use is located;
 - c. 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;
 - d. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.
- (b) *Minimum lot area per dwelling unit:*

PRUD: Sixty-five hundred (6,500) square feet of net land area as defined in section 14-47 (definitions) of this article. As part of a site plan and subdivision application, the applicant shall provide a calculation of those factors deducted to determine net land area. In addition, such net area factors shall be delineated on a site plan.

Other uses: Sixty-five hundred (6,500) square feet.

(c) *Minimum street frontage*: Fifty (50) feet, except that lots located in a subdivision approved after the effective date of Ord. No. 165-97 pursuant to section 14-497.5 shall meet the street frontage requirements approved as part of the subdivision plan under the terms of that section.

(d) *Minimum yard dimensions*:

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard*:

Principal or accessory structures: Twenty-five (25) feet.

A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20%) percent of the depth of the lot.

2. *Rear yard*:

a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

b. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

3. *Side yard:*

- a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	8 feet
1 1/2 stories	8 feet
2 stories	14 feet
2 1/2 stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than eight (8) feet.

- b. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

4. *Side yard on side street:*

- a. Principal or accessory structures: Twenty (20) feet.
- (e) *Maximum lot coverage:* Thirty-five (35) percent of lot area.
- (f) *Minimum lot width:* Sixty-five (65) feet.
- (g) *Maximum structure height:* Principal or accessory attached

structure: Thirty-five (35) feet.

Accessory detached structure: Eighteen (18) feet.

- (h) 1. *Maximum number of units in a building (PRUD of five (5) acres or more):* Six (6) units.
- 2. *Maximum number of units in a building (PRUD of less than five (5) acres):* Two (2) units.
- (i) *Maximum average number of units in a building (PRUD of five (5) acres or more):* Five (5) units.
- (j) *Maximum length of building (PRUD):* One hundred (100) feet for buildings without garages; one hundred forty (140) feet for buildings with integral garages.
- (k) *Minimum building setback from external subdivision property lines (PRUD):*
 - 1. Three (3) or fewer dwelling units in building: Twenty-five (25) feet.
 - 2. Four (4) or more dwelling units in building: Thirty-five (35) feet.
- (l) *Minimum distance between detached PRUD dwelling unit:* Sixteen (16) feet.
- (m) *Reserved.*
- (n) *Minimum recreation open space area (PRUD):* Three hundred (300) square feet per dwelling unit of common area designated on the site for recreation purposes. Such recreation areas shall be level graded, dry, accessible and properly drained. At a minimum, a contiguous area of six thousand (6,000) square feet with a minimum dimension of fifty (50) feet shall be provided and shall include one (1) or more of the uses set forth in section 14-526 (d) 9. and the planned residential unit development standards in the City of Portland Design Manual but shall at least provide usable recreation space. Such recreation areas shall be located at least twenty-five (25) feet from dwelling units.
- (o) No habitable space in a PRUD shall be below grade, except

basements that are a part of and below ground units.

- (p) *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	9,000 sq. ft.
Small	5,000 sq. ft.

- (q) *Maximum floor area for places of assembly not on a collector or arterial road:*

Large	9,000 sq. ft.
Medium	4,500 sq. ft.
Small	2,500 sq. ft.

(Ord. No. 534-84, 5-7-84; Ord. No. 81-88, § 5, 7-19-88; Ord. No. 385-89, §§ 1, 2, 4-3-89; Ord. No. 235-91, § 6, 2-4-91; Ord. No. 118-93, § 6, 10-18-93; Ord. No. 154-96, § 6, 12-16-96; Ord. No. 165-97, § 2, 12-1-97; Ord. No. 95-04/05, 11-15-04; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 40-12/13, 9-5-12)

***Editor's note**--Ord. No. 81-88, § 5, adopted July 19, 1988, amended § 14-90 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. 81-88.

Sec. 14-91. Other requirement.

Other requirements are as follows:

- (a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.
- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 534-84, 5-7-84; Ord. No. 15-92, § 7, 6-15-92)

Secs. 14-92. Reserved.

Secs. 14-93. Reserved.

DIVISION 4.5. FH FLEXIBLE HOUSING ZONE

Sec. 14-94. Purpose.

The intention of this division is to establish an overlay zone in which manufactured housing development is permitted in addition to those uses permitted in the underlying residential zone. The purpose of this division is to accommodate additional housing types in appropriate areas of the city, while protecting the value and integrity of established residential neighborhoods and ensuring a balanced and orderly pattern of residential development.

(Ord. No. 610-82, § 2, 7-7-82; Ord. No. 130-82, § 1, 9-20-82; Ord. No. 200-89, § 1, 12-18-89)

Sec. 14-95. Manufactured housing park or subdivision.

Notwithstanding any other provision of this article, no manufactured housing park or subdivision shall be permitted in any zone except as provided in this section.

- (a) Manufactured housing park or subdivision, as defined in section 14-47, shall be permitted in the flexible housing zone, the Planning Board shall be the reviewing authority. Such development shall be in accordance with the space and bulk and other requirements applicable to similar uses permitted in the underlying zone, except those standards set forth in section 14-96, and shall also meet the following additional requirement:

1. Reserved.
2. Such development shall be subject to approval by the Planning Board with respect to each and every requirement of article VI of this chapter, including the special requirements of section 14-499.5, whether or not such development is a subdivision within the meaning of article IV of this chapter, as now enacted or as hereafter amended and shall also be subject to article V of this chapter.
3. Whether or not the underlying zone permits planned residential unit development, a manufactured housing park shall be a planned residential unit development, subject to the provisions of this section, section 14-499.5 and section 14-526 9. All land, including but not limited to private streets,

private driveways, utility location areas, common parking areas and common recreation open space, shall be owned and used in common. Manufactured housing parks shall not be subject to the net land area calculations set forth in section 14-47.

4. Single-component manufactured housing shall be prohibited from being horizontally or vertically attached to any other unit or structure. (Provided, however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.)

(Ord. No. 610-82, § 2, 7-7-82; Ord. No. 130-82, § 1, 9-20-82; Ord. No. 263-84, § 1, 12-17-84; Ord. No. 200-89, § 2, 12-18-89; Ord. No. 278-09/10, 7-19-10)

Sec. 14-96. Additional dimensional requirements and performance standards for manufactured housing parks.

Notwithstanding the provisions of section 14-95 and the dimensional requirements for underlying zones, the following dimensional requirements shall apply to manufactured housing parks:

- (a) Minimum manufactured housing park unit space size: Four thousand five hundred (4,500) square feet. A manufactured housing park unit space in an unsewered residential district shall meet the provisions of 12 M.R.S.A. 4807 et seq., or the applicable zoning lot size, whichever is larger.
- (b) Maximum manufactured housing park unit space coverage: Fifty (50) percent.
- (c) Minimum street frontage for manufactured housing park: Fifty (50) feet.
- (d) Minimum open space requirement: Ten (10) percent of the combined area of the individual unit spaces within the manufactured housing park.
- (e) Minimum yard dimensions:

(Yard dimensions include setbacks from unit space boundaries and setbacks of structures from one another. No structure shall occupy the yard of another structure.):

1. Front yard: Principal or accessory structures:

Twenty (20) feet.

2. Rear yard:
 - a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.
 - b. Accessory detached structures with ground coverage of one hundred (100) square feet or less: Five (5) feet.
 3. Side yard: Principal or accessory structures: Ten (10) feet.
 4. Unit spaces located within a shoreland zone shall meet the lot area and lot width requirements for the underlying zone and shall also meet all applicable shoreland zoning standards.
- (f) All manufactured housing park unit spaces within a manufactured housing park shall be shown on a manufactured housing plan showing unit space boundaries, unit space sizes, and unit space dimensions. Such unit spaces shall be under unified ownership with all other unit spaces within the manufactured housing park. The manufactured housing park plan shall also contain a note that city services shall not be provided on private streets within the manufactured housing park. Individual leases for unit spaces shall disclose that city services shall not be provided on private streets within the manufactured housing park.
- (g) All single-family single-component manufactured housing units in a manufactured housing park shall meet the following performance standards:
1. More than half of the roof area of each unit shall be a double-pitched Class C rated shingled roof with a minimum pitch of 3/12.
 2. Each unit shall be installed on a full foundation, a concrete frost wall, or a reinforced floating concrete pad which shall be certified by an engineer if it is to be placed on soil with high frost susceptibility, in accordance with all applicable codes and regulations. Any hitch or tow

bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin-proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.

3. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboard or simulated clapboards shall have less than eight (8) inches of exposure, and sheet metal type siding shall not be permitted.
4. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
5. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
6. No unit shall be horizontally or vertically attached to any other unit or other structure, provided, however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

(Ord. No. 200-89, § 3, 12-18-89)

Sec. 14-97 - 14-100. Reserved.

DIVISION 5. R-4 RESIDENTIAL ZONE*

*Editor's note--Ord. No. 535-84, adopted May 7, 1984, repealed former Div.

5, §§ 14-101--14-104, and enacted a new Div. 6, §§ 14-101--14-106. The result of this action was that this Art. III contained no division designated 5. The editor has, therefore, in agreement with the city, retained the division designation 5. Formerly §§ 14-101--14-104 were derived from Code 1968, § 602.5.A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; and Ord. No. 91-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-101. Purpose.

The purpose of the R-4 residential zone is:

- (a) 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 multifamily dwellings and other compatible development at medium densities.

(Ord. No. 535-84, 5-7-84)

Sec. 14-102. Permitted uses.

The following uses are permitted in the R-4 residential zone:

(a) *Residential:*

1. Single-family detached dwellings;
2. New construction of two-family dwellings;
3. Reserved;
4. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff;
5. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District;
6. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District, provided that each unit meets the performance standards listed below:
 - a. More than half of the roof area of each unit shall be double pitched Class C rated shingled

roof with a minimum pitch of 3/12.

- b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.

- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

1. Cemeteries;
2. Parks, and other active and passive noncommercial recreation spaces;
3. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;
4. Home occupations subject to the provisions of section 14-410 (home occupation) of this article;
5. Municipal uses, excluding those specifically set forth in section 14-103 of this division.
6. Special needs independent living units, provided that a building housing special needs independent living units shall not house other types of residential or other permitted uses. The owner of a special needs independent living unit building shall file in the Cumberland County Registry of Deeds a statement under oath that the building is a special needs independent living unit building and that any future change of use to a permitted residential use shall require a change in use review by the City of Portland and a decrease in the number of units in the building in accordance with the Portland City Code, chapter 14. The owner shall file proof of such recording with the building inspections division prior to the issuance of any certificates of occupancy for the new uses.
7. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 535-84, 5-7-84; Ord. No. 264-84, § 1, 12-17-84; Ord. No. 67-87, § 2, 11-2-87; Ord. No. 82-88, § 1, 7-19-88; Ord. No. 86A-89, § 4, 8-21-89; Ord. No.

33-91, § 5, 1-23-91; Ord. No. 33A-91, § 2, 4-17-91)

***Editor's note--**Ord. No. 82-88, § 1, adopted July 19, 1988, amended § 14-102 by adding subsection (b)5 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. 82-88.

Sec. 14-103. Conditional uses.

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

(a) *Residential:*

1. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. 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 one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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.

2. Alteration of an existing structure to accommodate one (1) or more dwelling units provided that:
 - a. No additional dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - b. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
 - c. The alteration will not result in a total cubic volume increase of more than ten (10) percent within the immediately preceding five (5) years;
 - d. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
 - e. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
 - f. Three thousand (3,000) square feet of land area per dwelling unit shall be required;
 - g. The project shall be subject to article V (site plan) of this chapter for site plan review and approval.
 - h. Parking shall be provided as required in division 20 of this article.
3. Multiplex development with three (3) or more horizontally or vertically attached, or a series of such attached dwelling units and the construction

of at least one (1) building, provided that:

- a. No open outside stairways or fire escapes above the ground floor shall be constructed;
- b. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.
- c. Three thousand (3,000) square feet of land area per dwelling unit shall be required for the first three (3) dwelling units with a requirement of six thousand (6,000) square feet of land area per dwelling unit for additional dwelling units;
- d. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

The project shall be subject to article V (site plan) of this chapter for Planning Board site plan review and approval.

(b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

1. Elementary, middle, and secondary school (except as otherwise provided in section 14-276.10);
2. Places of assembly;

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion of existing such 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

- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. Community halls:
 - i. The structure was in existence as of January 4, 2010;
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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
 - iv. A parking management plan is submitted for review and approval by the planning board; and
- f. Private club or fraternal organizations: any such establishment serving alcoholic beverages or in possession of a license for serving alcoholic beverages shall be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) *Other:*

1. Off-street parking of passenger cars as provided in section 14-344 (board of appeals may authorize parking in certain residential zones) of this article;
2. Utility substations, including sewage and water pumping stations and standpipes, electric power substations, transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care use, home babysitting use, nursery school, or kindergarten or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.

- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is

required as provided in division 20 (off-street parking) of this article.

vii. The maximum number of children in a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and

viii. 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.

4. 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.

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

(Ord. No. 535-84, 5-7-84; Ord. No. 264-84, § 2, 12-17-84; Ord. No. 76-85, § 5, 7-1-85; Ord. No. 67-87, § 3, 11-2-87; Ord. No. 82-88, §§ 2, 3, 7-19-88; Ord. No. 235-91, § 7, 2-4-91; Ord. No. 118-93, § 7, 10-18-93; Ord. No. 133-96, § 4, 11-18-96; Ord. No. 154-96, § 7, 12-16-96; Ord. No. 222-99, §4, 3-01-99; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 138-09/10, 1-20-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12)

***Editor's note--**Ord. No. 82-88, §§ 2, 3, adopted July 19, 1988, amended

this section by amending subsection 14-103(a) and by deleting subsection (b)3, municipal use. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 82-88.

Sec. 14-104. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 535-84, 5-7-84)

Sec. 14-105. Dimensional requirements.

In addition to the provisions of division 25 of this article (space and bulk regulations and exceptions), lots in the R-4 zone shall meet the following requirements:

(a) *Minimum lot size:*

1. Residential: Six thousand (6,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.
2. Multiplex: Nine thousand (9,000) square feet.
3. School: Thirty thousand (30,000) square feet.
4. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

5. Municipal use: Six thousand (6,000) square feet.
6. All other uses: Six thousand (6,000) square feet.

Provided that for uses specified in section 14-105(a)3 through 5 above, no minimum lot area shall be required in the following cases:

- a. Uses existing on June 1, 1983;
- b. Expansion onto land abutting the lot on which the principal use is located;

- c. 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;
7. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.
- (b) *Minimum lot area per dwelling unit:* Three thousand (3,000) square feet, except as provided for a multiplex. This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.
 - (c) *Minimum street frontage:* Fifty (50) feet.
 - (d) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

 1. *Front yard:*

Principal or accessory structures: Twenty-five (25) feet.

A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.
 2. *Rear yard:*
 - a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

- b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

3. *Side yard:*

- a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	10 feet
1 1/2 stories	10 feet
2 stories	14 feet
2 1/2 stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than ten (10) feet.

- b. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

4. *Side yard on side streets:*

Principal or accessory structures: Twenty (20) feet.

A side yard on a side street need not exceed the

average depth of front setback directly abutting the lot.

(e) *Maximum lot coverage:* Thirty (30) percent of lot area.

(f) *Minimum width of lot:* Sixty (60) feet.

(g) *Maximum structure height:*

1. Principal structure: Thirty-five (35) feet.

2. Accessory detached structure: Eighteen (18) feet.

(h) *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

(i) *Maximum floor area for places of assembly not on a collector or arterial road:*

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(Ord. No. 535-84, 5-7-84; Ord. No. 82-88, § 4, 7-19-88; Ord. No. 235-91, § 9, 2-4-91; Ord. No. 33A-91, § 3, 4-17-91; Ord. No. 118-93, § 8, 10-18-93; Ord. No. 154-96, § 8, 12-16-96; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage)

***Editor's note--**Ord. No. 82-88, § 4, adopted July 19, 1988, amended § 14-105 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. 82-88.

Sec. 14-106. Other requirements.

[Other requirements are as follows:]

(a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.

(b) *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.

- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 535-84, 5-7-84; Ord. No. 15-92, § 8, 6-15-92)

Sec. 14-107 - 14-115. Reserved.

DIVISION 6. R-5 RESIDENTIAL ZONE*

***Editor's note--**Ord. No. 536-84, adopted May 7, 1984, repealed former Div. 6, §§ 14-116--14-119, and enacted in lieu thereof a new Div. 7, §§ 14-116--14-121. However, in order to avoid duplication of subsequent division numbers and in consultation with the city, the provisions have been retained as Div. 6. Sections 14-116--14-119 were formerly derived from Code 1968, § 602.5.A--D, and Ord. Nos. 207-72, 499-74, 193-82, 92-83, 422-83.

Sec. 14-116. Purpose.

The purpose of the R-5 residential zone is:

To provide appropriate areas of the city for medium-density residential development characterized by single-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. Such PRUD development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.

(Ord. No. 536-84, 5-7-84; Ord. No. 83-88, § 1, 7-19-88)

***Editor's note--**Ord. No. 83-88, § 1, adopted July 19, 1988, amended § 14-116 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. 83-88.

Sec. 14-117. Permitted uses.

The following uses are permitted in the R-5 residential zone:

- (a) *Residential:*

1. Single- and two-family dwellings; except that development of two (2) or more two-family dwellings on contiguous lots within any two-year period shall be subject to review as specified under the provisions of 14-117(a)2e if such lots were under single ownership at any time within the two-year period immediately prior to development of the first such lot. No building reviewed as a two-family dwelling in accordance with article V (site plan) of this chapter or not reviewed under article V shall be altered or enlarged to include any additional dwelling unit within five (5) years from the date of issuance of the building permit. Any building reviewed as a two-family dwelling in accordance with article V (site plan) which is altered or enlarged to include any additional dwelling unit after this five-year period shall be reviewed as a level I site plan pursuant to article V of this chapter.
2. Multiplex development with three (3) or more horizontally or vertically attached dwelling units or a series of such attached dwelling units and the construction of at least one (1) building on a parcel of less than two (2) acres, provided that:
 - a. The land area requirement for a multiplex shall be six thousand (6,000) square feet of land area per dwelling unit; except that a multiplex with two hundred fifty (250) feet or more of street frontage needs only forty-five hundred (4,500) square feet of land area per dwelling unit;
 - b. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - c. No open outside stairways or fire escapes above the ground floor shall be constructed;
 - d. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units;

- e. Such development shall be subject to article V (site plan) of this chapter for site plan review approval and shall conform to the R-5 Design Standards.
3. Planned residential unit development (PRUD) consisting of horizontally or vertically attached dwelling units, or a series of such dwelling units. No dimensional requirements contained in section 14-120 shall apply with respect to such development, except for those requirements specifically denoted for PRUD. There shall be no open outside stairways or fire escapes above the ground floor. All land shall be owned and used in common and shall be governed and maintained as set forth in section 14-498(i)(3) of this chapter. Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter, as now enacted or as hereafter amended.
4. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff.
5. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
6. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District, provided that each unit meets the performance standards listed below:
 - a. More than half of the roof area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.
 - b. Each unit shall be installed on a full foundation or a concrete frost wall in

accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.

- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions,

such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

1. Parks, and other active and passive noncommercial recreation spaces;
2. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;
3. Home occupation, subject to the provisions of section 14-410 (home occupation) of this article;
4. Municipal uses, excluding those specifically set forth in section 14-118 of this division.
5. Special needs independent living units on lots of less than two (2) acres, provided that a building housing special needs independent living units shall not house other types of residential or other permitted uses. The owner of a special needs independent living unit building shall file in the Cumberland County Registry of Deeds a statement under oath that the building is a special needs independent living unit building and that any future change of use to a permitted residential use shall require a change in use review by the City of Portland and a decrease in the number of units in the building in accordance with the Portland City Code, chapter 14. The owner shall file proof of such recording with the building inspections division prior to the issuance of any certificates of occupancy for the new uses.
6. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 536-84, 5-7-84; Ord. No. 265-84, § 1, 12-17-84; Ord. No. 98-86, § 1, 10-6-86; Ord. No. 83-88, §§ 2, 3, 7-19-88; Ord. No. 387-89, 4-3-89; Ord. No. 86A-89, § 5, 8-21-89; Ord. No. 95-89, § 1, 9-6-89; Ord. No. 279-90, § 1, 3-10-90; Ord. No. 33-91, § 6, 1-23-91; Ord. No. 33A-91, § 4, 4-17-91; Ord. No. 220-95, 4-3-95; Ord. No. 165-97, § 3, 12-1-97; Ord. No. 56-08/09, 9-3-08; Ord. No. 278-09/10, 7-19-10; Ord. No. 33-11/12, 1-18-12)

***Editor's note--**Ord. No. 83-88, §§ 2, 3, adopted July 19, 1988, amended

subsections 14-117(a) and (b)4 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. 83-88. Ord. No. 95-89, § 1, adopted Sept. 6, 1989, amended subsection (a)1 of § 14-117 to read as set out and, as amended, further ordained "that the prohibition upon unit additions contained in this ordinance shall not apply where a building permit has been issued. Additions proposed to such buildings shall require major site plan review and all other reviews required by this chapter."

Sec. 14-118. Conditional uses.

The following uses 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) *Residential:*

1. Reserved.
2. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. The facility shall make provision for adequate on-site staffing and supervision of residents in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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 the sheltered care group home permit.

3. Alteration of a structure existing and not in residential use as of January 1, 1984, to three (3) or more dwelling units, provided that:
 - a. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - b. No open outside stairways or fire escapes above the ground floor shall be constructed or have been constructed in the immediately preceding five (5) years;
 - 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. Three thousand (3,000) square feet of land area per dwelling unit shall be required;
 - e. On-site parking shall be required as specified in division 20 (off-street parking) of this article, for the combined uses of the site;
 - f. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:
 1. Any addition or exterior alterations such as facade materials, building form, and roof pitch shall be designed to be compatible with the architectural style of the structure;

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.
4. Conversions of existing two-family or multiplex structures into lodging houses, provided that a lodging house shall not be located within five hundred (500) feet of another as measured along street lines to the respective property lines.
5. Use of space existing as of September 3, 2008 to accommodate additional dwelling units under the following conditions:
 - a. This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;
 - b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site ;
 - c. Any units created under this section must be affordable to households earning up to 80% of AMI and are subject to income verification as further outlined in implementing regulations ;
 - d. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.

- e. Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;
 - f. Parking shall be provided as required by Division 20 of this article;
 - g. There shall be no open, outside stairways or fire escapes above the ground floor; and
 - h. The project shall be subject to Article V for site plan review and approval and the following additional standards:
 - i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and
 - ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.
- (b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article, or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
- 1. Elementary, middle, and secondary school;
 - 2. a. Long-term and extended care facilities;
 - b. Intermediate care facility for thirteen (13) or more persons;
 - 3. Places of assembly;
 - 4. Reserved;

5. Hospital;
6. College, university, trade school.

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion of existing such 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
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010;
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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

- iv. A parking management plan is submitted for review and approval by the planning board; and
 - f. 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 be located on a large lot, as specified in the minimum lot size provisions of this section.
 - d. A college, university or trade school may build principal structures to a height of fifty-five (55) feet, not including the USM overlay zone, if the following standards can be met:
 - (i) Lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.
 - (ii) Minimum setback between buildings on-site: 20 feet.
 - (iii) 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.
 - (iv) 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.
- (c) *Other:*

1. Off-street parking of passenger cars as provided in section 14-344 (board of appeals may authorize parking in certain residential zones) of this article;
2. Utility substations such as water and sewage pumping stations and standpipes, electric power substations, transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care use, home babysitting use, nursery school, or kindergarten, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.

- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-

street parking) of this article.

vii. The maximum number of children in a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and

viii. 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.

4. 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.

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

(Ord. No. 536-84, 6-7-84; Ord. No. 265-84, § 2, 12-17-84; Ord. No. 76-85, § 6, 7-1-85; Ord. No. 83-88, § 4, 7-19-88; Ord. No. 235-91, § 10, 2-4-91; Ord. No. 118-93, § 9, 10-18-93; Ord. No. 133-96, § 5, 11-18-96; Ord. No. 154-96, § 9, 12-16-96; Ord. No. 222-99, §5, 3-01-99; Ord. No. 94-07/08, 11-5-07; Ord. No. 56/08/09, 9-3-08; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12; Ord. 82-15/16, 10-19-2015)

***Editor's note--**Ord. No. 83-88, § 4, adopted July 19, 1988, amended §

14-118 by deleting subsection (b)5. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 83-88.

Sec. 14-119. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
(Ord. No. 536-84, 5-7-84)

Sec. 14-120. Dimensional requirements.

(a) In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-5 zone shall meet the following minimum requirements:

1. *Minimum lot size:*

- a. Residential: Six thousand (6,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. 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, or the applicable zoning lot size, whichever is larger.
- b. Reserved.
- c. Long-term, extended, or intermediate care facility: Two (2) acres.
- d. School: Thirty thousand (30,000) square feet.
- e. Places of assembly:

Large	43,560 sq. ft.
Medium	21,780 sq. ft.
Small	10,890 sq. ft.

- f. Municipal use: Six thousand (6,000) square feet.
- g. Hospital: Five (5) acres.
- h. College, university, trade school: Two (2) acres.
- i. Multiplex: Nine thousand (9,000) square feet.

- j. Planned residential unit development (PRUD): Two (2) acres gross area, as defined in section 14-47 (definitions) of this article, of contiguous land.
- k. All other uses: Six thousand (6,000) square feet.
- l. Lodging houses: Nine thousand (9,000) square feet.

Provided that for uses specified in section 14-120 (1) (c) through (i) above, no minimum lot area shall be required in the following cases:

- i. Uses existing as of June 1, 1983;
 - ii. Expansion of uses onto land abutting the lot on which the principal use is located;
 - iii. 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;
 - iv. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.
2. *Minimum lot area per dwelling unit:*

PRUD: Three thousand (3,000) square feet of net land area as defined in section 14-47 (definitions) of this article. As part of a site plan and subdivision application, the applicant shall provide a calculation of those factors deducted to determine net land area. In addition, such net area factors shall be delineated on a site plan.

Special needs independent living units: Four thousand

eight hundred (4,800) square feet; except that special needs independent living units with two hundred fifty (250) feet or more of frontage shall require three thousand six hundred (3,600) square feet.

Other uses: Three thousand (3,000) square feet, except as provided for a multiplex.

3. *Minimum street frontage:* Fifty (50) feet.

4. *Minimum yard dimension:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

a. *Front yard:*

Principal or accessory structures: Twenty (20) feet.

A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.

b. *Rear yard:*

i. Principal or attached accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

ii. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

Setbacks from swimming pools shall be as provided in section 14-432 (swimming pools) of this article.

c. *Side yard:*

i. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	8 feet
1 1/2 stories	8 feet
2 stories	12 feet
2 1/2 stories	14 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than eight (8) feet.

ii. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.

d. *Side yard on side street:*

Principal or accessory structures: Fifteen (15) feet.

5. *Maximum lot coverage:* Forty (40) percent of lot area.

6. *Minimum lot width:*

Multiplex: Ninety (90) feet.

Other uses: Sixty (60) feet.

7. *Maximum structure height:*

Principal or attached accessory structure: Thirty-five (35) feet.

Accessory detached structure: Eighteen (18) feet.

- Principal and accessory attached structure (PRUD):
Thirty-five (35) feet.
8. a. *Maximum number of units in a building (PRUD):*
Twelve (12) units
 - b. *Maximum number of units in a multiplex building:*
Six (6) units.
 9. *Maximum length of building (PRUD):* One hundred forty
(140) feet.
 10. *Maximum length of accessory garage structure (PRUD):*
Sixty (60) feet.
 11. *Minimum building setback from external subdivision
property lines (PRUD):*
 - a. *Building length of one hundred (100) feet or less:*
Twenty-five (25) feet.
 - b. *Building length greater than one hundred (100)
feet:* Thirty-five (35) feet.
 12. *Minimum recreation open space area (PRUD):* Three hundred
(300) square feet per dwelling unit of common area
designated for recreation purposes. Such recreation areas
shall be level graded, dry, accessible and properly
drained. At a minimum, a contiguous area of six thousand
(6,000) square feet, with a minimum dimension of fifty
(50) feet, shall be provided and shall include one (1) or
more of the uses set forth in section 14-526(d) 9. and
the planned residential unit development standards in the
City of Portland Design Manual, but shall at least be
usable as a multipurpose game field. Such recreation
areas shall be located at least twenty-five (25) feet
from dwelling units.
 13. No habitable space in a PRUD shall be below grade, except
basements that are part of and below aboveground units.
 14. a. *Minimum rooming unit area for lodging houses:* Two
hundred (200) square feet of combined rooming unit
and common area per rooming unit. Each individual
rooming unit shall be a minimum of eighty (80)
square feet.

- b. *Minimum land area per lodging house rooming unit:*
One thousand (1,000) square feet.

15. *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

16. *Maximum floor area for places of assembly not on a collector or arterial road:*

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(b) *Small residential lot development:* Single family homes may be built on small lots located in the R-5 and may use the dimensional requirements below if one of the following conditions is met:

The lot is:

Vacant as of (date of enactment); or used exclusively for parking; or contains structure(s) not used for residential purposes; or created from a single lot division of a developed lot and results in a lot meeting the dimensional requirements of § 14-120(b) with the remaining developed portion meeting the dimensional requirements of §14-120(a)(1)-(14) except as expressly provided in Section 14-120(b).

1. *Minimum lot size:* Five thousand (5,000) square feet.
2. *Maximum lot size:*
 - a. Lots that are vacant as of September 3, 2008, used exclusively for parking, or contain structure(s) not used for residential purposes: Six thousand (6,000) square feet.
 - b. Original developed lot prior to the single lot division that results in a lot meeting the dimensional requirements of §14-120(b) with the

remaining developed portion meeting the dimensional requirements of §14-120(a)(1)-(14): Thirteen thousand (13,000) square feet.

3. *Yard dimensions:*

a. *Side yard:*

- i. Principal or attached accessory structures with ground coverage greater than one hundred (100) square feet: Seven (7) feet.

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than four (4) feet in width.

- ii. Side yard on side street: Ten (10) feet.

4. *Minimum lot width:* Forty (40).

5. *Minimum street frontage:* Forty (40).

6. *Maximum lot coverage:* Fifty (50) percent.

(Ord. No. 536-84, 5-7-84; Ord. No. 98-86, § 2, 10-6-86; Ord. No. 83-88, § 5, 7-19-88; Ord. No. 386-89, §§ 1, 2, 4-3-89; Ord. No. 235-91, § 11, 2-4-91; Ord. No. 33A-91, § 5, 4-17-91; Ord. No. 118-93, § 10, 10-18-93; Ord. No. 154-96, § 10, 12-16-96; Ord. No. 165-97, § 4, 12-1-97; Ord. No. 56-08/09, 9-3-08; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 275-10/11, 10-18-10)

***Editor's note--**Ord. No. 83-88, § 5, adopted July 19, 1988, amended § 14-120 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. 83-88.

Sec. 14-121. Other requirements.

- (a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.

(c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(d) *Small residential lot development* shall conform to the site plan standards of § 14-526.

(Ord. No. 536-84, 5-7-84; Ord. No. 15-92, § 9, 6-15-92; Ord. No. 56-08/09, 9-3-08)

Sec. 14-122 - 14-125. Reserved.

DIVISION 6.5. R-5A RESIDENTIAL ZONE*

***Editor's note--**Ord. No. 537-84, adopted May 7, 1984, repealed a nonexistent Div. 6.5 and enacted a new Div. 8. However, in order to avoid duplication of division numbers and in consultation with the city, the provisions have been included as a new Div. 6.5, §§ 14-126--14-131.

Sec. 14-126. Purpose.

The purpose of the R-5A residential zone is:

(a) To provide for moderate-density residential development in off-peninsula sections 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.

(Ord. No. 537-84, 5-7-84; Ord. No. 84-88, § 1, 7-19-88)

***Editor's note--**Ord. No. 84-88, § 1, adopted July 19, 1988, amended § 14-126 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. 84-88.

Sec. 14-127. Permitted uses.

The following uses are permitted in the R-5A residential zone:

(a) *Residential:*

1. Single-, two-and three-family dwellings.
2. Planned residential unit development (PRUD) consisting of horizontally or vertically attached dwelling units or a series of such dwelling units. No dimensional requirements contained in section 14-130 shall apply with respect to such developments except for those requirements specifically denoted for PRUD. There shall be no open outside stairways or fire escapes above the ground floor. All land shall be owned and used in common and shall be governed and maintained as set forth in section 14-498(i)(3) of article IV (subdivisions). Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter, as now enacted or as hereafter amended.
3. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff.
4. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
5. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District, provided that each unit meets the performance standards listed below:
 - a. More than half of the roof area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.

- b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- g. No unit shall be horizontally or vertically attached to any other unit or other structure,

provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

6. Multifamily dwellings.

7. Congregate care.

(b) *Other:*

1. Parks and other active and passive noncommercial recreation spaces;

2. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;

3. Home occupation, subject to the provisions of section 14-410 (home occupation) of this article;

4. Municipal use;

5. Intermediate, extended and long-term care facilities.

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

(Ord. No. 537-84, 5-7-84; Ord. No 266-84, § 1, 12-17-84; Ord. No. 84-88, §§ 2, 3, 7-19-88; Ord. No. 86A-89, § 6, 8-21-89; Ord. No. 33-91, § 7, 1-23-91; Ord. No. 58-97, § 1, 8-18-97; Ord. No. 33-11/12, 1-18-12)

***Editor's note--**Ord. No. 84-88, §§ 2, 3, adopted July 19, 1988, amended § 14-127 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. 84-88.

Sec. 14-128. Conditional use.

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

(a) *Residential:*

1. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines.
 - b. There shall be no open outside stairways or fire escapes above the ground floor.
 - c. 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 one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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 the sheltered care group home permit.

(b) *Other:*

1. Utility substations, including water and sewage pumping stations and standpipes, electric power substations, transformer stations and telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.

2. Nursery schools and kindergartens.
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
 - c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
 - d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
 - e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the

past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:

- i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
- ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
- iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
- iv. A ten-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;
- v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
- vi. *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.
- vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
- viii. 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.

4. 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.

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

(Ord. No. 537-84, 5-7-84; Ord. No. 266-84, § 2, 12-17-84; Ord. No. 76-85, § 7, 7-1-85; Ord. No. 235-91, § 12, 2-4-91; Ord. No. 133-96, § 6, 11-18-96; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-129. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 537-84, 5-7-84)

Sec. 14-130. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-5A zone shall meet or exceed the following requirements:

Minimum Lot Size	Residential (Single-, two- and three-family dwellings): 6,000 SF and a maximum lot size up to 2 acres ¹
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¹ 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-A, or the applicable zoning lot size, whichever is the largest. Except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.

	Planned residential unit development (PRUD), multifamily development of 4 or more dwelling units, and Congregate Care: 2 acres gross area
	Intermediate, extended or long-term care facilities: 1 1/2 acres.
Min. Lot Area per D.U.	Single-, two-and three-family dwellings: 1,600 SF. Planned residential unit development (PRUD), Congregate Care and Multifamily development of 4 or more dwelling units: 1600 SF of net land area.
Min. Lot Area per Resident	<i>Minimum land area per intermediate care facility resident: 8,000 SF gross land area for the first thirty-five (35) residents, plus three hundred fifty (350) square feet for each additional resident.</i>
Min. Street Frontage	50 feet.

Min. Yard Dimensions for Single-, two-and three-family dwellings²	<p>1. <i>Front yard</i>: Principal or accessory structures: 25 feet.</p> <p>2. <i>Rear yard</i>:</p> <ul style="list-style-type: none">a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: 25 feet.b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: 5 feet. <p>Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article. (continued)</p> <p>3. <i>Side yard</i>:</p> <ul style="list-style-type: none">a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: <table border="0"><thead><tr><th><i>Height of Structure</i></th><th><i>Required Side Yard</i></th></tr></thead><tbody><tr><td>1 story</td><td>10 feet</td></tr><tr><td>1 1/2 stories</td><td>10 feet</td></tr><tr><td>2 stories</td><td>14 feet</td></tr><tr><td>2 1/2 stories</td><td>16 feet</td></tr></tbody></table> <p>The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than ten (10) feet.</p> <ul style="list-style-type: none">b. Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: 5 feet. <p>4. <i>Side setback on side streets</i>: Principal or accessory structures: 20 feet.</p>	<i>Height of Structure</i>	<i>Required Side Yard</i>	1 story	10 feet	1 1/2 stories	10 feet	2 stories	14 feet	2 1/2 stories	16 feet
<i>Height of Structure</i>	<i>Required Side Yard</i>										
1 story	10 feet										
1 1/2 stories	10 feet										
2 stories	14 feet										
2 1/2 stories	16 feet										

² Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.

Maximum Structure Height	Principal residential (single, two and three-family) or attached accessory structure: 35 feet.
	Accessory detached structure: 18 feet.
	Principal or attached accessory structure for PRUD, Multifamily development of 4 or more dwelling units, Congregate Care and Intermediate, extended or long-term care facilities: 55 feet.
Max. Lot Coverage	30%
Minimum Lot Width	60 feet
Minimum building setback from external subdivision property lines	PRUD, multifamily development of 4 or more dwelling units, Congregate Care, and Intermediate, extended or long-term care: a. Building length of one hundred (100) feet or less: 25 feet. b. Building length of greater than one hundred (100) feet: 35 feet.
Minimum recreation open space area	PRUD, multifamily development of 4 or more dwelling units, and Congregate Care: 200 SF per dwelling unit or living unit of common area designated on the site for recreation purposes.

(Ord. No. 537-84, 5-7-84; Ord. No. 84-88, § 4, 7-19-88; Ord. No. 58-97, § 2, 8-18-97; Ord. No. 165-97, § 5, 12-1-97; Ord. No. 131-08/09, 12-15-08; Ord. No. 278-09/10, 7-19-10; Ord. 276-14/15, 6-15-2015)

***Editor's note--**Ord. No. 84-88, § 4, adopted July 19, 1988, amended § 14-130 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. 84-88.

Sec. 14-131. Other requirements.

[Other requirements are as follows:]

- (a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.

(c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 537-84, 5-7-84; Ord. No. 15-92, § 10, 6-15-92)

Sec. 14-132. Reserved.

Sec. 14-133. Reserved.

Sec. 14-134. Reserved.

DIVISION 7. R-6 AND R-6A RESIDENTIAL ZONES*

***Editor's note--**Ord. No. 538-84, adopted May 7, 1984, repealed Div. 7, §§ 14-131--14-134, and enacted a new Div. 9, §§ 14-135--14-139, 14-145. However, in order to avoid duplication of division numbers and in consultation with the city, the provision has been included as Div. 7.

Sec. 14-135. Purpose.

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.

(b) 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.

The purpose of the R-6A residential zone is:

(c) To encourage neighborhood livability with higher density multi-family housing on large parcels located off the peninsula. The zone is appropriate in areas that are along major public transportation routes, near service areas, and in redevelopment (underutilized) or infill areas.

(Ord. No. 538-84, 5-7-84; Ord. No. 78-03/04, 10-20-03; Ord. No. 73-14/15, 10-20-2014)

Sec. 14-136. Permitted uses.

The following uses are permitted in the R-6 and R-6A

residential zones:

(a) *Residential:*

1. Single- and two-family dwellings. No building reviewed as a two-family dwelling in accordance with section article V (site plan) of this chapter shall be altered to include any additional dwelling unit within five (5) years from the date of issuance of the building permit. Any building reviewed as a two-family dwelling in accordance with article V (site plan) of this chapter or not reviewed under article V, which is altered or enlarged to include any additional dwelling unit after this five-year period, shall be reviewed as a pursuant to article V of this chapter.
2. Multifamily dwellings.
 - a. Parking shall be provided as required by division 20 of this article;
 - b. No open outside stairways or fire escapes above the ground floor shall be constructed;
 - c. A below-grade dwelling unit shall be permitted only if access is provided directly to the outside of the building;
 - d. Such development shall be subject to article V (site plan) of this chapter for site plan review and approval.
3. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff.
4. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District.
5. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National

Register Historic District, provided that each unit meets the performance standards listed below:

- a. More than half of the roof area of each unit shall be a double pitched Class C rated shingled roof with a minimum pitch of 3/12.
- b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.

- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

- 1. Lodging house;
- 2. Cemeteries;
- 3. Parks, and other active and passive noncommercial recreation spaces;
- 4. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;
- 5. Home occupation subject to the provisions of section 14-410 (home occupation) of this article;
- 6. Municipal uses, excluding those specifically set forth in section 14-137 of this division;
- 7. Special needs independent living units, provided that a building housing special needs independent living units shall not house other types of residential or other permitted uses. The owner of a special needs independent living unit building shall file in the Cumberland County Registry of Deeds a statement under oath that the building is a special needs independent living unit building and that any future change of use to a permitted residential use shall require a change in use review by the City of Portland and a decrease in the number of units in the building in accordance with the Portland City Code, chapter 14. The owner

shall file proof of such recording with the building inspections division prior to the issuance of any certificates of occupancy for the new uses.

8. Conversion of a structure existing on March 3, 1997, into a bed and breakfast with up to four (4) guest rooms, subject to the standards of article V (site plan).
9. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - a. No more than ten (10) overnight transient guests shall be permitted in the facility at any one time.
 - b. All applicable provisions of Article V of this chapter shall be met.
 - c. Parking shall be provided in compliance with Division 20 of this Article.
 - d. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - e. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - f. An owner, manager or operator shall live in the building as a permanent resident.
 - g. 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.
10. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 538-84, 5-7-84; Ord. No. 267-84, § 1, 12-17-84; Ord. No. 67-87, § 4, 11-2-87; Ord. No. 85-88, §§ 1, 2, 7-19-88; Ord. No. 86A-89, § 7, 8-21-89; Ord. No. 95-89, § 2, 9-6-89; Ord. No. 279-90, § 2, 3-19-90; Ord. No. 33-91, § 8, 1-23-91; Ord. No. 33A-91, § 6, 4-17-91; Ord. No. 125-97, § 2, 3-3-97; Ord. No. 278-09/10, 7-19-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord.

No. 73-14/15, 10-20-2014; Ord. 209-14/15, 5/4/2015)

***Editor's note--**Ord. No. 85-88, §§ 1, 2, adopted July 19, 1988, amended § 14-136 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. 85-88. Ord. No. 95-89, § 2, adopted Sept. 6, 1989, amended subsection (1)a of § 14-136 to read as set out and, as amended, further ordained "that the prohibition upon unit additions contained in this ordinance shall not apply where a building permit has been issued. Additions proposed to such buildings shall require major site plan review and all other reviews required by this chapter."

Sec. 14-137. Conditional uses.

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

(a) *Residential:*

1. Reserved.
2. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines.
 - b. There shall be no open outside stairways or fire escapes above the ground floor.
 - c. The facility shall make provision for adequate on-site staffing and supervision of residents in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals 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 the sheltered care group home permit.

3. Conversion of a structure existing on March 3, 1997, into a bed and breakfast with five (5) to nine (9) guest rooms.
- (b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
1. Elementary, middle, and secondary school except as otherwise provided in section 14-276.10;
 2.
 - a. Long-term and extended care facilities;
 - b. Intermediate care facility for thirteen (13) or more persons;
 3. Intermediate care facility;
 4. Places of assembly;
 5. Hospital;
 6. College, university, trade school.

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion onto land of existing such uses 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

- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010.
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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
 - iv. A parking management plan is submitted for review and approval by the planning board; and
- f. 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

be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) *Other:*

1. Utility substations, such as water and sewage pumping stations and standpipes, electric power substations, transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
2. Professional offices of a member of a recognized profession maintained for the conduct of that profession. Professional office uses exclude personal services, retail services, and veterinarians.

The illustrative examples that follow indicate the type of professional offices permitted: health care practitioner, attorney, social worker, engineer, architect, accountant, real estate agent, insurance agent.

Professional office uses shall meet the following standards in addition to provisions of section 14-474, except that subsections a., b., c. and d. of this section 14-137(c)2 shall not apply to the use of any building not designed or constructed for residential use, which was not in actual use as a residence on April 18, 1984, or thereafter.

- a. A professional office shall not be located within five hundred (500) feet of another as measured along the street line to the respective property lines.
- b. A building with one (1) or more professional offices shall have at least fifty (50) percent 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 (4) 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.
- e. 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.
- f. Off-street parking is required as provided in division 20 (off-street parking) of this article.

3. Chancellery.

4. Nursery school and kindergarten.

5. Off-street parking for passenger cars for uses permitted in the R-6 zone.

6. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:

- a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
- b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto,

unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.

- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;

- v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
 - viii. 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.
7. 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.
8. Hostels, provided the applicant submits a site plan

and operations plan demonstrating compliance with the following conditions:

- a. No more than twenty (20) overnight transient guests shall be permitted in the facility at any one time.
- b. All applicable provisions of Article V of this chapter shall be met.
- c. Parking shall be provided in compliance with Division 20 of this Article.
- d. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
- e. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
- f. An owner, manager or operator shall live in the building as a permanent resident.
- g. 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.

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

(Ord. No. 538-84, 5-7-84; Ord. No. 267-84, § 2, 12-17-84; Ord. No. 76-85, § 8, 7-1-85; Ord. No. 85-88, § 3, 7-19-88; Ord. No. 235-91, § 13, 2-4-91; Ord. No. 118-93, § 11, 10-18-93; Ord. No. 133-96, § 7, 11-18-96; ; Ord. No. 154-96, § 11, 12-16-96; Ord. No. 125-97, § 3, 3-3-97; Ord. No. 232-99, §2, 3-15-99; Ord. No. 77-02/03, § 2, 10-21-02; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 138-09/10, 1-20-10; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12)

Sec. 14-138. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 538-84, 5-7-84)

Sec. 14-139. Dimensional requirements.

(a) In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-6 and R-6A zones shall meet or exceed the following minimum requirements:

R-6 Dimensional Requirements	
Minimum Lot Size	Residential Uses: 2,000 sf, except that in R-6A the min. residential lot size is four (4) acres.
	Long-term and extended care facilities: Ten thousand (10,000) square feet for the first nine (9) residents plus seven hundred fifty (750) square feet for each additional resident, up to a total of two (2) acres.
	Intermediate care facility: One (1) acre.
	School: Thirty thousand (30,000) square feet.
	Places of assembly: Large, 15,000 sf; Medium, 10,000 sf; Small, 5,000 sf.
	Hospital: Two (2) acres
	All other uses: 2,000 sf
Min. Lot Area/Dwelling Unit	725 s.f.
Minimum Lot Area/Lodging House Rooming Unit	250 s.f
Minimum land area per intermediate care facility resident	250 s.f
Minimum land area per permitted hostel guest when maximum permitted guests is greater than 10	250 s.f
Street Frontage	20 feet
Minimum Front Yard Setback for Principal and Accessory Structures	5 ft, or the average depths of adjacent front yards.

Minimum Rear Yard Setback for Principal and Accessory Structures	10 feet, except that accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.
	All setbacks for swimming pools shall be as provided for in section 14-432, Swimming pools, of this article.
Minimum Side Yard Setback for Principal and Accessory Structures	5 ft, except that a side yard in the R-6 zone may be reduced to zero, provided that the cumulative side yard setbacks 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.
	Side yards in R-6A shall be 10 ft. for principal structures up to 45 ft. in height and 15 ft. for principal structures greater than 45 ft.in height.
Side Yard on Side Street	None
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. <i>Does not apply to side yards on side streets.</i>
Maximum Lot Coverage	60%
Minimum Lot Width	20 feet
Maximum Height	Principal and attached accessory structure: 45 ft
	Detached accessory structure: 18 ft
	In R-6A the maximum principal and attached accessory structure height shall be 65 ft.
Landscaped Open Space	20%. This area shall not include parking areas or other impervious surfaces as defined in section 14-47.

Minimum gross floor area for bed and breakfasts	Two thousand (2,000) square feet of gross floor area for the first three (3) guest rooms and five hundred (500) square feet of floor area for each additional guest room.
Maximum floor area for places of Assembly	<i>On a collector or arterial road:</i>
	Large: Not limited
	Medium: 4,500 s.f.
	Small: 2,250 s.f.
	<i>Not on a collector or arterial road:</i>
	Large: 4,500 s.f.
	Medium: 2,250 s.f. Small: 1,125 s.f.
Maximum Garage Opening	Garage openings on front façades shall not exceed the greater of nine (9) feet or forty (40) percent of the front façade, and in no case shall a garage opening on a front façade exceed 20 feet.

(b) Townhouse Subdivisions.

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 yard 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.

(c) Alterations to Single-family, two-family, and multi-family dwellings in existence as of June 15, 2015 shall not result in the creation of any additional dwelling unit of less than six hundred (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 one thousand (1,000) square feet of floor area, exclusive of common areas and storage in basement and attic.

(Ord. No. 538-84, 5-7-84; Ord. No. 634-86, § 1, 7-7-86; Ord. No. 264-87, § 1, 3-16-87; Ord. No. 85-88, § 4, 7-19-88; Ord. No. 230-90, § 1, 3-5-90; Ord. No. 33-91, § 9, 1-23-91; Ord. No. 235-91, § 14, 2-4-91; Ord. No. 33A-91, 4-17-91; Ord. No. 118-93, § 12, 10-18-93; Ord. No. 154-96, § 12, 12-16-96; Ord. No. 125-97, § 4, 3-3-97; Ord. No. 245-97, §§ 1, 2, 4-9-97; Ord. No. 232-99; §3, 3-15-99; Ord. No. 78-03/04, 10-20-03; Ord. No. 21-04/05, 8-2-04, Ord. No. 145-04/05, 2-23-05; Ord. No. 254-05/06, 6-5-06; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 65-10/11, 10-18-10; Ord. No. 73-14/15, 10-20-2014; Ord. 209-14/15, 5/4/2015)

***Editor's note--**Ord. No. 85-88, § 4, adopted July 19, 1988, amended § 14-139 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. 85-88.

Sec. 14-140. Other requirements.

(a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.

(b) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(c) *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.

(Ord. No. 538-84, 5-7-84; Ord. No. 85-88, § 5, 7-19-88; Ord. No. 15-92, § 11, 6-15-92; Ord. No. 37-98, § 1, 5-4-98; formerly §14-145--renumbered per Ord. No. 122, 12-20-99; Ord. No. 78-03/04, 10-20-03; Ord. No. 254-05/06, 6-5-06; Ord. No. 240-09/10, 6-21-10; Ord. 209-14/15, 5/4/2015)

***Editor's note--**Ord. No. 85-88, § 5, adopted July 19, 1988, amended § 14-145(a) 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. 85-88.

DIVISION 7.01. R-7 COMPACT URBAN RESIDENTIAL OVERLAY ZONE

Section 14-141. 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 element of the comprehensive plan and housing plans of the City of Portland. Sites suitable for in-city

living 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 in-city 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 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 rezone to R-7 overlay through conditional or contract zoning to ensure that the new development is architecturally appropriate and compatible with the surrounding neighborhood.

(Ord. No. 122, 12-20-99)

Sec. 14-142. Permitted Uses.

Permitted uses in the R-7 Compact Urban Residential Overlay Zone, shall be the uses permitted in the R-6 Zone, except that:

(a) Residential uses shall comply with the following dimensional requirements:

1. Minimum Lot Size: None
2. Minimum Frontage: None
3. Minimum Yard Dimensions:
 - a. Front yard: None
 - b. Rear and side yard: Five (5) feet.
 - c. Side yard on side street: None
4. Maximum Lot Coverage: 100%
5. Maximum Residential Density: Four hundred thirty five (435) square feet of land area per dwelling unit is required.

6. Maximum Building Height: Fifty (50) Feet

(b) Off-street parking is required as provided in division 20 (off-street parking) of this article;

(c) Residential development in the R-7 Zone shall be reviewed by the Planning Board for compliance with Article IV, Subdivisions, and Article V, Site Plan;

(d) Any new dwelling unit constructed in the R-7 Zone shall contain a minimum of 400 square feet of habitable floor area;

(e) All other uses in the R-7 Zone shall observe the requirements of the R-6 Zone.

(Ord. No. 122, 12-20-99; Ord. No. 84-08/09, 10-20-08; Ord. No. 240-09/10, 6-21-10)

Sec. 14-143. Design Standards.

Residential development in the R-7 Zone shall be reviewed by the Planning Board under Article V, Site Plan. Such development shall also comply with the following development standards. The general intent of these development standards is to achieve an attractive and comfortable city neighborhood environment. Varied and human-scaled building facades are key to making a place "pedestrian-oriented." Building designs should provide a high level of visual interest, without creating a chaotic image. Residences should include design elements that enhance the streetscape and address the street.

(a) Porches and bays should face the street.

(b) Primary ground floor residential entries to multi-family buildings must orient to street, not to interior blocks or parking lots. Secondary and upper-floor entries from the interior of a block are acceptable. The front door to single-family homes, duplexes, and townhouses must be visible from the street.

(c) The design approach shall provide an architecture that will be a visible and permanent expression of the character of the neighborhood;

(d) The facade shall be varied and articulated to provide visual interest to pedestrians;

(e) Reinforce the public realm of the public open space, sidewalks and streets through appropriately scaled entries, porches, fenestration, landscaping, and architectural details;

(f) Provide visual and acoustical privacy between units;

(g) Maximize natural light and ventilation within units.

(Ord. No. 122, 12-20-99)

Sec. 14-144. Reserved.

Sec. 14-145. Reserved.

(Ord. No. 122, 12-20-99)

DIVISION 7.1. IR-1 ISLAND RESIDENTIAL ZONE

Sec. 14-145.1. Purpose.

The purpose of the IR-1 island residential zone is 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.

(Ord. No. 27-85, § 1, 7-15-85)

Sec. 14-145.2. Permitted uses.

The following uses are permitted in the IR-1 island residential zone:

(a) Single-family detached dwellings.

(b) Planned residential unit development with a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least five, (5) acres of contiguous land, consisting of detached dwellings. Minimum yard dimensions (section 14-145.5(c)), street frontage (section 14-145.5(b)), and lot width (section 14-145.5(e)) shall be reduced up to fifty (50) percent of what would otherwise be required. Minimum lot area (section 14-145.5(a)) shall be reduced up to fifty (50) percent 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.

All area in such a development which is to be owned or used in common shall be governed and maintained as set forth in section 14-498(i)(3), article IV (subdivisions) of this chapter.

The density for a planned residential unit development shall not exceed one (1) dwelling unit per forty thousand (40,000) square feet of net area. Net area shall be determined by subtracting from the gross area of the site the area of street rights-of-way, slopes of fifteen (15) percent or greater, wetland.

Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended.

- (c) Agriculture.
- (d) Boat houses and store houses for fishing equipment.
- (e) Parking and storage of equipment related to agriculture or commercial fishing.
- (f) Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article, including but not limited to (a) home occupations, (b) temporary private tenting with one (1) tent accessory to a principal residential use provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use, and (c) road side stands less than two hundred (200) square feet in floor area for the sale of agricultural products produced on the premises and the sale of fish and shellfish caught by the occupant of the dwelling or principal structure.
- (g) Handicapped family unit, as defined in section 14-47, for handicapped persons, plus staff.
- (h) Wind energy systems, as defined and allowed in Article X,

Alternative Energy.

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 1, 12-11-89; Ord. No. 33-91, § 10, 1-23-91; Ord. No. 33-11/12, 1-18-12)

Sec. 14-145.3. Conditional uses.

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

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot area shall be seventy thousand (70,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. 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 single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

- f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;
 - g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and
 - h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - i. Shall remain under common ownership with the primary unit on the lot;
 - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
 - iii. Shall be rented households earning up to 100% of AMI and be subject to income verification as further outlined in implementing regulations;
 - iv. Shall be rented on an annual basis and may not be used for seasonal or weekly rentals; and
 - v. Shall be built within the principal building or as an attachment in accordance with subsection (d).
- (b) *Institutional*: Any of the following uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
- 1. Schools and other educational facilities including seasonal camps other than campgrounds;
 - 2. Places of assembly, excluding yacht clubs and marinas;

3. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped to ensure compatibility with the surrounding neighborhood;

Such uses shall be subject to the following standards if the total land area is two (2) acres or more:

- a. In the case of expansion of existing such 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;
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of July 15, 1985, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010.
 - ii. The structure was built for institutional or other non-residential uses;

- iii. 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
 - iv. A parking management plan is submitted for review and approval by the planning board; and
 - f. 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 be located on a large lot, as specified in the minimum lot size provisions of this section.
- (c) *Other:*
- 1. Utility substations including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
 - 2. Nursery schools and kindergarten;
 - 3. Cemeteries;
 - 4. Raising of domesticated animals, excluding pigs and reptiles, with no animals kept on any lot less than three (3) acres or closer than one hundred (100) feet to any street or lot line, except domesticated chickens as regulated in chapter 5, and provided that such use will not create any odor, noise, health or safety hazards, or other nuisance to neighboring properties;
 - 5. Wharves, piers, docks, or landing ramps;
 - 6. Campgrounds, excluding recreational vehicles, licensed by the State of Maine Department of Human Services provided that:
 - a. No tent shall be located within seventy-five

- (75) feet of the perimeter of site;
- b. The land area of the park shall not be less than the equivalent of five thousand (5,000) square feet of land area per tent site exclusive of the roadway network;
 - c. Site plan review and approval by the Planning Board shall be required.
7. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:
- a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
 - c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.

- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and

viii. 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.

8. 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.

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

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 2, 12-11-89; Ord. No. 133-96, § 8, 11-18-96; Ord. No. 153-08/09; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12; Ord. 82-15/16, 10-19-2015)

Sec. 14-145.4. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 27-85, § 1, 7-15-85)

Sec. 14-145.5. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the IR-1 zone shall meet the following minimum requirements:

- (a) *Minimum lot size*

1. Residential: Forty thousand (40,000) square feet for lots with public water; sixty thousand (60,000) square feet for lots without public water; except as provided in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and section 14-145.3(a)1 of this article.

2. Schools and other educational facilities: Forty thousand (40,000) square feet.

3. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

4. Seasonal camps and campgrounds: Ten (10) acres.

5. Animal raising: Three (3) acres.

6. In issuing any permit for new development, the building or planning authority shall require that any lot located in the IR-1 zone shall be at least forty thousand (40,000) square feet 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.

7. Excluding Peaks Island from this subsection h., any property owner whose lot does not meet the minimum lot size requirements outlined in subsection g. of this section may, for purposes of this section only, merge two (2) 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 building 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 building 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.
- 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 (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot sizes set forth in (a)1 of this section. 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 section 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 section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of section 14-433.

8. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the applicable requirements of CMR 241 Section 2-E. The land area requirements in subsection g. of this section shall not apply to such a replacement system.

For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

(b) *Minimum street frontage:*

One hundred (100) feet, except that a lot of record as described in section 14-433 (lots of record and accessory structure setbacks for existing buildings) 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 sixteen (16) feet and a minimum travel width of eight (8) feet except that an easement or right-of-way providing access for three (3) or more lots or providing the only means of access to a parcel or parcels of three (3) acres or more, shall conform to the requirements contained within the City of Portland Technical Manual and meet the construction requirements of article III of chapter 25 (street acceptances) of this Code. Such easement or right-of-way shall be sufficient to permit municipal service delivery.

(c) *Minimum yard dimensions:*

Yard dimensions shall include setbacks of structures from property lines and setbacks of structures from one

another. No structure shall occupy the minimum yard of another structure.

1. *Front yard:* Principal or accessory structures: Thirty (30) feet.
2. *Rear yard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Thirty (30) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Ten (10) feet.

3. *Side yard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Fifteen (15) feet, except that the minimum distance from a principal structure may be five (5) feet.

4. *Side yard on side streets:* Principal or accessory structures: Twenty (20) feet.

(d) *Maximum lot coverage:* Twenty (20) percent of lot area.

(e) *Minimum lot width:* One hundred (100) feet.

(f) *Maximum structure height:*

1. Principal or accessory attached structure: Thirty-five (35) feet.
2. Accessory detached structure: Eighteen (18) feet.

(g) *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

(h) *Maximum floor area for places of assembly not on a*

collector or arterial road:

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 3, 12-11-89; Ord. No. 218-04/05, 5-2-05; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 278-09/10, 7-19-10)

Sec. 14-145.6. Other requirements

Other requirements include the following:

- (a) Off-street parking shall be required as provided in division 20 (off-street parking) of this article.
- (b) *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.
- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 15-92, § 12, 6-15-92)

DIVISION 7.2. IR-2 ISLAND RESIDENTIAL ZONE

Sec. 14-145.7. Purpose.

The purpose of the IR-2 island residential zone is to protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services available. 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 I or IR-3.

(Ord. No. 28-85, § 1. 7.15-85)

Sec. 14-145.8. Permitted use.

The following uses are permitted in the IR-2 island residential zone:

- (a) Single-family detached dwellings.
- (b) Planned residential unit development with a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least five (5) acres of contiguous land, consisting of detached dwellings. Minimum yard dimensions (section 14-145.11(c)), street frontage (section 14-145.11(b)), and lot width (section 14-145.11(e)) shall be reduced up to fifty (50) percent of what would otherwise be required. Minimum lot area (section 14-145.11(a)) shall be reduced up to fifty (50) percent, 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 buffer between the buildings or between the development and the surrounding neighborhood.

All area in such a development which is to be owned or used in common shall be governed and maintained as set forth in section 14-498(i) (3), article IV (subdivisions) of this chapter.

The density for a planned residential unit development shall not exceed one (1) dwelling unit per twenty thousand (20,000) square feet of net area. Net area shall be determined by subtracting from the gross area of the site the area of street rights-of-way, slopes of fifteen (15) percent or greater, wetlands.

Such development shall be subject to review and approval by the Planning Board with respect to requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended.

- (c) Boathouses and storehouses for fishing equipment.
- (d) Parking and storage of equipment related to commercial fishing.
- (e) Accessory uses customarily incidental and subordinate to

the location, function and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article including but not limited to (a) home occupations, (b) private temporary tenting with one (1) tent accessory to a principal residential use, provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use, and (c) roadside stands less than two hundred (200) square feet in floor area for the sale of agricultural products produced on the premises, and the sale of fish and shellfish caught by the occupant of the dwelling or principal structure.

(f) Handicapped family unit, as defined in section 14-47, for handicapped persons plus staffs.

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

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 1, 12-11-89; Ord. No. 33-91, § 11, 1-23-91; Ord. No. 33-11/12, 1-18-12)

Sec. 14-145.9. Conditional uses.

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

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling provided that:

a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet;

b. Lot area shall be thirty thousand (30,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

c. There shall be no open outside stairways or fire escapes above the ground floor;

- d. 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 single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
- e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
- f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and
- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - i. Shall remain under common ownership with the primary unit on the lot;
 - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
 - iii. Shall be rented to households earning up to 100% of AMI and are subject to income verification as further outlined in implementing regulations;
 - iv. Shall be rented on an annual basis and may not be used for seasonal or weekly

rentals; and

- v. Shall be built within the principal building or as an attachment in accordance with subsection (d)..

(b) *Institutional*: Any of the following uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

1. Schools and other educational facilities;
2. Places of assembly, excluding yacht clubs and marinas;
3. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped to ensure compatibility with the surrounding neighborhood;

Such uses shall be subject to the following standards if the total land area of the use is two (2) acres or more:

- a. In the case of expansion of existing such 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;
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of July 15, 1985, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and

- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
 - i. The structure was in existence as of January 4, 2010.
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. 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
 - iv. A parking management plan is submitted for review and approval by the planning board; and
- f. 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 be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) *Other:*

- 1. Utility substations including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
- 2. Nursery schools and kindergartens;
- 3. Cemeteries;

4. Wharves, piers, docks, or landing ramps;
5. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms.
6. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) 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 (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. 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 (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
 - c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
 - d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.

- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-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;
 - v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
 - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
 - viii. 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.

7. 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.

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

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 2, 12-11-89; Ord. No. 235-91, § 15, 2-4-91; Ord. No. 133-96, § 9, 11-18-96; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11 3-7-11; Ord. No. 33-11/12, 1-18-12; Ord. 82-15/16, 10-19-2015)

Sec. 14-145.10. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 28-85, § 1, 7-15-85)

Sec. 14-145.11. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in an IR-2 zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

- 1. Residential: Twenty thousand (20,000) square feet, except as provided in section 14-433 (lots of

record and accessory structure setbacks for existing buildings) and section 14-145.9(a)1 of this article.

2. Schools and other educational facilities: Twenty thousand (20,000) square feet.

3. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

4. Lodging houses: Thirty thousand (30,000) square feet for three (3) lodging rooms, plus ten thousand (10,000) square feet for each additional lodging room in excess of three (3).

5. In issuing any permit for new development, the building or planning authority shall require that any lot located in an IR-2 zone shall be at least twenty thousand (20,000) square feet 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].

6. [Excluding Peaks Island from this subsection 7.,] any property owner whose lot does not meet the minimum lot size requirements outlined in subsection f. of this section may, for purposes of this section only, merge two (2) 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 building 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 building 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.
- 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 (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot sizes set forth in (a)1 of this section. 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 section 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 section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of section 14-433.

7. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the requirements of CMR 241 Section 2-E. The land area requirements in subsection f. of this section shall not apply to such a replacement system.

For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

(b) *Minimum street frontage:*

Seventy (70) feet, except that a lot of record as described in section 14-433 (lots of record and accessory structure setbacks for existing buildings) 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 sixteen (16) feet and a minimum travel width of eight (8) feet except that an easement or right-of-way providing access for three (3) or more lots or providing the only means of access to a parcel or parcels of three (3) acres or more, shall be a minimum thirty-two (32) feet wide and meet the construction requirements of article III of chapter 25 (street acceptances) of this Code. Such easement or right-of-way shall permit municipal service delivery.

(c) *Minimum yard dimensions:*

(Yard dimensions shall include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:* Principal or accessory structures:

Twenty-five (25) feet except that a front yard need not exceed the average depth of front yards on either side of the lot.

2. *Rear yard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Ten (10) feet.

3. *Side yard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: fifteen (15) feet, except that the minimum distance from a principal structure may be five (5) feet.

4. *Side yard on side streets:* Principal or accessory structures: Twenty (20) feet.

5. Notwithstanding the foregoing, the width of one side-yard may be reduced to not less than ten feet in the case of a lot of record, existing as of June 5, 1957, and which contained a structure in use at that time and at all times subsequent thereto as a year-round, single-family residence, and which is served by public sewer and water, at the time of any expansion permitted by this section, where the reduction is necessary either to bring the use into compliance with health and safety codes or to improve a condition which the Board of Appeals determines constitutes a health or safety problem. Any alteration or expansion authorized by this section may only be situated in the rear yard and shall not encroach into the required setback more than the existing building does prior to the construction of such alteration or expansion. Any such alteration or expansion will be subject to the maximum lot coverage requirements applicable to this zone; and, cumulatively, during the lifetime of the structure, may not exceed forty percent

(40%) of the combined floor area of the habitable rooms existing at the time of the first expansion permitted by this section. For the purposes of this section "floor area" and "habitable room" shall have the same meaning ascribed to them in Portland Municipal Code, §6-106, et seq., Housing Code, as it may be amended from time to time.

(d) *Maximum lot coverage:* Twenty (20) percent of lot area.

(e) *Minimum lot width:* Eighty (80) feet.

(f) *Maximum structure height:*

1. Principal or accessory attached structure: Thirty-five (35) feet. For Little Diamond Island only: Twenty (27) feet.
2. Accessory detached structure: Eighteen (18) feet.

(g) *Maximum floor area for places of assembly on a collector or arterial road:*

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

(h) *Maximum floor area for places of assembly not on a collector or arterial road:*

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 3, 12-11-89; Ord. No. 215-02, 4-17-02; Ord. No. 76-03/04, 10-20-03; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage)

Sec. 14-145.12. Other requirements.

Other requirements include the following:

(a) *Off-street parking:* Off-street parking shall be required as provided in division 20 (off-street parking) of this article.

(b) *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.

(c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 15-92, § 13, 6-15-92)

DIVISION 7.3. IR-3 ISLAND RESIDENTIAL ZONE

Sec. 14-145.13. Purpose.

The purpose of the IR-3 island residential zone is to allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone:

- (a) An IR-3 zone should have a minimum land area of twenty (20) acres;
- (b) A site for an IR-3 zone should be able to accommodate a higher density of development by providing buffers from surrounding areas on a substantially sized parcel for which natural amenities are capable of being conserved in a development plan for the site;
- (c) IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed;
- (d) The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and
- (e) The development plan should have the capability of meeting the development review standards of section 14-145.16.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.14. Permitted uses.

The following uses are permitted in the IR-3 island

residential zone:

- (a) Planned unit development, including:
 1. Single-family detached dwellings;
 2. Single-family attached dwellings provided that new construction shall be limited to no more than six (6) attached dwellings per building;
 3. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms;
 4. Inns, provided that the total number of rooms does not exceed fifty (50);
 5. Restaurants;
 6. Retail businesses or services;
 7. Campgrounds, excluding recreation vehicles, licensed by the State of Maine Department of Human Services provided that:
 - a. No tent shall be located within seventy-five (75) feet of the perimeter of the site;
 - b. The land area of the site shall not be less than the equivalent of five thousand (5,000) square feet of land area per tent site, exclusive of the roadway network;
 8. Recreation facilities excluding amusement park;
 9. Wharves, docks, piers, landing ramps, boat houses, store houses for fishing equipment, marinas, and yacht clubs;
 10. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped so as to ensure compatibility with surrounding neighborhood;
 11. Private clubs, fraternal organizations;
 12. Utility substations including sewage and water

pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;

13. Nursery schools, kindergartens, and day care facilities for seven (7) or more children;
14. Schools;
15. Churches or other places of worship;
16. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article including but not limited to home occupations; and
17. Handicapped family unit, as defined in section 14-47, for handicapped persons plus staff.

Such development shall have a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least twenty (20) acres of contiguous land. No dimensional requirements shall apply with respect to such development except for the following:

- a. Density requirements;
- b. Height requirements;
- c. Minimum front, rear and side yards adjoining any external property boundary;
- d. Minimum street frontage except where the Planning Board finds that the development has an adequate street network sufficient to permit access for pedestrians and emergency and service vehicles.

All area in such a development which is to be owned, used in common, or is proposed for open

space shall be governed and maintained as set forth in section 14-498(i)(3), article IV (subdivisions) of this chapter.

The maximum density for a planned unit development shall be based on the applicable minimum lot size for each use as measured in terms of net area. Net area shall be determined by subtracting from gross area the area of street rights-of-way, slopes of fifteen (15) percent or greater, wetland, and otherwise undevelopable area, unless such areas, excluding street rights-of-way, are dedicated to public recreational use or public pedestrian access and are usable as such. 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.

Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended. A planned unit development shall be approved by the Planning Board if, in addition to the above standards, it also finds that the development meets the following standards:

- (i) *Design relationship to site.* The development demonstrates 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.
- (ii) *Design relationship to surrounding neighborhood.* The design and layout of

the development and buildings are 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.

(iii) *Open space.* All open spaces on the site are functionally integrated into the development plan by virtue of such features as accessibility to residents, recreation, conserving 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.

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

(Ord. No. 29-85, § 1, 7-15-85; Ord. No. 33-91, § 12, 1-23-91; Ord. No. 33-11/12)

Sec. 14-145.14.1. Conditional uses.

The following uses 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. 14-145.15. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.16. Development review.

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

- (a) *Transportation*: 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.

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.

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.

- (b) *Solid waste*: 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.

- (c) *Sanitary waste:* 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.
- (d) *Water:* 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.
- (e) *Shoreland areas:* 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.
- (f) *Environmentally sensitive areas:* 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.

- (g) *Recreation and open space:* 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.
- (h) *Financial and technical capability:* 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.
- (i) *Environmental impact analysis:* 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.
- (j) *Development phasing:* 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.

- (k) *Emergency services*: The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.17. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the IR-3 zone shall meet the following minimum requirements:

- (a) *Minimum lot size*:

1. Residential: Forty-two thousand five hundred (42,500) square feet per dwelling unit, except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of thirty-five thousand (35,000) square feet 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 five thousand (5,000) square feet if a public off-island water source provides seventy-five (75) percent of the water needs of the development.
 - b. The minimum lot size per dwelling unit shall be reduced by two thousand five hundred (2,500) square feet 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.
2. Inn: Ten thousand (10,000) square feet for each lodging room.
3. Restaurant: Thirty-five thousand (35,000) square feet.

4. Campground: Five thousand (5,000) square feet per campsite, but not less than ten (10) acres.
5. Private clubs, fraternal organizations, or seasonal camp: Thirty-five thousand (35,000) square feet.
6. Lodging houses: Thirty thousand (30,000) square feet for three (3) lodging rooms, plus ten thousand (10,000) square feet for each additional lodging room in excess of three (3).
7. Other uses: Thirty-five thousand (35,000) square feet.
8. In issuing any permit for new development, the building or planning authority shall require that any lot located in an IR-3 zone shall be at least twenty thousand (20,000) square feet 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].
9. [Excluding Peaks Island from this subsection i.,] any property owner whose lot does not meet the minimum lot size requirements outlined in subsection h. of this section may, for purposes of this section only, merge two (2) 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 building 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 building 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.
- 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 (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot sizes set forth in (a)1 of this section. 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 section 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 section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed

shall meet the minimum lot size requirements of section 14-433.

10. Where an existing system subsurface wastewater disposal serving an existing structure requires replacement, the replacement system shall meet the requirements of CMR 241 Section 2-E. The land area requirements in subsection h. of this section shall not apply to such a replacement system.

For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

The minimum lot size for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two (2) or more residential uses contained in a building, the minimum lot size shall be the larger of the applicable minimum lot sizes.

(b) *Minimum street frontage:* Seventy (70) feet.

(c) *Minimum yard dimensions:*

(Yard dimensions shall include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:* Principal or accessory structures: Twenty-five (25) feet.
2. *Rear yard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Ten (10) feet.

3. *Sideyard:* Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

Accessory detached structures with ground coverage

of one hundred and forty-four (144) square feet or less: Fifteen (15) feet.

4. *Side yard on side street:* Principal or accessory structures: Twenty (20) feet.

(d) *Maximum lot coverage:* Twenty (20) percent of lot area.

(e) *Minimum lot width:* Eighty (80) feet.

(f) *Maximum structure height:* Principal or accessory attached structure: Thirty-five (35) feet.

Accessory detached structure: Eighteen (18) feet.

(Ord. No. 29-85, § 1, 7-15-85; Ord. No. 162-89, 12-11-89; Ord. No. 131-08/09, 12-15-08)

Sec. 14-145.18. Other requirements.

[Other requirements include the following:]

(a) *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.

(b) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.

(Ord. No. 29-85, § 1, 7-15-85; Ord. No. 15-92, § 14, 6-15-92; Ord. No. 240-09/10, 6-21-10)

Sec. 14-145.19. Reserved.

DIVISION 7.5. ISLAND TRANSFER STATION OVERLAY ZONE

Sec. 14-145.20. Purpose.

The purpose of the Island Transfer Station Overlay Zone is to establish an appropriate 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.

(Ord. No. 50-98, 7-20-98)

Sec. 14-145.21.1 Permitted uses.

The following uses shall be permitted in the Island Transfer Overlay Zone:

- (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.
- (c) Municipal garages, material storage, and parking for vehicles.
- (d) Maintenance of municipal vehicles and equipment.
- (e) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 50-98, 7-20-98; Ord. No. 33-11/12, 1-18-12)

Sec. 14-145.21.2. Conditional uses.

The following use is permitted only upon the issuance of a conditional use permit, subject to the provisions of section n14-474 (conditional uses) of this article and any special provisions, standards or requiremetns 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, of 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. 33-11/12, 1-18-12)

Sec. 14-145.22. Conditional rezoning.

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

(Ord. No. 50-98, 7-20-98)

DIVISION 8. R-P RESIDENCE-PROFESSIONAL ZONE*

***Editor's note**--Ord. No. 291-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-146--14-151 of Div. 8, R-P Residence-Professional Zone, of this article and enacted similar new provisions in lieu thereof as set out in §§ 14-146--14-151. Formerly, such sections derived from §§ 602.7A, 602.7A.A and 602.7A.B of the city's 1968 Code and from Ord. No. 49-73, adopted Jan. 3, 1973; Ord. No. 499-74, § 3, adopted Aug. 19, 1974; and Ord. No. 312-85, §§ 1--3, adopted Dec. 2, 1985.

Sec. 14-146. Purposes.

The purposes of the R-P residence-professional zone are:

(a) To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or

(b) To serve as a transition or buffer zone between residential and more intensive nonresidential zones.
(Ord. No. 291-88, 4-4-88)

Sec. 14-147. Permitted uses.

The following uses are permitted in the R-P district:

(a) *Residential*: Any residential use is permitted in the residential zone abutting the lot. If there is no abutting residential zone, the nearest residential zone to the lot. In the case of two (2) or more abutting residential zones, the most restrictive such zone.

(b) *Business*:

1. Professional offices, including the offices and facilities of health care and related laboratory and pharmacy services and health care administration, but excluding personal services, retail establishments and veterinarians.
2. Business services, as defined in section 14-47, except copy services.

3. Adult day care services.
4. Mortuaries or funeral homes.

(c) *Other:*

1. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding.
2. Accessory uses as provided in section 14-404.
3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 291-88, 4-4-88; Ord. No. 149-05/06, 2-18-06; Ord. No. 166-08/09, 3-3-09; Ord. No. 10 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-147.5. Conditional uses.

The following uses are permitted as provided in section 14-474 (conditional uses) if they meet the following requirements:

- (a) Such other offices which have characteristics similar to but no more objectionable than those generally associated with professional offices. In determining appropriateness, the zoning board shall consider the quality of building design and materials, signage, and landscaping, and their general compatibility with the surrounding residential development. Such uses shall also be shown to have vehicular patterns, including parking and storage of motor vehicles, similar to those associated with professional offices. Noise levels and hours of operation shall also be considered. An approval granted under this section shall be issued to a specific user and shall not run with the land to subsequent users. A new conditional use approval shall be required when the user changes. A new conditional use approval may be issued by the zoning authority if it determines that the new user will maintain the same use as the original user and that such use will not have substantially different external effects, including, but not limited to, parking, vehicular traffic on and off the site, noise levels, hours of operation, and visual characteristics such as signage or changes to building design.
- (b) With the exception of daycare facilities below, any conditional use that is allowed as a conditional use in

any residential zone abutting the lot. If there is no abutting residential zone, any conditional use that is allowed as a conditional use in the nearest residential zone to the lot. Any such conditional use shall be subject to all conditions required in the residential zone.

(c) 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.
- (d) Daycare facilities or home babysitting services not otherwise permitted as a home occupation under section 14-410, and nursery schools and kindergartens for up to twelve (12) children shall be allowed as a conditional use:
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. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
 3. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- (e) Daycare facilities, home babysitting services, nursery schools and kindergartens that serve more than 12 children shall meet the following additional standards:

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. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child.
3. The play area shall be located in the side and rear yards only and shall not be located in front yards.
4. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height.
5. A ten-foot (10') 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.
6. The minimum lot size for a daycare facility, home babysitting service, nursery school or kindergarten serving more than twelve (12) children shall be six thousand (6,000) square feet.
7. *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.
8. Any additions or exterior alternations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building or preserve the residential appearance of the building.

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

(Ord. No. 201-92, § 1, 1-6-92; Ord. No. 133-96, § 10, 11-18-96; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 312-08/09, 7-20-09; Ord. No. 33-11/12, 1-18-12)

Sec. 14-148. Prohibited uses.

Uses not enumerated in section 14-147 as permitted uses or in section 14-147.5 as conditional uses are prohibited.
(Ord. No. 291-88, 4-4-88; Ord. No. 201-92, § 2, 1-6-92)

Sec. 14-149. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, the following requirements shall apply. Residential uses permitted under section 14-147(a) shall meet the requirements of such abutting or nearest residential zone. Nonresidential uses in the R-P zone shall meet the following minimum requirements:

- (a) *Minimum lot size:* Six thousand (6,000) square feet.
- (b) *Minimum street frontage:* Sixty (60) feet.
- (c) *Minimum yard dimensions:*
 - 1. *Front yard:*
 - a. Principal or accessory structures: Twenty (20) feet, except that:
 - i. The front yard need not exceed the average depth of immediately abutting front yards; and
 - ii. The front yard of a lot existing as of April 4, 1988, which lot is less than one hundred (100) feet deep, need not be deeper than ten (10) percent of the depth of the lot.
 - 2. *Rear yard:*
 - a. Principal structures: Twenty (20) feet.
 - b. Accessory structures (detached): Seven (7) feet.
 - 3. *Side yard:*
 - a. Principal structures:

<i>Number of Stories</i>	<i>Required Side Yard</i>
1 story	10 feet
2 stories	12 feet
3 or more stories . .	14 feet

The width of one (1) side yard may be reduced one (1) foot for each foot that the other side yard is correspondingly increased, provided, however, no side yard shall be reduced to less than seven (7) feet in width.

- b. Accessory structures (detached): Seven (7) feet.
- c. Side yards on side streets (corner lot): For both principal or accessory structures:
 - i. One (1) or two (2) stories: Fifteen (15) feet; and
 - ii. Three (3) or more stories: Eighteen (18) feet.
- (d) *Minimum lot width*: Sixty (60) feet.
- (e) *Maximum structure height*: Forty-five (45) feet. Where the lot abuts an R-6 residential zone, the maximum permitted height shall be the maximum permitted height of the R-6 zone. If there is a difference in height between abutting R-6 zones, the least restrictive height limitation shall apply.
- (f) *Maximum impervious surface ratio*: The maximum impervious surface ratio is established according to the abutting residential zone. If there is no abutting residential zone to the lot in question, the nearest residential zone to the lot. In the case of two (2) or more abutting residential zones, the least restrictive such zone. The ratios are as follows:

Maximum Impervious

Residential Zone	Surface Ratio
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R-1/R-2 0.60

R-3 0.70

R-4/R-5/R-5A/R-6 0.80

(g) *Floor area ratio (F.A.R.):* The maximum floor area ratio is established according to the abutting residential zone. If there is no abutting residential zone to the lot in question, the nearest residential zone to the lot. In the case of two (2) or more abutting residential zones, the least restrictive such zone. The ratios are as follows:

Residential Floor Area Ratio

R-1/R-2 0.45

R-3 0.55

R-4/R-5/R-5A/R-6 0.65

(Ord. No., 291-88, 4-4-88; Ord. No. 149-05/06, 1-18-06)

Sec. 14-150. Other requirements.

All nonresidential uses in the R-P zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are as required by division 20 and division 21 of this article.
- (d) *Front yard parking:* There shall be no parking in the front yard between the street line and the required minimum setback line. A maximum of ten (10) percent of

the total parking provided on the site may be located between the principal structure and the front yard, provided that for a lot of three (3) acres or more this limitation does not apply.

- (e) *Signs*: Signs shall be subject to the provisions of division 22 of this article.
- (f) *Exterior storage*: There shall be no exterior storage with the exception of receptacles for solid waste disposal. Such receptacles shall be shown on the approved site plan.
- (g) *Storage of vehicles*: Storage of vehicles is subject to the provisions of section 14-335.
- (h) *Shoreland and flood plain management regulations*: If the lot is located in a shoreland zone or in a flood hazard zone, the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 291-88, 4-4-88; Ord. No. 149-05/06, 1-18-06)

Sec. 14-151. External effects.

Every use in a R-P zone shall be subject to the following requirements:

- (a) *Enclosed structure*: The use shall be operated within a completely enclosed structure, except for those customarily operated in the open air.
- (b) *Noise*: The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed fifty-five (55) decibels on the A scale, on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.
- (c) *Vibration and heat*: Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.
- (d) *Glare, radiation or fumes*: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.

- (e) *Smoke*: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level, as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.
- (f) *Materials or wastes*: No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.
- (g) The hours of operation of funeral homes (including processions) may be restricted and/or traffic management measures may be required, in order to avoid impacts to the public street system, if so recommended by the city traffic engineer or comparable professional.

(Ord. No. 291-88, 4-4-88; Ord. No. 166-08/09, 3-3-09)

DIVISION 8.1 USM, UNIVERSITY OF SOUTHERN MAINE OVERLAY ZONE

Sec. 14-152. Purpose.

The intention of this division 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 division is to recognize the unique qualities of a university campus while at the same time protecting the value and integrity of established neighborhoods.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.1. Location and applicability of University of Southern Maine overlay zone.

The University of Southern Maine overlay district, as shown on the zoning map is intended to encompass and define the University of Southern Maine campus westerly of Forest Avenue. Properties in the University of Southern Maine overlay zone shall continue to be governed by the regulations applicable to the underlying zoning districts except as specifically modified by this division.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.2. Permitted uses.

In addition to the permitted uses allowed in the underlying zoning districts and notwithstanding anything to the contrary in the use regulations for the underlying zoning districts, the following uses are permitted uses in the University of Southern Maine overlay zone.

University uses including, but not limited to, the following:

1. Classrooms;
2. Laboratory facilities;
3. Research facilities;
4. Student unions;
5. Dining halls;
6. Bookstores;
7. Auditoriums;
8. Concert halls;
9. Lecture halls;
10. Gymnasiums;
11. Libraries;
12. Outdoor use areas, such as "quads", greens, parks, gardens, art installations, and other active and passive noncommercial recreation spaces;
13. Faculty housing;
14. Student housing;
15. Parking lots;
16. Parking garages;
17. Community meeting spaces;
18. Administrative offices;
19. Faculty offices;

20. Transportation facilities;
21. Maintenance facilities;
22. Utility buildings;
23. Student health services;
24. 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;
25. Other buildings, structures and uses customarily incidental to a university.

Except that, 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 §14-152.7.

No change of use permit under section 14-463 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.
(Ord. NO. 171-05/06, 3-20-06)

Sec. 14-152.2.1. Conditional uses.

The following uses are permitted as provided in section 14-474 (conditional uses) if they meet the following requirements:

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

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-152.3 Dimensional requirements.

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

- (a) *Minimum yard dimensions* 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 yards 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 yard dimensions in the underlying zones are provided.

- (b) *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, depicting the following height zones:
1. Height zone A, maximum building height 45 feet.
 2. Height zone B, maximum building height 75 feet.
 3. Height zone C, maximum building height 85 feet.
- (c) *Minimum building height.* All new freestanding buildings in height zone B and height zone C must be built to a height of at 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* shall be 66% of the total land area within the University of Southern Maine overlay zone exclusive of public streets.
- (e) *Maximum coverage by buildings* shall be 40% of the total land area within the University of Southern Maine overlay zone exclusive of public streets.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.4. Parking.

Off-street parking: Off-street parking is required as provided in division 20 (off-street parking) of this article.

(Ord. No. 171-05/06, 3-20-06; Ord. No. 240-09/10, 6-21-10)

Sec. 14-152.5. Loading.

The requirements of section 14-351 shall not apply to university buildings. Instead, 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.
- (c) Impacts of the loading area on adjacent uses outside the University of Southern Maine overlay zone.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.6. Signage.

Signs comply with the requirements of Division 22, 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, apparent 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.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.7. University overlay zone design principles and standards.

All minor and major development in the University of Southern Maine overlay zone conform to the requirements of chapter 14, article V (site plan review) and the requirements contained within the planning and development design manual, which is incorporated therein by reference.

(Ord. No. 171-05/06, 3-20-06)

Sec. 14-152.8. Campus housing.

For any development requiring level III 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.

(Ord. No. 171-05/06, 3-20-06; Ord. No. 278-09/10, 7-19-10)

Sec. 14-152.9. 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, level II site plan review shall be required of: (1) all changes of use; and (2) all building additions and renovations affecting an area equivalent to 25% or more of the existing floor area of a structure, unless level III site plan review is otherwise required under chapter 14, article V.

(Ord. NO. 171-05/06, 3-20-06)

DIVISION 8.5. R-OS RECREATION AND OPEN SPACE ZONE

Sec. 14-153. Purpose.

- (a) The purpose of this division is:
1. To preserve and protect open space as a limited and valuable resource;
 2. 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;
 3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans;
 4. To provide a suitable location for large-scale regional

sports and athletic facilities; and

5. To develop a open space system throughout the downtown, which provides the highest quality parks, plazas, and pedestrian environment.

(b) 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. (Ord. No. 232-81, § 602.7B.1, 11-16-81; Ord. No. 187-01/02, § 2, 4-17-02; Ord. No. 221-13/14, 6-2-14)

Sec. 14-154. Permitted uses.

The following uses are permitted uses within the recreation and open space zone, subject to the development standards contained herein:

- (a) Municipal parks, public open spaces, picnic areas, playgrounds and play lots;
- (b) Cemeteries;
- (c) Arboretums;
- (d) Golf courses, excluding miniature golf;
- (e) Boat landings, beaches, and marinas for public uses;
- (f) Outdoor ballfields and public athletic fields;
- (g) Swimming pools and tennis courts;
- (h) Picnic groves and areas;
- (i) Natural parks and scenic overlooks;
- (j) Hiking, walking, bicycling or cross-country ski trails;
- (k) Community gardens for cultivation by and for city residents;
- (l) Sewage pumping stations and sewage treatment facilities;
- (m) Sports complexes;
- (n) Accessory uses, including structures or buildings of less

than two thousand five hundred (2,500) square feet of floor area;

- (o) Wind energy systems, as defined and allowed in Article X, Alternative Energy;
- (p) Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code; and
- (q) Events, activities, and uses licensed by the city, including but not limited to markets, festivals, café seating, concerts, and other gatherings.

(Ord. No. 232-81, § 602.7B.2, 11-16-81; Ord. No. 60-91, § 1, 8-5-91; Ord. No. 187-01/02, § 3, 4-17-02; Ord. No. 33-11/12, 1-18-12; Ord.No. 10-12/13, 7-16-12; Ord. No. 221-13/14, 6-2-14)

Sec. 14-155. Conditional uses.

The following uses are conditional uses in the recreation and open space zone, subject to approval by the board of appeals.

- (a) Accessory uses with structures or buildings of two thousand five hundred (2,500) square feet or more of floor area;
- (b) Other recreational facilities and uses that are open to the public;
- (c) Water pumping stations.
- (d) 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.
- (e) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 232-81, § 602.7B.3, 11-16-81; Ord. No. 67-89, § 1, 8-7-89; Ord. No. 60-91, § 2, 8-5-91; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-156. Standards for conditional uses.

In addition to the criteria listed in section 14-474(c), the board of appeals shall consider the following criteria when reviewing conditional uses specified in section 14-155(a), (b) and (c):

- (a) 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.
- (b) Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.
- (c) Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

(Ord. No. 232-81, § 602.7B.4, 11-16-81; Ord. No. 29-09/10, 8-3-09, emergency passage)

Sec. 14-157. Space and bulk requirements.

No building or structure of a permanent nature shall be erected, altered, enlarged, rebuilt, or used unless it meets the following requirements, except that public open spaces that are less than 2 acres and are on the peninsula are not required to meet the following space and bulk requirements:

(a) *Minimum front yard:*

- 1. Principal buildings or structures: Twenty-five (25) feet.
- 2. Accessory buildings or structures: Twenty-five (25) feet.

(b) *Minimum rear yard:*

- 1. Principal buildings or structures: Twenty-five (25)

feet.

2. Accessory buildings or structures: Twenty-five (25) feet.

(c) *Minimum side yard:*

1. Principal buildings or structures: Twelve (12) feet.
2. Accessory buildings or structures: Twelve (12) feet.

(e) *Maximum building height:* Thirty-five (35) feet, unless more than one thousand (1,000) feet from a shoreland zone. The maximum building height for buildings located more than one thousand (1,000) feet from a shoreland zone shall be forty-five (45) feet.

(f) *Maximum coverage of lot by buildings, structures and other impervious site improvements such as paved sidewalks, drives and parking lots:*

1. Sewage treatment facilities: No limit on maximum coverage.
2. Sports complexes: Seventy-five (75) percent of lot area.
3. All other uses: Twenty-five (25) percent of lot area.

(g) *Maximum floor area ratio:* Five-tenths (0.5).

(Ord. No. 232-81, § 602.7B.5, 11-16-81; Ord. No. 67-89, § 2, 8-7-89; Ord. No. 205-93, 2-2-93; Ord. No. 187-01/02, § 4, 4-17-02; Ord. No. 221-13/14, 6-2-14)

Sec. 14-158. Development standards for recreation and open space zone.

All development in the recreation and open space zone shall comply with the following development standards, and shall be reviewed under the site plan ordinance, as applicable:

- (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.
- (g) *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article.

(Ord. No. 232-81, § 602.7B.6, 11-16-81; Ord. No. 240-09/10, 6-21-10; Ord. No. 221-13/14, 6-2-14)

Sec. 14-159. 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.

(Ord. No. 232-81, § 602.7B.7, 11-16-81; Ord. No. 15-92, § 15, 6-15-92)

Sec. 14-160. Reserved.

DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES*

***Editor's note**--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.

Sec. 14-161. Purpose.

(a) B-1 Neighborhood Business Zone

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will 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. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) B-1b Neighborhood Business Zone

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of small-scale ground floor commercial uses to serve a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99; Ord. No. 281-10/11, 7-18-11; Ord. 90-14/15, 11/17/2014)

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on

the ground floor level of buildings in the B-1b zone. For permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

1. *Residential*
 - a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.
 - b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.
 - c. Combined living/working spaces including, but not limited to, artist residences with studio space.
2. *Business:* Business uses listed below are permitted, provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq.ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.
 - a. Professional, business, and general offices , but excluding veterinarians.
 - b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
 - c. Personal services, as defined in section 14-47.
 - d. Offices of building tradesmen, provided there is no exterior storage of building materials.
 - e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services

between the hours of ten (10) p.m. to seven (7) a.m.

- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:
 - i. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;
 - ii. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.
 - iii. Storage of all beverage containers shall be contained entirely within the building providing retail sales.
- g. Studios for artists, photographers and craftspeople including, but not limited to painters, sculptors, dancers, graphic artists and musicians.
- h. Restaurants are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone provided they meet the following additional requirements in addition to the vehicle trips standards of in Sec. 14-162.a.2:
 - a. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.
 - b. Maximum total floor area for use of the public shall be two thousand (2,000) square feet.
 - c. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day.

d. Food service and consumption are the primary function of the restaurant.

3. *Institutional:*

- a. Places of religious assembly;
- b. Municipal offices;
- c. Elementary, middle and secondary schools;
- d. Nursery schools and kindergarten;
- e. Clinics of less than three thousand (3,000) square feet of total floor space.

4. *Other:*

- a. Lodging houses;
- b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding;
- c. Day care facilities or babysitting services;
- d. Accessory uses as provided in section 14-404;
- e. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding.
- f. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - i. No more than twenty (20) overnight transient guests shall be permitted in the facility at any one time.
 - ii. All applicable provisions of Article V of this chapter shall be met.
 - iii. Parking shall be provided in compliance with

Division 20 of this Article.

- iv. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - v. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - vi. 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.
 - g. Neighborhood center.
5. Uses permitted above the ground floor level of buildings in the B-1b zone:
- a. Any residential use set forth in section 14-162(a);
 - b. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding.
 - c. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - i. No more than twenty (20) overnight transient guests shall be permitted in the facility at any one time.
 - ii. All applicable provisions of Article V of this chapter shall be met.
 - iii. Parking shall be provided in compliance with Division 20 of this Article.
 - iv. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - v. The length of stay for transient guests shall

not exceed fifteen (15) days out of any sixty-day period.

- vi. 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.

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

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99; Ord. No. 74-06/07, 12-4-06; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 278-09/10, 7-19-10, Ord. 10 10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 162-12/13, 4-1-13; Ord. 90-14/15, 11-17-2014)

***Editor's Note-** Pursuant to Ord. No. 74-06/07, enacted on 12-4-06 changes made in (2) *Business* are effective October 16, 2006.

Sec. 14-163. Conditional uses.

(a) 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. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99; Ord. No. 74-06/07, 12-4-06; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 33-11/12, 1-18-12; Ord. 90, 11-17-2014)

***Editor's Note-** Pursuant to Ord. No. 74-06/07, enacted on 12-4-06 changes made in

(2) *Business* are effective October 16, 2006.

Sec. 14-164. Prohibited uses.

Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.

(Ord. No. 292-88, 4-4-88)

Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses in off-peninsula locations, permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except minimum lot area per dwelling unit. Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zones shall meet the following minimum requirements:

Min. Lot Size	School: 20,000 SF Place of Assembly: 10,000 SF Other Non-Res Uses: None Residential: None
Min. Lot Area per D.U.	On-peninsula: 435 SF Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor
Min. Street Frontage	20 ft.
Min. Lot Width	None
Min. Front Yard	None
Max. Front yard	10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.
Min. Rear Yard	Principal: None, except 10 ft. if abutting a residential zone. Accessory: None, except 5 ft. if abutting a residential zone

Min. Side Yard	Principal: None, except 5 ft. if abutting residential zone. Accessory: None, except 5 ft. if abutting a residential zone
Max. Side Yard on Side Street	10 ft., except that this requirement applies to only one side street in cases where a lot has more than one side street
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Max. Structure Height¹	Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6. ² On-peninsula: 45 ft. except 50 ft. along Congress Street if commercial first floor & residential upper floors.
Max. Floor Area	Total maximum first floor area for non-residential uses per structure: 10,000 SF ³ Total maximum floor area per retail establishment: 5,000 SF
Max. Impervious Surface	90%

1. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.
2. Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 feet.
3. Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.

(Ord. No. 292-88, 4-4-88; Ord. No. 52-96, § 1, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. 281-10/11, 7-18-11; Ord. No. 118-13/14, §165 (e), 1-15-14; Ord. 90-14/15, 11-17-2014)

Sec. 14-166. Other requirements.

All nonresidential uses in B-1 and B-1b zones shall meet the requirements of division 25(space and bulk regulations and exceptions) of this article in addition to the following requirements:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions)

and article V (site plan).

- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are required as provided in division 20 and division 21 of this article.
- (d) *Front yard parking:* There shall be no off street parking in the front yard between the street line and the required maximum setback line. Where an existing building setback exceeds the maximum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.
- (e) *Signs:* Signs shall be subject to the provisions of division 22 of this article.
- (f) *Exterior storage:* There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. In no event shall vehicles, or truck trailers with or without wheels, be used for on-site storage. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occur more frequently than three (3) times a calendar year.
- (g) *Storage of vehicles:* Storage of vehicles is subject to the provisions of section 14-335.
- (h) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 292.88, 4-4-88; Ord. No. 94-99, 11-15-99)

Sec. 14-167. External effects.

Every use in a B-1 or B-1b zone shall be subject to the following requirements:

- (a) *Enclosed structure:* The use shall be operated within a completely enclosed structure, except for those specific

open air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc.

- (b) *Noise*: The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed fifty-five (55) decibels on the A scale, on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.
- (c) *Vibration and heat*: Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.
- (d) *Glare, radiation or fumes*: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (e) *Smoke*: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.
- (f) *Materials or wastes*: No materials or wastes shall be deposited on any lot in such form or manner that they are clearly visible from neighbors' properties or may be transferred beyond the lot boundaries by natural causes or forces. 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 containers or receptacles. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 292-88, 4-4-88; Ord. No. 94-99, 11-15-99)

Sec. 14-168 - Sec. 14-180 Reserved.

DIVISION 10. B-2 AND B-2b COMMUNITY BUSINESS ZONES*

***Editor's note**—Ord. No. 293-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-181-14-187 of Div. 10, B-2 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-181-14-187. Formerly, such sections derived from §§ 602.9.A-602.9.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972; Ord. No. 499-74, § 4, adopted Aug. 19, 1974; Ord. No. 334-76, § 6, adopted July 7, 1976; and Ord. No. 274-77, adopted May 16, 1977.

Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

1. 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.
2. 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 neighborhood business zone.
3. The B-2 zone will provide a broad range of goods and services and general businesses 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.
4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.

(b) B-2b Community Business Zone

The B-2b zone is intended 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 such as on-peninsula or in areas off-peninsula 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.

(c) B-2c Community Business Zone

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.

(Ord. No. 293-88, 4-4-88; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §2, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10)

***Editor's Note:** Order No. 25, adopted 7-07-99, enacted an emergency 120-day moratorium on drive-through facilities on lots in B-2 Zone adjacent to lots with residential uses effective 7-07-99 through 11-1-99; Ord. No. 94A, adopted 11-01-99 extended the moratorium on said drive-through facilities through December 15, 1999.

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential:*

1. Attached single-family and two-family dwellings;
2. Multi-family dwellings;
3. Handicapped family units;
4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business:*

1. General, business and professional offices, as defined in section 14-47;
2. Personal services, as defined in section 14-47;
3. Offices of building tradesmen;
4. Retail establishments;
5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol

no later than 11:00 p.m.;

6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a) (1), shall not be permitted in the B-2c zone;
7. Billiard parlors;
8. Mortuaries or funeral homes;
9. Miscellaneous repair services, excluding motor vehicle repair services;
10. Communication studios or broadcast and receiving facilities;
11. Health clubs and gymnasiums;
12. Veterinary hospitals, but excluding outdoor kennels;
13. Theaters and performance halls;
14. Hotels or motels of less than one hundred fifty (150) rooms;
15. Dairies in existence as of November 15, 1999;
16. Bakeries in existence as of November 15, 1999;
17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;
18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;
19. Registered medical marijuana dispensaries; and

20. Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.

(c) *Institutional:*

1. Long term, extended and intermediate care facility;
2. Clinics, as defined in section 14-47;
3. Places of assembly;
4. Kindergarten, elementary, middle and secondary schools;
5. College, university, trade schools; and
6. Municipal buildings and uses.

(d) *Other:*

1. Lodging houses;
2. Day care facilities or babysitting services;
3. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding;
4. Accessory uses, as provided in section 14-404;
5. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:
 - a. The meeting facility shall be limited to the following types of uses:
 - i. Private parties.
 - ii. Business meetings.
 - iii. Weddings.
 - iv. Receptions.
 - v. Seminars.

vi. Business and educational conferences.

b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

6. Studios for artists and craftspeople, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.

7. 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.

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

(Ord. No. 293-88, 4-4-88; Ord. No. 39-96, § 2, 10-7-96; Ord. No. 125-97, § 6, 3-3-97; Ord. No. 164-97, § 2, 12-1-97; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 118-00, 11-20-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 244-09/10, 6-21-10; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. 10 10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12; Ord. No. 41-12/13, 9-5-12; Ord. No. 263-13/14, 6-16-14; Ord. 90-14/15, 11-17-2014; Ord. 100-15/16, 11-16-2015)

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2, B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) *Business.* Any of the following conditional uses, provided that, notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:
1. Major and minor auto service stations in the B-2 zone, only;
 2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;
 3. Car washes;
 4. Drive-throughs in the B-2 zone which are adjacent to any residential use or zone; and
 5. Automobile dealerships.

In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:

- a. *Signs:* 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.
- b. *Circulation:* No ingress and egress driveways shall be located within thirty (30) feet 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.

6. Drive-throughs, where permitted, shall also specifically comply with the following conditions:
 - a. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, 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 forty (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 twenty-five (25) feet to the street line. 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.
 - b. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded 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.
 - c. Lighting: Drive-through facilities shall be designed so that 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 14-526.
 - d. Screening and Enclosure: 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, noise, etc. 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; and

- e. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
- f. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
- g. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:
 - i. A landscaped buffer, no less than five (5) 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;
 - ii. Car washes shall be designed to avoid the tracking of residual waters into the street.

(b) *Other:*

- 1. Printing and publishing establishments except as provided in subsection b. below;
- 2. Printing and publishing establishments in continuous operation at their current location since April 4, 1988, or earlier and which exceeded ten thousand (10,000) square feet of aggregate gross floor area at that time;
- 3. Wholesale distribution establishments; and
- 4. Research and development and related production

establishments.

Uses listed in this paragraph (b) (other) 1, 3 and 4 shall be limited to ten thousand (10,000) square feet of aggregate gross floor area, and uses listed in this paragraph (b) (other) 1, 2, 3 and 4 shall be subject to the following conditions and standards in addition to the provision of section 14-474:

- a. Traffic circulation: 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.
 - b. Building and site design: 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 section 14-526 for screening between land uses and the City of Portland Technical Manual.
5. 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.

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

(Ord. No. 293-88, 4-4-88; Ord. No. 16-92, 6-15-92; Ord. No. 39-96, § 3, 10-7-96; Ord. No. 25, 7-07-99: emergency enactment of 120-day moratorium, effective 7/07/99 thru 11/04/99; Ord. No. 94A, 11-01-99: emergency enactment of 44-day extension of moratorium enacted on 7-07-99, effective date 11/01/99 thru 12/15/99; Ord. No. 94-99, 11-15-99; Ord. No. 151-03/04, 02-23-04; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 276 -09/10, 7-19-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 10 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12; Ord. 90, 11-17-2014)

Sec. 14-184. Prohibited uses.

Uses not enumerated in sections 14-182 and 14-183 as either permitted uses or conditional uses are prohibited.

(Ord. No. 293-88, 4-4-88)

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum¹	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ²
Structure Stepbacks	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.

<p>Height maximum</p>	<p>45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.</p>
<p>Maximum Impervious Surface Ratio</p>	<p>a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b</p>
<p>Minimum Lot Area per Dwelling Unit</p>	<p>a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.</p>

¹ Building additions do not have to meet this section.

² If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. 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 City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

(Ord. No. 293-88, 4-4-88; Ord. No. 52-96, § 2, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. (Substitute)189-00, §3, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10; Ord. No. 41-12/13, 9-5-12; Ord. No. 163-13/14, 6-16-14; Ord. 90-14/15, 11-17-2014)

Sec. 14-186. Other requirements.

All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are required by division 20 and division 21 of this article;
- (d) *Front yard parking:*

There shall be no off-street parking in the front yard between the street line and the required minimum setback line in the B-2, B-2b and B-2c. Where existing buildings exceed the minimum front yard setback, a maximum of ten (10) percent of the total parking provided on the site may be located between the principal structure and the street.
- (e) *Signs:* Signs shall be subject to the provisions of division 22 of this article.
- (f) *Exterior storage:* There shall be no exterior storage with the exception of fully enclosed containers or receptacles for solid waste disposal. Such containers or receptacles shall be shown on the approved site plan. Vehicles or truck trailers with or without wheels shall not be used for on-site storage (1) except where such storage is located in a designated loading zone identified on an approved site plan; or (2) such storage is not visible from the street or adjacent residences during winter months and such storage area is identified on an approved site plan. Truck load sales shall not be considered outside storage provided that such activity does not extend beyond three (3) consecutive days nor occurs more frequently than three (3) times a calendar year.
- (g) *Storage of vehicles:* Storage of vehicles is subject to the provisions of section 14-335.
- (h) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or in a flood hazard

zone, then the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 293-88, 4-4-88; Ord. No. 51-96, 7-15-96; Ord. No. 94-99, 11-15-99; Substitute Ord. No. 189-00, §4, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 263-13/14, 6-16-14)

Sec. 14-187. External effects.

Every use in a B-2, B-2b and B-2c zone shall be subject to the following requirements:

- (a) *Enclosed structure*: The use shall be operated within a completely enclosed structure except for those specific open air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc.
- (b) *Noise*: Except as provided in 14-183(1)(iii)(2) (relating to Drive-throughs), the volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the A scale between 7:00 a.m. and 9:00 p.m. and fifty-five (55) decibels on the A scale between 9:00 p.m. and 7:00 a.m., on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.
- (c) *Vibration and heat*: Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.
- (d) *Glare, radiation or fumes*: Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (e) *Smoke*: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.
- (f) *Materials or wastes*: No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 293-88, 4-4-88; Ord. No. 94-99, 11-15-99; Ord. No. 03/04, 02/23/04)

Sec. 14-188. Active street frontages

A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable as determined by the Planning Board or Planning Authority: the primary building façade shall be within ten feet of the front street line; there shall be no parking on the lot within 35 feet of the front street 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 feet for residential or commercial uses; all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.
(Ord. No. 263-13/14, 6-16-14)

Sec. 14-189.- 14-195. Reserved.

DIVISION 11. A-B AIRPORT BUSINESS ZONE*

~~*Editor's note~~—Ord. No. 295-88, adopted Apr. 4, 1988, repealed §§ 14-196–14-202 of Div. 11, A-B Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-196–14-202. Formerly, such sections derived from §§ 62.9A.A–602.9A.G of the city's 1968 Code and from Ord. No. 348-71, § 2, adopted Aug. 2, 1971; Ord. No. 499-74, § 4, adopted Aug. 19, 1974; Ord. No. 334-76, § 6, adopted July 7, 1976; and Ord. No. 275-77, adopted May 16, 1977.

Sec. 14-196. Purpose.

The purpose of the A-B airport business zone is:

To provide an area for the development of airport-related enterprises. Appropriate uses permitted in this district 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.

(Ord. No. 295-88, 5-23-88)

Sec. 14-197.1. Permitted uses.

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

- (a) Administration;

- (b) Airline terminal including, but not limited to:
 - 1. Administration;
 - 2. Concessions including, but not limited to, newsstands, florists, pharmacies and sundries, parcel storage, insurance sales, vending machines and video games;
 - 3. Reservations and ticket sales;
 - 4. Air freight operations;
 - 5. Travel agency;
 - 6. Physical plant service, repair and storage;
 - 7. Cocktail lounges; and
 - 8. Public waiting area.
- (c) Charter flight service;
- (d) Airport carrier operations, including ground support and fueling;
- (e) Aircraft and aircraft accessory sales and services;
- (f) Flying school;
- (g) Ground transportation;
- (h) Car rental operations, including vehicle storage;
- (i) Hotel or motel;
- (j) Restaurant, coffee shop;
- (k) Bank;
- (l) Parking lots and garages; and
- (m) Accessory buildings and uses, including use of temporary structures within the boundaries of the Portland International Jetport for not longer than five (5) years, provided the owner demonstrates to the planning authority

the intention and ability to discontinue or replace the temporary use with a permanent structure within five (5) years.

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

(Ord. No. 295-88, 5-23-88; Ord. No. 33-11/12, 1-18-12)

Sec. 14-197.2. Conditional uses.

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

- (a) Temporary wind anemometer towers, as defined in section 14-47, are permitted provided the following standards are met in addition to section 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, of 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. 33-11/12, 1-18-12)

Sec. 14-198. Prohibited uses.

Uses not expressly enumerated in section 14-197 as permitted uses are prohibited.

(Ord. No. 295-88, 5-23-88)

Sec. 14-199. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, uses in the A-B zone shall meet the following:

- (a) *Minimum lot size:* Twenty thousand (20,000) square feet.
- (b) *Minimum street frontage:* Fifty (50) feet, except as described in section 14-201(b).
- (c) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from

property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:*

Principal or accessory structures: None, except that every property having frontage on Westbrook Street shall have a minimum front yard of twenty (20) feet.

2. *Rear yard:*

a. Principal or accessory structures: None, except where a rear yard abuts a residence zone or use, in which case it must be fifty (50) feet. No structure may extend beyond the building line established for any runway or taxiway. If provided, rear yards must not be less than five (5) feet in width.

3. *Side yard:*

Principal or accessory structures: None, except where a side yard abuts a residential zone or use, in which case it must be twenty-five (25) feet in width. If provided, side yards must not be less than five (5) feet in width.

(d) *Minimum lot width:* Fifty (50) feet.

(e) *Maximum structure height:* Seventy-five (75) feet, except within one hundred (100) feet of the private property line on Westbrook Street or within one hundred (100) feet of the boundary of the A-B airport business zone in which the height limit shall be forty-five (45) feet. No structure or tree, however, shall be erected, altered, allowed to grow or maintained to a height in excess of that allowed by applicable Federal Aviation Administration (FAA) regulation.

(f) *Maximum impervious surface ratio:* Seventy (70) percent.
(Ord. No. 295-88, 5-23-88)

Sec. 14-200. Other requirements.

In addition to the above, the following requirements are

applicable to all uses in the A-B zone:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are required as provided in division 20 and division 21 of this article.
- (d) *Signs:* Signs shall be subject to the provisions of division 22 of this article. Temporary freestanding advertising signs are not permitted.
- (e) *Exterior storage:* There shall be no exterior storage within the district, with the exception of receptacles for solid waste disposal. Such receptacles shall be shown on the approved site plan.
- (f) *Storage of vehicles:* Storage of vehicles is permitted as provided in section 14-335.
- (g) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or a flood plain zone, the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 295-88, 5-23-88)

Sec. 14-201. Special provisions as to restricted access areas.

(a) Runways, taxiways and other areas of the jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not, shall be known as "restricted access areas" and must be subject to the special provisions of this section.

(b) Lots in restricted access areas shall not be subject to the provisions of section 14-199(b) and (f) as to frontage and maximum impervious surface ratio; and shall not be subject to the provision of section 14-200(a) landscaping or the requirements of section 14-202.

(c) Use of lots in restricted access areas shall be limited to uses which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

(Ord. No. 295-88, 5-23-88)

Sec. 14-202. External effects.

(a) *Reserved.*

(b) *Enclosed structure:* The use shall be operated within a completely enclosed structure, except for those customarily operated in the open air.

(c) *Noise:* The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the A scale, on impulse (less than one (1) second at lot boundaries), excepting air raid sirens and similar warning devices.

(d) *Vibration and heat:* Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.

(e) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.

(f) *Smoke:* Smoke shall not be emitted at a density in excess of forty (40) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

(g) *Materials or wastes:* No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 295-88, 5-23-88)

Sec. 14-203 - Sec. 14-215. Reserved.

DIVISION 12. B-3, B-3b AND B-3c DOWNTOWN BUSINESS ZONES*

***Editor's note**—Ord. No. 241-91, adopted Mar. 11, 1991, repealed former Div. 12 of this article, §§ 14-216–14-221, relative to B-3 and B-3b Business Zones, and enacted new provisions in lieu thereof as Div. 12, §§ 14-216–14-221.1. Formerly, Div. 12 derived from §§ 602.10.A–602.10.F of the city's 1968 Code as amended by the following legislation:

Ord. No.	Section	Date	Ord. No.	Section	Date
452-72	2	7-17-72	364-88		5- 4-88
499-74	5	8-19-74	294-88		5-23-88
344-76	6	7- 7-76	34-89		6-28-89
429-83	1	4-25-83	153-89	2-7	11-20-89
173-87	1	3- 4-87	235-91	16	2- 4-91

Cross reference(s)—Public arts program, § 14-851 et seq.; relocation of displaced tenants, § 14-861 et seq.

Sec. 14-216. Purpose.

(a) The purposes of the B-3 and B-3b downtown business zones are to:

- (1) Maintain and enhance the role of the downtown as the business and commercial center of the region;
- (2) 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;
- (3) Encourage increased housing opportunity downtown for a diverse residential population;
- (4) 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;

- (5) Encourage excellence in urban design;
- (6) Preserve and capitalize on the unique character and historic fabric of the downtown through the encouragement of reuse of significant existing structures;
- (7) Provide opportunity for an enhanced presence and integration of the arts and cultural activities downtown;
- (8) 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;
- (9) Provide adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment;
- (10) In the pedestrian activities district (PAD) overlay zone, 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
- (11) Provide for the relocation of residents who are displaced by development.

(b) The B-3c downtown business zone recognizes that the business uses appropriate in this zone are constrained by the proximity of multi-unit elderly housing. In addition to the purposes of the B-3 and B-3b zones, the purpose of the B-3c zone is 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, uncontrolled late night activities.

(Ord. No. 241-91, 3-11-91; Ord. No. 46-97, § 2, 8-4-97)

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and B-3c zones:

1. *Residential:*

- a. Attached single-family, two-family and multifamily dwellings;
- b. Handicapped family units;

- c. Lodging houses;
- d. Combined living/working spaces including, but not limited to, artist residences with studio space.

2. *Business:*

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;
- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;
- j. Communication studios or broadcast and receiving facilities;
- k. Health clubs and gymnasiums;
- l. Theaters and performance and exhibition halls;
- m. Convention and meeting facilities;
- n. Hotels;
- o. Business services;

- p. Parking garages;
- q. Galleries;
- r. Registered medical marijuana dispensaries.

3. *Institutions*

- a. Museums;
- b. Public or private schools of any type;
- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;
- f. Nursery schools, kindergartens, and day care facilities or home babysitting services.
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions.

4. *Other:*

- a. County and municipal uses;
- b. Studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- c. Printing, publishing and related manufacture of cardboard or paper boxes, provided that these activities are conducted wholly within a building.
- d. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522a nd 14-523 not withstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:

- i. The meeting facility shall be limited to the following types of uses:
 - (a) Private parties.
 - (b) Business meetings.
 - (c) Weddings.
 - (d) Receptions.
 - (e) Seminars.
 - (f) Business and educational conferences.
- ii. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.
- e. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - i. All applicable provisions of Article V of this chapter shall be met.
 - ii. Parking shall be provided in compliance with Division 20 of this Article.
 - iii. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - iv. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - v. 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.
- f. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(b) The following additional restrictions shall apply in the PAD overlay zone, which shall be located on the streets listed below and as further delineated on the PAD overlay zone map, a copy of which is on file in the office of planning and urban development:

Center Street, from Fore Street to Commercial Street.

Commercial Street, north side, from Foundry Lane to Pearl Street.

Commercial Street, south side, from Carroll Block to Thomas Block, inclusive.

Congress Street, from Longfellow Square to Monument Square.

Dana Street.

Exchange Street, from Federal Street to Fore Street.

Fore Street, north side, from one hundred ten (110) feet west of Center Street to two hundred seventy-five (275) feet west of Pearl Street.

Fore Street, south side, from Center Street to Pearl Street.

Free Street, north side, from Congress Square to Temple Street.

Free Street, south side, from Congress Square to four hundred twenty-three (423) feet east of Oak Street and from Center Street to Temple Street.

Middle Street, north side, from Monument Square to sixty (60) feet east of Garden Lane.

Middle Street, south side, from Monument Square to two hundred fifty (250) feet east of Pearl Street.

Milk Street, from Exchange Street to Pearl Street.

Moulton Street.

Pearl Street, from Middle Street to Fore Street.

Wharf Street.

York Street, south side, from Center Street to Dunphy's Lane.

Frontages of the following areas: Longfellow, Congress, and Monument Squares; Tommy's and Post Office Parks.

1. *Ground floor uses:*

- a. Subject to the following limited uses, at least seventy-five (75) percent of the street level frontage of a building on a street located within the PAD overlay zone must be utilized, and, at minimum, the floor area to be occupied shall be seventy-five percent (75%) of the street level frontage multiplied by a twenty (20) foot depth:
 - i. Retail establishments as permitted in 14-217(a)(2)e;
 - ii. Personal services;
 - iii. Hotels;
 - iv. Copying centers;
 - v. Restaurants as permitted in 14-217(a)(2)f;
 - vi. Drinking establishments;
 - vii. Theaters, provided that only ticket and refreshment sales, lobbies, lounges and entrances shall be located within this area;
 - viii. Travel agencies;
 - ix. Real estate sales;
 - x. Visitor information services;
 - xi. Museums;
 - xii. Libraries;
 - xiii. Banks, financial and other business services, provided that only tellers and spaces primarily used for customer services shall be

located in this area;

- xiv. Municipal or county uses;
- xv. Galleries and studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- xvi. Performing arts studios which attract and allow for public, pedestrian observation from the adjacent sidewalks (including dance studios, music conservatories, and the like);
- xvii. Other uses where the applicant can demonstrate to the zoning administrator 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 (1) street located within the PAD overlay zone, the street level area of each such frontage shall meet the above requirements.

- b. For those buildings which have forty (40) feet or less of frontage on a street within the PAD overlay zone, the above restrictions shall be reduced to fifty (50) percent of the frontage where required to accommodate a service entrance. For buildings which have frontage on more than one (1) street located within a PAD overlay zone, only one (1) such frontage shall be permitted to reduce the required retail area to fifty (50) percent of the frontage.
- c. In no event shall any required retail frontage area be used for any of the following:
 - i. Storage;
 - ii. Service entrances, including loading docks, dumpsters and compactors, except as provided

in subsection b; or

- iii. Food preparation areas, unless such preparation areas are visually oriented toward pedestrians on streets located within a PAD overlay zone.

(Ord. No. 241-91, 3-11-91; Ord. No. 200-95, § 1, 3-20-95; Ord. No. 126-97, § 7, 3-3-97; Ord. No. 46-97, § 3, 8-4-97; Ord. No. 226-98, §§ 1, 2, 3-2-98; Ord. No. 51-00, §2, 8-7-00; Ord. No. 205-06/07, 6-4-07; Ord. No. 226-07/08, 5-19-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 283-09/10 emergency passage; Ord. No. 10-10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12)

***Editor's Note:** Pursuant to Order 164-06/07 passed on April 4, 2007 Section 14-217.5 (*Old Port Overlay Zone*) was repealed in its entirety and Division 19.8 (*Downtown Entertainment Overlay Zone*) was enacted.

***Editor's Note:** Pursuant to Order No. 48-06/07 passed on September 18, 2006 Section 14-217.6 (*Moratorium on Formula Restaurants in Old Port Historic District and Arts District*) expired on November 19, 2006.

Sec. 14-218. Conditional uses.

(a) The following use is permitted as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474(a) or any other provision of this Code, the planning authority shall be substituted for the board of appeals as the reviewing authority:

1. Ground floor uses in the mandated pedestrian-oriented use area of the PAD overlay zone: Any use permitted in the B-3 and B-3b zone, provided that 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 for permitted uses in the PAD overlay zone for a period of six (6) months and that it has been unable to market the space for a permitted use in accordance with section 14-217(b) (1); and
 - i. For existing structures, evidence that the

space has been actively marketed for permitted uses for a period of six (6) months and, in the case of new construction, evidence that the space has been actively marketed and available for use for a period of six (6) months; and

- ii. Evidence of market, advertising, or real estate brokerage efforts to attract permitted uses.
- b. The approval of any conditional use under this section 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 (5) 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 Board zoning board of appeals 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.

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

An appeal to the Planning Board shall be had from the planning authority's written decision under

this subsection. Such appeal shall be filed no later than thirty (30) days from the planning authority's decision.

(b) The following uses are permitted 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. Utility substations, such as water and sewage pumping stations and standpipes, electric power substation transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably located, screened and landscaped so as to ensure compatibility with the surrounding neighborhood.
2. Drive-up banking services, provided that drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street line. 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. Such uses shall also be in compliance with the applicable standards contained in the Downtown Urban Design Guidelines, a copy of which is on file in the department of planning and urban development. No other type of drive-up use shall be permitted.
3. Light industrial uses, subject to the following requirements:
 - a. The use shall not include any use prohibited in the I-L zone;
 - b. Glare, radiation, fumes or smoke shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries;
 - c. The floor area devoted to industrial use shall not exceed ten thousand (10,000) square feet; for a building in existence on March 11, 1991, the floor area shall not exceed ten thousand (10,000) square feet or fifty (50) percent of the total floor area,

whichever is greater;

- d. The use shall be operated within a completely enclosed structure;
- e. No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All materials which might cause fumes or dust or constitute a fire hazard if stored out-of-doors shall be stored only in closed containers. Areas attracting large numbers of birds, rodents or insects are prohibited;
- f. All truck parking and loading shall be accommodated off-street;
- g. 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 five (5) years;
- h. Any buildings located in a PAD overlay zone shall be subject to the requirements of that zone in addition to the requirements of this section.

The following additional requirements shall apply to 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 use set forth in section 14-217(a) subsections (1), (2) or (3) 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 (6) delivery or service trips per day between 7:00 a.m. and 7:00 p.m.
4. Emergency shelters, subject to the following conditions, in addition to the provisions of section 14-474:

- a. The facility shall be in compliance with the city's current Comprehensive Housing Assistance Plan, a copy of which is on file in the department of planning and urban development, or, if there is no current edition of the Comprehensive Housing Assistance Plan, with a determination of need by the director of the department of health and human services.
 - b. The facility shall be registered with the City of Portland Department of Health and Human Services.
5. Surface parking provided that:
- a. In the case of lot undergoing level I or level II site plan review, no new surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site;
 - b. In the case of a lot undergoing level III site plan review, no new or existing surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site; and
 - c. No surface parking spaces shall be encumbered by lease or other use commitment exceeding twenty-four (24) month term.

(c) 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.

(Ord. No. 241-91, 3-11-91; Ord. No. 36-93, 7-7-93; Ord. No. 46-97, § 4, 8-4-97; Ord. No. 51-00, §3, 8-7-00; Ord. No.205-06/07, 6-4-07; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 278-09/10, 7-19-10)

***Editors Note:** Section 14-218(b)(5), subparagraphs a-c shall apply to all applications filed on or after February 13, 2007

Sec. 14-219. Prohibited uses.

Uses not enumerated in sections 14-217 and 14-218 as either permitted uses or conditional uses are prohibited.

(Ord. No. 241-91, 3-11-91)

Sec. 14-220. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-3, B-3b and B-3c zones shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum street frontage:* Fifteen (15) feet.
- (c) *Street wall build-to line:* All buildings or structures shall be located within five (5) feet of the property line along street frontages, unless the Planning Board requires or approves an additional distance to comply with the requirements of section 14-526 (d)9 and the City of Portland Design Manual.
- (d) *Minimum yard dimensions:* None required.
- (e) *Minimum lot width:* None required.
- (f) *Maximum length of undifferentiated blank wall along a public street or publicly accessible pedestrian way:*
 - 1. PAD overlay zone: Fifteen (15) feet.
 - 2. All other areas: Thirty (30) feet.
- (g) *Maximum lot coverage:* One hundred (100) percent.
- (h) *Minimum building height:* No new construction of any

building shall be less than thirty-five (35) feet in height within fifty (50) feet of any street frontage, except that this provision 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.
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 square feet.
4. Additions to buildings existing as of June 4, 2007 provided that the cumulative additions since June 4, 2007 do not exceed ten percent (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.
8. Structures accessory to parks and plazas.
9. Buildings or building additions of less than 2,500 square feet footprint, on lots or available building sites of less than 3,000 square feet.

(i) *Maximum height of structures:*

1. The overall maximum permitted height of structures shall be as depicted on the [downtown height overlay map](#), a copy of which is on file in the department of planning and urban development.
 2. Maximum height along street frontages and minimum step-back dimensions shall be as depicted on the downtown maximum street wall height and minimum step-back map, a copy of which is on file in the department of planning and urban development.
 3. Where the [downtown height overlay map](#)^[NLE1] depicts a height plus forty (40) feet, the building form may extend up to forty (40) feet above the designated height limit for the purpose of providing a distinctive graduated design for an architectural building top and to enclose rooftop appurtenances as required by section 14-526(d) 9 of article V (site plan) and the City of Portland Design Manual. No habitable floor area shall be developed within the building envelope permitted by the additional forty (40) feet, unless at least fifty (50) percent of such habitable floor area is devoted exclusively to one (1) or more publicly accessible uses, such as eating or drinking establishments, an observatory, community meeting rooms or halls available to the public or such other uses that make reasonable accommodation for public use at reasonable times, on a nonmembership basis at no cost or at a cost that will not exclude use by the general public, and provided that such floor area is incidental to the primary design intent of the space to achieve the standards of this section. Notice of such public use and how it may be accessed by the general public must be given on the first floor of the building in a manner reasonably located to inform the general public of the availability of the public use.
- (j) *Maximum building area and floor area for buildings which exceed one hundred twenty-five (125) feet in height:*
1. For portions of structures which exceed one hundred twenty-five (125) feet in height, the maximum horizontal building coverage at one hundred twenty-five (125) feet or higher shall not exceed

twenty-five (25) percent of the site area, except that no floor area shall be required to be less than ten thousand (10,000) square feet.

2. The maximum gross floor area for each floor located above one hundred twenty-five (125) feet in height shall not exceed fifteen thousand (15,000) square feet.

(k) [*Uses in PAD overlay zone:*] All uses established in the PAD overlay zone shall meet the requirements of section 14-526(a) (16).

(Ord. No. 241-91, 3-11-91; Ord. No. 46-97, § 5, 8-4-97; Ord. No. 205-06/07, 6-4-07; Ord. No. 278-09/10, 7-19-10)

Sec. 14-221. Other requirements and standards.

(a) *Downtown urban design guidelines:* All development as defined in article V, all building and site alterations, and all provision of landscaping or other pedestrian amenities shall be consistent with the Downtown Urban Design Guidelines. Amendments to the Downtown Urban Design Guidelines may be made by the Planning Board and shall be filed with the city clerk. Such amendments shall become effective forty-five (45) days after the date of filing with the city clerk, unless vetoed in whole or in part by the city council within that time.

(b) *Off-street parking and loading:* Off-street parking and loading are required as provided in division 20 and division 21 of this article.

(c) *Signs:* Signs shall be subject to the provisions of division 22 of this article. In addition, signs within the pedestrian activities district (PAD) overlay zone or in areas designated as PAD encouragement areas, as shown on the pedestrian activities district map, a copy of which is on file in the department of planning and urban development, shall be consistent with the Downtown Urban Design Guidelines.

(d) *Exterior storage:* There shall be no exterior storage, with the exception of receptacles for solid waste disposal which are not visible from a public street. Such receptacles shall be shown on the approved site plan.

(e) *Storage of vehicles:* No more than one (1) unregistered vehicle shall be stored outside for a period in excess of thirty (30) days.

(f) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or in a flood hazard zone, then the requirements of division 26 and/or division 26.5 shall apply.

(g) *Downtown arts program:* All new development subject to section 14-851 shall make provision for participation in the public arts program.

(h) *Relocation of displaced residents:* Any development which results in the displacement of residents of dwelling units currently located on the development site shall meet the requirements of sections 14-861 through 14-864.

(i) *Historic resources:* The exterior design of proposed or renovated structures located within historic districts shall be subject to the provisions of article IX (historic preservation) of this chapter. The exterior design of proposed or renovated structures located adjacent to historic districts or historic resources shall be subject to section 14-526(d) 5, b.
(Ord. No. 241-91, 3-11-91; Ord. No. 240-09/10, 6-21-10; Ord. No. 278-09/10, 7-19-10)

Sec. 14-221.1. External effects.

Every use in the B-3, B-3b and B-3c zones shall be subject to the following requirements:

- (a) *Enclosed structure:* The use shall be operated within a completely enclosed structure, except for those uses customarily operated in the open air.
- (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 within the B-3 and B-3b zones shall not exceed fifty-five (55) decibels on the A scale between the hours of 9:00 p.m. and 7:00 a.m., and sixty (60) decibels on the A scale between 7:00 a.m. and 9:00 p.m. at the boundaries of any lot nor within publicly accessible pedestrian open space, 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 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 (LEQ₁).

- (c) *Vibration*: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.
- (d) *Heat*: Heat shall be imperceptible without instruments at lot boundaries. Heating elements which are intended to melt snow and ice shall be placed within sidewalk paving only when approved by the department of parks and public works.
- (e) *Glare, radiation or fumes*: Glare, radiation or fumes shall be imperceptible without instruments at lot boundaries.
- (f) *Smoke*: Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.
- (g) *Materials or wastes*: No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in closed containers and in accordance with section 14-221(d). Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 241-91, 3-11-91; Ord. No. 46-97, § 6, 8-4-97)

DIVISION 12.1. I-B ISLAND BUSINESS ZONE

Sec. 14-222. Purpose.

The purpose of the I-B island business zone is to provide limited areas on the islands for retail and service establishments that serve primarily the needs of the local island market area.

(Ord. No. 30-85, § 1, 7-15-85)

Sec. 14-223. Permitted uses.

The following uses are permitted in the I-B island business

zone:

- (a) Single-family detached dwellings;
- (b) Retail or service establishments, excluding those listed below:
 - 1. Automobile service stations;
 - 2. Inns;
- (c) Marinas and yacht clubs;
- (d) Lodging houses, with more than two (2) but not more than nine (9) lodging rooms;
- (e) Wharves, piers, docks, or landing ramps;
- (f) Off-street parking;
- (g) Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article including but not limited to home occupations;
- (h) Handicapped family unit, as defined in section 14-47, for handicapped persons plus staff.
- (i) Peaks Island only: Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding.
- (j) Studios for artists and craftspeople, provided that the area of such studios does not exceed one thousand (1,000) square feet for each studio space.
- (k) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 30-85, § 1, 7-15-85; Ord. No. 33-91, § 13, 1-23-91; Ord. No. 125-97, § 8, 3-3-97; Ord. No. 164-97, § 3, 12-1-97; Ord. No. 10-10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-224. Conditional uses.

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions,

standards or requirements specified below:

(a) Two-, three- or four-family dwelling, provided that:

1. No open outside stairways or fire escapes above ground floor shall be constructed or have been constructed in the immediately preceding five (5) years;
2. A below-grade dwelling unit shall be permitted only if access is provided directly to the outside of the building;
3. 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;
4. 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;
5. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
6. No additional dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
7. 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;
8. 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;

- (b) Automobile service stations;
- (c) Inns;
- (d) Schools;
- (e) Nursery schools, kindergartens and day care centers for seven (7) or more children;
- (f) Municipal uses, provided outside storage and parking area uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.
- (g) Places of religious assembly;
- (h) Private clubs, fraternal organizations.
- (i) Temporary wind anemometer towers, as defined in section 1-47, are permitted provided the following standards are met in addition to section 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 evicence 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 otherp upose; 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, of the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

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

(Ord. No. 30-85, § 1, 7-15-85; Ord. No. 435-89, 5-15-89; Ord. No. 163-89, § 1, 12-11-89; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-225. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 30-85, § 1, 7-15-85)

Sec. 14-226. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulation and exceptions) of this article, lots in the I-B zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Lot size shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where lot size 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.
2. Retail or service establishments: Twenty thousand (20,000) square feet, except that no minimum lot size shall be required if served by public water and sewer.
3. Restaurants and drinking establishments: Twenty thousand (20,000) square feet, except that ten thousand (10,000) square feet shall be required if served by public water and sewer.
4. Schools and other educational facilities: Twenty thousand (20,000) square feet.
5. Churches and other places of worship: Twenty thousand (20,000) square feet.
6. Private clubs, fraternal organizations: Twenty thousand (20,000) square feet.
7. Lodging houses: Thirty thousand (30,000) square feet for three (3) lodging rooms, plus ten thousand (10,000) square feet for each additional lodging room in excess of three (3), unless served by public water and public sewer. Five thousand (5,000) square feet for three (3) lodging rooms, plus five thousand (5,000) square feet for each additional lodging room in excess of three (3) if served by public water and public sewer.
8. Inns or bed and breakfasts: Ten thousand (10,000) square feet for each guest room, unless served by public water and public sewer. Five thousand (5,000) square feet for three (3) guest rooms, plus five thousand (5,000) square feet for each additional guest room in excess of three (3) if served by public water and public sewer.

9. Municipal uses: Twenty thousand (20,000) square feet.
10. Automobile service station: Twenty thousand (20,000) square feet.
11. In issuing any permit for new development, the building or planning authority shall require that any lot located in an I-B zone shall be at least twenty thousand (20,000) square feet in area when the lot is to be serviced by a subsurface wastewater disposal system, [excluding Peaks Island].
12. [Excluding Peaks Island from this subsection 12,] any property owner whose lot does not meet the minimum lot size requirements outlined in subsection 11 of this section may, for purposes of this section only, merge two (2) 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 building 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 building 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.
- 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 (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot size provisions set forth in (a)1 of this section. 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 section 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 section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of section 14-433.

- 13. Where an existing subsurface disposal system serving an existing structure requires replacement, the replacement system shall meet the requirements of CMR 241 Section 2-E. The land area requirements in subsection 11 of this section shall not apply to such a replacement system.

For purposes of this subsection the mean high tide mark shall be considered to be the shoreline lot

line.

(b) *Minimum street frontage:* Forty (40) feet.

(c) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:*

Principal or accessory structures: Twenty (20) feet, except that a front yard need not exceed the average depth of front yards on either side of the lot.

2. *Rear yard:*

Principal or accessory structures: Ten (10) feet.

3. *Side yard:*

Principal structures: Ten (10) feet.
Accessory structures: Ten (10) feet except that the minimum distance from a principal structure may be five (5) feet.

4. *Side yard on side streets:*

Principal or accessory structures: Ten (10) feet.

(d) *Maximum lot coverage:* Fifty (50) percent of lot area.

(e) *Minimum lot width:* Forty (40) feet.

(f) *Maximum structure height:*

Principal or accessory attached structure: Thirty-five (35) feet.

Accessory detached structure: Eighteen (18) feet.

(Ord. No. 30-85, § 1, 7-15-85; Ord. No. 163-89, § 2, 12-11-89; Ord. No. 125-97, § 9, 3-3-97)

Sec. 14-227. Other requirements.

Every use in a I-B zone shall be subject to the following requirements:

- (a) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) *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.
- (c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.
- (d) *Noise:* The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the A scale between 7:00 a.m. and 9:00 p.m. and fifty-five (55) decibels on the A scale between 9:00 p.m. and 7:00 a.m., on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.

(Ord. No. 30-85, § 1, 7-15-85; Ord. No. 15-92, § 16, 6-15-92; Ord. No. 15-04/05, 8-2-04; Ord. No. 240-09/10, 6-21-10)

Sec. 14-228 - Sec. 14-229.9. Reserved.

DIVISION 12.5. B-4 COMMERCIAL CORRIDOR ZONE

Sec. 14-229.10. Purpose.

The purpose of the B-4 commercial corridor zone is:

- (a) 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); or
- (b) To provide appropriate locations for large-scale commercial uses and commercial uses that require larger land areas to accommodate their operations.

Sec. 14-229.11. Permitted uses.

The following uses are permitted in the B-4 zone:

(a) *Business:*

1. General, business and professional offices, as defined in section 14-47;
2. Personal services, as defined in section 14-47;
3. Offices of building tradesmen;
4. Retail establishments;
5. Restaurants;
6. Drinking establishments;
7. Billiard parlors;
8. Major and minor gasoline service stations, as defined in section 14-47;
9. Mortuaries or funeral homes;
10. Miscellaneous repair services;
11. Health clubs and gymnasiums;
12. Hotels and motels;
13. New and used car dealerships;
14. Facilities for the maintenance and repair of automobiles, provided all repairs are performed in a fully enclosed structure;
15. Car washes;
16. Lumber and building materials dealers;
17. Communications studios and broadcast receiving facilities;

18. Veterinary hospitals but excluding outdoor kennels;
19. Auto body repair and paint shops provided all repairs are performed in fully enclosed structures;
20. Boat, trailer or recreational vehicle sales and service;
21. Theaters, entertainment and recreation services;
22. Self-storage facility;
23. Registered medical marijuana cultivation facilities.

(b) *Institutional:*

1. Governmental buildings and uses.
2. Colleges, universities and trade schools.
3. Places of assembly.
4. 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:
 - a. 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;
 - 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 (1) staff person for every ten (10) residents or fraction thereof; and
 - c. The facility shall provide twenty-four-hour supervision of program participants.

(c) *Other:*

1. Lodging houses;

2. Wholesale warehousing and distribution establishments;
3. Commercial bakeries and dairies;
4. Light manufacturing uses with not more than twenty-five thousand (25,000) square feet or less of gross floor area. Exterior assembly of materials or products is prohibited. Activity defined as a high hazard by chapter 6 of this Code (building code) is also prohibited;
5. Printing and publishing establishments;
6. Research and development and related production establishments;
7. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding; and
8. Day care facilities;
9. Studios for artists and craftspeople;
10. Accessory uses, as provided in section 14-404; and
11. 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.
12. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 296-88, 5-23-88; Ord. No. 285-95, 6-7-95; Ord. No. 154-96, § 13, 12-16-96; Ord. No. 164-97, § 3, 1-6-97; Ord. No. 164-97, § 4, 12-1-97; Ord. No. 81-99, § 1, 10-18-99; Ord. No. 97-06/07, 11-20-06; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 283-09/10 7-19-10, emergency passage; Ord. No. 10-10/11, 8-2-10; Ord. No. 90-11/12, 1-4-12; Ord. No. 33-11/12, 1-18-12)

Sec. 14-229.11.1. 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. 14-229.12. Prohibited uses.

Uses not expressly enumerated in section 14-229.11 as permitted uses are prohibited.

(Ord. No. 296-88, 5-23-88)

Sec. 14-229.13. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, uses other than utility substations in the B-4 zone shall meet the following minimum requirements:

- (a) *Minimum lot size:* Ten thousand (10,000) square feet.
- (b) *Minimum street frontage:* Sixty (60) feet.
- (c) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

Except as provided in subsection (5) below, the following setbacks shall be required:

1. *Front yard:*

- a. Principal or accessory structures: Twenty (20) feet, except that a front yard need not exceed the average depth of front yards on either side of the lot.
- b. The front yard of a lot existing as of May 23, 1988, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.

2. *Rear yard:*

- a. Principal structures: Twenty (20) feet.
- b. Accessory structures (detached) with a total floor area of one hundred (100) square feet or less: Seven (7) feet.

3. *Side yard:*

- a. Principal structures:

Number of Stories Required Side Yard

1 or 2 stories 10 feet

3 or more stories 12 feet

- b. Accessory structures (detached) with a total floor area of one hundred (100) square feet or less: Five (5) feet.

- c. Side yards on side streets (corner lot):

Principal or accessory structures:

i. One (1) or two (2) stories: Ten (10) feet.

ii. Three (3) or more stories: Twelve (12) feet.

- (d) *Minimum lot width:* Sixty (60) feet.
- (e) *Maximum height:* Sixty-five (65) feet; except that on lots in excess of five (5) acres, ninety (90) feet is permitted if each of the setbacks required under subsection (3) above is increased by one (1) foot in distance for each foot of height above sixty-five (65) feet.
- (f) *Maximum impervious surface ratio:* Eighty (80) percent.
- (g) *Maximum Floor Area Ratio (F.A.R.):* The maximum floor area ratio is established according to the abutting residential zone. If there is no abutting residential zone to the lot in question, the F.A.R may be a maximum of 0.65. In the case of two (2) or more abutting residential zones, the F.A.R. shall be the F.A.R. of the least restrictive such zone. The ratios are as follows:

<i>Residential</i>	<i>Floor Area Ratio</i>
R-1/R-2	0.45
R-3	0.55
R-4/R-5/R-5A/R-6	0.65

(Ord. No. 296-88, 5-23-88)

Sec. 14-229.14. Other requirements.

In addition to the above, the following requirements are applicable to all uses in the B-4 zone:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are as required by division 20 and division 21 of this article.
- (d) *Signs:* Signs shall be subject to the provisions of

division 22 of this article.

(e) *Exterior storage:*

1. 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 five (5) feet in height, or by a solid evergreen planting strip.
2. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container.
3. Outdoor storage of refuse, debris, or material awaiting reuse shall be in an appropriate container or located within a designated, screened area.
4. 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. No outdoor storage shall be permitted in the required yard between the front of any building on the site and the street, except for storage for plant and tree nurseries.

(f) *Storage of vehicles:* Storage of vehicles is subject to the provisions of section 14-335.

(g) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or in a flood plain zone, the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 296-88, 5-23-88; Ord. No. 164-97, § 4, 1-6-97)

Sec. 14-229.15. External effects.

Every use in a B-4 zone shall be subject to the following requirements:

- (a) *Enclosed structure:* The use shall be operated within a completely enclosed structure, except for those customarily operated in the open air.
- (b) *Noise:* The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty-five (65) decibels on the A scale between 7:00 a.m. and 9:00 p.m. and sixty (60) decibels on the A scale between 9:00 p.m. and 7:00 a.m., on impulse (less than one (1) second), off premises at source of complaint, excepting air raid sirens and similar warning devices.
- (c) *Vibration and heat:* Vibration inherently and recurrently generated and heat shall be imperceptible without instruments at lot boundaries.
- (d) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (e) *Smoke:* Smoke shall not be emitted at a density in excess of thirty (30) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

(Ord. No. 296-88, 5-23-88; Ord. No. 164-97, § 5, 1-6-97)

Sec. 14-229.16. - Sec. 14-229.30. Reserved.

DIVISION 12.6. B-5 URBAN COMMERCIAL MIXED USE ZONE

Sec. 14-230. Purpose.

The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district 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 such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.

(Ord. No. 168-93, § 3, 1-4-93; Substitute Ord. No. 164-97, § 1, 5-19-97)

***Editor's Note:** The text changes adopted in Ord. No. 215-04/05 Section 14-230.1 (a)8 and 13 and (g) 3 shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.1. Permitted uses.

The following uses are permitted in the B-5 and B-5b urban commercial mixed use zones:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments;
3. Meeting and convention halls;
4. Hotels and motels;
5. Craft and specialty shops, including the on-premises production of handcrafted goods;
6. Retail and service establishments except convenience stores with gas pumps;
7. Theaters and places of public assembly;
8. Banking services, except that any drive-up banking service shall be a conditional use;
9. Laundry and dry cleaning services;
10. Cabinet and carpentry shops;
11. Indoor recreation and family amusement establishments;
12. Intermodal transportation facilities;
13. Off-street parking lots and garages except in the

B-5 zoning district between Forest Avenue and Franklin Street surface parking lots shall be considered a conditional use;

14. Cold storage facilities;
15. Lumber and building materials dealers (in existence on date of passage);
16. Major and minor gasoline service stations, as defined in section 14-47. Major and minor gasoline service stations shall be located at least two thousand (2,000) feet from each other;
17. Personal services;
18. Business services;
19. Billiard parlors;
20. Offices of business tradespeople;
21. Miscellaneous repair services;
22. Communication studios, broadcast and receiving facilities;
23. Theaters;
24. Exhibition halls;
25. Indoor amusement and recreation centers.
26. 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.

(b) *Industrial:*

1. Warehousing and wholesaling;
2. Low impact industrial uses with total floor area of less than ten thousand (10,000) square feet and which meet the performance standards of the I-L zone;
3. Breweries, including associated bottling activities.

(c) *Marine:*

1. Marine products wholesaling and retailing;
2. Marine repair services and machine shops;
3. Harbor and marine supplies and services and ship supply;
4. Reserved;
5. Shipbuilding and facilities for construction, maintenance and repair of vessels;
6. Marine museums and aquariums;
7. Reserved;
8. Boat repair yards;
9. Boat storage facilities;
10. Seafood processing for human consumption;

11. Seafood packing and packaging;
12. Seafood distribution;

(d) *Residential:*

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

(e) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Museums and art galleries;
3. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces.

(f) *Institutional:*

1. Public or private schools of any type;
2. Clinics;
3. Places of assembly;
4. Colleges, universities or trade schools;
5. Governmental buildings and uses;
6. Nursery schools, kindergartens, and day care facilities or home babysitting services.

(g) *Other:*

1. Studios for artists and craftspeople including but not limited to, carpenters, cabinetmakers, and silk

screeners;

2. Printing and publishing establishments;
3. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses, excluding in the B-5b all drive-up services for retail, banking, or automotive repair uses. In the B-5 zoning district between Forest Avenue and Franklin Street, all drive-up services for all retail or drive-up automotive repair uses are prohibited. In the B-5 zone between Forest Avenue and Franklin Street, surface parking lots shall be considered a conditional use subject to the conditional use section of the B-5 zone.
4. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 4, 10-7-96; Substitute Ord. No. 164-97, § 2, 5-19-97; Ord. No. 164-97, § 5, 12-1-97; Ord. No. 80, 12-8-04; Ord. No. 215-04/05, 5-2-05; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12)

***Editor's Note:** The text changes adopted in Ord. No. 215-04/05 Section 14-230.1 (a)8 and 13 and (g) 3 shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.2. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-5 and B-5b urban commercial mixed use zones, provided that, notwithstanding section 14-471(c), 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, and further provided that, in addition to the provisions of section 14-474(c)(2), they shall also meet the requirements set forth below:

1. *Commercial:*
 - a. Self-storage facilities in B-5 zone (on-peninsula locations only) in buildings existing as of December 16, 2015; and

b. Outdoor storage of rental and moving equipment in B-5 zone (on-peninsula locations only) on sites with buildings existing of [enactment date]; and

i. 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; and

ii. A landscape buffer shall be provided in accordance with the landscape and buffer requirements of the City of Portland Technical and Design Manual.

2. *Industrial:*

a. Low impact industrial uses over ten thousand (10,000) square feet provided that they meet the following requirements:

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

ii. Street frontage shall be designed for pedestrian scale or interest.

iii. 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.

3. *Surface Parking:*

a. In the B-5 zoning district located between Forest Avenue and Franklin Street, surface parking lot provided the following requirements are met.

i. No new surface parking lot shall be developed within thirty-five (35) feet of any street except in the case of a property in which eighty percent (80%) of the property frontage

has a building within ten (10) feet of the street.

- ii. No surface parking lot shall be encumbered by lease or other use commitment to an off-site use exceeding a twenty-four month term.
- iii. For surface parking lots of 20,000 sq. ft or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than a twenty-four (24) month term.
- iv. 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 relocated parking is located within a reasonable distance from the use.
- v. Surface parking shall be laid out in a manner conducive to development of future buildings and/or structured parking.

4. *Drive Up Banking Services:*

- a. In the B-5 zoning district located between Forest Avenue and Franklin Street, drive up banking services provided the following requirements are met:
 - i. The drive up banking services are attached to a building which houses banking services other than, or in addition to, automated banking machines; and
 - ii. The drive up banking services are attached to a building with a minimum floor area of 20,000 square feet; and
 - iii. Any service window or automated teller machine shall not extend nearer than twenty-five (25) feet to the street; and 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 vehicles or pedestrians

on adjoining streets; and

- iv. There shall be no more than a total of two (2) vehicle lanes for both the service window and automated teller machine.

(b) The following use shall be permitted only upon the issuance of a conditional use permit by the Board of Appeals, 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. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 5, 10-7-96; Substitute Ord. No. 164-97, § 3, 5-19-97; Ord. No. 215-04/05, 5-2-05; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. 33-11/12, 1-18-12; Ord. 101-15/16, 11/16/2015)

***Editor's Note:** The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.3. Prohibited uses.

Uses which are not enumerated in either section 14-230.1 as permitted uses or in section 14-230.2 as conditional uses are prohibited.

(Ord. No. 168-93, § 3, 1-4-93)

***Editor's Note:** The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.4. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-5 and B-5b urban commercial mixed use zones shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Yard dimensions:*
 - 1. Minimum yards in the B-5 and B-5b zones:
 - Front setback: None required.
 - Side setback: None required.
 - Rear setback: None required.
 - 2. Maximum front yard setback in the B-5b zone: Ten (10) feet.
 - 3. Maximum street setback: In the B-5 zoning district located between Forest Avenue and Franklin Street the following street setbacks shall apply:
 - a. Ten (10) feet except for parking structures, public transportation facilities and secondary building components such as truck loading docks, mechanical equipment enclosures and refrigeration units. The setback can be increased more than ten (10) feet if all of the conditions are met below:
 - i. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet.

- ii. The increased setback area includes a functional public pedestrian entrance into the building that faces the street.
 - iii. The increased setback is not used for surface parking.
 - b. For any new construction on a lot abutting three (3) or more streets, the maximum setback shall apply only to two (2) streets.
 - c. 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.
 - d. Additions to and relocations of designated historic structures or structures determined to be eligible by the Historic Preservation Committee shall be exempt from this provision.
- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* Sixty-five (65) feet; except as follows:
- 1. For parcels of land in the B-5b located along West Commercial Street south of Danforth Street, maximum building heights shall be as follows:

West of the projection of the centerline of the Fletcher Street right-of-way, the maximum building height shall be forty-five (45) feet; and, east of the projection of the centerline of the Fletcher Street right-of-way and west of the projection of the centerline of the Emery Street right-of-way, the maximum building height shall be fifty-five

(55) feet.

For purposes of this section, 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 West Commercial Street.

Furthermore, notwithstanding the exception of roof top structures from building height regulations in Section 14-430(a), no rooftop structure located between the projections of the centerlines of Emery Street and Fletcher Street, as described above, shall exceed a height of sixty-two (62) feet as measured from the average grade of the building at its foundation.

2. For parcels of land located on Thompson's Point and also subject to an approved Master Plan Development: one hundred twenty (120) feet. 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 that are accessed from Hobart and Osgood Streets are, for the purposes of this provision, not considered part of Thompson's Point.

(f) *Minimum building height:*

1. In the B-5 zoning district between Forest Avenue and Franklin Street, within thirty-five (35) feet of any public street, no new construction of any building shall have less than three (3) floors of occupiable or habitable space above the average adjacent grade. This provision shall not apply to:
 - a. Accessory building components such as truck loading docks, mechanical equipment enclosures, refrigeration units;
 - b. Information kiosks and ticketing booths;
 - c. Parking garages;

- d. Public transportation facilities;
- e. Additions to buildings existing as of March 9, 2005 provided that the cumulative additions since March 9, 2005 does not exceed 25% of the building footprint on March 9, 2005 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 March 9, 2005;
- f. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic enclosures and other similar structures; and
- g. Additions to and relocations of designated historic structures or structures determined by the Historic Preservation Committee to be eligible for such designation.

(Ord. No. 168-93, § 3, 1-4-93; Substitute Ord. No. 164-97, § 4, 5-19-97; Ord. No. 215-04/05, 5-2-05; Ord. No.112-11/12, 2-22-12; Ord. No. 119-13/14, §230.4, 1-15-14)

***Editor's Note:** The text changes adopted in Order 215-04/05 Section 14-230.4 I3 and (g) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.5. Performance standards.

All uses shall comply with the following standards:

- (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 five (5) feet in height, or by a solid evergreen

planting strip. 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.

(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 a 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 (LEQ₁).

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 sounds 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*: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) 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 and loading are required as provided in division 20 and division 21 of this article.
- (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 in the required yard between the front of any building on the site and the street.

(k) *Odor*: It shall be a violation of this chapter to create an odor nuisance.

1. *Determination of odor nuisance*: An odor nuisance shall be considered to exist when ten (10) confirmed complaints occur in an area within two (2) separate twenty-four-hour periods. The ten (10) confirmed complaints must originate from ten (10) different households in an area zoned residential or from ten (10) different individuals in a commercial or industrial facility. The building authority 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 building authority 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 building authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one (1) working day, with a written confirmation within seven (7) working days of the complaint. In the event that the building authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one (1) working day, then the building authority shall send written notice to the operator within seven (7) working days of the complaint.

In the event that ten (10) complaints are confirmed as set forth in subsection 1. in two (2) separate twenty-four-hour periods within a ninety-day period, the building authority shall cause a

certified odor inspector to investigate any odor complaints received in the next thirty (30) days following the receipt of the tenth confirmed complaint from the second twenty-four-hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next thirty (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 section:

- 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 n-butanol intensity scale as defined in regulations promulgated by the director of the planning authority to establish training and technical standards to support this section; and
- c. Track the odor to its source.

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 building authority shall notify the owner or operator either by telephone or in person of the violation within one (1) working day of the violation. The building authority shall confirm this notification in writing within seven (7) working days of this initial notice. In the event that the building authority 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 seven (7) working days of the violation.

Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:

- a. Implement odor reduction procedures immediately upon notification by the building authority that the facility has violated this

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

- b. Submit to the building authority, within thirty (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 thirty (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 building authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
 - c. Implement the plan in accordance with the schedule approved by the building authority.
2. *Ambient odor limits:* The maximum ambient intensity standard for odors generated by uses located in the I-L zone shall not exceed the following levels when the odor is measured in the zone indicated:
- 4.0 in any industrial or business zone for odors resulting from any use in the B-5 zone.
 - 3.0 in any residential zone for odors resulting from any use in the B-5 zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelman chart.
 - (m) *Discharge into sewers:* 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.

- (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.

(Ord. No. 168-93, § 3, 1-4-93; Substitute Ord. No. 164-97, § 5, 5-19-97; Ord. No. 240-09/10, 6-21-10)

***Editor's Note:** The text changes adopted in Order 215-04/05 Section 14-230.4 I3 and (g) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.6. thru 14-230.9 Reserved.

DIVISION 12.7. O-P OFFICE PARK ZONE

Sec. 14-230.10. Purpose.

The purpose of the O-P zone is to provide substantial areas for integrated development of professional 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.

(Ord. No. 297-88, 5-23-88)

Sec. 14-230.11. Permitted uses.

The following uses are permitted in the O-P zone:

Office park (O-P) with a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least three (3) acres of contiguous land, consisting of either an Office Park Planned Unit Development (OPPUD) on one (1) lot with one (1) or more buildings and with driveways and open areas to be owned and maintained in common, or a subdivision (OPS) on one (1) parcel with two (2) or more lots intended for separate ownership, and including any of the following uses:

- (a) Professional offices and office complexes;
- (b) Research and development establishments;
- (c) Printing and publishing establishments;
- (d) Reserved;
- (e) Day care facilities;
- (f) Uses incidental and subordinate to the office park as a whole, which may include sales and services for employees and visitors; including, but not limited to; parking structures, health clubs, gymnasiums and recreational facilities, day care centers and cafeterias.

An Office Park Planned Unit Development (OPPUD) shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) and the development standards of this chapter, article V sections 14-522 and 14-523 notwithstanding, and whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended. An Office Park Subdivision (OPS) shall be subject to review and approval by the Planning Board with respect to the requirements of article IV (subdivision) and article V (site plan), sections 14-522 and 14-523 notwithstanding, as each subdivided lot is developed. All areas in such a development that are to be owned or used in common shall be governed and maintained as set forth in section 14-498(i)(3) of article VI (subdivisions) of this chapter.

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

(Ord. No. 297-88, 5-23-88; Ord. No. 10-10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-230.11.1. Conditional uses.

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

- (a) High technology manufacturing of biotechnology,

pharmaceutical, and nanotechnology products provided that:

1. Manufacturing, including the warehousing therewith, shall occupy a gross floor area no greater than 20,000 square feet.
 2. A minimum of one-third of the total square footage devoted to manufacturing is conducted in a laboratory environment, i.e. in a controlled environment with specialized air handling systems that exceed levels for pressurization and filtration found in office environments and traditional manufacturing facilities.
 3. Truck traffic serving a single manufacturing business or institution shall not exceed, on a regular basis, more than two (2) tractor-trailer truck deliveries per week and provided that no deliveries are accepted between 7:00 p.m. and 7:00 a.m.
 4. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary.
- (b) 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.

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

(Ord. No. 300-05/06, 7-17-06; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-230.12. Prohibited uses.

Uses not enumerated in section 14-230.11 as permitted uses are

prohibited.

(Ord. No. 297-88, 5-23-88)

Sec. 14-230.13. Development standards.

An office park (O-P) shall be approved by the Planning Board only if, in addition to the dimensional and other requirements of this article and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following development standards:

- (a) *Master plan:* Development proposals shall include a master plan of the office park. The master plan shall include the following:
 - 1. For an OPPUD proposal: The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation, architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this section; and
 - 2. For an OPS proposal: Delineation of the subdivision of land; infrastructure of the site; identification of common areas, if any; traffic circulation; desired architectural character, including private development restrictions to ensure compatibility of architectural character of future buildings with each other; phasing and timing of the development; private development restrictions; and such other information as necessary and sufficient to ensure compliance with the standards in this section.
- (b) *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches.

- (c) *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan).
- (d) *Impervious surface ratio:* Development proposals may have an impervious surface ratio of up to sixty (60) percent and shall meet the following criteria:
1. No pavement may be located closer than fifteen (15) feet from the property line and from a public street right-of-way, excepting approved entrance drives;
 2. Parking may not be located in the required front yard setback. If parking is provided in the area between the building and minimum setback line, the parking area must be adequately screened with landscaping materials and permanently maintained.
- (e) *Sidewalks:* Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site.
- (f) *Buffers and screens:* Development proposals shall include buffering yard areas abutting a residential zone or residential use and to screen parking lots and driveways from public view, identifying the location, composition and maintenance of the buffer. The buffer and screening shall be of a dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements deemed necessary.
- (g) *Preservation of natural features:* Development proposals shall identify the extent to which the developer shall preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.
- (h) *Traffic:* Development proposals shall identify all

proposed traffic controls, parking areas, interior traffic circulation, and demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets.

- (i) *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine and shall be in conformance with the proposed master plan. The scale, texture, color and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in the private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.
- (j) *Lighting:* Development proposals shall identify the location and style of lighting to be used in the development. All light fixtures shall be hooded or shielded so that the light shines downward.
- (k) *Signs:* Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

(Ord. No. 297-88, 5-23-88)

Sec. 14-230.14. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the O-P zone shall meet the following minimum requirements:

- (a) *Minimum lot size:* One and one-half (1.5) acres.
- (b) *Minimum street frontage:* One hundred (100) feet.

- (c) *Minimum lot width:* One hundred fifty (150) feet.
- (d) *Minimum yard dimensions:*
 - 1. Front yard: Fifty (50) feet.
 - 2. Rear yard: Fifty (50) feet.
 - 3. Side yards: Twenty-five (25) feet, except where a side yard abuts a residential zone or use, in which case it shall be forty (40) feet.

The Planning Board can reduce by up to fifty (50) percent the minimum yard setback if another yard within the lot is correspondingly increased so that the combined minimum setbacks on all four (4) sides equal one hundred fifty (150) feet. If two (2) or more buildings are located on one (1) lot, only the requirements of the front, rear or side yards that adjoin any external property boundary must be met, provided a sufficient fire line is provided.

- (e) *Maximum structure height:* Fifty-five (55) feet, except that on lots or within office-park subdivisions which are composed of over fifty (50) acres in total land area, seventy-five (75) feet is permitted, including roof appurtenances, if each of the required minimum yard dimensions is increased by one (1) foot in distance for each one (1) foot of height above fifty-five (55) feet.

(Ord. No. 297-88, 5-23-88; Ord. No. 223-92, 1-22-92)

Sec. 14-230.15. Other requirements.

[In addition to the above, the following requirements are applicable to all uses in the O-P zone:]

- (a) *Off-street parking and loading:* Off-street parking and loading are required as provided in division 20 (off-street parking) and division 21 (off-street loading).
- (b) *Signs:* Signs shall be subject to the provisions of division 22 of this article. Temporary freestanding advertising signs are not permitted.
- (c) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.

- (d) *Shoreland and flood plain management regulations:* If the lot is located in a shoreland zone or in a flood hazard zone, the requirements of division 26 and/or division 26.5 apply.

(Ord. No. 297-88, 5-23-88)

Sec. 14-230.16. External effects.

Every use in a O-P zone, unless expressly exempted, shall be subject to the following limitations:

- (a) *Enclosed structure:* The use shall be operated within a completely enclosed structure, except for those customarily operated in the open air.
- (b) *Noise:* The volume of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American Standards Association), generated shall not exceed sixty (60) decibels on the A scale, on impulse (less than one (1) second), at lot boundaries, excepting air raid sirens and similar warning devices.
- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.
- (d) *Heat, glare, radiation or fumes:* Heat, glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (e) *Smoke:* Smoke shall not be emitted at a density in excess of twenty (20) percent opacity level as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.
- (f) *Materials or wastes:* No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by natural causes or forces. All material which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in enclosed containers. Areas attracting large numbers of birds, rodents or insects are prohibited.

(Ord. No. 297-88, 5-23-88)

DIVISION 13. I-L AND I-Lb INDUSTRIAL ZONES*

***Editor's note**—Ord. No. 164-97, § 6, passed Jan. 6, 1997, repealed div. 13, §§ 14-231-14-236 of this article and enacted new provisions as herein set out. Formerly, such division pertained to the I-1 industrial zone and derived from §§ 602.11.A-602.11.F of the 1968 Code as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
570-71	--	11-16-71	330-90	1	5-7-90
327-71	--	7- 7-71	17-90	--	6-18-90
499-74	5	8-19-74	112-90	--	10- 1-90
334-76	6	7- 7-76	15-92	17	6-15-92
430-85	--	3- 4-85	193A-93	1	2-17-93
633-86	1	6- 2-86	89A-94	--	9-19-94
578-87	1	6-15-87	154-96	14	12-16-96

Sec. 14-231. Purpose.

The low impact industrial zone is intended 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 the I-M or I-H 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. Performance standards include full enclosure of uses and requirements for buffers and screening from adjacent properties.

(Ord. No. 164-97, § 6, 1-6-97; Ord. No. 149-10/11, 3-7-11)

Sec. 14-232. Permitted uses.

The following uses are permitted whether provided by private or public entities in the low impact industrial zone and the I-Lb 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.
- (c) Indoor amusement and recreation centers.
- (d) Plant and tree nurseries, including associated recycling activities.
- (e) Lumber yards.
- (f) Commercial kitchens or other food preparation, provided that the food is not prepared for service on the premises.
- (g) Building contractors and outside storage of related construction equipment, provided that there shall be no outside storage of materials and supplies.
- (h) Repair services, including all types of automotive repair.
- (i) 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 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.
- (j) Dairies.
- (k) Dog training services, including but not limited to obedience, guide, and service training, but not including boarding or kennel services.
- (l) Intermodal transportation facilities.
- (m) Utility substations.
- (n) Marinas.
- (o) Distribution centers, warehouses and wholesale businesses under ten thousand (10,000) square feet in total building area, with no outside storage permitted.
- (p) Back office uses.
- (q) Accessory uses.
1. Incidental accessory uses.
 2. In the Ilb zone, the following additional accessory uses shall also be permitted:
 - a. Makers' markets, including periodic, seasonal, or temporary sales of handcrafted and limited production products for final consumption, which may include prepared or raw foods, provided that:
 - i. Such sales are located within a lawfully conforming principal permitted use;
 - ii. Such sales occupy an area no larger than 45% of the floor area devoted to the principal use;
 - iii. Such sales by any single vendor or group of vendors shall occur for no more than a

total of 28 hours a week collectively;

- iv. Such products are produced or permitted to be produced in the IL zone; and
- v. Such products are sold by the producer of the product or their designee.

Such sales shall be subject to any other applicable city ordinances. Food trucks are exempt from the limitations contained in this provision, but are subject to Chapter 19 of the City Code and any regulations promulgated pursuant thereto.

- b. Temporary events associated with a principal use, such as concerts, lectures, exhibitions of the local production of handcrafted and limited production products, fundraisers, and other similar gatherings, provided that they occur no more than a total of 16 hours a week, subject to the performance standards of this zone and any other applicable city ordinances.
- (r) Registered medical marijuana cultivation facilities.
- (s) Neighborhood centers.
- (t) Places of religious assembly, limited to facilities of 10,000 square feet or less.
- (u) Wind energy systems, as defined and allowed in Article X, Alternative Energy.
- (v) Street vendors licensed pursuant to Chapter 19.
- (w) Studios for artists, photographers, and craftspeople, including but not limited to painters, sculptors, dancers, graphic artists, and musicians.

(Ord. No. 164-97, § 6, 1-6-97; Ord. No. 22-97, § 1, 7-7-97; Ord. No. 137-97, § 1, 11-3-97; Ord. No. 106-04/05, 12-8-04 enacted as an emergency; Ord. No. 240-09/10, 6-21-10; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 10-12/13, 7-16-12; Ord. No. 265-12/13, 7-15-13)

Sec. 14-232.1. 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.

(Ord. No. 29-09/10, 8-3-09, emergency passage)

Sec. 14-233. 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 and restaurants that are not accessory to a permitted use.
- (c) Junk yards and scrap metal reprocessing and recycling.
- (d) Amusement parks.
- (e) Crematoriums.
- (f) Mining and drilling operations.
- (g) Refining of petroleum or its products, including tar distillation.
- (h) Commercial petroleum storage yards.
- (i) Commercial excavation of building or construction materials other than in the normal course of building or construction or site preparation.

- (j) Distillation of bones; fat rendering; glue, soap, or fertilizer manufacture.
- (k) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse.
- (l) Stockyard or slaughtering of animals.
- (m) Smelting of iron, copper, tin, zinc, or any other ore.
- (n) Manufacture of primary chemicals.
- (o) Manufacture of cement, lime, gypsum, or plaster of paris.
- (p) Manufacture of bleaching powder, matches, paper, or rubber.
- (q) Manufacture and storage of explosives or fireworks.
- (r) Tanning, curing or storage of raw hides or skins.
- (s) Coal distillation or coke ovens.
- (t) Foundries.
- (u) Creosote treatment.
- (v) Drop forging.
- (w) Steel mills or furnaces.
- (x) Coal- or coke-fired kilns.
- (y) Used tire storage.
- (z) Outdoor sales or outdoor display.
- (aa) Extraction of raw materials.
- (bb) Concert halls or dance halls.
- (cc) Banquet facilities.
- (dd) Office uses other than back offices or offices that are accessory to a permitted use.

(Ord. No. 164-97, § 6, 1-6-97; Ord. No. 137-97, § 2, 11-3-97)

Sec. 14-234. Dimensional requirements.

(a) *Minimum lot size:* None.

(b) *Maximum impervious surface ratio:* I-L zone: Sixty-five (65) percent. I-Lb zone: One hundred (100) percent.

(c) *Maximum building height:* Forty-five (45) feet.

(d) *Minimum side yards:* Principal and accessory structures in the I-L zone: Twenty-five (25) feet, except that the minimum side yard shall be forty (40) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Lb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.

(e) *Minimum rear yards:* Principal and accessory structures in the I-L zone: Twenty-five (25) feet, except that the minimum rear yard shall be forty (40) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Lb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.

(f) *Minimum front yard:* Principal and accessory structures in the I-L zone: Twenty-five (25) feet. Principal and accessory structures in the I-Lb zone: None.

(g) *Minimum street frontage:* Sixty (60) feet.

(h) *Pavement setback from lot boundary:* Driveways, parking lots and other paved circulation areas: Fifteen (15) feet.
(Ord. No. 164-97, § 6, 1-6-97)

Sec. 14-235. Other requirements.

(a) Off-street parking shall meet the requirements of division 20 of this article.

(b) Off-street loading shall meet the requirements of division 21 of this article.

(c) Signs shall be subject to the provisions of division 22 of this article.

(d) *Shoreland and floodplain 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 of this article.

(e) All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.

(f) 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 five (5) feet in height, or by a solid evergreen planting strip.

(g) All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container.

(h) 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 food processing waste storage areas shall be cleaned and sanitized on a regular basis.

(i) Outdoor storage of refuse, debris, or material awaiting reuse shall be in an appropriate container or located within a designated, screened area.

(j) 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. No outdoor storage shall be permitted in the required yard between the front of any building on the site and the street, except for storage for plant and tree nurseries.

(Ord. No. 164-97, § 6, 1-6-97)

Sec. 14-236. Performance standards.

Uses in the I-L and I-Lb zones shall comply with the following standards:

(a) *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 a 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 (LEQ₁).
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 sounds 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.
- (b) *Electromagnetic interference:* There shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference, or that does not conform to the regulations of the Federal Communications Commission.

- (c) *Vibrations:* Vibrations inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.
- (d) *Glare, heat:* Any use shall be in an enclosed structure in such a manner that glare and heat shall be imperceptible from neighboring properties.
- (e) *Discharge of toxic or noxious matter:* All discharges of toxic or noxious matter shall be made in accordance with all applicable state and federal regulations.
- (f) *Odor:* It shall be a violation of this chapter to create an odor nuisance.
 - 1. *Determination of odor nuisance:* An odor nuisance shall be considered to exist when ten (10) confirmed complaints occur in an area within two (2) separate twenty-four-hour periods. The ten (10) confirmed complaints must originate from ten (10) different households in an area zoned residential or from ten (10) different individuals in a commercial or industrial facility. The building authority 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 building authority 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 building authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one (1) working day, with a written confirmation within seven (7) working days of the complaint. In the event that the building authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one (1) working day, then the building authority shall send written notice to the operator within seven (7) working days of the complaint.

In the event that ten (10) complaints are confirmed as set forth in subsection (1) in two (2) separate

twenty-four-hour periods within a ninety-day period, the building authority shall cause a certified odor inspector to investigate any odor complaints received in the next thirty (30) days following the receipt of the tenth confirmed complaint from the second twenty-four-hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next thirty (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 section:

- 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 n-butanol intensity scale as defined in regulations promulgated by the director of the planning authority to establish training and technical standards to support this section; and
- c. Track the odor to its source.

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 building authority shall notify the owner or operator either by telephone or in person of the violation within one (1) working day of the violation. The building authority shall confirm this notification in writing within seven (7) working days of this initial notice. In the event that the building authority 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 seven (7) working days of the violation.

Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:

- a. Implement odor reduction procedures

immediately upon notification by the building authority that the facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;

- b. Submit to the building authority, within thirty (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 thirty (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 building authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
 - c. Implement the plan in accordance with the schedule approved by the building authority.
2. *Ambient odor limits:* The maximum ambient intensity standard for odors generated by uses located in the I-L zone shall not exceed the following levels when the odor is measured in the zone indicated:
- 4.0 in any industrial or business zone for odors resulting from any industrial use.
 - 3.0 in any residential zone for odors resulting from any industrial use.
- (g) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelmann chart.
 - (h) *Emissions:* All emissions shall be made in accordance with all applicable state and federal regulations.

- (i) *Radiation*: Radiation at a site shall comply with all applicable state and federal regulations.
- (j) *Discharge into sewers*: 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.
- (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*

***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.

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.
- (y) Intermediate care facilities on any property with existing structures provided they were not designed constructed or used for any amusement, industrial, warehouse or manufacturing use on September 15, 2014 or thereafter. Properties with such structures may be reused and expanded to establish an intermediate care facility for no more than 30 persons plus staff.

(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; Ord. 53-14/15, 9-15-2014)

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.

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

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

(f) *Minimum front yard:* Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height.

Principal and accessory structures in the I-Mb zone: None.

(g) *Minimum street frontage:* Sixty (60) feet.

(h) *Pavement setback from lot boundaries:* Ten (10) feet.
(Ord. No. 164-97, § 7, 1-6-97)

Sec. 14-251. Other requirements.

(a) Off-street parking shall meet the requirements of division 20 of this article.

(b) Off-street loading shall meet the requirements of division 21 of this article.

(c) Signs shall be subject to the provisions of division 22 of this article.

(d) *Shoreland and floodplain 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 of this article.

(e) All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.

(f) 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 five (5) feet in height, or by a solid evergreen planting strip.

(g) All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container.

(h) 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 food processing waste storage areas shall be cleaned and sanitized on a regular basis.

(i) Outdoor storage of refuse, debris or previously used materials awaiting reuse shall be either in an appropriate container or located within a designated, screened area.

(j) 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. No outdoor storage shall be permitted between the front of any building on the site and the street, except for storage for plant and tree nurseries or lumber yards.

(Ord. No. 164-97, § 7, 1-6-97)

Sec. 14-252. Performance standards.

Uses in the I-M, I-Ma, and I-Mb zones shall meet the following standards:

(a) *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 a 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 (LEQ₁).
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. Seventy (70) dBA between the hours of 7:00 a.m. and 10:00 p.m.
 - b. Fifty-five (55) 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 sounds 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 (d)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 (d)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.
- (b) *Electromagnetic interference:* There shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference, or that does not conform to the regulations of the Federal Communications Commission.
- (c) *Vibrations:* Any use creating earthshaking vibrations 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 (1) inch, as

measured by a vibrograph or similar instrument at the property boundaries.

- (d) *Glare, heat:* Any use shall be in an enclosed structure in such a manner that glare and heat shall be imperceptible from neighboring properties.
- (e) *Discharge of toxic or noxious matter:* All discharges of toxic or noxious matter shall be made in accordance with all applicable state and federal regulations.
- (f) *Odor:* It shall be a violation of this chapter to create an odor nuisance.
 - 1. *Determination of odor nuisance:* An odor nuisance shall be considered to exist when ten (10) confirmed complaints occur in an area within two (2) separate twenty-four-hour periods. The ten (10) confirmed complaints must originate from ten (10) different households in an area zoned residential or from ten (10) different individuals in a commercial or industrial facility. The building authority 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 building authority 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 building authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one (1) working day, with a written confirmation within seven (7) working days of the complaint. In the event that the building authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one (1) working day, then the building authority shall send written notice to the operator within seven (7) working days of the complaint.

In the event that ten (10) complaints are confirmed as set forth in subsection (1) in two (2) separate

twenty-four-hour periods within a ninety-day period, the building authority shall cause a certified odor inspector to investigate any odor complaints received in the next thirty (30) days following the receipt of the tenth confirmed complaint from the second twenty-four-hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next thirty (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 section:

- 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 n-butanol intensity scale as defined in regulations promulgated by the director of the planning authority to establish training and technical standards to support this section; and
- c. Track the odor to its source.

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 building authority shall notify the owner or operator either by telephone or in person of the violation within one (1) working day of the violation. The building authority shall confirm this notification in writing within seven (7) working days of this initial notice. In the event that the building authority 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 seven (7) working days of the violation.

Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:

- a. Implement odor reduction procedures immediately upon notification by the building authority that the facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;
 - b. Submit to the building authority, within thirty (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 thirty (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 building authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
 - c. Implement the plan in accordance with the schedule approved by the building authority.
2. *Ambient odor limits:* The maximum ambient intensity standard for odors generated by uses located in the I-M zones shall not exceed the following levels when the odor is measured in the zone indicated:
- 4.0 in any industrial or business zone for odors resulting from any industrial use.
 - 3.0 in any residential zone for odors resulting from any industrial use.
- (g) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelmann chart.

- (h) *Emissions*: All emissions shall be made in accordance with all applicable state and federal regulations.
- (i) *Radiation*: Radiation at a site shall comply with all applicable state and federal regulations.
- (j) *Discharge into sewers*: 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.
- (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.
- (l) *Traffic*: Development in the I-M, I-Ma and I-Mb zones shall utilize to the greatest extent possible arterial streets as delineated on the Maine Department of Transportation Map, a copy of which is on file in the Department of Planning and Urban Development.

(Ord. No. 164-97, § 7, 1-6-97)

Sec. 14-253 - Sec. 14-260. Reserved.

DIVISION 15. I-H AND I-Hb INDUSTRIAL ZONES*

***Editor's note**—Ord. No. 164-97, § 8, passed Jan. 6, 1997, repealed div. 15, §§ 14-261-14-266 of this article and enacted new provisions as herein set out. Formerly, such provisions pertained to the I-3 and I-3b industrial zones and derived from §§ 602.13.A-602.13.F of the 1968 Code as amended by Ord. No. 499-74, § 5, adopted Aug. 19, 1974; Ord. No. 334-76, §§ 4-6, adopted Jul. 7, 1976; Ord. No. 198-88, adopted Nov. 21, 1988; Ord. No. 201-88, adopted Nov. 21, 1988; Ord. No. 330-90, § 3, adopted May 7, 1990; Ord. No. 15-92, § 19, adopted Jun. 15, 1992; and Ord. No. 193A-93, §§ 3, 4, adopted Feb. 17, 1993.

Sec. 14-261. Purpose.

The high impact industrial zones are intended to provide areas suitable for higher impact industrial uses than are permitted in other industrial zones and other uses including hospital campuses

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. Due to the intensity of uses, the performance standards will allow for the higher intensity of use.

(Ord. No. 164-97, § 8, 1-6-97; Ord. No. 106-01/02, § 1, 12-3-01)

Sec. 14-262. Permitted uses.

The following uses are permitted whether provided by private or public entities in the high impact industrial zone and the I-Hb 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.
- (c) Wholesale trade.
- (d) Warehousing and distribution facilities.
- (e) Intermodal transportation facilities and transportation terminals.
- (f) Repair services, including all types of automotive repair services.
- (g) High impact industrial uses.
- (h) Building contractors and construction services.

- (i) Plant and tree nurseries, including associated recycling activities.
- (j) Lumber yards.
- (k) Fish waste processing facility, provided that it has received all required licenses and is in compliance with all applicable licensing requirements.
- (l) Commercial kitchens or other food preparation, provided that the food is not prepared for service on the premises.
- (m) Recycling facilities.
- (n) Food and seafood processing.
- (o) Dairies.
- (p) Municipal or regional solid waste disposal facilities, provided that all disposal activities are carried out within an enclosed structure.
- (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-Hb zone;
 - 3. If a facility requires a state or federal license, 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) Storage lots for towed or impounded vehicles.
- (t) Registered medical marijuana cultivation facilities.
- (u) wind energy systems, as defined and allowed in Article X, Alternative Energy.
- (v) Street vendors licensed pursuant to Chapter 19.

(Ord. No. 164-97, § 8, 1-6-97; Ord. No. 137-97, § 5, 11-3-97; Ord. No. 97-06/07, 11-20-06; 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. 14-262.1. 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)

Sec. 14-263. 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) Junk yards.

- (b) Amusement parks.
- (c) Refining of petroleum or its products, including tar distillation.
- (d) Distillation of bones; fat rendering; glue, soap, or fertilizer manufacture, except that fish waste processing may be permitted as set forth in section 14-262.
- (e) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse.
- (f) Stockyard or slaughtering of animals.
- (g) Smelting of iron, copper, tin, zinc, or any other ore.
- (h) Manufacture of explosives or fireworks.
- (i) Coal distillation or coke ovens.
- (j) Creosote treatment.
- (k) Drop forging.
- (l) Steel mills or furnaces.
- (m) Coal- or coke-fired kilns.
- (n) Used tire storage.
- (o) Extraction of raw materials.
- (p) Concert halls or dance halls.
- (q) Banquet facilities.

(Ord. No. 164-97, § 8, 1-6-97; Ord. No. 137-97, § 6, 11-3-97; Ord. No. 106-01/02, § 2, 12-3-01)

Sec. 14-264. Contract or conditional zoning.

A conditional or contract rezoning shall only be approved 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 this 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.

(Ord. No. 164-97, § 8, 1-6-97)

Sec. 14-265. 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-H zone: Eighty-five (85) percent. I-Hb zone: One hundred (100) percent.
- (c) *Maximum building height:* Seventy-five (75) feet.
- (d) *Minimum side yards:* Principal and accessory structures in the I-H zone: Thirty-five (35) feet. Principal and accessory structures in the I-Hb zone: None.
- (e) *Minimum rear yards:* Principal and accessory structures in the I-H zone: Thirty-five (35) feet. Principal and accessory structures in the I-Hb zone: None.
- (f) *Minimum front yard:* Principal and accessory structures in the I-H zone: Twenty-five (25) feet. Principal and accessory structures in the I-Hb zone: None.
- (g) *Minimum street frontage:* Sixty (60) feet.

(h) *Pavement setback from lot boundaries:* Ten (10) feet.
(Ord. No. 164-97, § 8, 1-6-97)

Sec. 14-266. Other requirements.

(a) Off-street parking shall meet the requirements of division 20 of this article.

(b) Off-street loading shall meet the requirements of division 21 of this article.

(c) Signs shall be subject to the provisions of division 22 of this article.

(d) *Shoreland and floodplain 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 of this article.

(e) All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.

(f) Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting nonindustrial use properties by a solid fence at least five (5) feet in height, or by a solid evergreen planting strip.

(g) All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container.

(h) 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 food processing waste storage areas shall be cleaned and sanitized on a regular basis.

(i) Outdoor storage of refuse, debris or material awaiting reuse shall be in an appropriate container or located within a designated, screened area.

(j) 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. No outdoor storage shall be permitted between the front of any building on the site and the street, except for storage for plant and tree nurseries or lumber yards.

(Ord. No. 164-97, § 8, 1-6-97)

Sec. 14-267. Performance standards.

Uses in the I-H and I-Hb zones shall meet the following standards:

(a) *Required landscaping:* 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 fifteen (15) vehicles shall be landscaped if visible from a street, public open space or residential zone.

(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 a 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 (LEQ₁).

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. Seventy-five (75) dBA between the hours of 7:00 a.m. and 10:00 p.m.
 - b. Fifty-five (55) 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 sounds 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.
- (b) *Electromagnetic interference:* There shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference, or that does not conform to the regulations of the Federal Communications Commission.
- (c) *Vibrations:* Any use creating earthshaking vibrations 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 (1) inch, as measured by a vibrograph or similar instrument at the property boundaries.
- (d) *Glare, heat:* Any use shall be in an enclosed structure in such a manner that glare and heat shall be imperceptible from neighboring properties.
- (e) *Discharge of toxic or noxious matter:* All discharges of toxic or noxious matter shall be made in accordance with all applicable state and federal regulations.
- (f) *Odor:* It shall be a violation of this chapter to create an odor nuisance.
1. *Determination of odor nuisance:* An odor nuisance shall be considered to exist when ten (10)

confirmed complaints occur in an area within two (2) separate twenty-four-hour periods. The ten (10) confirmed complaints must originate from ten (10) different households in an area zoned residential or from ten (10) different individuals in a commercial or industrial facility. The building authority 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 building authority 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 building authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one (1) working day, with a written confirmation within seven (7) working days of the complaint. In the event that the building authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one (1) working day, then the building authority shall send written notice to the operator within seven (7) working days of the complaint.

In the event that ten (10) complaints are confirmed as set forth in subsection (a) in two (2) separate twenty-four-hour periods within a ninety-day period, the building authority shall cause a certified odor inspector to investigate any odor complaints received in the next thirty (30) days following the receipt of the tenth confirmed complaint from the second twenty-four-hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next thirty (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 section:

- 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 n-butanol intensity scale as defined in regulations promulgated by the director of the planning authority to establish training and technical standards to support this section; and
- c. Track the odor to its source.

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 building authority shall notify the owner or operator either by telephone or in person of the violation within one (1) working day of the violation. The building authority shall confirm this notification in writing within seven (7) working days of this initial notice. In the event that the building authority 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 seven (7) working days of the violation.

Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:

- a. Implement odor reduction procedures immediately upon notification by the building authority that the facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;
- b. Submit to the building authority, within thirty (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 thirty (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 building authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and

- c. Implement the plan in accordance with the schedule approved by the building authority.
2. *Ambient odor limits:* The maximum ambient intensity standard for odors generated by uses located in the I-H zones shall not exceed the following levels when the odor is measured in the zone indicated:
 - 4.0 in any industrial or business zone for odors resulting from any industrial use.
 - 3.0 in any residential zone for odors resulting from any industrial use.
- (g) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelmann chart.
 - (h) *Emissions:* All emissions shall be made in accordance with all applicable state and federal regulations.
 - (i) *Radiation:* Radiation at a site shall comply with all applicable state and federal regulations.
 - (j) *Discharge into sewers:* 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.
 - (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, § 8, 1-6-97)

DIVISION 15.1. B-6 EASTERN WATERFRONT MIXED ZONE

Sec. 14-268. Purpose.

The purpose of the B-6, eastern waterfront mixed zone is 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 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 urban vitality and shared use of parking infrastructure as recommended in the eastern waterfront master plan for redevelopment.

The zone language established herein provides regulatory framework to promote the mixed-use development pattern envisioned for urban land on Portland's peninsula. Specific development criteria, including building height overlays and design standards, may be established for this district to supplement the provisions of this section. District-specific design standards and overlay maps can be found at the city planning and development office.

(Ord No. 80-04/05, 12-8-04)

Sec. 14-269. Permitted uses.

The following uses are permitted in the B-6 zone:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments, except that no drinking establishments as defined in section 14-47 that are located east of Waterville Street shall be permitted within fifty feet (50') of Fore Street, and provided that restaurants that are located east of Waterville Street and within fifty feet (50') of Fore Street must meet the following

requirements:

- a. The hours of operation shall be limited to between 5:00 a.m. and 11:00 p.m. each day; and
- b. Food service and consumption are the primary function of the restaurant;
3. Hotels and inns limited to no more than 150 rooms;
4. Craft and specialty shops, including the on-premises production of handcrafted goods;
5. Retail and retail service establishments, excluding those with gas pumps;
6. Theatres;
7. Banking services, excluding vehicular drive-up services;

Editor's Note: Drive-up banking facilities located in the interior of parking structures are allowed as a conditional use subject to the criteria outlined below in the conditional use provisions of this section.

8. Cabinet and carpentry shops;
9. Personal services;
10. Business services;
11. Offices of business trades people;
12. Miscellaneous repair services, excluding all types of automotive repair except for automobile repair and service establishments;
13. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-271 (prohibited uses);

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

shall be:

- a. No taller than 15 feet above the highest structural steel of the building roof; and
 - b. Set back no less than 15 feet from the building perimeter; and
 - c. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.
14. Brew pubs and microbreweries without associated bottling facilities; and brewpubs and microbreweries with associated bottling facilities limited to 5,000 bottles per year output, except that no brew pubs or microbreweries that are located east of Waterville Street shall be permitted within fifty feet (50') of Fore Street;
 15. Electronic data storage;
 16. Marine products wholesaling and retailing;
 17. Harbor and marine supplies and services, chandlery and ship supply;
 18. Underground marine fuel storage provided that fuel storage structures shall be used solely for the purpose of fueling vessels;
 19. Bakeries, coffee roasters, and commercial kitchens with building footprints limited to fifteen thousand (15,000) square feet of contiguous building space.
 20. Printing establishments.

(b) *Residential:*

1. Attached dwellings including row houses, two-family and multifamily dwellings;
2. Handicapped family units;

3. Combined living/working spaces, including but not limited to artist residences with studio space;
4. Mixed use residential and commercial structures.

(c) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;
3. Pedestrian and multi-use trails;

(d) *Other:*

1. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians;
2. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses, except that parking lots shall not be considered a permitted accessory use and such parking is subject to the conditional use section of the B-6 zone.
3. Health clubs, martial arts and meditation facilities.
4. Intermodal transportation facilities.
5. Nursery schools, kindergartens, and daycare facilities or home babysitting services.
6. Private clubs or nonprofit social and recreational facilities, as defined in 14-47.
7. Educational facilities.

8. Temporary events, provided that all such events on a lot do not exceed a combined total of (60) days per year and that the total floor area utilized for such uses does not exceed seventy thousand (70,000) square feet at any one (1) time.

9. Museums and art galleries.

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

(Ord. No. 33-11/12, 1-18-12; Ord. 184-14/15, 6-1-2015)

Sec. 14-270. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-6 zone as provided in 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:*

- a. Meeting and exhibition facilities limited to a total of 20,000 gross square feet of interior floor area.
- b. Wholesaling, providing the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of the facility occupies a building footprint of less than 15,000 square feet.
- c. Drive-up banking facilities located in the interior of parking structures, subject to the following criteria:
 - i. All drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street line;
 - ii. 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;

iii. 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.

d. Research and development and related production facilities, including but not limited to biotechnology, subject to the following conditions:

i. Associated manufacturing and warehousing uses combined are not to exceed 15,000 square feet.

ii. Biotechnology facilities must demonstrate approvals by all applicable regulatory authorities prior to commencement of operations.

(2) *Parking:*

a. All surface parking lots shall meet the applicable conditions outlined below.

Editor's note: These conditions promote parking development in a manner that creates an urban street form with streetscapes dominated by buildings, not surface parking. This code recognizes that many parcels will develop incrementally over time and a phased approach may be needed to fully achieve the goals of this provision.

i. No surface parking lot shall be encumbered by lease or other use commitment exceeding a twenty-four month term.

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

iii. Surface lots shall be laid out in a manner conducive to development of future

buildings, and/or structured parking.

- b. All structured parking, including multi-level parking garages shall meet the applicable conditions outlined below.
 - i. Parking garages shall incorporate first floor retail space or other mixed use (an active use other than parking) along all street frontages unless the applicant requests from the planning board a waiver of this provision subject to the following criteria:
 - ii. Waivers: the planning board may waive the requirement for first floor mixed use upon demonstration that the project meets one or more of the criteria listed under provisions a, b, and c below.

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.

Editor's note: Use of traditional storefront design concepts and traditional building materials is encouraged. Developers should look to the eastern waterfront design guidelines for additional direction in meeting these standards.

Standards for waiving first floor mixed use:

- a. That 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.
- b. That 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.

- c. Where the applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, the Planning Board may grant a waiver of this condition, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future.

The Planning Board will need to find that on the street level deck of a proposed parking garage a minimum of twenty (20) feet horizontal distance of depth from the street and nine (9) feet finished floor to finished ceiling clearance could in future house 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 a 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 primary (higher traffic volume) street.

(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.

(Ord. No. 80-04/05, 12-8-04; Ord No.200-04/05, 4-4-05; Ord. No. 29-09/10, 8-3-09, emergency passage)

Sec. 14-271. Prohibited uses.

Uses, which are not enumerated as permitted or conditional uses in the B-6 zone are prohibited. Those uses that are prohibited shall 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;
- (d) Drive-up facilities, except banking drive-up services in the interior parking structures, as allowed in the conditional use section 14-270.

Sec. 14-272. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-6 Eastern Waterfront Business Zone shall meet the following requirements:

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

- 1. Minimum yards in the B-6 zone:

Front setback: None required except as provided in 3. below:

Side setback: None required.

Rear setback: None required.

2. Maximum building setback from street line except for parking garages, public transportation facilities and provided in 3. below: 10 feet.

a. For lots fronting on more than one street, the setback can be increased more than ten (10) feet if all of the following conditions are met:

i. The increased setback occurs at the intersection of the streets;

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

iii. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet; and

iv. All building wall segments, which make up the increased setback shall be included in the calculation of the total building wall length noted in subsection iii above.

In addition, for any new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two most major streets. (For purposes of this section, major street shall mean that street with the highest traffic volume or the greatest street width in comparison with the remaining streets).

3. View Corridors and Key Street Wall Development

Notwithstanding sections 1. and 2. above, 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, 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.

- (d) *Minimum length of building wall required to be located along street frontage of lot* (except that buildings located in the easternmost key building envelope, as shown on the *B6 Building Height Overlay & Building Envelopes map*, shall not be subject to this requirement).
 - i. 70% of lot street frontage; or
 - ii. 25% of building perimeter,
 - iii. 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 feet.
- (e) *Maximum lot coverage*: One hundred (100) percent.
- (f) *Maximum building height*: 65 feet, or as otherwise governed by a Building Height Overlay map (for example, in the Eastern Waterfront). Building Height Overlay maps are found in the Planning and Development Department Office.
- (g) *Minimum building height*: No new construction of any building shall have less than three (3) floors of habitable space above the average adjacent grade within twenty five (25) feet of any public street (except that buildings located in the easternmost key building envelope, as shown on the *B6 Building Height Overlay & Building Envelopes map*, shall not be subject to a minimum building height).

This provision shall not apply to:

- i. Parking attendant booths,
- ii. Information kiosks and ticketing booths,
- iii. Parking garages,
- iv. Public transportation facilities,
- v. 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,
- vi. Buildings or building additions of less than 2,000 square feet footprint, on lots or available building sites of less than 2,000 square feet,
- vii. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, and
- viii. Additions to and/or relocations of designated historic structures.

Ord. 184-14/15, 6-1-2015

Sec. 14-273. Performance standards.

All new development in the B-6 Eastern Waterfront Business Zone shall comply with the following standards:

- (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 five (6) 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.

(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 (LEQ₁).

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 sounds 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 temporary 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, fireworks displays, festivals, events and concerts.

- (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 vehicle 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.
- (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-6 zone shall adhere to the odor regulations of the IL zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 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.

(Ord. No. 80-04/05, 12-8-04; Ord. NO. 240-09/10, 6-21-10; ORd. No. 278-09/10, 7-19-10; Ord. 284-14/15, 6-1-2015)

Sec. 14-274. Affordable Housing

Amendments to Division 30 related to affordable housing that are enacted prior to April 1, 2016 shall apply to any site plan review application on the Portland Company (58 Fore Street) portion of this zone received after April 1, 2015.

(Ord. 284-14/15, 6-1-2015)

DIVISION 15.2. INDIA STREET FORM-BASED CODE ZONE (IS-FBC)

Sec. 14-275.1 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 zoning district 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 components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

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.

(a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

1. 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.
2. 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.
3. 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.

4. 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.
5. Respect historic character. If a property is within the India Street Historic District, Article IX Historic Preservation 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.

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.2. Applicability.

The requirements set forth in this Division 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

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.3. 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.

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.4. Definitions.

Terms used throughout this India Street Form-based Code Zone may be defined in Section 14-47 or elsewhere in Article III, Zoning. 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 Section 14-47, or any other sections of Article III, Zoning, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this India Street Form-based Code Zone shall

take precedence.

ALTERATION means a change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

BUILDING ADDITION means any increase to footprint or volume of an existing structure. See Table 14.275.4c. Building - Principal & Accessory

BUILDABLE AREA means the area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

BUILDING, ACCESSORY means 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. See Table 14.275.4c. Building - Principal & Accessory.

BUILDING, PRINCIPAL means 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. See Table 14.275.4c. Building - Principal & Accessory.

BUILDINGS, ATTACHED means 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) means the basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

ELEVATION means an exterior wall of a building not along a frontage line. See FAÇADE and Table 14.275.4e. Frontage & Lot Lines.

ENTRANCE, PRINCIPAL means the main point of access for pedestrians into a building. A building may have more than one principal entrance.

EXPRESSION LINE means a line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

FAÇADE means any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.275.4e. Frontage & Lot Lines.

FAÇADE, BLANK means 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 means 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.

LOT LAYER means a range of depth of a lot within which certain elements are permitted. See Table 14.275.4d. Lot Layers.

MID-BLOCK PERMEABILITY means 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 means any partition wall common to two adjacent or attached buildings.

REGULATING PLAN means a zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

STEPBACK means 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.

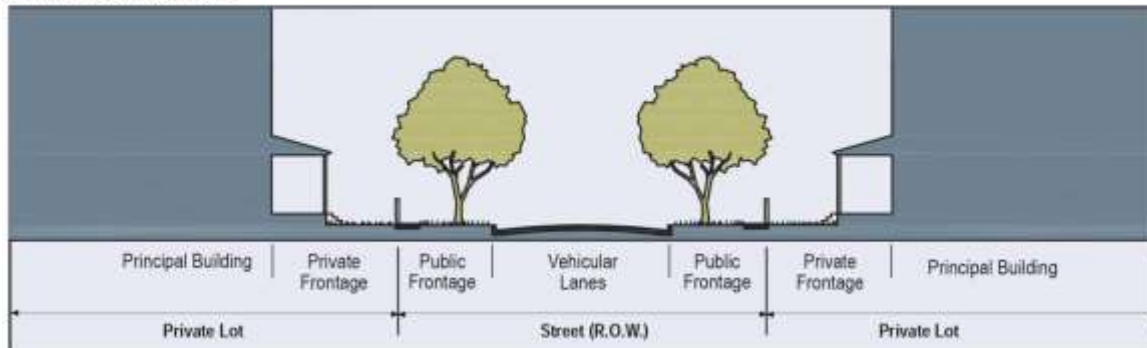
YARD, SIDE means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any

structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

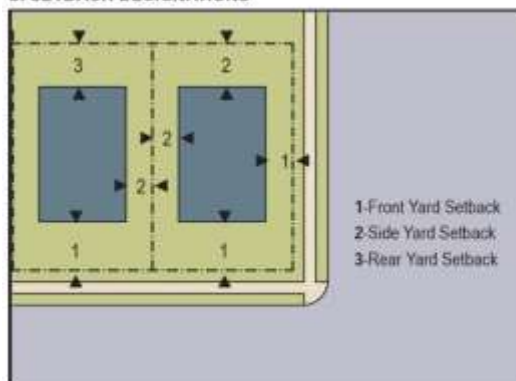
ZERO LOT LINE means the location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.275.4e. Frontage & Lot Lines.

TABLE 14.275.4 DEFINITIONS ILLUSTRATED

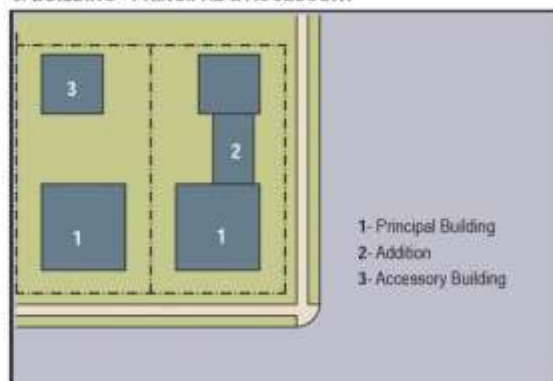
a. STREETS & FRONTAGES



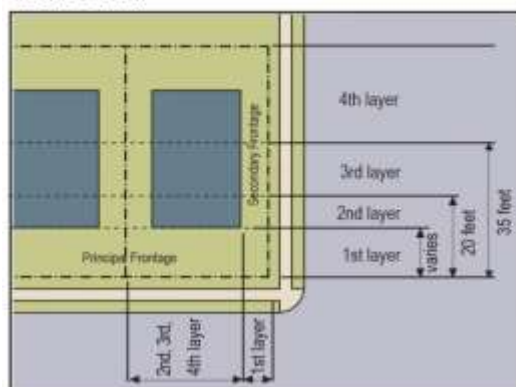
b. SETBACK DESIGNATIONS



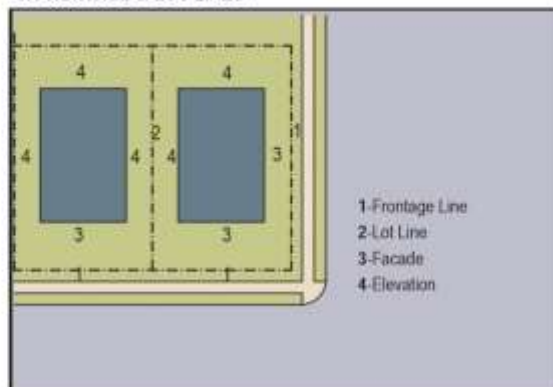
c. BUILDING - PRINCIPAL & ACCESSORY



d. LOT LAYERS



e. FRONTAGE & LOT LINES



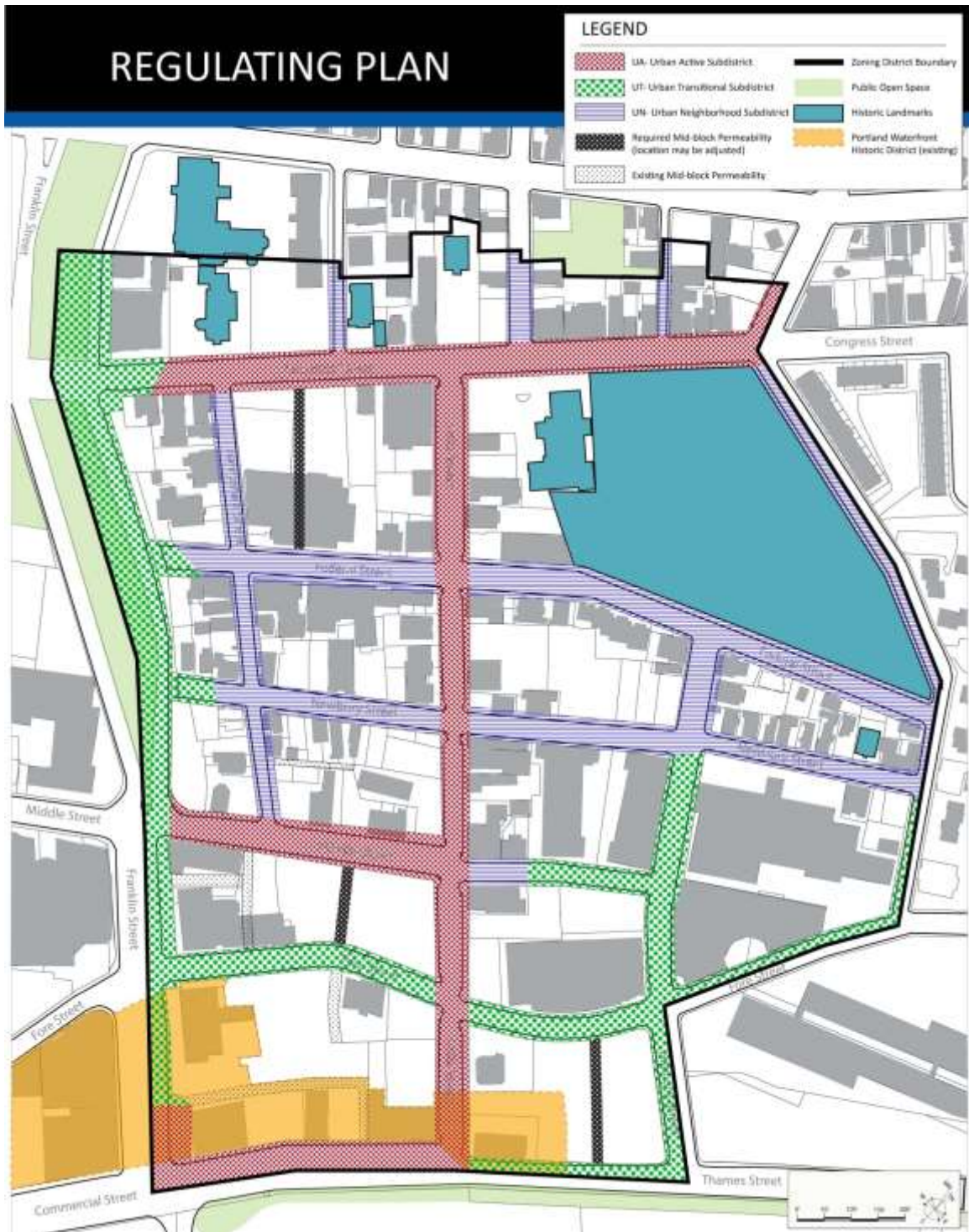
City of Portland
Code of Ordinances
Sec. 14-275.4

Land Use
Chapter 14
Rev. 11-2-2015

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.5. Regulating Plan.

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.



Sec. 14-275.6. General development standards.

The following standards apply to all subdistricts unless expressly stated otherwise.

(a) *Prohibited uses* - uses not to be established in the India Street Form-based Code Zone include:

1. Correctional facilities;
2. Cremation facilities;
3. Drive-through facilities;
4. High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e - y), (aa);
5. Major/minor auto-service station;
6. Truck terminals;
7. Waste related 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 Table 14.275.7a. Mid-Block Permeability)

- 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 (1) additional story of up to 12' in height (see Sec. 14-275.6(c) Height Standards). 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 - Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

- a. 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. (see Table 14.275.7d Additional Building Length - ATTACHED BUILDINGS).
- b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.275.7f Additional Building Length - Ground Floor Partitions)
 - 1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.
 - 2. Partitions must be architecturally expressed on the building exterior.
 - 3. Each module created by partition must have at least one functional, street-facing entry.

4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.
- c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3rd LOT LAYER (at least 20') (see Table 14.275.7e Additional Building Length - Massing Variation).
 - d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

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

3. Setbacks.
 - a. Side Yard Setbacks for Small Lots - Lots with street frontage of less than 35' are not required to have side yards.
 - b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.
 - c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.

d. ATTACHED BUILDINGS on Individual Lots - 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 yard requirements 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-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.

b. Wall/Fence Dimensional Requirements

Wall/Fence Dimensional Requirements		
LOT LAYER	Height	Visual Permeability
1ST	6' max.	Required above 2' from sidewalk grade
2ND - 4TH	8' max.	n/a

5. BUILDING ADDITIONS.

a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.

b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.275.7b. Addition)

c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

(c) Height standards.

1. Height bonus.

- a. Applicability:
 1. If principal frontage faces a UT street, UN street, or Congress Street, then the building is eligible for a height bonus.
 2. Only one height bonus may be applied per structure.
- b. One (1) additional story of up to 12 feet in height is allowed if one of the following provisions is met:
 1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor);
 2. 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.
 3. 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 Section 14-485.

Sub-district	Height Bonuses						
	Max. Pre-bonus Height	MID-BLOCK PERMEABILITY (publicly accessible)	Res. Density	GREEN ROOF	Afford. Housing	Max. Height w/ Bonus	Min. Bonus Floor Stepback *
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'

*measured from the ground floor building edge facing any public right-of-way

(d) Parking standards.

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS 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.

(Ord. 83-15/16, 11-2-2015)

Sec. 14-275.7. Subdistrict dimensional requirements.

(a) Urban Neighborhood (UN) subdistrict.

Intent: 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 (1st LOT LAYER)

Building Length - Principal facade	50' max.
Building Length - Secondary fac.	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.)	
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 (1st Lot Layer)	5' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10' min.
Accessory Building	
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
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

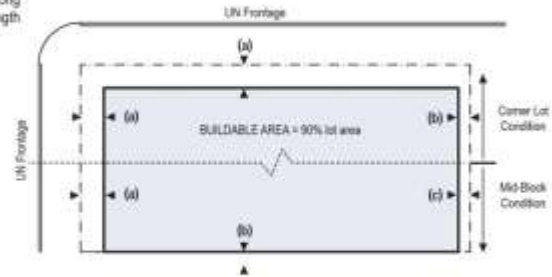
Surface Parking Location	
Side Yard	20' max in width per lot; may not exceed 50% of frontage length
Rear Yard	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b).3. Setbacks)

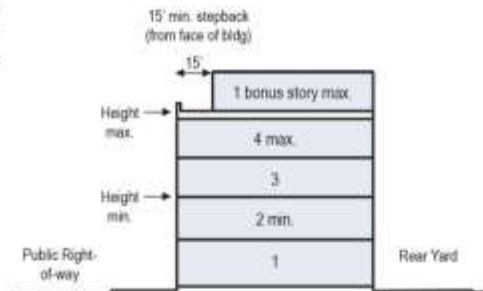
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



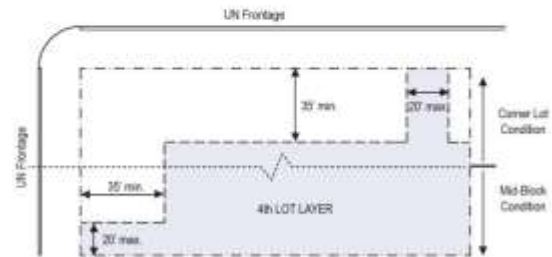
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of"
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the shaded area shown.



(b) Urban Transitional (UT) subdistrict.

Intent: 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 setbacks providing relief from large building masses.

UT

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max.
FRONTAGE REQUIREMENTS (1st LOT LAYER)	
Building Length	100' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7.c)	
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 (1st Lot Layer)	10' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER.
(b) Side Yard*	10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20'
(c) Rear Yard	10' min.
(d) STEPBACK (adjacent to UN)	10' min. setback after 45' height
Accessory Building	
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

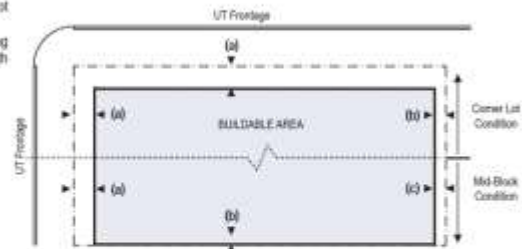
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3 Setbacks)

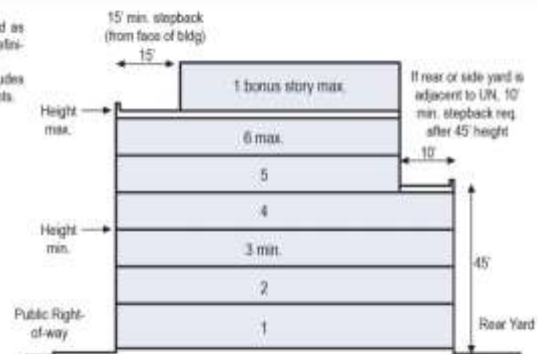
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table:



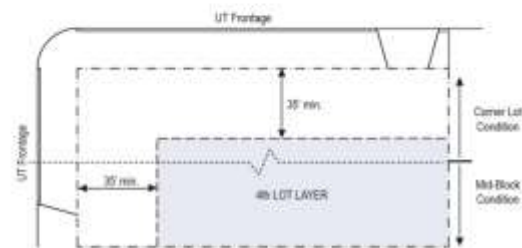
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



(c) Urban Active (UA) subdistrict.

Intent: 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 (1st LOT LAYER)	
Building Length	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.)	
Additional Building Length	(see also Table 14.275.7)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	150' max., 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* (1st Lot Layer)	5'0" max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard**	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10'0" min.
Accessory Building	
Side Yard	5'0" min.
Rear Yard	5'0" 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
Ground Story Height	12'0" min. clear
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

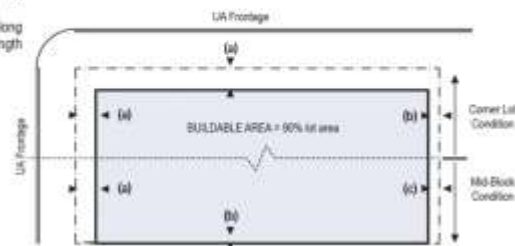
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback	3rd LOT LAYER
Garage Door Opening (max)	n/a

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
- ** Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

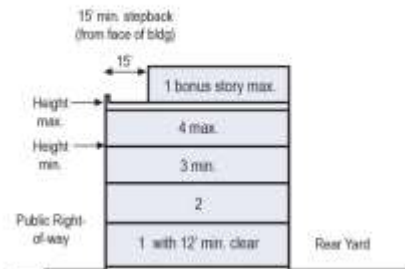
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



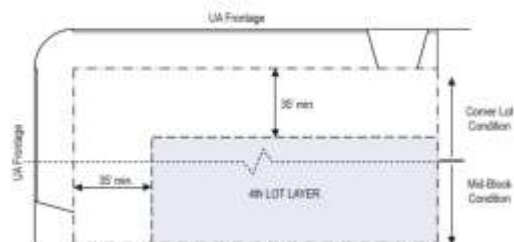
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



(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 from the 1st through 3rd LOT LAYER (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 (1st Lot Layer) | 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) | |
| Ground Story Height | 12' min. clear |
| Fenestration, ground floor | 60-90% (see BDS) facade area |
- (measured as a percentage of the FAÇADE that is 2' above sidewalk grade)

UA INTERSECTS UN

- | | |
|--|------------------------------|
| Dominant Subdistrict (35' deep) | UA |
| Orientation - Principal Frontage | UA street |
| Building Length - UN FAÇADES | 100' max |
| Dominant Building Design Standards (applicable 35' deep) | |
| Ground Story Height | 12' min. clear |
| Fenestration, ground floor | 60-90% (see BDS) facade area |
- (measured as a percentage of the FAÇADE 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

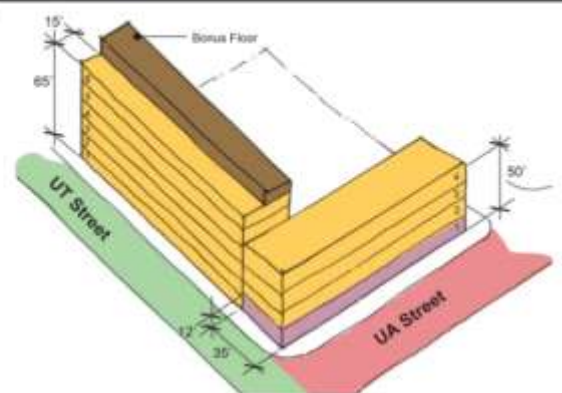
UN INTERSECTS UN

- | | |
|---------------------------|---------|
| Building Length maximums: | |
| Principal Frontage | 30' max |
| Secondary Frontage | 50' max |

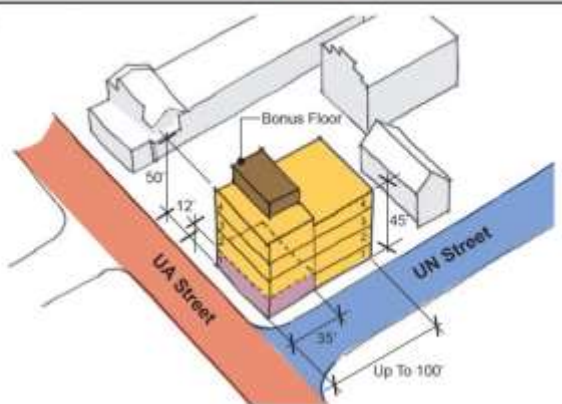
Notes and Exceptions

- * Does not have to correspond to legal building address

UA INTERSECTS UT
(example only)



UA INTERSECTS UN
(example only)



UT INTERSECTS UN
(example only)

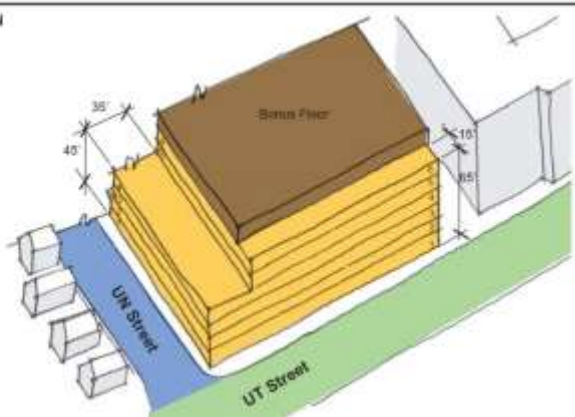
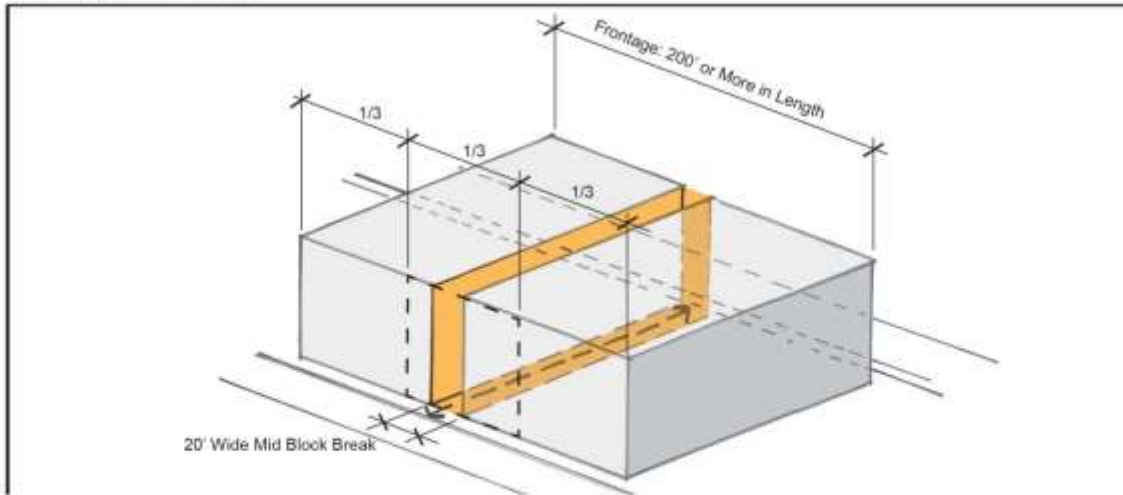
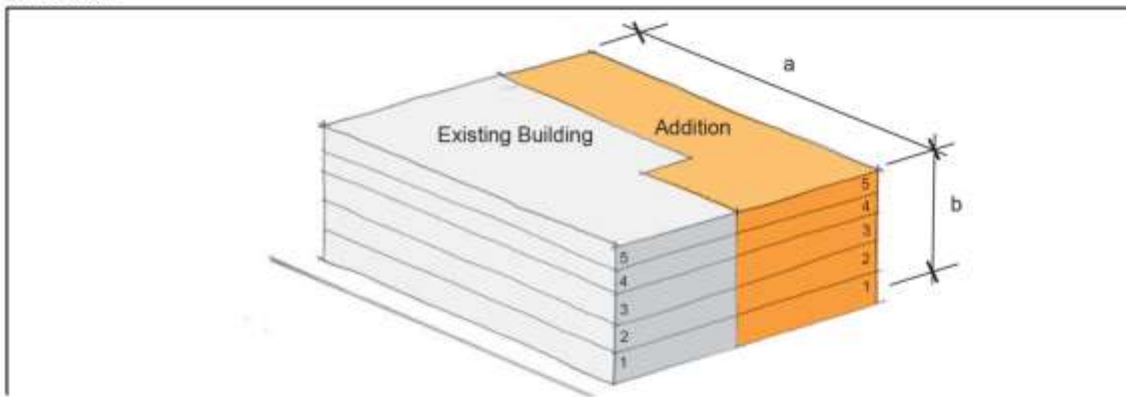


TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED

a. MID-BLOCK PERMEABILITY

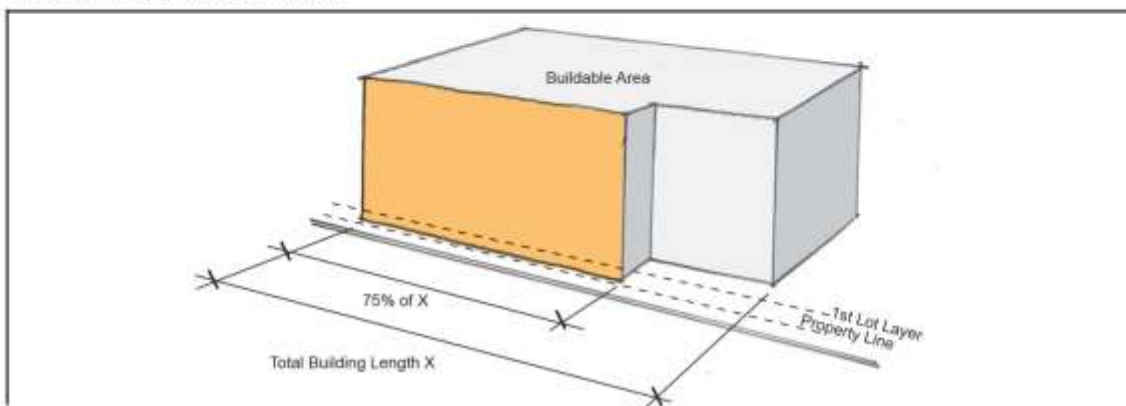


b. ADDITION



- a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.
- b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

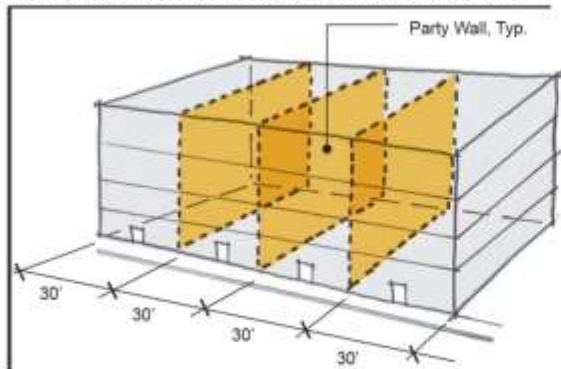
c. BUILDING LENGTH - 1st LOT LAYER



At least 75% of the total building length must be within the 1st LOT LAYER.

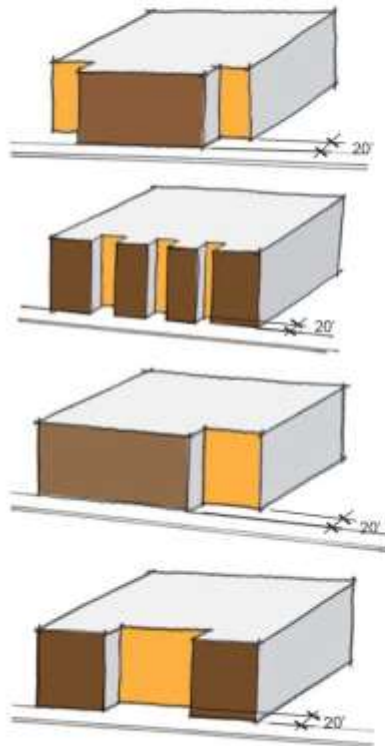
TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED (CONTINUED)

d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS



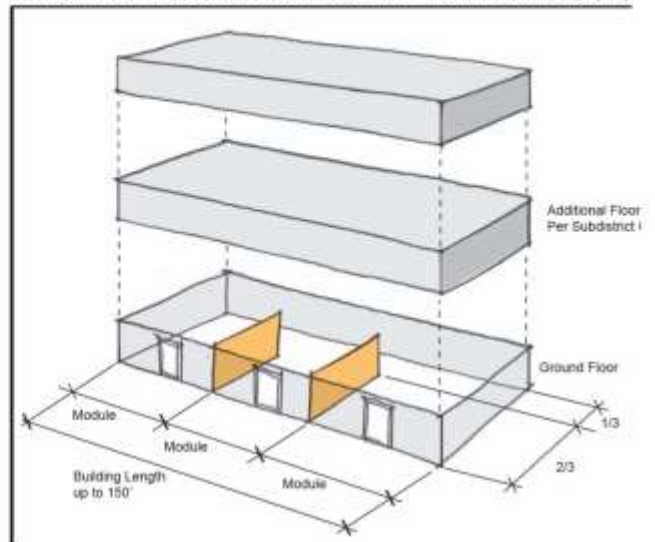
An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.
 A PARTY WALL condition is required at least every 30' and for the entire height of each building.

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 to the 3rd LOT LAYER (20').

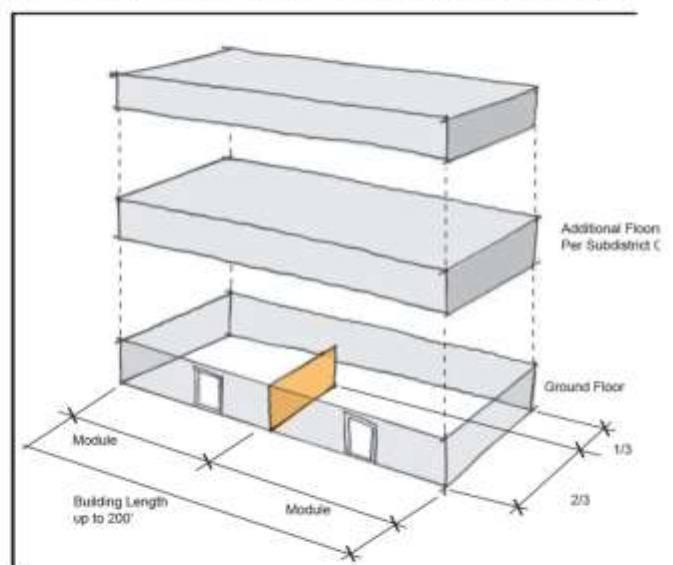
f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)



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.

(Ord. 83-15/16, 11-2-2015)

DIVISIONS 16. WAYNFLETE SCHOOL OVERLAY ZONE*

Editor's note—Ord. No. 164-97, § 9, passed Jan. 6, 1997, repealed divs. 16 and 17 of this article, which pertained to the I-4 industrial zone and the I-P industrial park zone, respectively. Formerly, such divisions consisted of substantive §§ 14-276-14-282, 14-291-14-297 and derived from 602.13B.A-602.13B.F, 602.13B.H, 602.10A.A-602.10A.E and 602.10A.H of the 1968 Code as amended by Ord. No. 536-74, § 2, adopted Aug. 19, 1974; Ord. No. 334-76, §§ 6, 7, adopted Jul. 7, 1976; Ord. No. 159-87, adopted Nov. 2, 1987; Ord. No. 235-88, adopted Feb. 1, 1988; Ord. No. 330-90, §§ 4, 5, adopted May 7, 1990; Ord. No. 15-92, §§ 20, 21, adopted Jun. 15, 1992; and Ord. No. 193A-93, § 5, adopted Feb. 17, 1993; pursuant to Order 138-09/10 passed on 1/20/10 Division 16 (Waynflete School Overlay Zone) was adopted in its entirety.

Sec. 14-276. Purpose.

The intention of this division is to establish an 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 division, the term "Waynflete School" includes any successor institution that operates as a private day school.

(Ord. No. 138 - 09/10, 1-20-10)

Sec. 14-276.1. Location and applicability of Waynflete School Overlay Zone.

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 by the regulations applicable to the underlying zoning districts except as specifically modified by this division.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.2. Overlay Zone sub-districts.

The Waynflete School Overlay Zone consists of two sub-districts, as shown on the Waynflete School Overlay Zone sub-district map, incorporated herein by reference, 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 buildings along the street frontages. The space and bulk regulations of the R-4 district continue to apply within the Campus Edge sub-district.

Except where otherwise specified in this division, all provisions of this Waynflete School Overlay Zone apply in both sub-districts.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.3. Permitted uses.

In addition to the permitted uses allowed in the underlying zoning districts and notwithstanding anything to the contrary in the use regulations for the underlying zoning districts, the following uses are permitted uses 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 halls;
 6. Lecture halls;
 7. Gymnasiums;
 8. Libraries;

9. Outdoor use areas, such as "quads", greens, parks, gardens, art installations, and other active and passive recreation spaces;
10. Parking lots;
11. Parking structures;
12. Community meeting spaces;
13. Administrative offices;
14. Faculty offices;
15. Transportation facilities;
16. Maintenance facilities;
17. Utility buildings;
18. Student health services;
19. Bookstores;
20. Accessory uses which are customarily incidental and subordinate to the location, function and operation of a private day school.

(b) *Residential uses.*

1. Faculty or staff housing, which shall be considered a residential use, and not a school use, for all purposes under this overlay zone.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.4. Prohibited uses.

- (a) Boarding schools;

- (b) Dormitories.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.5. 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 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 the four (the number existing at the time of enactment of this Overlay Zone).
(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.6. Dimensional requirements.

Buildings and structures in the Waynflete School Overlay zone shall be subject to the applicable dimensional requirements of the underlying zoning districts, except as follows:

- (a) *Minimum yard dimensions* shall be the same as in the underlying zone, except that side and rear yards 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.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.7. 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 th 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-stsreet 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 employe 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 and other such strategies that reduce signle 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.

(Ord. No. 138-09/10, 1-20-10)

14-276.8. Loading.

The requirements of section 14-351 shall not apply to buildings within the Waynflete School Overlay one. Instead, the amount of locading area required for any building within the 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.
- (c) Impacts of the loading area on adjacent uses outside the Waynflete School Overlay Zone.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.9. Signage.

Signs shall comply with the requirements of Division 22.

(Ord. No. 138-09/10, 1-20-10)

Sec. 14-276.10. Restrictions outside the Waynflete School Overlay Zone.

Notwithstanding the provisions of section 14-103(b)(1) or section 14-137(b)(1), Waynflete School cannot locate a school use listed in section 14-276.3(a) 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 district 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.

(Ord. No. 138-09/10, 1-20-10)

- Sec. 14-277. Reserved.**
- Sec. 14-278. Reserved.**
- Sec. 14-279. Reserved.**
- Sec. 14-280. Reserved.**
- Sec. 14-281. Reserved.**
- Sec. 14-282. Reserved.**
- Sec. 14-283. Reserved.**
- Sec. 14-284. Reserved.**
- Sec. 14-285. Reserved.**
- Sec. 14-286. Reserved.**
- Sec. 14-287. Reserved.**
- Sec. 14-288. Reserved.**

- Sec. 14-289. Reserved.**
- 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; and
 - 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 percent (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 a twenty-four month term;

 - 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;

26. Notwithstanding Sections 14-295(a) (24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:
 - a. All or a portion of the 35-foot setback area had a gravel surface on September 29, 2015;
 - b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015;
 - c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot;
 - d. One of the buildings described in paragraph c 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;
 - e. 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 in Sec. 14-526(a) (4) (a) (1);
 - f. The proposed parking spaces meet the landscape and buffer requirements of 14-299(f); and
 - g. 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; and
27. Bakeries, coffee roasters and commercial kitchens

provided such uses include retail sales or a tasting room within the principle building.

(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; Ord. 100-15/16, 11/16/2015)

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, except that for lots of less than 20,000 square feet and in existence as of March 9, 2005, a drive-up may be included in a building of less than 20,000 sq ft.; and
 - iii. The drive-up facility is 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 contained in Section 14-298 (h) 5, 7, and 8 shall not apply; and
 - iv. The first floor of the building shall 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; and
 - v. 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
 - vi. 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

vii. Drive-up vehicle circulation shall not be located between the building and any adjacent public streets; and

viii. The drive-up shall be limited to two vehicle drive-up lanes; and

ix. The location of any drive-up shall be limited to the geographic area between Somerset/Kennebec Streets/ I-295/Franklin Street/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. Reserved.
- 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 twenty-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; Ord. 255-14/15, 6-15-2015; Ord. 100-15/16, 11-16-2015)

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 (LEQ₁).

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*

***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.

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 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.

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.

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.

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:

- (a) 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);
- (b) 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
- (c) Other uses specified herein are allowed only if they do not interfere with and are not incompatible with higher priority uses.

(Ord. No. 297-05/06, 9-18-06)

Sec. 14-300.1. 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 (1) 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.

(Ord. No. 297-05/06, 9-18-06)

Sec.14-301. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-300.1. (no adverse impact on marine uses), 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 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.

***Editor's Note**—On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (conditional uses, parking) below.

2. Temporary events, except festivals as otherwise governed under section 14-301I3 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 square feet of building or outdoor space shall not exceed a combined total of sixty (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.

3. Festivals subject to City license.
4. Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(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. Wind energy systems, as defined and allowed in Article X, Alternative Energy;
2. A facility for non-profit organizations whose facility may include offices, classrooms, equipment, equipment rentals, storage, and bathrooms for the public.

(Ord. No. 297-05/06, 9-18-06; Ord. No. 33-11/12, 1-18-12; Ord. No. 262-13/14, 6-16-14; Ord. 184-14/15, 6-1-2015)

Sec. 14-301.1. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the Eastern Waterfront Port Zone, provided that, notwithstanding section 14-471(c), 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, and provided further that in addition to the provision of section 14-474(c)(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:

1. Conditional use standard:
 - a. *Marine compatibility:* The proposed use shall be compatible with existing and potential marine uses in the vicinity, as required by section 14-304(n) and (o) (compatibility of non-marine uses with marine uses and functional utility of piers and access to the water's edge); and
 - b. *Parking and traffic circulation:*
 - i. *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.

2. Conditional uses:

a. *Marine:*

- i. Marine products, wholesaling and retailing;
- ii. Ice-making services;
- iii. Marine freight facilities providing service for, and/or intermodal transfer of, container and breakbulk freight;
- iv. Marine educational facilities;
- v. Seafood retailing, wholesaling, packaging and shipping;
- vi. Seafood processing for human consumption, subject to the performance standards of the IL zone set forth in section 14-236 in addition to the performance standards of section 14-304;
- vii. 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;
- viii. Fish byproducts processing, provided that:
 - a. Any fish byproducts processing facility has a valid rendering facility license

under chapter 12 of the Portland city code; and

b. 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 (section 14-252); and

c. The processing other material wastes or byproducts shall not be deemed a lawful accessory use Permitted herein.

b. *Commercial:*

a. Structured parking available to the general public;

b. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006;

c. Passenger support services supporting a marine passenger use listed under 14-301(a) (marine passenger). 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 square feet cumulative within the EWPZ:

i. Retail;

ii. Restaurants/food service other than street vendors;

iii. Retail service;

iv. Passenger information services.

c. *Industrial:* The following industrial uses are permitted provided that such uses shall conform

to the IM zone performance standards set forth in section 14-252 in addition to the performance standards of 14-304. Where redundant or contradictory performance standards exist, the more restrictive standard applies.

- i. Non-marine related warehousing in structures existing as of September 18, 2006;
- ii. Facilities for combined marine and general construction;
- iii. Low impact industrial uses as permitted in the IL zone in structures existing as of September 18, 2006, excluding all auto repair service facilities.

d. *Public:*

- i. *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:
 - a. The facility is located more than 100 feet from the water's edge;
 - b. The facility occupies no more than 50 square feet of structure above ground;
 - c. 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
 - d. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.
- ii. Maritime museums, limited to 5,000 square feet of ground floor footprint.

***Editor's Note**—On-site parking for non-marine commercial and industrial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (conditional uses, parking) below.

- e. *Parking for non-marine uses:* Notwithstanding sections 14-304(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, 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 that are permitted by section 14-301 (permitted marine uses) and 14-301.1. (conditional marine uses) 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.

(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. 297-05/06, 9-18-06; Ord. No. 29-09/10, 8-3-09, emergency passage;
Ord. No. 33-11/12, 1-18-12; Ord. No. 262-13/14, 6-16-14; Ord. 184-14/15, 6-1-

Sec.14-301.2. Prohibited uses.

Uses, whether floating or fixed to land, which are not enumerated in either section 14-301 or 14-301.1. 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.

(Ord. No. 297-05/06, 9-18-06)

Sec. 14-302. Contract or conditional rezoning.

In addition to those marine and non-marine uses authorized in section 14-301 (permitted uses) and 14-301.1(conditional uses) 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 section 14-300.1 (no adverse impact), the performance standards of 14-304(a-o), and the applicable standards of contract/conditional rezoning contained in sections 14-60 to 14-63 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 section 14-301.2 (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 section 14-301 (permitted, marine uses) and 14-301.1 (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 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 section 14-301 (permitted uses) and 14-301.1 (conditional uses) and that said use is not abandoned after the project is developed; and
7. Notwithstanding section 14-304(h) (performance standard "*Parking*") and section 14-526 (a) 4.a.(i), 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 section 14-301.1 (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.

(Ord. No. 297-05/06, 9-18-06; Ord. No. 278-09/10, 7-19-10)

Sec. 14-303. Dimensional requirements.

In addition to the provisions of article III, division 25 of this 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 twenty-five (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 14-301(b)(12), may be located up to five (5) 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 sections 14-300.1 (no adverse impact) and 14-301.1 (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:* One hundred (100%) percent.
- (e) *Maximum building height:* Forty-five (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 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 forty-five (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 forty-five (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.

(Ord. No. 297-05/06, 9-18-06; Ord. No. 27-11/12, 8-15-11; Ord. 184-14/15, 6-1-2015)

Sec. 14-304. 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 fifty-five (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 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 (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 pressure, each with a duration of less than one (1) 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 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 ten (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.A. § 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 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 division 20 (off-street parking) of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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 division 26 and/or division 26.5.

- (k) *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 compliant with the Site Lighting Standards of the City of Protland Technical Manual.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *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.
- (n) *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 berthing or other access to the water by existing or potential marine uses.
- (o) *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.

(Ord. No. 297-05/06, 9-18-06; Ord. No. 240-09/10, 6-21-10; Ord. No. 278-09/10, 7-19-10)

DIVISION 18. WATERFRONT CENTRAL ZONE*

***Editor's note**—Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306–14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of

May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Order 184-14/15 repealed Division 18.7 on 6-1-2015.

Sec. 14-305. Purpose.

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 an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforcestheir continued economic viability;
- (b) 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;
- (c) 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.

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, hours of 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 the zone 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.

Commercial Street is recognized as an important economic center for the city and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 193-05/06, 4-19-06; Ord.No. 103-10/11, 12-20-10)

***Editor's Note**—Pursuant to Council Order 103-10/11 passed on 12/20/10 Section 14-306 *No adverse impact on marine uses* was repealed in it's entirety and remaining sections were re-numbered accordingly.

Sec. 14-306. Definitions.

For the purposes of the waterfront central zone only the following terms shall have the following definitions:

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.

Lot: any abutting property under common ownership.

Non-marine use overlay zone (NMUOZ): The non-marine use overlay zone (NMUOZ) 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 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the NUMUOZ are defined by parcels of land and piers within the waterfront central zone located on the landward side of a line established one hundred fifty (150) feet southerly from the southerly sideline of Commercial Street and modified as follows: the seaward limit of the NMUOZ extends to a line 500 feet southerly from the southerly sideline of Commercial Street in the area between the easterly sideline of Long Wharf to the westerly sideline of Union Wharf. Additionally, all areas subject to this provision are set back landward at least twenty-five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. All offset distances are measured horizontally.

All applicants for development within the NUMUOZ are

responsible for demonstrating their location within NMUOZ 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 NMUOZ shall be shown on all site plans and subdivision plats for proposed development within the NMUOZ. A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in determining whether a proposed development is located within the NMUOZ.

On-Site shall mean that portion of any lot included within or directly impacted by a proposed development.
(Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10)

Sec. 14-307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-311, as applicable, the following uses are permitted in the waterfront central zone:

(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;
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 in conditional use, section 14-308(b)(3) below);

11. Seafood processing;
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 fifty (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 section 14-311(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.

(b) *Non-marine commercial and industrial uses:* Non-marine uses permitted by this section are subject to the standards listed in section 14-311.

1. Professional, business, government, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. 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;
4. Banking services without drive-up services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries; and
10. 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 section 14-307(a)(1), (a)(7), or (a)(22); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual use does not exceed one-thousand (1,000) square feet 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 14-311(a); and

- b. Interior meeting or classroom space accessory to uses permitted in section 14-307(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 three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

2. Street vendors licensed pursuant to chapter 19.

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

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 131-01/02, § 1, 1-23-02; Ord. No. 309-01/02, § 1, 7-15-02; Ord. No. 38-02/03, § 1, 9-4-02; Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10; Ord. No. 33-11/12, 1-18-12)

Sec. 14-308. Conditional use.

The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471 and 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, and further provided that in addition to the provisions of section 14-474(c) (2), they shall also meet the applicable waterfront central zone development standards in section 14-311:

(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;
- 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
- 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 one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-311(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 ten thousand (10,000) square feet of building footprint.

(b) *Residential*: The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy upper floor space with a residential use, provided the following conditions are met:

1. The applicant demonstrates a compelling business

related need for living on-site that cannot otherwise be accomplished;

2. The residential living space shall not exceed one thousand (1,000) square feet, inclusive of all exterior porches and decks;
3. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
4. The residential use shall be limited to one unit per wharf;
5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and
6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine business listed under section 14-307(a), permitted marine uses.

(c) *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 one-hundred (100) feet from the water's edge;
2. The facility occupies no more than fifty (50) square feet 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.

(d) 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.

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

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02; Ord. No. 193-05/06, 4-19-06; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 278-09/10, 7-19-10; Ord. No. 103-10/11, 12-20-10; Ord. No. 33-11/12, 1-18-12)

Section 14-309. Prohibited uses.

Uses which are not enumerated in either section 14-307 or 14-308 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Except as provided in section 14-308, residential uses (not in existence on May 5, 1987);
- (b) Hotels, motels or boatels;
- (c) Auditoriums, civic centers, convention centers or other meeting facilities;
- (d) Drinking establishments;

(e) Ground mounted telecommunication towers, antennas, and/or disks; and

(f) Drive-up services for any use other than a permitted use listed under 14-307(a) or 14-308(a) (1).

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02 § 2, 10-15-01; Ord. No. 193-05/06, 4-19-06; Ord. No. 103-10/11, 12-20-10)

Sec. 14-310. Dimensional requirements.

In addition to the provisions of division 25 of this article, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage along Commercial Street:* Seventy-five (75) feet.

(c) *Minimum lot width within the NMUOZ:* Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the NUMUOZ.

(d) *Minimum yard dimensions:*

1. Front setback: None.

2. Side setback: None

3. Rear setback: None.

4. Setback from pier edge: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(e) *Maximum lot coverage:* One-hundred (100) percent.

(f) *Maximum building height:* Fifty (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 three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet 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 NMUOZ, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

(Ord. No. 168-93, §2, 1-4-93; Ord. No. 309-01/02, § 2, 7-15-02; Ord. No. 193-05/06, 4-19-06, Ord. No. 103-10/11, 12-20-10)

Sec. 14-311. Development standards.

(a) *Standards for non-marine uses located outside of the NMUOZ:* Non-marine uses listed above in Sec. 14-307(b) and 14-308(b) that are located outside of the NMUOZ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. *55% marine use required on ground floors:* At least 55% of the ground floor of all of the buildings on the lot (defined in 14-306 above), when calculated using the aggregate of all such ground floors, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(a) (1).
2. *55% marine use required for all open areas:* After subtracting areas used for common circulation drives (defined in 14-306 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 14-307(a) or 14-308 (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 NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine

uses to occupy the space.

- a. *Ground floor vacancy and change of occupant outside of the NMUOZ advertised to marine users:* In any lot or portion of lot outside of the NMUOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space 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 (60) day period in targeted media and by other means reasonably calculated to reach marine users. 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 NMUOZ.) The property owner may stop advertising sooner than the end of the 60 day period if a lease is signed with a marine user. Should no marine user apply by the end of the 60 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 woner must indicate the square footage of area occupied and whther 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. Applicants for site plan review or a change of use permit outside of the NMUOZ shall provide the planning authority with proof of compliance with

the requirements of this section as a condition of approval.

- d. The city planning authority shall compile and report inventories of ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.
4. Pier or bulkhead edge reserved for marine uses: Notwithstanding anything in contained in 14-311(c) (Contract or conditional rezoning) or any other provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(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 of water depth at mean low water, to a minimum setback line of at least five feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(b). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) *NMUOZ standards*: Non-marine uses listed under 14-307(b) and 14-308 located within the NMUOZ, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. *Vessel access*: Non-marine uses allowed 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 Sec. 14-311(d).
2. *Maximum setback for new development on lots with seventy-five (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 seventy-five (75) or more feet of frontage along

the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (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 seventy-five (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 square feet 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 NMUOZ 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 be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the NMUOZ.

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 14-307(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 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*.

(c) *Contract or conditional rezoning standards:*
Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:

1. *Conditional or contract rezoning located outside of the NMUOZ:* The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of section 14-311(a) of this code.
2. *Conditional or contract rezoning located within the NMUOZ:* Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b) (3) (*Investment in marine infrastructure*).
3. Residential dwellings are prohibited.
4. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.
5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
6. The project's public benefits outweigh its potential negative impacts, taking into consideration as public

benefits: protection of existing 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.

7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d) (8).
9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.

(d) *Performance standards*: All uses in the waterfront central zone shall comply with the following standards. Standards 8, 10, 13, 14, 15, 16, and 17 below shall be reviewed by the planning authority:

1. *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 forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
2. *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 seventy-five (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 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 (LEQ₁).

3. *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.
4. *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.
5. *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 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.
6. *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
7. *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. sections 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 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.

8. *Off-street parking and loading:* Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.

The planning authority shall review applications for non-marine use parking against the following standards:

- a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.
 - b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").
 - c. Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.
 - d. Water-dependent use parking spaces shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.
9. *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 of this article.
 10. *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.
 11. *Signs:* Signs shall be permitted as set forth in division

22 of this article.

12. *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.
13. *Urban design:* Construction of new structures located within thirty-five (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 one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
14. *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.
15. *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 interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
16. *Functional utility of piers and access to the water's edge:* All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles, and shall demonstrate adherence to the following provisions:
 - a. Provisions for the storage and movement of goods and materials must be designed into all waterside

development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

- b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.
 - c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.
 - d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.
17. *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 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. (Ord. No. 103-10/11, 12-20-10; Ord. 108-15/16, 11-16-2015)

Sec. 14-312 thru Sec. 14-317. Reserved.

DIVISION 18.5. WATERFRONT PORT DEVELOPMENT ZONE*

***Editor's Note**—See the editor's note to division 18 of this article.

Sec. 14-318. 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.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Nonmarine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development. (Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-318.5. 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 development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-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.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-319. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-318.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront port development zone:

- (a) *Marine:*
 - 1. Marine repair services and machine shops;
 - 2. Tugboat, fireboat, pilot boat and similar services;
 - 3. Harbor and marine supplies and services and ship supply such as fueling and bunkering of vessels;
 - 4. Shipbuilding and facilities for construction, maintenance and repair of vessels;
 - 5. Marine cargo handling facilities, including docking, loading and related storage;
 - 6. Boat repair yards;
 - 7. Facilities for marine construction and salvage;
 - 8. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.

(b) *Commercial:*

1. Intermodal transportation facilities principally for vessels with regularly scheduled destination service or for railroad transportation service;
2. Warehousing and storage of goods which are awaiting shipment via cargo carriers;
3. Marine cargo container and chassis maintenance and repair.

(c) *Public:*

Public uses including pedestrian and bicycle trails.

(d) *Other:*

1. 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 section 14-319(a)3, 6, or (b)1, if all such uses do not exceed two thousand (2,000) square feet in total floor area of the building or twenty-five (25) percent of the total floor area of the building, whichever is less, and if each individual use does not exceed one thousand (1,000) square feet 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.
2. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront port development zone: on Commercial Street from the intersection of India Street to the westerly side of the Maine State Pier.
3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 38-02/03, § 2, 9-4-02; Ord. No. 33-11/12, 1-18-12)

Sec. 14-320. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the waterfront port development zone, provided that, notwithstanding section 14-471(c), 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, and provided further that in addition to the provisions of section 14-474(c)(2) such uses will not impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses, and meet any additional standards set forth below:

1. *Marine:*

- a. Marine products, wholesaling and retailing;
- b. Boat storage facilities, excluding rack storage;
- c. Seafood processing;
- d. Seafood packing and packaging;
- e. Fabrication, storage and repair of fishing equipment;
- f. Ice-making services;
- g. Fabrication of marine-related goods;
- h. Fish by-products processing, provided that:
 - i. Any fish by-product processing facility has a valid rendering facility license under chapter 12; and
 - 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.

2. *Commercial:*

Off-street parking lots, excluding parking structures.

3. *Industrial:*

- a. Storage of goods in existing structures;
- b. Facilities for combined marine and general construction;
- c. 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 set forth in §14-252.

4. *Public:*

Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water.

(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. 168-93, § 2, 1-4-93; Ord. No. 149-01/02, 2-4-02; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-320.1. Prohibited uses.

Uses which are not enumerated in either section 14-319 or 14-320 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Restaurants and drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-320.2. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the waterfront port development zone shall be subject to the following requirements:

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

Front setback: None.

Side setback: None.

Rear setback: None.

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-319 and 14-320, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* Forty-five (45) feet, except as follows:

1. In the areas bounded as described below, facilities for bulk storage of materials delivered to a site by waterborne transportation or awaiting transportation from the site by means of waterborne transportation may be erected up to the maximum heights indicated (above mean sea level):
 - a. In the area that lies between Danforth Street and the Veterans Memorial Bridge: One hundred forty-five (145) feet.
 - b. In the area between Danforth Street and the projection of the centerline of Vaughn Street between its intersections with Orchard Street and Danforth Street: Seventy (70) feet.
 - c. In the area between the projection of the centerline of Vaughn Street between its intersections with Orchard Street and Danforth Street and the projection of the centerline of Fletcher Street between its intersections with Orchard Street and Danforth Street: Seventy-five (75) feet.
 - d. In the area formed by the projection of the centerline of Fletcher Street between its intersections with Orchard Street and Danforth Street easterly to the projection of the centerline of Emery Street between its intersections with Taylor Street and Danforth Street: Seventy-five (75) feet.
 - e. In those areas where the maximum height may not exceed forty-five (45) feet above grade, no structure may exceed sixty-five (65) feet in height above mean sea level.

For purposes of this section, a projection of the centerline of a street shall consist of an extension of the centerline of the street to the water side boundary of the waterfront port development zone.

2. Additional bulk, height and location standards for structures exceeding forty-five (45) feet in height above grade within the waterfront port development zone:

- a. The maximum horizontal diagonal measurement of portions of a structure, cluster of structures or equipment exceeding forty-five (45) feet in height above grade shall not exceed one hundred (100) feet, except that for each foot that the structure, cluster of structures, or equipment is lowered from the maximum permitted height, the maximum horizontal measurement may increase by one (1) foot.
- b. In addition to any other setback requirements, portions of structures or clusters of structures exceeding forty-five (45) feet in height above grade shall be set back a minimum of one (1) foot from the exterior property line of the owner of the underlying fee interest for each foot that the structure or cluster of structures exceeds forty-five (45) feet in height above grade.
- c. No structure or cluster of structures exceeding forty-five (45) feet in height above grade may be located closer than one hundred fifty (150) feet from any other such structure or cluster of structures.
- d. The cumulative width of the portion of structures exceeding forty-five (45) feet in height above grade shall not exceed more than thirty (30) percent of the average width of the lot as measured by a line drawn parallel to the water.
- e. No structure shall exceed forty-five (45) feet in height above grade within the view corridors established by the projection of the street right-of-way lines of Vaughn Street or Emery Street.
- f. For purposes of this section only, 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. Other rooftop appurtenances shall not exceed the maximum height limits set forth in this section.

- g. 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.
- h. Accessory uses in structures which exceed forty-five (45) feet in height above grade shall not be located higher than forty-five (45) feet within the structure.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-320.3. 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 forty-five (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 fifty-five (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 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 (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 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 (1) 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 sixty (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.A. Sections 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 division 20 (off-street parking) of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.
- (k) *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.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.

- (m) *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.
- (n) *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 or other access to the water by existing or potential marine uses.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 240-09/10, 6-21-10)

DIVISION 18.7. Reserved

DIVISION 19. R-P RESOURCE PROTECTION ZONE

Sec. 14-321. Use.

No building shall be erected, altered, enlarged, rebuilt or used, and no premises shall be used, in a R-P resource protection zone except for the following uses:

- (a) Nonintensive recreational uses not requiring structures, such as fishing and hiking;
- (b) Motorized and nonmotorized vehicular traffic on existing roads, trails and rails, as appropriate;
- (b2) Bikeways, pedestrian trails and walkways;
- (c) Fire prevention activities;
- (d) Wildlife management activities;
- (e) Soil and water conservation activities;
- (f) Surveying and natural resource analysis;
- (g) Emergency operations as defined in section 14-47;
- (h) Harvesting of wild crops;
- (i) Nonresidential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square

feet;

- (j) Public and private parks and recreational areas, including one (1) or more structures containing a total maximum floor area of not more than ten thousand (10,000) square feet;
- (k) Permanent and temporary piers, docks, wharves, bridges and uses projecting into water bodies, as allowed in section 14-449(b);
- (l) Reserved;
- (m) Storehouses for fishermen's gear;
- (n) Reserved;
- (o) Essential services as defined in section 14-47 accessory to the uses permitted herein;
- (p) Signs, as allowed in division 22 of this article;
- (q) Road construction, in accordance with the provisions of section 14-449;
- (r) Parking facilities for uses permitted under this section;
- (s) Reserved;
- (t) Landfill and other earth-moving activity, as allowed in section 14-449(d).
- (u) The following uses are permitted in the R-P zone only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below.
 - 1. Temporary wind anemometer towers, as defined in section 14-47, are permitted provided the following standards are met in addition to section 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, of 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.

(Code 1968, § 602.13A.A; Ord. No. 499-74, § 6, 8-19-74; Ord. No. 15-92, § 24, 6-15-92; Ord. No. 33-11/12, 1-18-12)

Sec. 14-322. Space and bulk.

No building or structure shall be erected, altered, enlarged, rebuilt, or used in a R-P resource protection zone which does not comply with the following requirements:

- (a) *Minimum rear yards:* Principal building or structure, other than a boathouse or storehouse for fishermen's gear: Seventy-five (75) feet.
- (b) *Minimum side yards:*
 1. Principal building or structure: Fifteen (15) feet.
 2. Accessory building or structure: Five (5) feet.
- (c) *Minimum side yard on side streets:*
 1. Principal building or structure: Twenty (20) feet.
 2. Accessory building or structure: Twenty (20) feet.
- (d) *Minimum front yards:*
 1. Principal building or structure: Twenty-five (25) feet.
 2. Accessory building or structure: Twenty-five (25) feet.
- (e) *Maximum height:*
 1. Principal building or structure: Two (2) stories or twenty-five (25) feet.
 2. Accessory building or structure: One (1) story or fifteen (15) feet.

- (f) *Maximum building area:* Principal building or group of buildings: Ten (10) percent of lot area.
- (g) *Minimum lot area:* Twenty thousand (20,000) square feet.
- (h) *Minimum width of lot:* One hundred (100) feet.
- (i) *Minimum lot frontage on street or shoreline:* One hundred (100) feet.
- (j) *Minimum shoreline setback:* All principal structures other than permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishermen's gear: Seventy-five (75) feet.

(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

Sec. 14-323. Off-street parking.

Any off-street parking in a R-P resource protection zone is required as provided in division 20 of this article.

(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

Sec. 14-324. 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.

(Ord. No. 15-92, § 25, 6-15-92)

DIVISION 19.5. HELISTOP OVERLAY ZONE

Sec. 14-325. Purpose.

The intent of this zone is to create an overlay zone in which helicopter landing areas are permitted 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.

(Ord. No. 48-93, 7-19-93)

Sec. 14-326. Helistop defined.

A helistop, for purposes of this division, shall be defined as 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.
(Ord. No. 48-93, 7-19-93)

Sec. 14-327. Regulations for helistops.

(a) *Helistops which have more than five landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations, including those for marking of landing areas.
- (2) All take-off, landing and parking areas at such a helistop site shall be surfaced with grass or with a dust-proof material.
- (3) Each landing pad shall be set back at least two hundred (200) feet from any residence, school or church. Each landing pad shall be set back at least fifty (50) feet from any commercial or industrial structure. All setbacks shall be measured from the edge of the landing pad.
- (4) The area in which a landing pad is located shall be enclosed by a fence or other barrier of not less than three (3) feet in height or shall be secured by a locked gate, as approved by the fire department.
- (5) All such helistops shall be subject to review under article V of this chapter.

(b) *Helistops which have five or fewer landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations.
- (2) All such helistops shall be subject to approval by the zoning administrator and the fire department.
- (3) Such helistops shall not be subject to review under article V of this chapter.

(Ord. No. 48-93, 7-19-93)

Sec. 14-328 - Sec. 14-330. Reserved.

DIVISION 19.7. RESERVED.

Sec. 14-330.1. - Sec. 14-330.5 Reserved.

***Editor's Note-** Pursuant to Order 142-06/07 passed on 2/21/07 repealed Division 19.7.(Formula Businesses) Sections 14-330.1.-14-330.5. in its entirety and established a task force on business diversity to develop a strategy for preserving and enhancing the economic health of Portland's downtown business district related to its unique character, business diversity, economic vitality, and quality of life. As part of its charge, the Task Force shall undertake the following actions:

1. Study and report on the strengths and challenges of various regulatory tools used in other municipalities to maintain business diversity, including community impact review; formula business restrictions; local purchasing preferences; site plan review standards; Tax Increment Financing; and District Improvement Financing.
2. Consider the legality of the various regulatory tools noted in paragraph 1.
3. Consider the potential economic impact of the various regulatory tools noted in paragraph 1 on the downtown business district, including but not limited to consideration of measured impacts of the Formula Business Ordinance adopted in November of 2006; development patterns in and surrounding the downtown business district; review of lease rates and real estate values within the downtown business zone; and a review of openings and closings of establishments within the zone in the recent past.
4. Upon completion of its review, the Task Force will prepare a report summarizing its research and findings, including any recommendations needed to maintain the economic health of Portland's downtown business district. Such report shall be submitted to the Council and Planning Board for review and consideration.

The Task Force shall consist of 15 individuals appointed by the Mayor representing the following groups:

Portland City Council: Two City Councilors who shall be Co-chairs.
One representative nominated by the Maine Real Estate and Developers Association.
One representative nominated by the Portland Community Chamber of Commerce.
One representative nominated by Portland Buy Local.
One representative nominated by the Bayside Community Development Corporation.
One representative nominated by the Portland Downtown District.
One District One resident.
One District Two resident.
One District Three resident.
One District Four resident.
One District Five resident.
One representative of formula businesses.
One representative of small independent businesses.
One representative of downtown Portland property owners.

DIVISION 19.8. DOWNTOWN ENTERTAINMENT OVERLAY ZONE

Sec. 14-330.11. Purpose.

The purpose and intent of this section 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 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.

(Ord. No. 164-06/07, 4-4-07)

Sec. 14-330.12. Definitions.

(a) *After-hours entertainment license.* For the purpose of the after-hours entertainment prohibition in section 14-330.15, "after-hours entertainment license" means any of the music, dancing and special entertainment licenses required or authorized by article III, chapter 4 of this Code.

(b) *Downtown entertainment overlay zone.* 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 attached downtown entertainment overlay zone map: B-3, B-3(c) and WCZ zones, a copy of which is on file in the department of planning and urban development.

Any property that lies partly within the overlay zone and partly outside it shall be subject to this ordinance.

(Ord. No. 164-06/07, 4-4-07)

Sec. 14-330.13. Dispersal requirement for facilities with entertainment license in downtown entertainment overlay zone.

A business with an entertainment license as required or authorized by section 4-51(a) of this code located 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.

(Ord. No. 164-06/07, 4-4-07)

Sec. 14-330.14. 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 chapter 14, division 23 of this code. Such a business is considered an entertainment business for the purpose of calculating dispersion requirements under section 14.330.13 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 section 14-330.13.
(Ord. No. 164-06/07, 4-4-07; Ord. No. 68-09/10, 10-19-09)

Sec. 14-330.15. 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.
(Ord. No. 164-06/07, 4-4-07)

Sec. 14-330.16. Conditions on after-hours food service in the downtown entertainment overlay zone.

(a) Following a hearing held pursuant to chapter 15, section 15-10, 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.

(b) The clerk's decision may be appealed to the city manager pursuant to section 15-9 of this code.

(c) 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.

DIVISION 20. OFF-STREET PARKING

Sec. 14-331. Defined.

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

(Code 1968, § 602.14.A; Ord. No. 272-77, 5-16-77; Ord. No. 389-89, § 1, 4-3-89; Ord. No. 278-09/10, 7-19-10)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 14-332. Uses requiring off-street parking.

Except as provided in Section 14-332.1, 14-332.2 (exceptions) and 14-345 (fee in-lieu of parking) of this division, for the uses listed below the following minimum off-street parking requirements shall be provided and maintained in the case of new construction, alterations which increase the number of units, and changes of use:

(a) *Residential structures:*

1. For new construction, two, (2) parking spaces for each dwelling unit.
2. For alterations or changes of use in existing structures, which create new or additional dwelling units in such structures, and for accessory units pursuant to §§14-68,78,88, one (1) additional parking spaces for each such unit. Existing parking spaces shall not be used to meet the parking requirements of this paragraph, unless the existing parking spaces exceed one (1) space for each dwelling unit.
3. For residential development in the B-2, B-2b, B-2c zones:
 - a. One (1) parking space per dwelling unit.

(b) *Motel:* One (1) parking space for each sleeping room.

(c) *Hotels:* One (1) parking space for each four (4) guest

rooms.

- (d) *Schools providing instruction for students up to and including those fifteen (15) years of age:* One (1) parking space for each room used for purposes of instruction.
- (e) *Schools providing instruction for students sixteen (16) years of age and over:* One (1) parking space for each ten (10) seats or major fraction thereof, used for purposes of instruction; if no fixed seats, one (1) parking space for each one hundred (100) square feet or major fraction thereof used for purposes of instruction.
- (f) *Hospitals:* One (1) parking space for each five hundred (500) square feet or major fraction thereof, of floor area, exclusive of cellar.
- (g) *Auditoriums, theaters, assembly halls, funeral homes:* One (1) parking space for each five (5) seats or for each one hundred (100) square feet, or major fraction thereof, of assemblage space if no fixed seats.
- (h) *Retail stores:* One (1) parking space for each two hundred (200) square feet of first floor area in excess of two thousand (2,000) square feet not used for bulk storage and one (1) parking space for each seven hundred (700) square feet, or major fraction thereof, for each floor above the first floor not used for bulk storage.
- (i) *Restaurants or establishments constructed and intended for the dispensing of food and drink as the principal activity:* One (1) parking space for each one hundred fifty (150) square feet, or major fraction thereof, of floor area not used for bulk storage or food preparation.
- (j) *Offices; professional and public buildings:* One (1) parking space for each four hundred (400) square feet, or major fraction thereof, of floor area exclusive of cellar not used for bulk storage.
- (k) *Places of assembly (which includes private club and fraternal halls, places of religious assembly, and community halls):* One (1) parking space for each one hundred and twenty five (125) square feet, or major fraction thereof, of floor area used for assembly area not including bathrooms, bulk storage, stairways, closets

or other non-assembly areas.

- (l) *For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet:* One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.
- (m) *Hostels:* One (1) parking space for each eight (8) beds, or major fraction thereof. This requirement may be reduced to one (1) parking space for each twelve (12) beds if the site is within one quarter (1/4) mile of a public transit stop.
- (n) *Long-term, extended care and intermediate care facilities:* One (1) parking space for each five (5) beds, or major fraction thereof, plus one (1) parking space per each employee normally present during one (1) weekday morning shift.
- (o) *Lodging houses:* One (1) parking space for each five (5) rooming units, except in the R-5 zone; in the R-5 zone, one (1) parking space for every two (2) rooming units.
- (p) *Sheltered care group homes and emergency shelters:* One (1) parking space for every two (2) employees.
- (q) *Congregate care facilities:* One (1) parking space for every three (3) living units.
- (r) *Special needs independent living units:* One (1) parking space per every four (4) living units, plus one (1) parking space for each staff member, if any, normally present at any one time.
- (s) *Bed and breakfast:*
 - 1. *Except in the I-B zone:* One (1) parking space for each two (2) guest rooms or fraction thereof for the first four (4) guest rooms; one (1) parking space for each additional guest room in excess of four (4).
 - 2. *In the I-B zone:* No off-street parking required.
- (t) *Day care facilities:* Off-street parking shall be provided on the site for all staff of the facility. Parking for

the facility shall not interfere with access to or use of play areas. In residential zones parking spaces may be stacked or placed side by side in order to less their impact on the residential character of the lots and the neighborhood, and shall not be located closer than five (5) feet from the property line of any abutting residential use or residentially zoned site.

- (u) *Private clubs:* One (1) parking space for each one hundred fifty (150) square feet, or major fraction thereof, of floor area.
- (v) *Neighborhood Centers:* One (1) parking space for each 150 square feet, or major fraction thereof, of floor area, except for neighborhood centers which serve primarily clientele from the surrounding neighborhood, the parking requirement shall be one (1) parking space per 1,000 square feet, or major fraction thereof, of floor area.

(Code 1968, § 602.14.B; Ord. No. 268-77, 5-16-77; Ord. No. 431-82, § 2, 2-22-82; Ord. No. 575-86, §§ 1, 2, 5-19-86; Ord. No. 65-87, 11-2-87; Ord. No. 230-90, § 2, 3-5-90; Ord. No. 33-91, § 14, 1-23-91; Ord. No. 243-91, § 1, 3-11-91; Ord. No. 33A-91, § 8, 4-17-91; Ord. No. 125-97, § 10, 3-3-97; Ord. No. 232, §4, 3-15-99; Ord. No. 94-99, 11-15-99; Ord. No. 77-02/03, § 1, 10-21-02; Ord. No. 199-04/05, 4-4-05; Ord. No. 84-08/09, 10-20-08; Ord. No. 36-09/10, 8-17-09; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 241-09/10, 11-15-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 279-09/10, 6-6-11; Ord. No. 73-14/15, 10-20-2014; Ord. 209-14/15, 5/4/2015)

Sec. 14-332.1. Zone specific off-street parking exceptions and modifications.

The off-street parking requirements established for uses, established above in section 14-332 of this division, are hereby modified for the following zones according to the provisions described below.

- (a) *IR-3, Island Residential Zone, Off-street parking:* Off-street parking shall not be required irrespective of the requirements of division 20 (off-street parking) of this article.
- (b) *USM Overlay Zone, parking:* The parking requirements of section 14-332 (division 2) shall not apply to university buildings. Instead, 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:

1. The availability of off-campus parking and shuttle transportation to and from such off-campus facilities.
 2. The ratio of commuter students to resident students.
 3. 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.
 4. Shared use of a single parking facility by two or more buildings when the peak parking demand period for such buildings do not overlap.
 5. 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.
 6. 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.
- (c) *Recreation open space zone:* Off-street parking adequate to serve projected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.
- (d) *Change of use in the B-2b zone:*
1. A change of use of 10,000 sq. ft. or less of floor area of a building or a portion of a building need not provide parking for non-residential uses, provided that if the number of existing parking

spaces serving the site is less than the requirements of this division, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except:

- a. To the extent necessary to meet the requirements of the Americans with Disability Act; or
 - b. To the extent it is a requirement or a condition of site plan review; or
 - c. To the extent the change of use requires less parking than the previous use and the total number of parking spaces serving the site exceeds the parking requirements of this division for all uses on the site including the change of use.
2. A newly constructed building, a building addition or a change of the use of a building exceeding 10,000 sq. ft. of floor area, shall provide the parking required by this division.
- (e) *B-3 Zone*: No off-street parking is required for changes of use.
 - (f) *I-R1, Island Business Zone*: Off-street parking shall be required at twenty-five (25%) percent of the required number of parking spaces for specified uses as provided in division 20 (off-street parking) of this article, except that residential uses shall meet the full parking requirement.
 - (g) *B-5 Zone*: No off-street parking shall be required.
 - (h) *B-6 Eastern Waterfront Mixed Use Zone*: Off-street parking for all projects regardless of size shall be governed by 14-332.2(c) of this article.
 - (i) *B-7, Mixed Development District Zone*: Off-street parking for all projects regardless of size, shall be governed by 14-332.2(c) of this article.
 - (j) *Waterfront Zone parking requirements; Eastern Waterfront Port Zone; Waterfront Central Zone; Waterfront Port Development Zone; Waterfront Special*

Use Zone: Off-street parking is required at fifty (50%) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.

- (k) *Residential development on the peninsula and in the R-6 and R-6A Zones, including new construction, alterations that increase the number of units, and changes of use:*
1. Except as provided below, there shall be one (1) space per unit
 2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
 3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.
 4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.
 5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions as of June 3, 2015. This exemption may be utilized one time.

(Ord. No. 240-09/10, 6-21-10; Ord. 209-14/15, 5/4/2015; (Ord. 83-15/16, 11-2-2015)

Sec. 14-332.2. Categorical exceptions and modifications to off-street parking requirements.

Regardless of which zone a project of use is located, the following exceptions to the off-street parking requirements listed above in section 14-332 are additionally hereby established.

- (a) *Home occupations, Section 14-410:* Any need for parking generated by the conduct of a home occupation allowed under section 14-410 of this article shall be met off the street and other than in a required front yard.
- (b) *Incentives for affordable housing- parking reductions:* For each low-income or workforce housing unit for rent or sale within an eligible project under the Affordable Housing Ordinance established in Division 30 of this article, no more than one (1) parking space shall be required. The planning board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.
- (c) *Site plans over 50,000 square feet and projects in the B-6, B-7, and USM Overlay Zones:* Where construction is proposed of new structures having a total floor area in excess of fifty thousand (50,000) square feet, the planning board shall establish the parking requirement for such structures. The parking requirement shall be determined based upon a parking analysis submitted by the applicant and upon the recommendation of the city transportation engineer.
- (d) *Exception for historic structures:* No parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required for any structure under Article IX of this chapter, as a contributing structure in a local or National Register historical district, or as a locally designated or National Register landmark building; however, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

(Ord. No. 240-09/10, 6-21-10; Ord. 82-15/16, 10-19-2015)

Sec. 14-332.3. Uses requiring off-street bicycle parking.

In all zones where off-street motor vehicle parking is required, minimum off-street bicycle parking requirements shall be provided and maintained in the case of new construction, alterations and changes of use as specified in Section 14-526(a)(2) (Site Plan Standards).
(Ord. NO. 134-07/08, 2-4-08)

Sec. 14-333. To be located on lot with principal use in residential zones; exceptions.

Required off-street parking in all residential zones and accessory off-street parking in R-1 through R-5 zones shall be located on the same lot with the principal building or use, except that the Board of Appeals may permit such off-street parking to be located at a distance of not more than three hundred (300) feet from the principal building or use, measured along lines of public access where it cannot reasonably be provided on the same lot if the premises to be used for parking are held under the same ownership or lease as the building or use served and if said premises are located in the same or a less restricted zone as the building or use served. Evidence of such control, either deed or lease, shall be required. The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

(Code 1968, § 602.14.C; Ord. No. 94-99, 11-15-99)

Sec. 14-334. To be located on lot with principal use in nonresidential zones; exceptions.

Required off-street parking in all nonresidential zones shall be located on the same lot with the principal building or use, or within one hundred (100) feet measured along lines of public access, except the Board of Appeals, or Planning Board when applicable, may permit off-street parking located further than one hundred (100) feet from the principal building or use upon finding that such off-street parking meets the following standards:

- (a) *Distance from principal building or use site:* Off-street parking shall be located no more than 1500 ft. from the principal building or use site measured along lines of public access.
- (b) *Control by ownership or lease:* The premises to be used for parking shall be held under the same ownership as the principal building or use or by lease with a term of not less than five (5) years with an option to renew. Evidence of such control, shall be required by showing for review and approval by City Corporation Counsel, at a minimum, a signed letter of intent, purchase and sale agreement, or option for sale or lease at the time of approval, and an executed deed or lease prior to issuance of any certificate of occupancy.

The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

(Code 1968, § 602.14.D; Ord. No. 430-83, § 1, 4-25-83; Ord. No. 94-99, 11-15-99; Ord. No. 241-10/11, 11-15-10)

Sec. 14-335. Off-street parking restricted.

Off-street parking shall not include:

- (a) More than one (1) commercial motor vehicle in any residence zone, the R-P zone or any B-1 zone;
- (b) More than six (6) commercial motor vehicles in any B-2 zone;
- (c) Loading, sales, dead storage, repair, or servicing of any kind, except when customarily incidental or accessory to a conforming principal building or use when located in an I-2, I-2b, I-3 zone and I-3b zone;
- (d) Except in the case of a car dealer, more than one (1)

unregistered motor vehicle stored outside for a period in excess of thirty (30) days in any residence zone, the R-P zone or any business zone;

- (e) Notwithstanding (1) above, any truck body, commercial trailer or similar commercial vehicles in any residence zone or the R-P zone.

(Code 1968, § 602.14.E; Ord. No. 298-88, 5-31-88)

Sec. 14-336. Location in residence zones for six or fewer vehicles.

(a) Where off-street parking for six (6) or fewer vehicles is required or provided in any residence zone, it shall not be located closer than fifty (50) feet to any street line if less than five (5) feet from any lot line and shall not be closer to any street line than the required depth of the front yard for the same lot, except on a corner lot where the minimum depth from the line of the side street shall be the minimum width of the side yard on the side street. Lots in the R-6 zone shall not be required to provide the five-foot setback required by this section, but parking in the R-6 zone shall meet the front yard setbacks set forth in this section.

(b) Parking shall be prohibited in the front yard of lots containing two (2) or more dwelling units, except within one (1) driveway on the lot. "Driveway," as used in this paragraph, shall not include any turnaround area.

(Code 1968, § 602.14.F; Ord. No. 231-90, § 1, 3-5-90; Ord. No. 310-98, § 2, 5-4-98)

Sec. 14-337. Location in residence zones for more than six vehicles.

Where off-street parking for more than six (6) vehicles is required or provided for nonresidential uses in residence zones, it shall not be located closer than twenty-five (25) feet to any residential structure on an adjoining lot.

(Code 1968, § 602.14.G)

Sec. 14-338. When located within required open yard areas in residence zones.

(a) Where off-street parking for more than six (6) vehicles is required or provided on a lot in a residence zone and vehicles are to be or may be parked within the area otherwise required to be kept open and unoccupied for front, side and rear yards in the zone in which such parking is located, the following requirements shall be met:

- (1) A continuous curb guard, rectangular in cross-section, at

least six (6) inches in height and permanently anchored, shall be provided and maintained at least five (5) feet from the street or lot line between such off-street parking and that part of the street or lot line involved; or a continuous bumper guard of adequate strength, the top of which shall be at least twenty (20) inches in height, shall be provided and maintained between such off-street parking and that part of the street or lot line involved so that bumpers of vehicles cannot project beyond its face toward the street or lot line involved, either above or below the impact surface.

- (2) Where such off-street parking shall abut a lot in residential use or an unoccupied lot which is located in a residence zone, a chain link, picket or sapling fence, not less than forty-eight (48) inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.

(b) Notwithstanding the provisions of subsection (a) of this section, parking shall be prohibited in the front yard of lots containing two (2) or more dwelling units, except within one (1) driveway on the lot. "Driveway," as used in this paragraph, shall not include any turnaround area.

(Code 1968, § 602.14.H; Ord. No. 231-90, § 2, 3-5-90)

Sec. 14-339. When located adjacent to a street or a residential use.

Where off-street parking for more than six (6) vehicles is required or provided on a lot in any business zone, the following requirements shall be met:

- (a) Where vehicles are to be or may be parked within ten (10) feet of any street line, a continuous curb guard, rectangular in cross-section, at least six (6) inches in height and permanently anchored, shall be provided and maintained at least five (5) feet from the street line between such off-street parking and that part of the street line involved; or a continuous bumper guard of adequate strength, the top of which shall be at least twenty (20) inches in height, shall be provided and maintained between such off-street parking and that part of the street line involved so that bumpers of vehicles cannot project beyond its face toward the street line involved either above or below the impact surface.

- (b) Where such off-street parking shall abut a lot in a residence zone or a lot in residential use, a chain link, picket or sapling fence, not less than forty-eight (48) inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.

(Code 1968, § 602.14.1)

Sec. 14-340. Construction requirements when more than six vehicles parked.

Where off-street parking for more than six (6) vehicles is required or provided, the following construction requirements shall apply:

- (a) Appropriate driveways from streets or alleys, as well as maneuvering areas, shall be provided. Location and width of approaches over public sidewalks shall be approved by the traffic engineer.
- (b) The surface of driveways, maneuvering areas and parking areas shall be uniformly graded with a subgrade consisting of gravel or equivalent materials at least six (6) inches in depth, well compacted, and with a wearing surface equivalent in quantities of compaction and durability to fine gravel.
- (c) A system of surface drainage shall be provided in such a way that the waste run-off shall not run over or across any public sidewalk or street.
- (d) Where artificial lighting is provided, it shall be shaded or screened so that no light source shall be visible from outside the area and its access driveways.

(Code 1968, § 602.14.J; Ord. No. 96-88, § 1, 7-19-88)

***Editor's note**—Ord. No. 96-88, § 1, adopted July 19, 1988, amended subsection (a) of 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. 96-88.

Sec. 14-341. Aisles required for six or more spaces.

In parking facilities containing six (6) or more parking spaces, there shall be provided vehicular access by one (1) or more aisles. Aisle widths shall be in conformance with the standards set forth in the City of Portland Technical Manual, as hereafter

amended.

(Code 1968, § 602.14.A; Ord. No. 272-77, 5-16-77; Ord. No. 389-89, § 2, 4-3-89;
Ord. No. 278-09/10, 7-19-10)

Sec. 14-342. Reserved.

***Editor's note**—Section 1 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed
§ 14-342, relative to a reduction of requirements by the board of appeals, which
derived from Code 1965, § 602.14.K.

**Sec. 14-343. Either the Board of Appeals or the Planning Board
may approve joint use.**

(a) Except as provided in subsection (b) below, the Board of Appeals may approve the joint use of a parking facility by two (2) or more principal buildings or uses where it is clearly demonstrated that the parking facility will substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees among such establishments. This section shall apply to residential uses in the B-1, B-1b, B-2, B-2c and B-3 zone which propose joint use of a parking facility with another principal use in the B-1, B-1b, B-2 and B-3 zone. The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

(b) Requests for joint use of parking in the B-2b zone shall be reviewed and approved by the Zoning Administrator only in the following circumstances:

1. Residential uses above the first (1st) floor in buildings in the B-2b zone shall be permitted to share parking spaces with commercial uses located in the same building; and
2. It is clearly demonstrated that the joint parking arrangement will substantially meet the intent of the

parking requirements by reason of a variation in the probable time of maximum use by patrons or employees of the commercial establishment and tenants of the residential dwelling units; and

3. Parties involved in the joint use of parking shall provide evidence of a binding agreement for the joint use of parking. Any subsequent modifications to the structure or change in the tenant occupancy of the commercial use(s) shall require review by the Zoning Administrator for conformance with this section.

Any decision by the Zoning Administrator on shared parking requests may be appealed to the Zoning Board of Appeals as an interpretive appeal pursuant to 14-471(a).

(Code 1968, § 602.14.L; Ord. No. 243-91, § 2, 3-11-91; Ord. No. 94-99, 11-15-99; Ord. No. 36-09/10, 8-17-09)

Sec. 14-344. Either the Board of appeals or the Planning Board may authorize parking in certain residence zones.

In R-3 through R-5 zones, the Board of Appeals may permit off-street parking for passenger cars only accessory to a use located in and conforming with the provisions of a nearby business or industrial zone (except B-1 zones) if the lot on which the use is proposed is located wholly within three hundred (300) feet, measured along lines of public access, of the principal building of the use to which the proposed use would be accessory and provided further that:

- (a) The lot where the parking use is proposed shall be under the control of the owner of the use to which the parking use would be accessory. 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.
- (b) The Board of Appeals may impose such conditions as deemed necessary to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this article and may at its discretion limit the period of such use.
- (c) The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

(Code 1968, § 602.14.M; Ord. No. 541-84, 5-7-84; Ord. No. 94-99, 11-15-99)

Sec. 14-345. Peninsula fee-in-lieu of parking.

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

- (a) Provide the number of off-street parking spaces according to the provisions of section 14-332 (uses requiring off-street parking) and section 14-334 (off-site parking) of this division; or,
- (b) Pay a fee-in-lieu of parking of not less than \$5,000.00 as adjusted annually per (c) below, per space not provided. Fees shall be deposited into the Sustainable Transportation Fund, as established in section 14-346 of this division.
- (c) The value of the fee shall be adjusted annually according to the Engineer's News Record construction index as published on January 1st of the current calendar year. The fee adjustment shall be calculated by taking the index amount published on January 1st, of the current year, divided by the index amount published on January 1, 2010 (8660), multiplied by (the fee amount from (b) above). The base fee, the adjustment index, or the calculation method may be otherwise amended by action of the city council from time to time.
- (d) The fee shall be paid on or before the date upon which a certificate of occupancy is issued. Payment shall be secured by a bond at the time the amount of the fee is set.

(Ord. No. 241-09/10, 11-15-10; Ord. 83-15/16, 11-2-2015)

Sec. 14-346. Sustainable transportation fund established.

By act of the Portland City Council, the Sustainable Transportation Fund is hereby established.

(Ord. No. 241-09/10, 11-15-10)

Sec. 14-346.1 Sustainable transportation fund purpose.

The purpose of the fund is to implement those provisions of the Peninsula Transit Study Report, and Action Plan, as adopted by the Portland City Council on August 3, 2009 as a component of the city's Comprehensive Plan, which recommended creation of a Sustainable Transportation Fund. The Peninsula Transit Study Report and Action Plan establish a goal to reduce the number and impact of single occupancy vehicle trips to and from the Portland Peninsula. Achieving this goal requires transportation choice for residents, businesses, and visitors to the Portland Peninsula. This ordinance establishes a funding source for broadening transportation choice and facilitating development with lower traffic impacts and reduced parking requirements.

The mechanism and protocol for collecting fees and spending funds are consistent with state requirements for utilizing transportation related impact fees.

(Ord. No. 241-09/10, 11-15-10)

Sec. 14-346.2. Deposits and expenditures for the Sustainable Transportation Fund.

(a) *Deposits*

1. The city shall establish a Sustainable Transportation Fund to be set up as a separate account within the city. Deposits into the fund shall include:
 - a. 100% of the revenue generated by the fee in-lieu of parking program, as established in section n14-345 of the city Land Use Code;
 - b. Funds appropriated for deposite into the fund by vote of the city council;
 - c. Voluntary contributions of money or other liquid assets to the fund; and,
 - d. Any federal, state or private grant or loan funds provided to the fund.

2. *Accounting of deposits by project and sub-district:* Funds from the fee in-lieu of parking program, as established in section 14-345 above, shall be individually collected and accounted for by project and the geographic *fee in-lieu of parking sub-district* in which it is located, as shown on the Portland Peninsula fee in-lieu of parking sub-district map on file with the Department of Planning and Urban Development.
3. *Funds to be used within 10 years of deposit:* Funds collected under the fee in-lieu of parking ordinance shall be spent on eligible infrastructure and/or capital improvements or expenses, as outlined in (b) and (c) below, within 10 years of the date of collection. Any funds which are not so utilized and which exceed the City's actual costs of implementing the infrastructure improvement or improvements for which such fees were collected shall be refunded. Refunds shall be paid to the owner of records of the property for which the funds were collected, determined as of the date the refund is made.
4. *Use of funds by sub-district:* Funds collected under the fee in-lieu of parking ordinance shall be spent on permitted expenditures of the fund, as outlined in (b) below, within the same geographic fee in-lieu of parking sub-district as the contributing project as depicted on the Portland Peninsula Fee In-Lieu of Parking Sub-district Map on file with the Department of Planning and Urban Development. However, for projects located within two hundred fifty (250) feet of an abutting sub-district, contributed fees can be used for eligible infrastructure projects in either abutting sub-district.

(b) *Permitted expenditures of the fund.*

The Sustainable Transportation Fund may only be expended on the activities as described below:

1. Funds collected as fees in-lieu of parking shall be expended toward capital transportation improvements on the Portland Peninsula. Such

capital improvements shall include but are not limited to the following:

- a. Parking Infrastructure
 - i. Shared-use, publicly accessible parking facilities;
 - ii. Publicly accessible bicycle racks and bicycle parking shelters;
 - b. Transit Capital Improvements and Expenses
 - i. Bus shelters, bus turnouts, transit signage and other transit amenities;
 - ii. Buses and transit vehicles;
 - iii. Transit and transportation information systems;
 - iv. Fixed guide way and/or rail transit systems;
 - c. Pedestrian and Bicycle Infrastructure
 - i. Multi-use trails, and non-vehicular transportation corridors;
 - ii. Pedestrian infrastructure and amenities located on publicly accessible rightsof way including, but not limited to cross walks, signalization, landscaping, street furniture, wayfinding signage, traffic calming, and lighting;
 - iii. New publicsidealksa nd new bicycle lanes along publicly accessible rights of way or corridors where such facilities are not previously provided;
 - d. Other such improvements intended to enhance transportation choice and promote transit and non-automotive transport on the Portland Peninsula.
2. Funds collected or appropriated by means other

than from a fee in-lieu of parking may be used for any of the capital transportation improvements listed above in (b) (1), and for any of the following uses:

- a. Transportation Demand Management Program administration;
- b. On or off-peninsula transit and/or non-automotive transportation capital or operating expenses;
- c. Transit and/or non-automotive transportation promotion and education material; and
- d. Other such programs or improvements intended to enhance transportation choice and promote transit and non-automotive transport for the City of Portland.

(c) *Annual Sustainable Transportation Plan and Appropriations Schedule:*

Annually, the city manager shall submit to the city council a recommended sustainable transportation plan and appropriations schedule, utilizing the revenues of the Sustainable Transportation Fund. The Transportation Committee of the city council or such other committee as the council shall designate shall recommend and refer the plan and appropriations schedule to the city council for action.

(Ord. No. 241-09/10, 11-15-10)

***Editor's Note**—The effect of Section 14-346.2(a) (iv) above is to establish the western boundary of the central sub-district as State Street, no High Street.

Sec. 14-347. - Sec. 14-350 Reserved.

DIVISION 21. OFF-STREET LOADING

Sec. 14-351. Minimum loading bays or loading berths.

In those zones where off-street loading is required, the following minimum off-street loading bays or loading berths shall be provided and maintained in the case of new construction,

alterations and change of use:

- (a) Office buildings and hotels with a gross floor area of more than one hundred thousand (100,000) square feet: One (1) bay.

- (b) Retail, wholesale and industrial operations with a gross floor area of more than five thousand (5,000) square feet:
 - 1. 5,000 to 40,000: 1 bay;
 - 2. 40,001 to 100,000: 2 bays;
 - 3. 100,001 to 160,000: 3 bays;
 - 4. 160,001 to 240,000: 4 bays;
 - 5. 240,001 to 320,000: 5 bays;
 - 6. 320,001 to 400,000: 6 bays;
 - 7. Each 90,000 over 460,000 square feet: 1 additional bay.

- (c) Hospitals and nursing and convalescent homes: Two (2) off-street loading areas shall be provided whereby one (1) service area for ambulance and other emergency vehicles shall be separate from one (1) service area accommodating supply vehicles, and whereby both off-street loading areas shall be separate from parking and entrance locations.

(Code 1968, § 602.15.A; Ord. No. 49-74, 1-7-74)

Sec. 14-352. Dimensions.

Each loading bay shall have minimum dimensions of fifty (50) feet by fourteen (14) feet and may be located either within a building or outside and adjoining an opening in the building, except that in the case of hospitals and nursing homes and convalescent homes, the off-street loading area provided for ambulance and other emergency vehicles shall be exempt from the minimum dimension requirement but shall be of sufficient width and depth to permit expeditious access and egress from the loading area. Every part of such loading bay shall be located completely off the street. In case trucks, trailers, or other motor vehicles larger than the dimensions of the minimum loading bay habitually

serve the building in question, additional space shall be provided so that such vehicle shall park or stand completely off the street. (Code 1968, 602.15.B; Ord. No. 49-74, 1-7-74)

Sec. 14-353. Requirements to be met for additional bays and for alterations or modifications.

Any additional loading bays which are provided in excess of the requirements of this article or any loading bays otherwise established shall meet the requirements of section 14-352, and no alterations or modifications shall be made in an existing building or structure whereby loading openings or platforms are constructed or established unless the provisions of section 14-352 are met. (Code 1968, § 602.15.C)

Sec. 14-354. Reserved.

***Editor's note**—Section 2 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed § 14-354, relative to variance prohibited, exception, which derived from Code 1968, § 602.15.D.

Sec. 14-355. - Sec. 14-365. Reserved.

DIVISION 22. SIGNS*

***Editor's note**—Ord. No. 252-94, § 2, passed Apr. 4, 1994, repealed Div. 22 of this article, §§ 14-366-14-368, relative to signs and billboards, and added new provisions relative to signs as set forth in §§ 14-366-14-372.5. Formerly, such provisions derived from §§ 602.10A.G, 602.13B and 602.16.A-602.16.C of the 1968 Code as amended by the following legislation:

Ord. No.	Section	Date	Ord. No.	Section	Date
499-74	7	8-19-74	538-81	1	2-18-81
536-74	2	8-19-74	39-85	1	7-15-85
334-76	7	7- 7-76	284-88		12-12-88
269-77		5-16-77	371-91	1	6- 5-91
270-77		5-16-77			

Cross reference(s)—Signs prohibited in cemeteries, § 7-137.

Sec. 14-366. Purpose.

The purpose of this division is to balance the need for adequate identification, communication and advertising for all land uses with the need to protect the public safety and welfare and to maintain and enhance the aesthetic environment of the City of Portland. The following policies shall apply in regulating signs:

- (a) To allow for the orderly advertisement and identification of goods and services by public and private establishments in the city;
- (b) To enhance public awareness of and access to goods, services and attractions by promoting visual order and clarity on city streets;
- (c) To promote traffic safety by controlling the location, design and placement of signs on city streets; and
- (d) To protect property values by ensuring the appropriate location, size, number and use of signs in neighborhoods and business districts.

(Ord. No. 252-94, § 2, 4-4-94)

Sec. 14-366.5. Applicability.

A sign may be erected, placed, established, painted, created or maintained in the city only in conformance with the standards, procedures, exemptions and other requirements of this division.

All signage of a commercial nature, whether or not exempt from the receipt of a permit hereunder, shall be removed within thirty (30) days from the earlier of: vacancy of the advertised space by the applicable owner and/or tenant, or the cessation of the commercial enterprise so advertised. This subsection shall not apply to signs which have acquired historic significance, such as painted wall signs, as so determined by the Historic Preservation Program Manager. The owner of the building and/or any tenant advertising through the use of such signage each shall be responsible for adhering to this requirement.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 187-02/03, 4-7-03)

Sec. 14-367. Definitions.

For the purposes of this division, the following definitions

shall apply, in addition to the provisions of section 14-47:

Animated sign: Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

Awning sign: Any sign that is a part of or attached to an awning, canopy or other fabric, plastic or structural protecting cover over a door, entrance, window, storefront or outdoor service area or any internally illuminated awning sign. A marquee shall not be considered an awning.

Banner: Any sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one (1) or more edges. National, state and municipal flags or the official flag of any institution or business shall not be considered banners.

Beacon: Any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same lot as the light source or any light with one (1) or more beams that rotate or move.

Building marker: Any sign indicating the name of a building, date of construction, or other incidental information about its construction and/or history.

Building sign: Any wall sign, projecting sign, suspended sign, or any sign attached to any exterior part of a building. Interior window signs shall not be considered building signs and shall not be included in the calculation of maximum cumulative sign area or maximum number of permitted signs.

Bus shelter signs: as specified in 23 M.R.S.A. § 1908-A, a bus shelter sign is any outdoor sign visible to the traveling public from a public way that is affixed to a publicly owned bus shelter where a public transport bus stops for the purpose of allowing passengers to board and/or leave the bus.

Changeable copy sign: A sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight (8) times per day shall be considered an animated sign and not a changeable copy sign for the purposes of this division. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a time and temperature portion of a sign and not a changeable copy sign for purposes of this division.

Commercial message: Any sign wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

Community/cultural banner: Banners located in the public right-of-way intended to serve a community purpose or convey information of community-wide interest.

Department: The department of planning and urban development.

Directory sign: A sign located at or near the entrance of a multi-tenant building, lot or park, the sole purpose of which is to provide a listing of names of individual tenants located thereon.

Flag: Any fabric, banner or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision or other entity.

Freestanding sign: Any sign supported by structures or supports that are placed on or anchored in the ground and that are independent from any building or other structure.

Incidental sign: A sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. Directional signs indicating the location of a building, tenant or entrance shall also be considered incidental signs. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

Internally illuminated awning sign: An awning that is translucent and lighted from within and which either incorporates any commercial message, trademark or symbol or is readily concurrently visible with another internally illuminated awning sign that incorporates a commercial message, trademark or symbol.

Landmark sign: An existing sign determined by the department to have attained a high degree of community, cultural, aesthetic or historic significance.

Marquee: Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

Marquee sign: Any sign attached to in any manner, or made part of, a marquee.

Multi-tenant lot: Any lot with more than one (1) business or more than one (1) use with exterior signs.

Nonconforming sign: Any sign that does not comply with the requirements of this division.

Pennant: Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in a series, designed to move in the wind.

Portable sign: Any sign not permanently attached to the ground or some type of permanent structure, or a sign designed to be transported including, but not limited to, signs designed to be transported by means of wheels; signs converted to or located on A- or T-frames; menu and sandwich board signs; inflatable signs or large-scale tethered balloons; and/or signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

Principal facade: Any facade or facades that constitute the primary visual and functional orientation of the building or tenant space, characterized by a combination of such features as principal entry, storefront and visibility from streets or parking areas.

Projecting sign: Any sign affixed to a building or wall in such a manner that its leading edge extends more than twelve (12) inches beyond the surface of the building or wall. A projecting sign may be either perpendicular or parallel to a wall and may have a message on more than one (1) face.

Readily concurrently visible signs: Any combination of signs that can be clearly and simultaneously viewed by an individual from any publicly accessible vantage point.

Residential sign: Any sign located in a district zoned for residential uses that contains no commercial message except advertising for goods and services offered on the premises where the sign is located, provided that offering such goods or services conforms with all requirements of this article.

Roof sign: Any sign erected and constructed wholly on and over

the roof of a building, including attachment to a rooftop mechanical parapet supported by the roof structure, and extending vertically above the highest portion of the roof.

Roof sign, integral: Any sign incorporated as an integral or essentially integral part of a normal roof structure of any design, including attachment to a rooftop mechanical parapet, where no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six (6) inches.

Security sign: Any sign that is placed upon a lot or a building to inform of the location of a security or other alarm system located upon the lot or within the building.

Sign: Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

Street frontage: The distance for which a lot line of a lot adjoins a public street, from one (1) lot line intersecting said street to the furthest distant lot line intersecting the same street.

Suspended sign: A sign that is suspended from the underside of a horizontal plane surface and is supported by that surface.

Temporary sign: Any sign, except for a window sign, that is used for a period of not more than thirty (30) days and that is not permanently mounted.

Wall area: The area of a wall within a single plane.

Wall sign: Any sign parallel and attached to a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one (1) sign surface.

Window sign: Any sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, that is placed inside a window or upon the interior face of window panes or glass, and is visible from the exterior of the window.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 37 06/07, 9-6-06; Ord. No. 91-11/12, 5-21-12)

Sec. 14-368. Regulations.

(a) *Signs allowed on private property with and without permits.* Signs shall be allowed on private property in the city in accordance with, and only in accordance with, Table 1 of section 14-369.5. If the notation "A" appears for a sign type in a column, such sign is allowed without prior approval as provided in this division in the zoning district(s) represented by that column. If the notation "B" appears for a sign type in a column, such sign is allowed only with prior permit approval in the zoning district(s) represented by that column. Special conditions may apply in some cases. If the notation "D" appears for a sign type in a column, such a sign is not allowed in the zoning district(s) represented by that column under any circumstances.

Although permitted under the previous paragraph, a sign designated by an "A" or "B" in Table 1 of section 14-369.5 shall be allowed only if:

1. The sum of the area of all building and freestanding signs on the lot conforms with the maximum permitted sign areas for such as determined by the formula for the zoning district in which the lot is located as specified in Table 2 of section 14-369.5; and
2. The size, location and number of signs on the lot conform with the requirements of Table 2 of section 14-369.5, which establish permitted sign dimensions by sign type, and with any additional limitations listed therein.

(b) *Permits required.* If a sign requiring a permit under the provisions of this division is to be placed, constructed, erected or modified on a lot, the owner of the lot shall secure a sign construction permit prior to the construction, placement, erection or modification of such a sign in accordance with the requirements of section 14-368.5. In addition, the property owner shall maintain in force at all times a sign construction permit for such sign in accordance with section 14-368.5.

No signs shall be erected in the public right-of-way except in accordance with subsection (e) of this section and the permit requirements of section 14-368.5.

No sign permit of any kind shall be issued for an existing or proposed sign unless such sign is in compliance with the requirements of this division, including those protecting existing signs.

(c) *Design, construction and maintenance.* All signs shall be designed, constructed and maintained in accordance with the following standards:

1. All signs shall comply with applicable provisions of the building code and the electrical code of the city at all times;
2. Except for banners, flags, temporary signs, portable signs and window signs conforming in all respects with the requirements of this division, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building or another structure by direct attachment to a rigid wall, frame or structure; and
3. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this Code, at all times;
4. Signs located in or adjacent to residential zones shall not cause light spillover or glare into properties within the residential zone.

(d) *Signage plan.* No permit shall be issued for an individual sign requiring a sign construction permit unless and until a signage plan for the lot on which the sign will be erected has been submitted to the department.

For any lot on which the owner proposes to erect one (1) or more signs requiring a permit, the owner shall submit to the department a signage plan containing the following:

1. A sketch plan of the lot. The sketch plan should indicate the location of buildings and driveways on the lot, as well as any abutting streets. Length of building frontages and street frontage(s) should also be noted;
2. An indication on the sketch plan of the proposed location of each existing and proposed sign of any type, except that incidental, portable, temporary and window signs need not be shown. For building signs, a sketch or a photograph of each building wall shall be provided indicating wall and sign dimensions; and
3. Computations of the following:

- a. A listing of each building sign (existing and proposed), identifying the location of each such sign and its sign area;
 - b. A listing of each freestanding sign (existing and proposed), indicating the area, height and setback of each such sign; and
4. A sketch of proposed signs, indicating dimensions, materials, source of illumination and construction method.

For purposes of this section, a sketch plan shall not require a stamp by a licensed professional such as an engineer or an architect. Measurements may be estimated. For multi-tenant lots or buildings, individual tenants shall be required to submit only those measurements applicable to their individual frontage or as otherwise required to review their application. Once a sketch plan has been filed for a property, the department shall keep a record of such plan so that a new sketch plan shall not be required for later changes to signage on a site for which a sketch plan has been previously submitted.

(e) *Signs in the public right-of-way.* No signs shall be allowed in the public right-of-way, except for the following:

1. Permanent signs, limited to the following: Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic, including parking regulatory signs; bus stop signs erected by a public transit company; informational signs of a public utility regarding its poles, lines, pipes or facilities.
2. Signage meeting the requirements of section 14-370.
3. Emergency warning signs erected by a governmental agency, a public utility company or a contractor doing authorized or permitted work within the public right-of-way.
4. Community/cultural banners.
5. Permanent directional signs retail/accessory retail in residential zones. A lawfully existing retail business, existing as of March 1, 2008 and located in a residential

zone, qualifies for an off-premise sign if it meets the following requirements: 1) the establishment is not a home occupation; 2) the establishment is not located within 500 feet of a major or minor arterial; 3) the sign would be no larger than 12 inches x 48 inches and would otherwise adhere to the requirements set out by MDOT/MUTCD in their standard sign manual. Such establishment may qualify for one, two-sided, or two one-sided, off-premise signs to be located on a major or minor arterial in a location determined safe by the city traffic engineer and upon the payment of an initial fee of \$300.00, with an annual renewal fee of \$30.00. In the event the sign is damaged or destroyed, the replacement of any sign shall be the sole responsibility of the permittee. The permittee shall be required to obtain a permit for said sign from the building inspections department, after securing \$400,000 insurance for said sign, naming the City of Portland as an additional insured.

6. Bus shelter signs as provided for in section 14-371 (k).

(f) *Signs in historic districts, in historic landscape districts, or on individual landmark properties.* Signs in historic districts, in historic landscape districts, or on individual landmark properties shall also be subject to the provisions of article IX of this chapter. Where the regulations of article IX are either more or less stringent than those set forth in this division, the more stringent standard shall apply.

(g) *Signs in Pedestrian Activities District (PAD) overlay zone and PAD encouragement areas.* Signs in PAD overlay zone and PAD encouragement areas of the B-3 zone shall also be subject to the standards set forth in the Downtown Urban Design Guidelines. Where those standards are either more or less stringent than the regulations set forth in this division, the more stringent standard shall apply.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 143-07/08, 5-19-08; Ord. No. 91-11/12, 5-21-12)

Sec. 14-368.5. Permits.

The procedures set forth below shall govern the application for, and issuance of, all sign permits under this division, unless a sign is also subject to review under any other division or section of this chapter or any other chapter of this Code, including site plan and historic preservation ordinances. Where a sign requires such other review, the time periods set forth in the

ordinance for that review process shall control.

- (a) *Applications.* All applications for sign permits of any kind shall be submitted to the department on an application form or in accordance with application specifications published by the department.
- (b) *Fees.* Each application for a sign permit shall be accompanied by the applicable fees, which shall be established by the council order.
- (c) *Action on sign permit application.* Within ten (10) working days of receipt of a complete application, the department shall either:
 - 1. Issue the sign permit, if the sign that is the subject of the application conforms in every respect with the requirements of this division; or
 - 2. Deny the sign permit if the sign that is the subject of the application fails in any way to conform with the requirements of this division. In the event of a denial, the department shall set forth in writing the reasons for the denial.
- (d) *Permits to construct or modify signs.* Signs identified with the notation "B" on Table 1 shall be erected, installed or created only in accordance with a duly issued and valid sign construction permit issued by the department. Such permits shall be issued only in accordance with the requirements and procedures of subsection (f) of this section.
- (e) *Application for new sign or for sign modification.* An application for construction, creation or installation of a new sign or for modification of an existing sign shall be accompanied by drawings to show the dimensions, design, source of illumination, construction method and location of each particular sign. One (1) application and construction permit may include more than one (1) sign on the same lot.
- (f) *Assignability of sign permits.* A current and valid sign permit issued under this division shall be freely assignable to a successor as owner of the property or operator of the premises. The assignment shall not require approval by the department. This provision shall

also apply to signs lawfully in existence on April 4, 1994, which are further subject to the provisions of section 14-372.

- (g) *Issuance pursuant to level II site plan review.* An applicant for a permit or other approval under this division whose application has been denied for failure to meet the regulations contained in section 14-369.5 may apply to the planning authority for review of the denied signage pursuant to the standards set forth in section 14-526(d)8, provided, however, that no site plan fee shall be required for this review and no site plan submission materials shall be required beyond those necessary to allow review under this section.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 278-09/10, 7-19-10)

Sec. 14-369. Computations.

Sign area, sign height and number of signs shall be computed in accordance with the following principals:

- (a) *Computation of area of individual signs:* For all signs other than awning signs, the area of a sign face shall be computed by means of the smallest square, circle, rectangle, triangle or simple polygon that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display, but not any supporting framework, bracing or decorative fence or wall when such fence is clearly incidental to the display itself.
- (b) *Computation of area of multifaced signs:* The sign area for a sign with more than one (1) face shall be computed by adding together the area of all sign faces visible from any one (1) point. When two (2) identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time and when such sign faces are part of the same sign structure and are not more than forty-two (42) inches apart, the sign shall be computed by the measurement of one (1) of the faces.
- (c) *Computation of area of awning signs:*
1. For opaque awnings, only those sections which incorporate writing, symbols, emblems or other types of graphics used for the purposes of identification or advertisement shall be included

in computing sign area. The methods set forth in subsection (1) of this section shall be utilized in measuring sign area on opaque awnings. Street names and numbers on opaque awnings shall not be considered to be signs for purposes of this section, unless a business located within the building has the street name and/or the street number as its name.

2. For awnings that are translucent and internally illuminated and that incorporate any commercial message, trademark or symbol, the sign area shall be computed as the two-dimensional projection of the awning onto the face of the building on which the awning is to be installed. Such awnings which wrap around building corner(s) shall be treated as separate awnings on each respective building face and shall be considered as signs if they include any message, trademark or symbol. Internally illuminated bands shall be permitted across the building face without being included in the calculations under this subsection, provided that such bands do not include any message, trademark or symbol and that the bands do not exceed three (3) feet in height.
 3. Where only a portion of the awning is translucent and internally illuminated, only the area of the translucent illuminated portion shall be included in computing sign area, unless commercial message content appears on other opaque portion(s) of the awning. Opaque portions of these types of awnings shall be computed in accordance with subsection a. above.
- (d) *Computation of height:* The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be considered the lower of either existing grade prior to construction or the newly established grade after construction excluding any filling, berming, mounding or excavating accomplished solely for the purpose of locating the sign. In cases where the normal grade cannot reasonably be determined, sign height shall be computed based upon the assumption that the elevation of the normal grade at the base of the

sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

- (e) *Computation of number of signs:* For purposes of computing the number of signs, a single sign shall be considered either enclosed within a single frame or composed of modular parts with identical frame elements designed to be joined together to form a single composite sign.

(Ord. No. 252-94, § 2, 4-4-94)

Sec. 14-369.5. Tables.

- (a) *Table 1. Permitted sign types by zone.*

Note: The following legend applies for Table 1 below:

- A. Allowed, no permit required;
- B. Allowed, permit required;
- C. Allowed, subject to licensing and permit required;
- D. Prohibited;
- E. Not Applicable

Parenthetical letters, i.e. (a), refer to the notes provided at the end of Table 1.

	<i>R-1/R-6 IR-1/IR-3 Residential</i>	<i>Institutional Uses in Residential Zones (a)</i>	<i>RP Residence Zones</i>	<i>ROS/RPZ Open Space</i>	<i>B-1 Neighborhood Business</i>	<i>B-2 Regional Business</i>
Freestanding	D	B	B	B	B	B
In general(b)						
Residential I	A	A	A	E	A	A
Residential (d)	D	A	A	A	A	A
Temporary/ Portable (b)	D	D	D	D	D	B
Building	D	D	D	B	B	B
Commercial Banner						
Building	A	A	A	A	A	A
Marker (f)						
Awning	D	D	D	B	B	B
Identification (e)	A	A	A	A	A	A
Incidental (d)	A	A	A	A	A	A
Marquee (g)	D	D	D	D	D	B
Projecting	A	D	D	B	B	B
Residential (b)	A	D	A	E	A	A
Roof	D	D	D	D	D	D
Roof Integral	D	D	D	D	D	D
Suspended (g)	A	D	D	B	B	B

Temporary(h)	D	D	D	B	B	B
Wall	A	B	D	B	B	B
Window(I)	D	D	A	A	A	A
Miscellaneous	D	A	A	A	A	A
Community, Cultural Banner						
Directory(j)	D	A	A	D	A	A
Flag(k)	A	A	A	A	A	A
Pennant	D	D	D	D	D	D
Portable-in City right-of-way (A-frame)	D	D	D	D	C	C

Mixed-use
Urban B-6/B-7

	<i>AB Airport Business</i>	<i>Downtown Business (B-3) & Urban Com- mercial (B-5)</i>	<i>I-B Island Business</i>	<i>B-4 Commercial Corridor</i>	<i>O-P Office Park</i>	<i>I-L, I-Lb Industrial</i>
Freestanding	B	B	D	B	B	B
In general(b)						
ResidentialI	A	A	A	A	E	A
Residential(d)	A	A	A	A	A	A
Temporary/ Portable (b)	D	D	D	B	D	D
Building	B	B	B	B	D	B
Commercial Banner						
Building	A	A	A	A	A	A
Marker(f)						
Awning	B	B	B	B	B	B
Identification(e)	A	A	A	A	A	A
Incidental(d)	A	A	A	A	A	A
Marquee(g)	B	B	D	B	B	B
Projecting	B	B	B	B	B	B
Residential(b)	A	A	A	A	E	A
Roof	D	D	D	D	D	D
Roof Integral	D	D	D	D	D	D
Suspended(g)	B	B	B	B	B	B
Temporary(h)	B	B	B	B	D	B
Wall	B	B	B	B	B	B
Window(I)	A	A	A	A	A	A
Miscellaneous	A	A	A	A	A	A
Community, Cultural Banner						
Directory(j)	A	A	A	A	A	A
Flag(k)	A	A	A	A	A	A
Pennant	D	D	D	D	D	D
Portable-in City right-of-way (A-frame)	C	C	C	C	D	D

*Eastern
Waterfront
Port
Waterfront*

	<i>I-M, I-Ma, I-Mb Industrial</i>	<i>I-H, I-Hb Industrial</i>	<i>Central Waterfront Special Use</i>	<i>Waterfront Port Development</i>
Freestanding	B	B	B	B
In general (b)				
Residential I	A	A	A	A
Residential (d)	A	A	A	A
Temporary/ Portable (b)	D/D	B/D	D	D
Building	B	B	B	B
Commercial Banner				
Building	A	A	A	A
Marker (f)				
Awning	B	B	B	B
Identification (e)	A	A	A	A
Incidental (d)	A	A	A	A
Marquee (g)	B	B	B	B
Projecting	B	B	B	B
Residential (b)	A	A	A	A
Roof	D	D	D	D
Roof Integral	D	D	D	D
Suspended (g)	B	B	B	B
Temporary (h)	B	B	B	B
Wall	B	B	B	B
Window (I)	A	A	A	A
Miscellaneous	A	A	A	A
Community, Cultural Banner				
Directory (j)	A	A	A	A
Flag (k)	A	A	A	A
Pennant	D	D	D	D
Portable-in City right-of-way (A-frame)	D	D	C	D

Notes for Table 1 (Permitted Sign Types by Zone).

- (a) This column does not represent a zoning district. It applies to institutional uses permitted under the zoning ordinance in residential zoning districts. Such uses may include, but are not necessarily limited to, churches, schools and hospitals.
- (b) The following limiting provision shall apply to freestanding signs in the B-1, B-2 and B-3 zones on the Portland Peninsula (except for the B-2 zone in the vicinity of St. John Street): Such signs shall be allowed only if the front facade of the building (or individual tenant's/tenants' frontage in the case of a multi-tenant building) is set back a distance of at least twenty (20)

feet from either of the front facades of the abutting buildings (or other tenants' frontage in the same multi-tenant building). Notwithstanding the limitations of this section, freestanding signs shall be permitted for gas stations provided that all signage for such gas stations conform to the requirements of this division.

- (c) No commercial message allowed on sign, except for a commercial message drawing attention to an activity legally offered on premises.
 - (d) No commercial message of any kind allowed on a sign if such message is legible from any location off the zone lot on which the sign is located.
 - (e) Only address and name of occupant allowed on sign.
 - (f) May include only building name, date of construction, or historical data on historical site.
 - (g) If such a sign is suspended or projects above a public right-of-way, the issuance and continuation of a sign permit shall be conditioned on the sign owner obtaining and maintaining in force liability insurance for such a sign.
 - (h) The provisions governing portable/temporary signs shall apply. See section 14-370.
 - (i) Window signs shall be allowed without a permit and shall not be included when calculating cumulative sign area. However, in no event shall more than fifty (50) percent of window area be obscured.
 - (j) Directory signs, freestanding or on buildings, shall be allowed without a permit and shall not be included when calculating cumulative sign area, provided the sign area for each tenant does not exceed one and one-half (1.5) square feet.
 - (k) Flags used as a symbol of a government, political subdivision or other entity. Any flag not meeting this description shall be considered a banner sign or pennant and shall be subject to regulation as such.
- (b) *Table 2. Sign regulations by zone.* Table 2 is comprised of

fourteen (14) individual charts outlining sign regulations for each zone in the city. Regulations are for permanent freestanding and building signs and shall not apply to portable/temporary signs, special sign types, incidental signs, directory signs or exempt signs. See applicable sections of this division for regulations governing such signs.

Other applicable regulations:

- * Signs in historic districts, in historic landscape districts, or on individual landmark properties shall also be subject to the provisions of article IX of this chapter. Where the regulations of article IX are more stringent than those set forth in this division, the more stringent standard shall apply.
- * Signs associated with projects otherwise subject to site plan review shall also be subject to the provisions of article V of this chapter.
- * Signs located in the Pedestrian Activities District (PAD) overlay zone and in PAD Encouragement Areas within the B-3 zone shall also be subject to the standards set forth in the Downtown Urban Design Guidelines.

Contents of Table 2:

- 2.1 Sign Regulations for R-1-R-7, IR-1-IR-3 Residential Zones
- 2.2 Sign Regulations for Institutional Uses in Residential Zones
- 2.3 Sign Regulations for RP Residence-Professional Zone
- 2.4 Sign Regulations for ROS/RPZ Open Space Zones & Signs in all Municipal Parks
- 2.5 Sign Regulations for B-1 Neighborhood Business Zone – Single Tenant Lots
- 2.6 Sign Regulations for B-2 Regional Business Zone – Single Tenant Lots

2.7 Sign Regulations for AB Airport Business Zone – Single Tenant Lots

2.8 Sign Regulations for B-3 Downtown Business, B-5 Urban Commercial, B-6 and B-7 Mixed Use Urban, WC Waterfront Central, and EWP, Eastern Waterfront Port Zones

2.9 Sign Regulations for IB Island Business Zone – Single Tenant Lots

2.10 Sign Regulations for B-4 Commercial Corridor Zone – Single Tenant Lots

2.11 Sign Regulations for OP Office Park Zones

2.12 Sign Regulations for I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb Industrial and WPD Waterfront Port Development Zones

2.13 Sign Regulations for B-1, B-2, AB, IB, and B-4 Business Zones – Multi-Tenant Lots

2.14 Sign Regulations for Gas Stations – All Zones Where Permitted

TABLE 2.1 R1 – R6, IR1 – IR3: RESIDENTIAL AND ISLAND RESIDENTIAL ZONES

Freestanding Signs

	<i>Single-Family Lots</i>	<i>PRUDs, Single-Family Subdivisions & Multifamily Developments – Development Identification Signs</i>
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Area	2 sq. ft.	15 sq. ft.
Height	5 feet	5 feet
Setback	5 feet	5 feet
Number freestanding signs per lot	1(a)	1 per major entrance

(a) A maximum of one (1) sign is allowed per lot. Such sign may be either a freestanding or a building sign.

Building Signs

	<i>Single-Family Lots</i>	<i>PRUDs, Single-Family Subdivisions & Multifamily Developments – Development Identification Signs</i>
Maximum permitted sign area	2 sq. ft.	10 sq. ft.
Number building signs permitted per lot	1(a)	1(b)

(a) A maximum of one (1) sign is allowed per lot. Such sign may be either a freestanding or a building sign.

(b) One (1) allowed per street frontage, provided there are no freestanding signs on the lot or development.

TABLE 2.2 INSTITUTIONAL USES IN RESIDENTIAL ZONES

(Regulations apply to institutions permitted as conditional uses in residential zoning districts. Such uses may include, but

are not necessarily limited to, churches, schools, private clubs, fraternal organizations and hospitals.)

Freestanding Signs

	<i>Street Frontage < 100'</i>	<i>Street Frontage 100' to 250'</i>	<i>Street Frontage > 250'</i>
Area	15 sq. ft.	25 sq. ft.	50 sq. ft.
Height	6 feet	8 feet	8 feet
Setback	5 feet	5 feet	5 feet
Number freestanding signs per lot	1/st. frontage (a) (b)	1/st. frontage (a) (b)	1/st. frontage (a) (b)

(a) Lots fronting on two (2) or more streets are allowed one (1) freestanding sign for each frontage. However, the area of each sign shall correspond to the length of the applicable frontage. Freestanding signs shall be positioned such that they are not readily concurrently visible.

(b) Where one (1) lot contains more than one (1) affiliated use, each use shall be allowed one (1) sign per street frontage.

Note: Pertinent directional information shall, to the extent possible, be included on the principal freestanding sign. Additional directional signs shall be allowed only in the event that necessary information cannot fit reasonably within the permitted sign area. The size of additional signs shall be the minimum necessary to achieve the informational objective.

Building Signs (a)

Maximum permitted sign area	na
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Percent of wall area on which sign is to be placed	5%
Number building signs permitted per lot	1/building face (b)

- (a) Building signs shall be reviewed for compliance with sign standard(s) included in site plan ordinance and shall under no circumstances be internally illuminated.
- (b) One (1) sign is allowed per building face, provided such signs are not readily concurrently visible.

TABLE 2.3 RESIDENCE-PROFESSIONAL (R-P) ZONE

Freestanding Signs

Area	30 sq. ft.
Height	8 feet
Setback	5 feet
Number permitted per lot	1 (a)

- (a) Lots fronting on two (2) or more streets are allowed one (1) freestanding sign of equivalent size for each street frontage with vehicular entry, provided such signs are not readily concurrently visible.

Building Signs

None allowed, other than incidental and/or directory signs.

TABLE 2.4 ROS & RPZ OPEN SPACE ZONES AND SIGNS IN ALL MUNICIPAL PARKS

These regulations shall not apply to municipal stadiums with a seating capacity of greater than six thousand (6,000) seats.

See also section 14-370.7 (special sign types) for regulation of signs associated with seasonal sales/markets, special events, fairs/festivals, etc. Signs in designated historic landscape districts shall also be subject to the provisions of article IX of this chapter.

Freestanding Signs (a)

	<i>General Park Identification Sign</i>	<i>Concession/Facility Signs (b)</i>
Area	20 sq. ft.	16 sq. ft.
Height	5 feet	8 feet
Setback	5 feet	5 feet
Number freestanding signs per lot	1 per major vehicular entry	1 per concession or facilityI

- (a) All signs shall be integrated with existing landscape features or shall be visually related to existing architecture in terms of materials, color, scale, etc., as determined by the planning authority.
- (b) Product trademarks shall be limited to not more than five (5) percent of the total sign area.
- (c) Concession stands or other facilities located within an RPZ or ROS zone shall be allowed one (1) freestanding sign or building sign, not both.

Building Signs (a)

	<i>Concession/Facility Signs</i>
Maximum permitted sign area	20 sq. ft.

Square feet per linear foot of building facade on which sign will be placed	1 sq. ft.
Number building signs permitted per lot	1 per concession or facility(b)

- (a) Building signs shall be visually related to the building on which they are located in terms of materials, color, scale, etc., as determined by the planning authority. Product trademarks shall be limited to not more than five (5) percent of the total sign area.
- (b) Concession stands or other facilities located within an RPZ or ROS zone shall be allowed one (1) freestanding sign or building sign, not both.

Scoreboards

Scoreboard size shall correspond to the size and type of facility in which it is to be located, as determined by the recreation director. Commercial sign content shall not exceed fifteen (15) percent of surface area of scoreboard.

Ballfield Booster or Sponsor Signs

Such signs shall be exempt from regulation, provided they remain in place only for the applicable season and do not exceed thirty-two (32) square feet in area each.

TABLE 2.5 NEIGHBORHOOD BUSINESS (B-1) ZONE—SINGLE TENANT LOTS

Freestanding Signs

Area	32 sq. ft.
Height	16 feet
Setback	5 feet

Number freestanding signs permitted per lot	1
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Building Signs

	As of Right
Maximum cumulative area of all building signs	100 sq. ft.
Square feet per linear foot of building facade on which sign will be placed	1 1/2 feet
Number building signs permitted per lot	1 per building facade facing on abutting st. + 1 additional

TABLE 2.6 REGIONAL BUSINESS (B-2) ZONE – SINGLE TENANT LOTS

Freestanding Signs

	<i>Facing Street Frontage < 200'</i>	<i>Facing Street Frontage > 200'</i>
Area	65 sq. ft.	100 sq. ft.
Height	18 feet	18 feet
Setback	5 feet	5 feet
Number permitted per lot	1 (a)	1 (a)

- (a) If lot fronts on more than one (1) street, one (1) freestanding sign is permitted for each additional frontage, but at one-half the maximum allowable area for the original, except in those instances where the

freestanding signs are not concurrently visible. In such an instance, additional freestanding signs shall be permitted the full area allowance.

Building Signs

	<i>Building Face < 150 Linear Feet</i>	<i>Building Face > 150 Linear Feet</i>
Maximum cumulative area of all building signs (b)	150 square feet (a)	225 (a)
Square feet per linear foot of building facade on which sign will be placed	2 feet	Same
Number of building signs permitted per lot	1 per building facade facing an abutting street + 1 additional	Same

(a) If any one (1) building face on which a sign is to be placed exceeds one hundred fifty (150) linear feet, then the maximum allowable sign area for the building as a whole is increased to two hundred twenty-five (225) square feet. However, the limit of two (2) square feet per linear foot of building frontage still applies for purposes of calculating maximum sign area for each building face.

(b) Where a building features two (2) principal entry facades facing parallel streets, each such entry facade shall be eligible for the full amount of signage relative to its frontage, notwithstanding the maximum cumulative sign area.

TABLE 2.7 AIRPORT BUSINESS (AB) ZONE

Freestanding Signs

	<i>Facing Street Frontage < 200'</i>	<i>Facing Street Frontage > 200'</i>
Area	32	65
Height	16	16
Setback	5	5
Number permitted per lot	1(a)	1(a)

(a) If lot fronts on more than one (1) street, one (1) freestanding sign is permitted for each additional frontage, provided such signs are not readily concurrently visible.

Building Signs

Maximum cumulative area of all building signs	na
Square feet per linear foot of building facade on which sign will be placed – or –	2 sq. ft.; or
Maximum percent of wall area on which sign(s) is(are) to be placed	6%
Number building signs permitted per lot	1 per building facade facing an abutting street + 1 additional

TABLE 2.8 SIGN REGULATIONS BY ZONE

Downtown Business (B-3), Urban Commercial (B-5), and Waterfront Central (WC) Zones

* Signs located on individual landmark properties or within historic districts, PAD overlay districts or PAD encouragement areas shall, in addition to the provisions herein, be subject to article IX of this Code or the Downtown Urban Design Guidelines, as applicable. Where the design guidelines are more restrictive than these regulations, the design guidelines shall supersede the otherwise applicable dimensional standards.

- (o) Freestanding signs shall be allowed only if the front facade of the building (or individual tenant's/tenants' frontage in the case of a multi-tenant building) is set back a distance of at least twenty (20) feet from either of the front facades of the abutting buildings (or other tenants' frontage in the same multi-tenant building).

Freestanding Signs

	<i>Single & Multi-Tenant Buildings</i>
Area	16 sq. ft.
Height	6 ft.
Minimum setback	5 ft.
Number of freestanding signs per lot	1 per abutting street

Building Signs

		<i>Multi-Tenant Buildings</i>	
	<i>Single Tenant Buildings</i>	<i>Building ID Sign and/or Upper Floor Tenant Signs</i>	<i>Ind. Ground Floor Tenant Signs</i>

Maximum cumulative permitted area of all building signs	Na	Na	na
Square feet per linear feet of building facade on which sign will be placed	2 sq. ft.	na	2 sq. ft. per ft. of tenant's building frontage
Maximum percent of wall area on which sign(s) is(are) to be placed	Na	5%	na
Number of building signs permitted per lot	1 per facade + 1	1 per facade + 1 per tenant	1 per tenant (a)

(a) If individual tenant fronts on more than one (1) street, one (1) additional building sign is permitted for each additional frontage.

TABLE 2.9 ISLAND BUSINESS (IB) ZONE

Freestanding: None allowed, except for marine-related uses serving vessel traffic. Such signs shall not exceed twenty (20) square feet in area and ten (10) feet in height. One (1) such sign is allowed per use.

Building

Maximum permitted sign area	40 sq. ft.
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Square feet per linear feet of building facade on which sign will be placed	1 sq. ft.
Number of building signs permitted per lot	1 per building facade facing an abutting street + 1 additional

TABLE 2.10 COMMERCIAL CORRIDOR (B-4) ZONE – SINGLE TENANT LOTS

Freestanding Signs

	<i>Facing Street Frontage < 200'</i>	<i>Facing Street Frontage > 200'</i>
Area	65 sq. ft.	100 sq. ft.
Height	25 ft.	35 ft.
Setback	5 ft.	Same
Number permitted per lot	1 (a)	Same

(a) If lot fronts on more than one (1) street, one (1) freestanding sign is permitted for each additional frontage, provided such signs are not readily concurrently visible.

Building Signs

	<i>Building Face < 150 Linear Feet</i>
Maximum cumulative area of all building signs	na

Square feet per linear feet of building facade on which sign will be placed -or-	2 sq. ft. -or-
Maximum percent of wall area on which sign(s) is(are) to be placed	6%
Number of building signs permitted per lot	1 per bldg. facade facing an abutting street and 1 additional

TABLE 2.11 OFFICE PARK (O-P) ZONE

Freestanding Signs

	<i>Joint Identification Sign (a)</i>	<i>Individual Tenant Signs (a)</i>
Maximum permitted area	50 sq. ft.	15 sq. ft.
Height	8 ft.	5 ft.
Setback	5 ft.	5 ft.
Number of freestanding signs per lot	1 per major vehicular entry	1 per tenant

(a) In the case of multi-tenant office parks, individual tenants may be identified on joint identification sign at park entranceway, on directory signs within the office park development, and/or on individual signs located immediately in front of individual business establishment, but shall not be allowed additional freestanding signs at the principal entryway(s) into the development.

Building Signs

	<i>Single Tenant Buildings</i>	<i>Multi-Tenant Buildings</i>
Maximum permitted sign area	na	na
Maximum percent of wall area on which sign(s) is(are) to be placed	6%	8%
Number of building signs permitted per lot	1	1 per tenant

TABLE 2.12 INDUSTRIAL I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb AND WATERFRONT PORT DEVELOPMENT ZONES

Freestanding Signs

	<i>Single Tenant Buildings</i>	<i>Multi-Tenant Buildings</i>
Maximum permitted area	35 sq. ft.	70 sq. ft.
Height	10 ft.	15 ft.
Setback	5 ft.	5 ft.
Number of freestanding signs per lot	1 (a)	1 (a)

(a) If lot fronts on more than one (1) street, one (1) freestanding sign of equivalent permitted sign area is allowed for each additional frontage, provided such signs are not readily concurrently visible.




Building Signs

	<i>Single Tenant Buildings</i>	<i>Multi-Tenant Buildings</i>	
Maximum permitted sign area	Na	na	
Maximum percent of wall area on which sign(s) is(are) to be placed	6%	Principal facade(s) 8%	All other facade(s) 2%
Number of building signs permitted per lot	2/building face	1/tenant plus 1 additional per building face (a)	

(Editor's note: "TABLE 2.12 (CONTINUED) SPECIAL PROVISION FOR ZONES WITHIN 800 FEET OF I-295" repealed by Ord. No. 15-00, 6-7-00, retroactive to 6/01/00)

TABLE 2.13 MULTI-TENANT LOTS – B-1, B-2, AB, B-4, AND IB ZONES

Freestanding Signs (a)

	<i>B-1, B-2, AB, B-4, IB Zones</i>		
	<i>Land Area</i>		
	< 1 acre	1–2.5 acres	   2.5 acres
Area	Same as single	100	140
Height	Tenant	Same as for single tenant lots in applicable zones	
Number permitted per lot (b)	lots	1	1

- (a) Freestanding signs shall be for purposes of joint identification. Individual tenants shall not be permitted their own freestanding sign. Such sign may identify name of center and may also include names of individual tenants.
- (b) Lots fronting on two (2) or more streets are allowed an additional freestanding sign of one-half the area of the first for each frontage which includes a vehicular entry point, provided signs are not readily concurrently visible. Such signage cannot be accumulated and used on one (1) street in excess of that allowed for lots with only one (1) street frontage.

Building Signs

a. *Joint identification sign (a):*

	<i>B-1, IB</i>	<i>B-2, AB, B-4 I</i>
Maximum area	na	250 sq. ft. I
Number permitted per lot (b)	not allowed	1 (b)

(a) Sign identifying name of building or shopping center only. Unused sign area cannot be applied to area allowances for other freestanding or individual tenant signs. Where name of shopping center is the same as or incorporates name of one (1) or more of the businesses located within the center, such business(es) shall elect between a joint identification sign and an individual business sign and shall not be allowed both.

(b) See (a) above.

(c) Allowed only on shopping centers featuring four (4) or more tenants and occupying a land area in excess of two and one-half (2.5) acres.

TABLE 2.13, CONTINUED

b. *Individual business signs:*

Alternative 1

	<i>B-1, B-2, AB, B-4, IB Zones</i>	
	<i>Tenant's Frontage < 150 linear ft.</i>	<i>Tenant's Frontage 150 linear ft.</i>
Maximum area	150 sq. ft.	Na
Square feet per linear feet of building front	1.5 sq. ft.	na
Maximum percent of wall area on which sign(s) is(are) to be placed	na	5%
Number permitted per business (a)	1	1

(a) If individual tenant fronts on more than one (1) street, one (1) additional building sign is permitted for each additional frontage, but at one-half the maximum allowable area of the first.

Alternative 2

Note: Alternative 2 is available as an option to proprietors of multi-tenant lots needing greater flexibility in allocating signs to tenants. This option requires the submission of a signage plan as described in section 14-368(d) as evidence that all building signs on the subject lot comply with the provisions of this division, including the size and number limits of this table. All nonconforming building signs must be brought into compliance to be eligible for the Alternative 2 option.

Maximum permitted sign area	na
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Maximum percent of wall area on which signs are to be placed	Principal facade(s) 5%	All other facade(s) 2%
Number of building signs permitted per lot	1 per tenant plus 1 additional per building face	

TABLE 2.14 GAS STATIONS – ALL ZONES WHERE PERMITTED

Freestanding Signs

	<i>B-1, IB</i>	<i>B-4</i>	<i>All Other Zones</i>
Area	32 sq. ft./10 sq. ft./20 sq. ft. (a)	60 sq. ft./20 sq. ft./30 sq. ft. (a)	40 sq. ft./15 sq. ft./24 sq. ft. (a)
Height	16 feet	35 feet	18 feet
Setback	5 feet	5 feet	5 feet
Number permitted per lot	1/major principal and auxiliary use + 1 price sign (a) (b)	Same	Same

- (a) Area limits are broken down according to sign types, as follows: Sign area for principal use/sign areas for additional major auxiliary use(s) on site (for example, car wash, repair garage, convenience store)/sign area for gas prices. In the B-1 and IB zones, for example, the maximum permitted sign area for the principal use is twenty-five (25) square feet. The maximum permitted sign area for each auxiliary use is ten (10) square feet and the maximum permitted area for the gas price sign is

twenty (20) square feet.

(b) All signs shall be mounted on the same base.

Building/Canopy Signs

	<i>All Zones</i>
Maximum permitted area	30 sq. ft. for principal building sign/10 sq. ft. for each additional major activity/20 sq. ft. for canopy sign
Square feet per linear foot of building facade on which sign will be placed	Na
Maximum vertical dimension	2 feet
Number permitted per lot	1 building sign for each major activity/2 canopy signs (a)

(a) Maximum two (2) signs allowed on large canopy; one (1) each on opposite facing planes.

Miscellaneous Signs

Signs placed on individual pumps shall be considered incidental signs and shall not be calculated in total allowable sign area. Incidental signs shall not be limited in number. However, no individual sign shall exceed one (1) square foot. (Ord. No. 252-94, § 2, 4-4-94; Ord. No. 164-97, § 10, 1-6-97; Ord. No. 37-06/07, 9-6-06)

Sec. 14-369.6. Signs prohibited under this division.

All signs not expressly permitted under this division or exempt from regulation hereunder in accordance with section 14-371 are prohibited. (Ord. No. 252-94, § 2, 4-4-94)

Sec. 14-370. Portable/temporary signs.

(a) *On private property.* Portable and temporary signs shall meet, in addition to the other requirements of this division, the following requirements:

1. *Number of signs.* There shall be no more than one (1) portable or one (1) temporary sign on any lot.
2. *Term.* A portable or temporary sign permit shall allow the use of a portable or temporary sign for a specified thirty-day period.
3. *Number of permits.* No more than two (2) portable or temporary sign permits shall be issued to each business on the same lot in any calendar year. In no event shall any lot have a portable or temporary sign for more than sixty (60) days in one (1) calendar year.
4. *Other conditions.* A portable or a temporary sign shall be allowed only in those districts indicated on Table 1 of section 14-369.5.
5. *Permit sticker.* Each portable sign and each temporary sign shall display a permit sticker issued by the building authority. The sticker shall contain the expiration date of the permit.

(b) *Additional requirements for freestanding portable or temporary signs.* In addition to the requirements of subsection (a) of this section, freestanding portable or temporary signs on private property shall meet the following requirements:

1. No portable or temporary sign shall interfere with the sight distance of traffic passing the site. The determination of sight distance shall be made by the traffic engineer.
2. Portable and temporary signs shall be set back a minimum of five (5) feet from the side line of the city right-of-way and a minimum of five (5) feet from any property line.
3. No portable or temporary sign shall exceed four (4) feet by eight (8) feet in size.

(c) *Portable signs in the city right-of-way.* Portable signs

to be located in the city right-of-way shall receive a license from the building authority and shall be subject to the regulations promulgated by the building authority.

(d) *Calculations.* Portable and temporary signs shall not be included in calculations for other types of signage permitted by this division.

(Ord. No. 252-94, § 2, 4-4-94)

Sec. 14-370.7. Special sign types.

(a) *Window signs.* Window signs shall be permitted without a permit and shall not be included when calculating cumulative sign area. In no event, however, shall window signs cover more than fifty (50) percent of the area of any window.

(b) *Real estate/construction/for sale or lease signs.* Such signs shall be permitted without a permit, provided that in residential zones there shall be no more than one (1) such sign for each residential unit offered for sale or lease and such sign shall not exceed fifteen (15) square feet in area. In commercial and industrial zones, there shall be no more than one (1) such sign per unit offered for sale or lease for each street frontage of the property and the area of such signs shall not exceed sixty-four (64) square feet in the aggregate for each frontage.

(c) *Works of art containing signage.* Decorative murals, outdoor paintings, sculpture or other bona fide works of art that contain any commercial message, trademark or symbol are permitted in all zones except residential zones, provided that such commercial message, trademark or symbol does not comprise more than ten (10) percent of the total area of the artwork. Works of art containing a commercial message, trademark or symbol shall be permitted in residential zones only where such signage is ornamental in nature and does not serve any type of advertising function for the site upon which it is located or for any other site owned or controlled by the residential property owner or tenant.

(d) *Building marker.* Building markers shall be permitted without a permit.

(e) *Seasonal sales/special activities signs.* Signs associated with special events or activities that are licensed or authorized by the city council or its designee, such as seasonal sales or markets, special events, fairs and festivals, shall be permitted subject to applicable conditions or limitations that are imposed as

part of the licensing or authorization process.

(f) *Directory signs.* Except where prohibited by section 14-369.5, directory signs, freestanding or attached to buildings, shall be allowed without a permit and shall not be included when calculating cumulative sign area, provided that the sign area for each tenant does not exceed one and one-half (1.5) square feet.
(Ord. No. 252-94, § 2, 4-4-94)

Sec. 14-371. Exemptions.

The following signs shall be exempt from regulation under this division and shall not be included when calculating cumulative sign area:

- (a) Any public notice or warning required by a valid and applicable federal, state or local law, regulation or ordinance;
- (b) Any sign inside a building that is not attached to a window or door;
- (c) Works of art that do not include a commercial message;
- (d) Holiday lights and decorations with no commercial message;
- (e) Traffic control signs on private property, such as stop, yield and similar signs, the face of which meets department of transportation standards and which contains no commercial message of any sort;
- (f) Public signs erected by or on behalf of a governmental body to post legal notices, convey public information, and direct or regulate pedestrian or vehicular traffic, including parking regulatory signs; bus stop signs erected by a public transit company; informational signs of a public utility regarding its poles, lines, pipes or facilities;
- (g) Political signs, subject to the provisions of 23 M.R.S.A. § 1913;
- (h) Signs inside office park developments with a single tenant, where such signs are not visible from any public street or public open space;

- (i) Landmark signs; and
- (j) Security signs, except that no commercial message of any kind shall be allowed on a sign if such message is legible from any location off the lot on which the sign is located.
- (k) Bus shelter signs, as defined in section 14-367, subject to the provisions of Section 1 of the Technical Manual concerning the placement and permitted dimensions of bus shelter signs.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 91-11/12, 5-21-12)

Sec. 14-372. Nonconforming signs.

(a) All signs lawfully existing on April 4, 1994, that do not conform to the terms of this division may be continued, subject to subsection (b) of this section.

(b) Notwithstanding subsection (a) of this section, lawfully nonconforming signs shall be made to conform or shall be removed if any of the following occurs, unless such improvements are required to achieve compliance with applicable federal, state or local regulations, other than the provisions of this division, and such improvements do not require replacement of the nonconforming sign:

1. Level III site plan review is sought for any new structures or building additions on the site, except as provided in subsection (5).
2. A building permit is sought for a rehabilitation of a building where the value of the rehabilitation exceeds fifty (50) percent of the assessed value of the building, or one hundred thousand dollars (\$100,00.00), whichever is less, provided that where rehabilitation is of a multi-tenant building, only the tenant or tenants whose building or area is being rehabilitated shall be required to come into conformance with this division.
3. An application is filed for a new sign permit, except as provided in subsection (5), in accordance with the following:
 - a. When an application is filed for a new building sign, all building signs on the lot shall be required to come into compliance with all requirements of this division for building signs.

- b. When an application is filed for a new freestanding sign, all freestanding signs on the lot shall be required to come into compliance with all requirements of this division for freestanding signs.
4. A sign is modified in any way, except for routine maintenance or repair of sudden and accidental damage, or for a change in the message panel only, unless otherwise required to conform under this section. Repair of sudden and accidental damage shall not include replacement of the entire sign, which shall be treated as a modification under this subsection. Letters on nonconforming signs designed for changeable messages may be changed without triggering the terms of this subsection as long as no other change is made to the sign. Replacement of an awning covering with substantially the same material and text shall also not be considered a modification.
5. In the case of nonconforming freestanding joint identification signs for multi-tenant properties, signs may be added or modified to reflect a change in individual tenants without triggering the terms of this subsection, provided that the degree of nonconformity is not increased. In the case of building signs on multi-tenant properties, this subsection shall apply only to the individual business tenant that is adding or modifying a sign or seeking level III site plan review and shall not trigger the conformance requirement for other tenants' building signs, unless the building owner(s) elects to proceed under alternative 2 of Table 2.13- of section 14-369.5. In that case, all building signs on the subject lot shall be made to conform to the provisions of this division or shall be removed.
6. In no event shall the degree of nonconformity of any sign or type of signage on any lot be increased.

(Ord. No. 252-94, § 2, 4-4-94; Ord. No. 278-09/10, 7-19-10)

Sec. 14-372.5. Violations and enforcement.

Failure to perform any act required by this division or by any permit issued hereunder or performance of any act prohibited by this division shall constitute a violation and shall be subject to penalties as set forth in 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes

of this section. The building authority shall be responsible for enforcement of this division.

(Ord. No. 252-94, § 2, 4-4-94)

DIVISION 22.5. ADULT BUSINESS ESTABLISHMENTS*

***Cross reference(s)**—Amusements, Ch. 4.

Sec. 14-373. Findings and purpose.

The council hereby finds that, because of their unique and potentially offensive nature, adult business establishments can have a blighting influence on the surrounding neighborhood if permitted at all in certain zones, or if allowed to concentrate in certain other zones, within the city. Moreover, such establishments are incompatible with uses characterized by family and youth-related activities. The purpose of this division is, therefore, to prevent such deleterious effects and, thus, protect the public health, safety, and general welfare by regulating the location and certain other aspects of adult business establishments.

(Ord. No. 187-81, § 602.16A(1), 9-21-81; Ord. No. 356-82, 1-18-82)

Sec. 14-374. Definitions.

Except as provided herein or in section 14-47, all words used in this division shall have their common meanings unless the context clearly implies otherwise.

Adult business establishment means and includes any retail 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 section 4-16; or
- (b) Customarily 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.

Customarily means more often than an average of one (1) calendar week during any calendar month of operation.

Sexually explicit means 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.
(Ord. No. 187-81, § 602.16A(2), 9-21-81; Ord. No. 356-82, 1-18-82)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 14-375. Adult business establishments permitted; special requirements.

(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.

(Code 1968, § 602.17.D; Ord. No. 499-74, § 8, 8-19-74)

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)

***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.

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.

***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.

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 marking 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)

~~*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.

Sec. 14-392. - Sec. 14-400. Reserved.

DIVISION 24. USE REGULATIONS AND EXCEPTIONS

Sec. 14-401. Generally.

The requirements of this article shall be subject to the use regulations and exceptions of this division.
(Code 1968, § 602.18)

Sec. 14-402. Relationship of buildings to lots.

Every building hereafter erected shall be located on a lot as

defined in section 14-47.
(Code 1968, § 602.18.A)

Sec. 14-403. Street access.

(a) *In general.* 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 thirty-five (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 section. For purposes of this section, street shall be as defined in section 14-47, 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 (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) 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) *Minimum requirements for street improvements on unimproved and improved but unpaved streets.* 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, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, 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 section 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 in section 14-501. Also as set forth in section 14-501, 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 (b) shall not apply to the erection of any single-family dwelling on 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.

I *Exceptions.* The requirements of this section 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;
2. Morgan Court.

(Code 1968, § 602.18.B; Ord. No. 193-84, § 1, 11-19-84; Ord. No. 178-87, 11-2-87; Ord. No. 372-89, 3-20-89; Ord. No. 273-90, 3-19-90)

Sec. 14-404. Accessory use.

The term "accessory use" shall include only the following:

- (a) A subordinate use of land or building which is customarily incidental to the main building or to the principal use of the land and which is located on the same lot with the principal building or use. 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 "customarily incidental" if such sale occurs after sales have been conducted on the same premises for six (6) or more days previously during the calendar year.

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 (2) such machines or devices on the premises.

- (b) Off-street parking when serving conforming uses located

in any zone.

- (c) Home occupations as defined in section 14-47 and section 14-410.
- (d) Signs as defined in division 22 of this article.
- (e) The letting of rooms within an existing dwelling unit in any residential zone, provided that:
 - 1. There shall be no more than two (2) persons occupying such room or rooms;
 - 2. There shall be not more than two (2) 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 (2) years.

(Code 1968, § 602.18.C; Ord. No. 574-81, 4-6-81; Ord. No. 66-87, § 1, 11-2-87; Ord. No. 240-09/10, 6-21-10)

Sec. 14-405. Business entrances.

In any business zone which abuts a residence zone in such a manner that the dividing line between the zones is one hundred (100) feet or less from the main business street of such business zone, no building of nonconforming use in such residence zone shall be built and no such existing building shall be altered so as to have its front or any entrance door or any part thereof used for a nonconforming use in such residence zone facing upon any other street than the main business street unless such entrance is at a distance greater than sixty (60) feet from the nearest residence zone.

(Code 1968, § 602.18.D)

Sec. 14-406. Garages.

No building in any zone shall be erected, altered or used as a garage for the storage of more than three (3) 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 (5) 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 fifteen (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 (3) 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.

(Code 1968, § 602.18.E)

Sec. 14-407. Temporary stands.

(a) 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 one hundred twenty-five (125) feet to any residence zone, except that stands for the sale of agricultural products shall be permitted as specified in division 2 of this article.

(b) 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 one hundred (100) square feet in floor area or open table area and is located a minimum of five feet from any property line; and 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.

(c) A single produce stand shall be permitted on the premises of a non-profit organization 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.

(d) For purposes of this Section, non-profit organization shall mean a non-profit organization incorporated pursuant to the laws of the State of Maine.

(Code 1968, § 602.18.F; Ord. No. 75-10/11, 11-15-10; Ord. No. 59-12/13, 9-19-12)

Sec. 14-408. Exceptions to performance standards.

The operation on public streets, airports and railroad rights-of-way of motor vehicles and other vehicles for the transportation of goods or persons shall be excepted from the limitations of the sections entitled "external effects."

(Code 1968, § 602.18.G)

Sec. 14-409. Heliports.

Heliports shall meet the following minimum specifications, subject to regulations of the Civil Aeronautics Administration when such regulations are greater:

(a) *Roof heliport:*

1. Take-off area: Two hundred (200) feet by two hundred fifty (250) feet minimum.
2. Parking area: Thirty (30) feet by ninety (90) feet minimum.

(b) *Ground heliport:*

1. Take-off area: Three hundred (300) feet by seven hundred (700) feet minimum.
2. Parking area and station building shall be located out of flight area.

(c) *Maximum elevation of operational area above street:* One hundred (100) feet.

(d) *Minimum clearance from lateral obstruction:* One hundred (100) feet.

(e) *Minimum width of approach and departure path:* Five hundred (500) feet at landing area, tapering outward fifteen (15) degrees on each side to a width of one

thousand (1,000) feet.

(f) *Slope:* With emergency landing areas: One (1) to eight (8): Without emergency landing areas: One (1) to twenty (20).

(g) *Curved approach:* Minimum radius to turn, six hundred fifty (650) feet.

(h) *Approach zone transition area:* Slope, one (1) in two (2).
(Code 1968, § 602.18.H)

Sec. 14-410. Home occupation.

Purpose. 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.

(a) In connection with the operation of a home occupation, within a dwelling unit, the following requirements shall be met:

1. A home occupation shall not occupy more than five hundred (500) square feet of floor area or more than twenty-five (25) percent 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 (6) children plus two (2) children after school and having no nonresidential employees;
2. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
3. Storage of materials related to the home occupation shall count as a part of the occupancy limitations in subsection (a)1 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;
4. Exterior signs shall be limited to one (1) nonilluminated sign not exceeding a total area of

two (2) square feet, affixed to the building and not projecting more than one (1) foot beyond the building;

5. 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;
 6. *Off-street parking*: Off-street parking is required as provided in division 20 (off-street parking) of this article;
 7. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;
 8. There shall be no more than one (1) nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
 9. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
 10. No motor vehicle exceeding a gross vehicle weight of six thousand (6,000) pounds shall be stored on the property in connection with the home occupation.
- (b) No residence shall be occupied, altered or used for any home occupation except the following:
1. Accountants and auditors;
 2. Answering services (telephone);
 3. Architects;
 4. Artists and sculptors;
 5. Authors and composers;
 6. Computer programming;

7. Custodial services;
8. Custom furniture repair and upholstery;
9. Dentists, doctors, therapists, and health care practitioners;
10. Direct mail services;
11. Dressmakers, seamstresses and tailors;
12. Engineers;
13. Family planning services;
14. Hairdressers (limited to no more than two (2) hair dryers);
15. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
16. Interior decorators;
17. Lawyers, justices of the peace and notary publics;
18. Licensed family day care home or babysitting services;
19. Musicians or music teachers, including group instruction not to exceed six (6) students at any time but not including performances or band rehearsals, which shall meet the following requirements in addition to those set forth in subsection (a) of this section:
 - a. Electronic amplification is prohibited;
 - b. 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;
 - c. Hours of operation shall be limited to 8:30

a.m. to 9:30 p.m.

20. Office facility of a minister, rabbi, or priest;
 21. Photographic studios;
 22. Professional counseling and consulting services;
 23. Professional research services;
 24. Sales persons provided that no retail or wholesale transactions are made on the premises;
 25. Small appliance repair;
 26. Snow plowing provided that only one (1) snow plow vehicle is stored on or generated from the site;
 27. Special tutoring or instruction (not to exceed three (3) pupils at any given time);
 28. Stenographic and other clerical services.
- (c) A home occupation that is not listed in paragraph (b) of this section but is similar to and no more objectionable than those home occupations listed in that paragraph, shall be permitted as a conditional use subject to the requirements of paragraph (a) of this section and section 14-474 (conditional use) 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.

(Code 1968, § 602.18.I; Ord. No. 277-77, 11-7-77; Ord. No. 548-85, § 1, 5-6-85; Ord. No. 76-85, § 1, 7-1-85; Ord. No. 66-87, § 2, 11-2-87; Ord. No. 329-90, 5-7-90; Ord. No. 240-09/10, 6-21-10)

Sec. 14-411. - Sec. 14-420. Reserved.

DIVISION 25. SPACE AND BULK REGULATIONS AND EXCEPTIONS

Sec. 14-421. Generally.

The requirements of this article shall be subject to the space and bulk regulations and exceptions of this division.

Sec. 14-422. Reduction of lot area prohibited.

No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit, and space for off-street parking and/or off-street loading shall be less than the minimum required under this article.

(Code 1968, § 602.19.A)

Sec. 14-423. Reserved.

*Editor's Note: Pursuant to Council Order No. 240-09/10, passed on June 21, 2010, Section 14-423 (Joint occupancy) was repealed in its entirety.

Sec. 14-424. Required open space.

No part of a yard or other open space required about any building under this article shall be included as a part of a yard or other open space required for another building.

(Code 1968, § 602.19.C)

Sec. 14-425. Projections in required yard areas.

Any yard 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 fifty (50) square feet nor the projection from the building exceed six (6) feet. A basement bulkhead of similar size, but not more than twenty four (24) inches in height, is also permitted. A cornice eave, sill, canopy, chimney, or other similar architectural feature, but not including a bay window, may project into any required yard a distance of not more than two (2) feet.

(Code 1968, § 602.19.D; Ord. No. 78-03/04, 10-20-03)

Sec. 14-426. Fences.

In residence zones no wall or fence along a street line or within twenty-five (25) feet of a street line shall be more than four (4) feet in height unless said fence is located in the side or rear yard and is reviewed by the public works authority and found not to be a traffic or public safety hazard, subject to the provisions of section 14-434.

(Code 1968, § 602.19.E; Ord. No. 247-97, 4-9-97)

Sec. 14-427. Enclosure of porches.

Any open porch existing with a roof over the same on June 5,

1957, and encroaching upon any yard required by this article may be enclosed if the major portion of the enclosure is of glass.
(Code 1968, § 602.19.F)

Sec. 14-428. Corner lots.

In case a dwelling house has its front yard upon the long side of a corner lot, the rear yard may be reduced to a depth not less than the width required for a side yard on the lot, provided 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 yards required if the front yard were faced on the short side of the lot.
(Code 1968, § 602.19.G)

Sec. 14-429. Lot surrounded by streets or alleys.

Where a lot containing ten thousand (10,000) square feet or less is completely surrounded by streets or alleys, the building area may be increased twenty (20) percent.
(Code 1968, § 602.19.H)

Sec. 14-430. Height limits.

(a) *Roof structure.* Roof structures for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, water tanks, or silos may be erected above the height limitation herein prescribed for buildings. Roof-mounted wind energy systems shall not be considered to be roof structures for the purposes of Article X, Alternative Energy.

(b) *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 XI, Public Art Program of the Land Use Code, (Section 14-852(c)), shall not be subject to the height limitations for buildings within the underlying zone.

(c) *Temporary wind anemometer towers.* Temporary wind anemometer towers may be erected above the height limitation for buildings within the underlying zone, subject to receiving Board of Appeals approval and FAA approval, if necessary.

(d) *Wind energy systems.* Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone, pursuant to Article X, Alternative

Energy.

(Code 1968, § 602.19.I; Ord. No. 428-83, § 1, 4-25-83; Ord. No. 36-89, § 3, 6-28-89; Ord. No. 96-08/09, 11-17-08; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 33-11/12, 1-18-12)

Sec. 14-431. Yards.

The height in stories or feet of that part of the principal building adjoining a yard shall be used in determining the required width or depth of that yard, but in no case shall any higher part of the building be closer to the property line than width or depth of yard required for that height. In case an addition is to be made to a building which existed on June 5, 1957, the side yard spaces of which complied with the ordinance in effect on that date, the aggregate side yards may be the same as required on that date, provided the yard on the side where the addition is intended would comply with the minimum width required by the present ordinance. Yards as prescribed for residential uses shall be required for an apartment house or hotel erected above the ground floor of a building where the ground floor is designed exclusively for business purposes.

(Code 1968, § 602.19.J)

Sec. 14-432. Swimming pools.

Outdoor swimming pools accessory to dwellings, apartment houses, hotels or motels shall be permitted on lots, provided the following conditions are met:

- (a) No swimming pool shall be sited in the front yard.
- (b) No part of any swimming pool shall be located closer than ten (10) feet from the principal structure, nor closer than ten (10) feet from the side or rear lot lines.

(Code 1968, § 602.19.K; Ord. No. 271-77, 5-16-77; Ord. No. 90-88, 7-19-88)

***Editor's note**—Ord. No. 90-88, adopted July 19, 1988, amended § 14-432 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. 90-88.

Sec. 14-433. Lots of record and accessory structure setbacks for existing buildings.

- (a) Lots of Record.

Lots of record that meet the minimum standards provided below shall be considered buildable lots.

1. Lots of record as of June 5, 1957, may be considered a buildable lot in any residential zone provided the applicable yard dimensions can be met; provided that a minimum street frontage of forty (40) feet can be met, or to which a means of access has been previously approved by the city council as provided elsewhere in this article; and provided such lots have a minimum lot size of five thousand (5,000) square feet, or the applicable minimum lot size and frontage in that zone, whichever is less .
2. A lot in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones that was described in a subdivision plat approved by the Planning Board after June 5, 1981, or a lot of record that conformed to the applicable lot size requirement, lot width and street frontage as of June 5, 1984, shall be considered a buildable lot, provided that the applicable yard dimensions can be met.
3. Any lot of record as of July 15, 1985, and held under separate and distinct ownership from adjacent lots and meeting the applicable street frontage requirements of that time may be considered a buildable lot in the IR-1 and IR-2 zones, provided that the applicable yard dimensions can be met and provided further that a lot in the IR-1 zone shall have a minimum area of ten thousand (10,000) square feet and a lot of the IR-2 zone shall have a minimum area of six thousand five hundred (6,500) square feet unless it is served by both public sewer and public water, in which case it shall have a minimum area of five thousand (5,000) square feet.4. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable yard dimensions can be met.
5. 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 14-433 (a-d).

(b) Accessory Structures and Building Additions.

Where such a lot has a principal structure which existed

as of July 19, 1988, an accessory structure or building addition may be located within the following side and rear yards, provided that the normal applicable yard requirements cannot be met:

1. R-1, R-2:

Rear yard: Ten (10) feet.

Side yard: Five (5) feet.

2. R-3, R-4, R-5, R-5A, R-6:

Rear yard: Five (5) feet.

Side yard: Five (5) feet.

(c) Conversion of Accessory Structures to Dwelling Units:

Any detached or accessory structure in the R-3, R-4, R-5 or R-6 zones, with a ground coverage exceeding two hundred fifty (250) square feet and which was in existence on January 1, 1940, may be converted to dwelling units without meeting front, side or rear yard setbacks, provided there is no enlargement of any nonconforming portion of the existing building footprint and provided the conversion will conform to the minimum land area per dwelling unit.

Any such conversion in the R-3 zone or on a nonconforming lot in the R-5 zone shall be a conditional use subject to the requirements of section 14-88(a)2 for lots in the R-3 zone, or to the requirements of section 14-118(a)5 for nonconforming lots in the R-5 zone, and shall be in lieu of any additional dwelling units authorized under sections 14-88 or 14-118.

(Code 1968, § 602.19.L; Ord. No. 539-84, 5-7-84; Ord. No. 32-85, § 1, 7-15-85; Ord. No. 91-88, 7-19-88; Ord. No. 310-89, 1-30-89; Ord. No. 166-89, 12-11-89; Ord. No. 78-03/04, 10-20-2003; Ord. No. 202-13/14, 4/28/2014; Ord. 209-14/15, 5/4/2015)

***Editor's note**—Ord. No. 91-88, adopted July 19, 1988, amended § 14-433 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. 91-88. Subsequently, § 14-433 was amended by Ord. No. 310-89, adopted Jan. 30, 1989, to read as set out, which ordinance further provided that it be applicable to all pending proceedings and be enacted as an emergency.

Sec. 14-434. Corner clearance.

No obstruction higher than three and one-half (3 1/2) feet above the lowest elevation at the curblines shall be permitted on a corner lot within the area of a triangle formed by a line intersecting the street lines of the intersecting streets at points twenty-five (25) feet from the corner, unless said obstruction is located in the side or rear yard and is reviewed by the public works authority and found not to be a traffic or public safety hazard. For the purpose of this section, the word "obstruction" shall mean any shrub, wall, fence, temporary building, sign, a pile of material, but shall not include permanent buildings or structures where permitted elsewhere in this article.

(Code 1968, § 602.19.M; Ord. No. 247-97, 4-9-97; Ord. No. 56-08/09)

Sec. 14-435. Unsewered residential district.

Where a lot in a residence zone is not served by public sewers and septic tank disposal systems are required, the minimum lot area required shall be determined from the following table, except that on the islands in Casco Bay, such variation as shall be approved by the health officer may be permitted in the minimum required lot areas:

<i>Standard Percolation Test Rate of Percolation (minutes)</i>	<i>Lot Area Required (square feet)</i>
2	7,800
3	8,400
4	8,800
5	9,100
10	10,500
15.....	11,800
30	13,800

45	15,500
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(Code 1968, § 602.19.N)

Sec. 14-436. Building extensions.

Existing non-residential and residential principal structures which are nonconforming as to any area and/or yard requirements may be enlarged within the existing footprint subject to the following provisions:

- (a) *For principal structures lawfully nonconforming as to land area per dwelling unit as of July 19, 1988:* The floor area of the expansion shall be limited to no more than fifty (50) percent of the first floor footprint. The additional floor area shall be created in the uppermost floor by the use of dormers, turrets or similar structures needed to provide the minimum height required for habitable space while preserving the existing roof configuration to the maximum extent possible.
- (b) *For residential principal structures conforming as to land area per dwelling unit as of July 19, 1988, but lawfully nonconforming as to any yard setback or nonresidential principal structures that are lawfully nonconforming as to any yard setback:* The floor area of the expansion shall be limited to no more than eighty (80) percent of the first floor footprint. The additional floor area shall be created by raising the existing roof configuration the minimum amount required to create an additional story of habitable space, or by the use of dormers, turrets or similar structures.

Building expansions under this section may occur only once during the lifetime of an existing structure.

(Ord. No. 61-97, 8-18-97; Ord. No. 284-99, §3, 5-17-99, enacted as an emergency to take effect immediately pursuant to Article II, Sec. 8 of the Portland City Charter)

***Editor's note**—Ord. No. 61-97, adopted Aug. 18, 1997, repealed former § 14-436 and enacted similar new provisions as herein set out. Formerly, such section derived from § 602.19.0 of the 1968 Code as amended by Ord. No. 92-88, adopted July 19, 1988.

Sec. 14-437. Setback reductions.

(a) *Authority.* The zoning administrator may grant setback reductions to the extent provided by this section.

(b) *Procedure.* Application for a setback reduction shall be submitted to the building inspections division. A payment of a nonrefundable application fee, as established from time to time by order of the city council to cover administrative costs, shall accompany each application. The application shall be in such form as prescribed by the zoning administrator and shall contain at least the following information and documentation:

1. The name and address of the applicant and his or her interest in the subject property;
2. The name and address of the owner, if different from the applicant;
3. The address or location and the city assessor's chart, block and lot number of the subject property;
4. The present use and zoning classification of the subject property;
5. Plot plan showing sufficient information to indicate the location of all structures existing and proposed in relation to the lot lines. Such a plan must be prepared by a state registered land surveyor. If, in the opinion of the surveyor, sufficient monumentation is not available, then a standard boundary survey will be necessary to meet the requirements of this section.

(c) *Purpose.* The purpose of setback reductions is to validate the sites of mislocated single-family, owner-occupied residential structures and those structures accessory thereto, which are not otherwise legally sited and which were in existence on November 15, 1993.

(d) *Conditions for setback reductions.* Setback reductions which may be granted by the zoning administrator are subject to the following conditions:

1. The sole use of the property is (and, if the application should be granted, will remain) as a single-family detached dwelling.
2. The property is located in R-1, R-2, R-3, R-4, R-5, R-6,

IR-1, IR-2, IR-3 or RP zones.

3. The reduction sought cannot be reduced by more than the following:

IR-1, IR-2, IR-3, R-3, RP, R-1, R-2, R-4 and R-5 zones:

Front yard: Ten (10) feet

Rear yard: Ten (10) feet

Side yard: Five (5) feet

R-6 zone:

Front yard: Five (5) feet

Rear yard: Ten (10) feet

Side yard: Five (5) feet

4. No relief may be granted under this section in cases where the building authority determines that the setback violation was the result of a willful act by either the applicant or a prior owner.
5. This section shall only apply to the inadvertent misplacement of a structure.
6. Recording of setback reduction: The zoning administrator shall provide a signed instrument in recordable form, indicating any setback reduction granted under the terms of this section. The applicant for such reduction shall be responsible for recording this instrument in the Cumberland County Registry of Deeds.

(Ord. No. 138-93, 11-15-93)

Sec. 14-438. Setback reductions for porches and other similar uses.

(a) Porches, decks and sheds which are accessory to single-family dwellings built five (5) years prior to the date of application will be eligible for setback reductions as provided in this section. Such structures are not subject to the limitations in section 14-437, must be set back two (2) feet from the rear and side property lines, and must comply with the front yard setback required for the applicable zone. A reduced setback may be

permitted only when the applicant can show that there will be no development within the setback required by the zoning ordinance on adjacent property which abuts the area for which a reduced setback is sought. The applicant will demonstrate compliance with the above requirement by providing an affidavit from the abutting property owner stating that the area in question will never be developed. Reduced setbacks will not be permitted when the area proposed for such setbacks abuts either city or state owned property. No setback reduction may be granted which would permit any structure on the lot which is the subject of the application to be within fifteen (15) feet of any existing residential structure on an adjacent lot.

(b) Recording of setback reduction. The zoning administrator shall provide a signed instrument in recordable form, indicating any setback reduction granted under the terms of this section. The applicant for such reduction shall be responsible for recording this instrument in the Cumberland County Registry of Deeds. The abutter's affidavit will also be recorded.
(Ord. No. 139-93, 11-15-93)

Sec. 14-439. Setback reductions in the industrial zones.

Where a setback is required in an industrial zone the Planning Board may grant a reduction of such setback upon the submission of a site plan meeting the requirements of article V of this chapter and as set forth below if at least one (1) of the following conditions exists:

- (a) The property is encumbered by an easement or right-of-way that substantially impedes or prohibits development;
- (b) The yard for which the setback reduction is sought abuts an easement or right-of-way area that prohibits buildings within the area of such easement or right-of-way; or
- (c) The yard for which the setback reduction is sought abuts an area whose natural features, such as slopes or drainage areas, prohibit development in such area.

The Planning Board may reduce the required setback to the extent necessary for development, but in no event shall any side or rear setback be reduced to less than ten (10) feet or any front setback be reduced to less than five (5) feet. The Planning Board may require increased buffering to mitigate the impacts of a setback reduction under this section. This section shall not apply to reductions of setbacks required by division 26 of this chapter.

The planning authority shall be responsible for providing to the applicant for setback reduction an instrument signed by the chair or vice-chair of the Planning Board, indicating any setback reduction granted under the terms of this section. The applicant for such setback reduction shall be responsible for recording this instrument in the Cumberland County Registry of Deeds within sixty (60) days of the Planning Board's grant of the reduction. Failure to record such instrument within the required time period shall render the reduction null and void.

(Ord. No. 227-97, 3-17-97)

Sec. 14-440. Exterior egress.

Notwithstanding any other provision of this Code, 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:

- (a) 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;
- (b) 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;
- (c) Reductions to setbacks granted under this section shall be the least amount required to meet life safety code requirements; and
- (d) Exterior stairways on buildings subject to regulation under article IX of this chapter shall require review and approval under the provisions of that article.

(Ord. No. 181-98, 1-5-98)

Sec. 14-441. - Sec. 445. Reserved.

DIVISION 26. SHORELAND REGULATIONS

Sec. 14-446. Purposes.

The purposes of this division are 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, 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.

(Code 1968, § 602.19A.A; Ord. No. 499-74, § 10, 8-19-74; Ord. No. 15-92, § 27, 6-15-92)

Sec. 14-447. Applicability.

This division applies to all land areas, uses, structures and land use activities within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal actions within two hundred fifty (250) feet, horizontal distances, of the upland edge of a freshwater wetland; and within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream. This division 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 or within a wetland.

(Code 1968, § 602.19A.B; Ord. No. 499-74, § 10, 8-19-74; Ord. No. 15-92, § 28, 6-15-92; Ord. No. 296-08/09, 6-15-09)

Sec. 14-448. Zoning districts and shoreland regulations.

The regulations and controls of this division apply to all land areas, uses, structures and land use activities cited in section 14-447, in all zones of the city.

(Code 1968, § 602.19A.C; Ord. No. 499-74, § 10, 8-19-74)

Sec. 14-449. Land use standards.

All land uses and land use activities subject to this division shall conform to the following standards and regulations, as applicable:

- (a) *Principal and accessory structures:*

1. All principal and accessory structures shall be set back at least seventy-five (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:
 - a. B-3, B-5, B-5b, I-L (south and east of I-295), and I-M (south and east of I-295): Twenty-five (25) feet.
 - b. W-C, W-PD, I-B, EWP: No setback required. Pier edge setbacks apply in EWP (Sec. 14-303(c)(4), W-C (Sec. 14-310(d)(4), and W-PD (Sec. 320.2(c)).

For the principle structures, setback measurements shall be taken from the top of a costal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant "Classification of Coastal Bluffs", and published in the most recent Coastal Bluff Map as further referenced on the Zoning Map.

Notwithstanding this requirement, when a lot is a lot of record as defined in section 14-433 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 twenty-eight (28) feet, provided that the setback is not reduced to less than forty (40) feet. Structures in existence on June 15, 1992, may be expanded once during the lifetime of the structure up to twenty-five (25) feet toward a freshwater wetland, 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 thirty (30) percent. In no event shall the setback from a coastal wetland be reduced to less than seventy-five (75) feet, except in the B-3, B-5, B-5b, EWP, W-C, W-PD, W-SU, I-B, I-L and I-M zones, where setbacks shall

be as set forth above in this subsection.

In all cases, accessory detached structures of less than one hundred (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.

2. Development activities within the shoreland zone are reviewed by the Zoning Administrator for compliance with required setbacks of this Division. Submission of plans for such development activity shall be prepared by competent professionals, based upon a boundary survey.
 3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one (1) foot above the elevation of the one hundred (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.
 4. 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:
 - a. The structure is limited to a maximum of four (4) feet in width;
 - b. 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.A. Section 480-C; and
 - c. The applicant demonstrates that no reasonable access alternative exists on the property.
- (b) *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:*

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion;
2. The location shall not interfere with existing developed or natural beach areas;
3. The facility shall be located so as to minimize adverse effects on fisheries;
4. The facility shall be no larger in dimension than necessary to carry on the activity and shall be consistent with surrounding character and uses;
5. 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.A. § 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.
6. Except in the W-C, EWP, W-PD, 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;
7. 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.

(c) *Clearing or removal of vegetation:*

1. 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.
2. The clearing or removal of vegetation standards of this section shall not apply to the following zones: EWP, WCZ, WPD, B-3, B-5, B-5b, B-6, B-7, I-L

(south and east of I-295) and I-M zones (south and east of I-295).

3. Other than cutting or removal of vegetation as provided for in this section, 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 (2) acres within the shoreland zone shall not be considered timber harvesting. Cutting or removal of such trees shall be regulated pursuant to this section.
4. For purposes of this section, 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.
 - a. 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 seventy-five (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:
 - i. There shall be no cleared opening greater than two hundred fifty (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 (6) 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.
 - ii. 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 of this section, 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 sixteen (16) or more in any twenty-five-foot by fifty-foot rectangle area as determined by the following rating system:

Diameter of tree at four and one-half (4 ½) feet above ground level

<i>(Inches)</i>	<i>Points</i>
2 ≤ 4	1
4 ≤ 8	2
8 - 12	4
12 in. or greater	8

The following shall govern in applying this point system:

- 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 section, "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (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 (2) inches in diameter can be removed until 5 samplings have been recruited into the plot.

Notwithstanding the above provisions, no more than forty (40%) percent of the total volume of trees four (4) inches or more in diameter, measured at four and one-half (4 ½) feet above ground level may be removed in any ten-year period.

- iii. In order to protect water quality and wildlife habitat, existing vegetation under three (3) 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.
- iv. Pruning of tree branches on the bottom one-third of the tree is allowed.
- v. 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.

The provisions contained in subsection b. of this

section 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.

2. Selective cutting of not more than forty (40%) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 1/2) feet above ground level, shall be allowed within any ten-year period at distances greater than seventy-five (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 uses. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent 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 twenty-five (25%) percent of the lot area within the shoreland zone, including land previously cleared.
3. Legally existing nonconforming cleared openings may be maintained but shall not be enlarged, except as allowed by this division.
4. 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.

(d) *Erosion and sedimentation control:*

1. 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 permitting authority for approval and shall include, where applicable, provisions for:

- a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
2. 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.
 3. 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.
 4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) 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 (9) months of initial exposure. The following standards shall also be met:
 - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. 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.

5. 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.
- (e) *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.
- (f) *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.
- (g) *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 twenty (20) days prior to action being taken by the building authority. The building 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 IX of this chapter.

(h) *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.

(i) *Essential services:*

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. 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 District, except where the applicant demonstrates that no reasonable alternative exists.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

(j) *Roads and driveways:*

1. Roads and driveways shall be setback a minimum of seventy-five (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 EWP, WC, WPD, B-3, B-5, B-5b, I-L (south and east of I-295) and I-M (south and east of I-295) roads and driveways shall be setback as established for structures in those zones; as specified in Sec. 14-449(a)1.

- b. Where the planning board determines that no other reasonable alternative exists. If no other reasonable alternative exists, the planning board may reduce the road and/or driveway setback requirement to no less than fifty (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 placed so as to avoid sedimentation of the water body, tributary stream or wetland.
2. Existing public roads may be expanded within the legal road right of way regardless of their setback from a waterbody, tributary stream or wetland.
3. 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 District 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.
4. Road and driveway banks shall be no steeper than slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in sec. 14-449(d).
5. Road and driveway grades shall be no greater than ten (10%) percent except segments of less than two hundred (200) feet.
6. 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.

7. 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, driveway, or ditch. To accomplish this, the following shall apply:

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

<u>Grade (percent)</u>	<u>Spacing (feet)</u>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10%) percent or less.
- c. On sections having slopes greater than ten (10%) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

- d. 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.
8. 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.
- (k) *Parking areas:* Parking areas shall be set back a minimum of seventy-five (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 EWP, WC, WPD, 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 Sec. 14-449(a)1.
 2. Parking setbacks in the S-P (stream protection) zones are as established in Division 26.7.
 3. 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 fifty (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.
- (l) *Septic waste disposal:*

All subsurface sewage disposal system 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 seventy-five (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.

(m) *Stormwater runoff:*

1. 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 berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwater.
2. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

(n) *Agriculture:*

1. 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.A. §§ 4201-4209).
2. Manure shall not be stored or stockpiled within seventy-five (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.
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the shoreland zone shall require a conservation plan to be filed with the building authority.
4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies and coastal wetlands or within

twenty-five (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 forty thousand (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 forty thousand (40,000) square feet or less, the tillage shall be set back a minimum of twenty-five (25) feet from all water bodies, tributary streams or wetlands.

5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of water bodies and coastal wetlands or within twenty-five (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 building authority.
- (o) *General site plan features:* 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 section 14-526, are met:
1. The proposal will maintain safe and healthful conditions;
 2. The proposal will not result in water pollution, erosion, or sedimentation to surface waters;
 3. The proposal will adequately provide for the disposal of all wastewater;
 4. The proposal will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 5. The proposal will conserve shore cover and visual, as well as actual, points of access to inland and

coastal waters;

6. The proposal will protect archaeological and historic resources;
7. The proposal will not adversely affect existing commercial fishing or maritime activities;
8. The proposal will avoid problems associated with flood plain development and use; and
9. The proposal is in conformance with the standards set forth in this section.

(Code 1968, § 602.19A.D; Ord. No. 499-74, § 10, 8-19-74; Ord. No. 38-85, § 1, 7-15-85; Ord. No. 15-92, § 29, 6-15-92; Ord. No. 164-97, § 12, 1-6-97; Ord. No. 296-08/09, 6-15-09; Ord. No. 278-09/10, 7-19-10; Ord. No. 27-11/12, 8-15-11; Ord. 184-14/15, 6-1-2015)

Sec. 14-450. Reserved.

DIVISION 26.5. FLOOD PLAIN MANAGEMENT REGULATIONS*

***Editor's note**—Ord. No. 660-86, adopted July 7, 1986, amended Ch. 14, Art. III, by the addition of Div. 26A, §§ 14-450.1–14-450.8, which provisions have been included herein as Div. 26.5 at the discretion of the editor in order to conform with the existing numbering of divisions contained in this article.

Sec. 14-450.1. Establishment.

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 division establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the city.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.2. Purposes.

The purposes of this division 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.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.3. Applicability.

This division 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 Code.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 135-97, 11-3-97; Ord. No. 156-98, 11-16-98)

Sec. 14-450.4. Zoning districts and flood plain management regulations.

The regulations and controls of this division apply to all land areas, uses, structures, and land use activities cited in section 14-450.3, in all zones of the city.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.5. Definitions.

For the purpose of this division, the following terms and words shall have the meanings given herein:

Area of special flood hazard: The land in the flood plain having a one (1) percent or greater chance of flooding in any given year as specifically identified in the Flood Insurance Study cited in section 14-450.3.

Base flood: The flood having a one (1) percent chance of being 608hereof or exceeded in any given year (i.e., a one-hundred-year storm).

Building authority: The division of inspection services within the department of planning and urban development.

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 or addition to, any buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.

Floodproofing: Any combination of structural or nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real estate, to water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) 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 one-half (1/2) the width of the flood plain, as measured from the normal high water mark to the upland limit of the flood plain.

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.

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 nonelevation design requirements of this division.

Manufactured home or housing: As defined in section 14-47 (definitions) of this Code.

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 nineteen

(19) years, and mean high tide is defined as the average of the high waters over a nineteen-year 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 two-thirds (2/3) of its floor-to-ceiling height is above the average adjoining ground level, or at least fifty-one (51) percent 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 fifty (50) percent 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.
(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.6. Application for permit-Filing.

(a) *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 permits, and site plan and subdivision review, which may be required pursuant to the Codes and ordinances of the city.

(b) *Submission.* The application for a flood hazard area development permit shall be submitted in writing to the building authority and shall include the following:

1. A final site plan, where applicable, showing information as required in section 14-527 (final site plan) for either a level I, II or III site plan as defined in section 14-523 (required approvals and applicability);
2. A final subdivision plat, where applicable, providing information as required in section 14-496 (plat requirements);
3. For any development which does not meet the minimum threshold as a development requiring site plan review as authorized by section 14-523 (required approvals and applicability), the following information shall be provided:
 - a. The name, address and phone number of the applicant, owner and contractor;
 - b. A map with address indicating the location of the development site;
 - c. 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;
 - d. A statement of the intended use of any structure and/or other development;
 - e. A statement of the cost of the development including all materials and labor; and
 - f. A statement of the type of wastewater disposal system proposed.
4. In addition to the foregoing, all applications for a permit shall include the following information:
 - a. The elevation in relation to the National Geodetic Vertical Datum (NGVD), (or to a locally established datum for Zone A only) of the:
 - i. Base flood at the proposed site of all new or substantially improved structures, which is

determined:

- a. In Zones A1-30, AE, AO, AH, V1-30, and VE from data contained in the "Flood Insurance Study - City of Portland, Maine," as described in section 14-450.3; or
- b. 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;
 - ii. Highest and lowest grades at the site adjacent to the walls of the proposed building;
 - iii. Lowest floor, including basement; and whether or not such structures contain a basement; and
 - iv. Level, in the case of nonresidential structures only, to which the structure will be floodproofed;
- b. A description of an elevation reference point established on the site of all new or substantially improved structures;
- c. Either an elevation certificate (FEMA Form 81-31, 03/97, as amended) completed by a professional land surveyor, registered 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;
- d. Certifications by a registered professional engineer or architect that:
 - i. Nonresidential structures will meet the floodproofing criteria of section 14-450.6(a)4a.; section 14-450.8(g); and other applicable standards in section 14-450.8;

- ii. Construction in coastal high hazard areas, Zones V1-30 and VE, will meet the criteria of section 14-450.8(p); and other applicable standards in section 14-450.8;
- iii. Engineered hydraulic openings in foundation walls will meet the standards of section 14-450.8(l)2;
- iv. Bridges will meet the standards of section 14-450.8(m);
- v. Containment walls will meet the standards of section 14-450.8(n);
- e. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
- f. A statement of construction plans describing in detail how each applicable development standard in section 14-450.8 will be met.
- g. Cross section(s) of the site acceptable to the public works authority.

(Ord.No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98; Ord. No. 278-09/10, 7-19-10)

Sec. 14-450.7. Same-Review.

(a) Upon determination by the building authority that an application is complete, the building authority shall transmit the application to the planning authority for review for compliance with this division. The planning authority shall coordinate review of the application by the city. No permit shall be issued by the building authority until the planning authority, or the Planning Board in the case of an application requiring subdivision or site plan review by said board, finds that the development proposal is in compliance with the standards of this division. Compliance with the provisions of this division shall be required prior to beginning any development as defined herein.

(b) The planning authority, and Planning Board when applicable, 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 (5) or more acres, or in the case of manufactured home parks divided into

two (2) 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 section 14-450.8 of this division. 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 to be signed by the Planning Board or planning authority 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 planning authority, or Planning Board as appropriate, shall utilize the base flood data contained in the Flood Insurance Study, Portland, Maine, Cumberland County, as described in section 14-450.3. 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. The public works authority shall make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in section 14-450.3 herein;

3. Prior to approval of issuance of the flood hazard area development permit, the planning authority, or Planning Board 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
4. The building authority shall notify adjacent municipalities, the Maine Department of Environmental Protection and the Maine Flood Plain Management Program in the State Planning Office, prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency.
5. 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 14-450.12 of this division, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of sections 14-450.6, 14-450.8, and 14-450.10.

(Ord.No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98; ORd. No. 278-09/10, 7-19-10)

Sec. 14-450.8. Standards.

When reviewing flood hazard area development permit applications hereunder, the planning authority or Planning Board, where applicable, shall approve the plans under this division only if the following standards are met:

- (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.
- (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) *Watercourse carrying capacity:* 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 (2) 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 (2) feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - b. At least three (3) feet if no depth number is specified.
 4. Zone A shall have the lowest floor (including basement) elevated to at least two (2) feet above the base flood elevation utilizing information obtained pursuant to section 14-450.6(b)4.a.ii.; section 14-450.7(b)4; or section 14-450.7(c)1.
 5. Zones V1-30 and VE shall meet the requirements of section 14-450.8(p).
- (f) *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 (2) feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. Be floodproofed to at least two (2) 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 section 14-450.6(b)4d 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 (2) feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - b. At least three (3) 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 section 14-450.8(g).
 4. Zone A shall have the lowest floor (including basement) elevated to at least two (2) feet above the base flood elevation utilizing information obtained pursuant to section 14-450.6(b)4.a.ii.; section 14-450.7(b)4; section 14-450.7(c)1; or
 5. Zones V1-30 and VE shall meet the requirements of section 14-450.8(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 (2) 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 (4) corners of the manufactured home, plus two (2) additional ties per side at intermediate points (manufactured homes less than fifty (50) feet long require one (1) additional tie per side); or by
 - ii. Frame ties at each corner of the home, plus five (5) additional ties along each side at intermediate points (manufactured homes less than fifty (50) feet long require four (4) additional ties per side).
 - iii. All components of the anchoring system described in section 14-450.8(h)1.b.i. and ii. Shall be capable of carrying a force of four thousand eight hundred (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 (2) feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - b. At least three (3) feet if no depth number is specified; and
 - c. Meet the requirements of section 14-450.8(h)1.b.
4. Zone A shall:
 - a. Be elevated on a permanent foundation such that the lowest floor is at least two (2) feet

above the base flood elevation utilizing information obtained pursuant to section 14-450.6(b)4.a.ii; section 14-450.7(b)4; section 14-450.7(c)1; and

- b. Meet the requirements of section 14-450.7(2)b.
5. Zones V1-30 and VE shall meet the requirements of article VI.P.
- (i) *Recreational vehicles*: Recreational vehicles located within:
1. Zones A1-30, AH and AE shall either:
 - a. Be on the site for fewer than one hundred eighty (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 by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in section 14-450.8(h)1a and b.
 2. Zones V1-30 and VE shall meet the requirements of either section 14-450.8(i)1.a. or b. or section 14-450.8(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 section 14-450.8(f) and (g) above, if all other requirements of section 14-450.8 and all the following requirements are met. Accessory structures shall:
1. Be five hundred (500) square feet or less and have a value less than three thousand dollars (\$3,000.00);
 2. Have unfinished interiors and not be used for human habitation;

3. Have hydraulic openings, as specified in section 14-450.8(1), in at least two (2) 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 section 14-450.8(11)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 (1) foot at

any point within the community; and

- 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 one-half (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 section 14-450.8(k)2.a. and b.
 - (1) *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 article VI, including the elevation requirements of section 14-450.8, paragraphs (f), (g) or (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:
 - (a) A minimum of two (2) openings having a total net area of not less than one (1)

square inch for every square foot of the enclosed area;

- (b) The bottom of all openings shall be no higher than one (1) foot above the lowest grade; and

- I 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 (2) feet above the base flood elevation; and
- 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 section 14-450.8(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 located within:
1. Zones A1-30, AE, AH, V1-30 and VE shall:
 - a. Have the containment wall elevated to at least two (2) feet above the base flood elevation;
 - 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 section 14-450.6(b)d.4.
 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:
 - a. At least two (2) feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - b. At least three (3) feet if no depth number is specified.
 4. Zone A shall have the containment wall elevated to at least two (2) feet above the base flood elevation utilizing information obtained pursuant to section 14-450.6(b)4.a.ii.; section 14-450.7(a)4; or section 14-450.7(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:
 - a. Be elevated on posts or columns such that:
 - i. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to two (2) feet above the base flood elevation;
 - ii. 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
 - iii. 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.
 - b. Have the space below the lowest floor:

- i. Free of obstructions; or
 - ii. 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
 - iii. Constructed with nonsupporting breakaway walls which have a design safe loading resistance of not less than ten (10) or more than twenty (20) pounds per square foot.
3. A registered professional engineer or architect shall:
 - a. 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)*; and
 - b. Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of section 14-450.8(p)2.
4. The use of fill for structural support in Zones V1-30 and VE is prohibited.
5. 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.
6. The enclosed areas may be used solely for parking vehicles, building access, and storage.
7. Lobster sheds and fishing sheds located seaward of mean high tide shall be exempt from the elevation requirement in section 14-450.8(g) only upon review and approval by the planning authority or Planning

Board and if all the following requirements of section 14-450.8(a), (k) and (l) are met:

- a. The conditional use shall be limited to low value structures such as metal or wood sheds two hundred (200) square feet or less and shall not exceed more than one (1) 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.
- 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 (2) 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.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98; Ord. No. 199-03/04, 4-21-04)

Sec. 14-450.9. Permit.

Upon determination that the development or substantial improvement plan is in compliance with this division, the building authority shall issue one (1) of the following Flood Hazard Area Development Permits based on the type of development:

- (a) Issue 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 section 14-450.8(f), (g), (h) or (p). Following review of the elevation certificate data, which shall take place within seventy-two (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) Issue a Flood Hazard Development Permit for Floodproofing of Nonresidential Structures that are new construction or substantially improved nonresidential structures that are not being elevated but that meet the floodproofing standards of section 14-450.8(g)1.a.-c. The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect; or
- (c) Issue a Flood Hazard Development Permit for all level I and level II site plans that are not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than fifty (50) percent of the market value of the structure. Level I and level II site plans also include, but are not limited to: accessory structures as provided for in section 14-450.8(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.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98; Ord. No. 278-09/10, 7-19-10)

Sec. 14-450.10. Certificate of compliance.

No land in an area of special flood hazard shall be occupied

or used in violation of this division, 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 an applicant files the following certifications of the "as-built" development with the building authority:

- (a) For new construction or substantial improvement of any structure the applicant shall submit to the building authority:
 1. An elevation certificate completed by a professional land surveyor, registered professional engineer, or architect, for compliance with applicable provisions of section 14-450.8; and
 2. For structures in Zones V1-30 and VE, certification by a registered professional engineer or architect that the design and methods of construction to be used are in compliance with applicable provisions of section 14-450.8(p)3.
- (b) The applicant shall submit written notification to the building authority that the development is complete and complies with the provisions of this division.
- (c) Within thirty (30) working days, the building authority shall:
 1. Review the elevation certificate and the applicant's written notification; and
 2. Upon determination that the development conforms with the provisions of this division, shall issue a certificate of compliance.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.11. Fee.

A nonrefundable flood hazard area development permit fee of fifty dollars (\$50.00) shall be paid to the building authority, and a copy of a receipt for the same shall accompany the application. (Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.12. Appeals and variance processes.

- (a) The board of appeals shall hear and decide appeals from

and review orders, decisions, determinations or interpretations or the failure to act of the building authority as authorized in section 14-472 (appeals).

(b) The board of appeals may authorize variances from the provisions of this division as authorized in section 14-473 (variances), except:

1. As otherwise expressly provided in section 14-473I(3); or
2. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

(c) Section 14-473 notwithstanding, variances from the requirements of this division shall be granted only upon:

1. A showing of good and sufficient cause; and
2. 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
3. A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and
4. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
 - b. 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
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon the determination that:

1. The development meets the criteria of section 14-450.12(a) through (d); 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.

(f) 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 this section and section 14-450.8 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.

(g) Any applicant who meets the criteria of this section shall be notified by the board of appeals in writing over the signature of the chairman 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 twenty-five dollars (\$25.00) per one hundred dollars (\$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.

(h) The above paragraph(s) 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 he/she is 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 ⁶³²therefore, 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 he/she has read, understands and agrees to all of the stipulations in this subsection and subsection (7) immediately above.

(i) 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.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.13. Records; reports.

(a) The director of planning and urban development 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 director of planning and urban development 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 division and on any variances granted hereunder. A copy of such annual reports shall also be sent to the state planning office.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.14. Enforcement and penalties.

It shall be the duty of the building authority to enforce the provisions of this ordinance pursuant to Title 30-A M.R.S.A. § 4452. The penalties contained in Title 30-A M.R.S.A. § 4452 shall apply to any violation of this ordinance.

In addition to any other actions, the building authority, upon determination that a violation 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:

- (a) The name of the property owner and address or legal description of the property sufficient to confirm its identity and location;
- (b) A declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
- (c) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (d) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- (e) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(Ord. No. 156-98, 11-16-98)

Sec. 14-450.15. Conflict with other ordinances.

This division shall not repeal, annul or in any way impair or remove the necessity of compliance with any other rules, regulations, permits or provisions of law. Where one (1) section of

this Code imposes a greater restriction upon the use of land, buildings or structures than another section, the provisions of the stricter section shall control.

(Ord. No. 660-86, 7-7-86; Ord. No. 579-87, 6-15-87; Ord. No. 156-98, 11-16-98)

Sec. 14-450.16. Validity and severability.

If any section or provision of this division is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this division.

(Ord. No. 156-98, 11-16-98)

Sec. 14-450.17.- 14-450.30. Reserved.

DIVISION 26.7. S-P STREAM PROTECTION ZONE

Sec. 14-451. Purposes.

The purposes of the S-P stream protection zone are to preserve and protect significant streams as defined in 38 M.R.S.A. Section 438-A(1) by providing a buffer from land development activities in order to conserve stream channel capacity and to minimize siltation and stream bank erosion.

(Ord. No. 15-92, § 30, 6-15-92)

Sec. 14-452. Applicability.

The S-P stream protection zone includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream as shown on the City of Portland Zoning Map. The regulations set forth in this division shall not apply to a stream and its associated shoreland area when they are also located in an area designated as a shoreland zone. Streams located within shoreland zones shall be subject to the provisions of division 26.

(Ord. No. 15-92, § 30, 6-15-92)

Sec. 14-453. Development standards.

(a) *Minimum building setback from normal high water line of stream:* Seventy-five (75) feet. Notwithstanding this requirement, when a lot is a lot of record as defined in section 14-433 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 twenty-eight (28) feet, provided that the setback is not reduced to less than forty (40) feet. Structures in existence on June 15,

1992, may be expanded once during the lifetime of the structure up to twenty-five (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 thirty (30) percent.

(b) *Filling of material within a stream protection zone:* Filling of material within a stream protection zone shall require site plan review in accordance with article V of this chapter.

(c) *Minimum parking setback from normal high water line of stream:* Seventy-five (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.
(Ord. No. 15-92, § 30, 6-15-92; Ord. No. 278-09/10, 7-19-10)

Sec. 14-454. - Sec. 14-460. Reserved.

DIVISION 27. ADMINISTRATION AND ENFORCEMENT*

*Cross reference(s)—Administration, Ch.2.

Sec. 14-461. Building authority to enforce article.

It shall be the duty of the building authority to enforce the provisions of this article. No permit or certificate of occupancy shall be issued for the construction, alteration, enlargement, moving, use or change of use of any building, structure, or part thereof, or for the use or change of use of any premises, unless the plans and intended use indicate that the building, structure or premises is to conform in all respects with the provisions of this article.

(Code 1968, § 602.22.A)

Sec. 14-462. Change to nonconforming use.

The use of any part of any building or structure for a one-family dwelling house, two-family dwelling house, lodging house, hotel, tenement or apartment house, dormitory, educational use, club, church, farm use, hospital, sanitarium, institution, aviation facility, office or bank, place of amusement or assembly, retail business or service other than a filling station or garage, wholesale business, manufacturing or storage facility, warehouse,

filling station, stable, minor garage for not more than one (1) commercial motor vehicle, minor garage for more than one (1) commercial motor vehicle, public garage, any use prohibited in an industrial zone, or for any other distinctive use shall not be changed to any other use in this list of uses or to any other distinctive use, whether alterations in the building or structure are involved or not, until a permit and certificate authorizing such change of use has first been secured from the building authority, unless the proposed use conforms with the requirements of this article for the zone in which the building or structure or part thereof is located. Failure to secure such a permit before such a change is made shall be a violation of this article.

(Code 1968, § 602.22.B)

Sec. 14-463. Certificate of occupancy required.

No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. Applications for building permits and certificates of occupancy required by the building code shall also serve as applications for permits required by this article. After the building, structure or part thereof has been completed, altered, enlarged or moved, a certificate of occupancy shall be obtained for the proposed use before the same may be occupied or used. A certificate of occupancy shall be required for any of the following:

- (a) Any increase in the number of dwelling units in a building;
- (b) Establishment of any home occupation;
- (c) Change in the use of a nonconforming use, whether of land or buildings;
- (d) Occupancy and use, or change of use, of vacant land, except for the raising of crops;
- (e) Change in the use of an existing building, whether or not alterations are involved, from any use in the following list to any of the other uses on the list:
 - 1. Manufacturing or processing;
 - 2. Residential;
 - 3. Retail;

4. Storage or warehouse;
5. Transportation;
6. Other industrial;
7. Institutional;
8. office;
9. Other commercial;
10. Water-dependent use;
11. Marine use.

(Code 1968, § 602.22.C; Ord. No. 293-84, § 1, 11-19-84; Ord. No. 168-93, § 4, 1-4-93)

Sec. 14-464. Plans to be submitted.

A site plan showing the dimensions of the lot and of all buildings, yards and parking spaces, existing or proposed, shall accompany each application to the building authority for a building permit or certificate of occupancy. Site plans of all off-street loading and off-street parking, whether or not such parking is located on the same lot with the building for which it is required or which it is to serve, shall be provided.

(Code 1968, § 602.22.D)

Sec. 14-465. Zoning Determination Fee.

Upon request of any person and payment of a \$150.00 fee, the building authority shall issue a written decision, determination or interpretation regarding the zoning code. The fee shall not apply to any such decision, determination or interpretation made in regard to a single-family residence which is owned and occupied by the person making the request.

(Ord. No. 224-00, 5-15-00; Ord. No. 119-01/02, § 3, 12-3-01)

Sec. 14-466. - Sec. 14-470. Reserved.

DIVISION 28. JURISDICTION OF BOARD OF APPEALS*

*Cross reference(s)—Administration, Ch. 2; boards generally, § 2-31 et seq.; board of appeals, § 14-541 et seq.

Sec. 14-471. Jurisdiction and authority.

The board of appeals shall have the following jurisdiction and authority:

- (a) Subject to the provisions of section 14-472, to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority;
- (b) Subject to the provisions of section 14-473, to hear and grant or deny applications for variances from the terms of this article;
- (c) Subject to the provisions of section 14-474, to hear and grant or deny applications for conditional uses, as specified in this article;

(d) To initiate changes and amendments to this article.

(Code 1968, § 602.24.A; Ord. No. 437-74, 7-1-74; Ord. No. 354-85, § 5, 1-7-85)

Sec. 14-472. Appeals.

(a) *Authority.* The board of appeals shall hear and decide appeals from and review orders, decisions, determinations or interpretations or the failure to act of the building authority.

(b) *Procedure:*

1. *Notice of appeal.* An appeal may be taken to the board of appeals by any person affected by a decision of the building authority. Such appeal shall be taken within thirty (30) days of the action complained of by filing with the building authority a notice of appeal specifying the grounds thereof. A payment of a nonrefundable filing fee, as established from time to time by the city council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The building authority shall forthwith transmit to the board of appeals all of the papers constituting the record upon which the action appealed from was taken.
2. *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
3. *Action by the board of appeals.* Within thirty (30) days

following the close of the public hearing, the board of appeals shall render a decision on the appeal in the manner and form specified in article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the board. Within five (5) days of such decision or failure to act notice thereof shall be mailed by the secretary to each party.

4. *Right to grant variance in deciding appeals.* In any case where the notice is accompanied by an application for variance in accordance with section 14-473(b)(1), the board of appeals shall have the authority to grant, as part of the relief, a variance, but only in strict compliance with each provision of section 14-473 hereof.
5. *Conditions and limitations on rights granted by appeal.* Any right granted by the board of appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

(Code 1968, § 602.24.B; Ord. No. 437-74, 7-1-74)

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3) and (c)(4), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division 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.

(b) *Procedure:*

1. *Application.* 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 and contain at least the following information and documentation:
 - a. The name and address of the applicant and his or her interest in the subject property;
 - b. The name and address of the owner, if different

from the applicant;

- c. The address or location of the subject property;
 - d. The present use and zoning classification of the subject property;
 - e. Where the site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter;
 - f. The relief sought from the board of appeals.
2. *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

A copy of each variance request pertaining to division 26 (shoreland regulations) including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commission of the Department of Environmental Protection at least twenty (20) days prior to action by the board. Any comments received from the Commissioner prior to action by the board shall be made part of the record and shall be taken into consideration by the board.

3. *Action by board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision granting or denying the variance, in the manner and form specified by article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the variance unless mutually extended in writing by the applicant and the board. Within seven (7) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

(c) *Conditions for variances:*

1. *Undue hardship required; defined.* Except as provided in subsection (2) below, a 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:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
2. *Disability variance:* Notwithstanding the provisions of subsection (c)(1) of this section, 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.
3. *Practical difficulty variance:*
- a. Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the board of appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:
 1. The need for a variance is due to the unique circumstances of the property, and not to the

general conditions in the neighborhood;

2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
 3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
 4. No other feasible alternative is available to the applicant, except a variance;
 5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; 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.
- b. The following words have the meanings set forth below:
1. *Dimensional standards*: Those provisions of this article which relate to lot area, lot coverage, frontage, and setback requirements.
 2. *Practical difficulty*: A case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant.
 3. *Significant economic injury*: 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.

- c. Except as modified above, the other provisions of section 14-473 will apply to practical difficulty variances, including, but not limited to, the provisions of section 14-473(b)(2) (public hearing), and section 14-473(d) (specified variances prohibited).
- d. A practical difficulty variance may not be used to grant relief from the provisions of section 14-449 (land use standards), to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.

4. *Specified variances prohibited:*

- a. No use permitted in medium- and high-density residential districts shall be permitted in low-density residential districts. No use permitted in business districts shall be permitted in any residential district. No use permitted in industrial districts shall be permitted in any business or residential district. No use permitted in residential districts shall be permitted in any industrial district. The general use categories are listed below:
 - 1. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - 2. Medium- and high-density residential: R-4, R-5, R-6.
 - 3. Business: R-P, B-1, B-2, B-3, A-B, B-4, B-5, I-B.
 - 4. Industrial: I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb.
- b. 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.

- c. 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 article or the land development plan of the city; 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.
- d. 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.
- e. Except for appeals concerning nonconforming dwelling units in existence and use prior to April 18, 1984, no variance shall be granted which would permit the alteration of a structure to accommodate any additional dwelling unit as a conditional use without meeting the requirements which would otherwise be a condition precedent to such conditional use treatment.
- f. No variance shall be granted which would permit the alteration of an existing residential structure in an R-4 or an R-5 zone to accommodate more than three (3) dwelling units. No such variance shall be granted unless:
 - 1. No additional unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - 2. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;

3. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
4. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
5. The building shall have been in existence prior to January 1, 1984;
6. A minimum of nine thousand (9,000) square feet of land area shall be required;
7. A minimum of four (4) on-site parking spaces shall be required;
8. A minimum of seventy-five (75) feet of street frontage shall be required; provided, further, before a building permit may be issued, site plan approval under article V of this chapter shall be required with the following additional review standards:
 - (i) Any addition or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the structure;
 - (ii) 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;

provided, further, that no variance shall be granted with respect to any of the preceding additional requirements.

- g. No variance shall be granted from the minimum lot sizes set forth in section 14-433 for lots in the IR-1, IR-2 and I-B zones.

- h. No variance shall be granted from the requirements in Section 14-403.

(d) *Conditions on variances; variances less than requested.* Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) 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 (1) 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 (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one (1) 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.

(f) *Recording of variances.* No variance shall be valid unless, within thirty (30) 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 4963.

(Code 1968, § 602.24.C; Ord. No. 437-74, 7-1-74; Ord. No. 467-83, § 1, 4-20-83; Ord. No. 563-84, 5-7-84; Ord. No. 357-84, § 1, 12-17-84; Ord. No. 354-85, § 6, 1-7-85; Ord. No. 40-85, § 1, 7-15-85; Ord. No. 67-87, § 5, 11-2-87; Ord. No. 93-88, 7-19-88; Ord. No. 167-89, 12-11-89; Ord. No. 324-92, 4-22-92; Ord. No. 164-97, § 13, 1-6-97; Ord. No. 208-98, §§ 1, 2, 2-2-98; Ord. No. 253-05/06, 7-17-06; Ord. No. 296-08/09, 6-15-09; Ord. No. 60-12/13, 11-19-12)

***Editor's note**—Ord. No. 93-88, adopted July 19, 1988, amended § 14-473 by adding subsection (f) 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. 93-88.

Sec. 14-474. Conditional uses.

(a) *Authority.* The board of appeals may, subject to the procedures, standards and limitations set out in this section, approve the issuance of a conditional use permit authorizing development of conditional uses listed in this article.

(b) *Procedure:*

1. *Application.* Applications for conditional use permits shall be submitted to the building authority. 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 building authority but shall in all instances contain at least the following information and documentation:
 - a. The applicant's name and address and his or her interest in the subject property;
 - b. The owner's name and address if different than the applicant;
 - c. The address, or chart, block and lot number as shown in the records of the office of the assessor of the subject property;
 - d. The zoning classification and present use of the subject property;
 - e. The particular provision of this article authorizing the proposed conditional use;
 - f. A general description of the proposed conditional use;
 - g. Where site plan approval is required by article V of this chapter, a preliminary or final site plan

as defined by article V of this chapter.

2. *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
3. *Action by the board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision, in a manner and form specified by article VI of this chapter, granting the application for a conditional use permit, granting it subject to conditions as specified in subsection (d), or denying it. The failure of the board to act within thirty (30) days shall be deemed an approval of the conditional use permit, unless such time period is mutually extended in writing by the applicant and the board. Within five (5) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant and, if a permit is authorized, shall issue such permit, listing therein any and all conditions imposed by the board of appeals.

(c) *Conditions for conditional uses:*

1. *Authorized uses.* A conditional use permit may be issued for any use denominated as a conditional use in the regulations applicable to the zone in which it is proposed to be located.
2. *Standards.* The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed 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 zoning district. The Board 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) *Conditions on conditional use permits.* The board of appeals 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 permit and in the permit. Violation of such conditions shall be a violation of this article.

(e) *Effect of issuance of a conditional use permit.* The issuance of a conditional use permit 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 codes and ordinances of the city, including but not limited to a building permit, a certificate of occupancy, subdivision approval and site plan approval.

(f) *Limitations on conditional use permits.* No conditional use permit shall be valid for a period longer than six (6) months from the date of issue, or such other time as may be fixed at the time granted not to exceed two (2) years, unless the conditional use has been commenced or is issued and construction is actually begun within that period and is thereafter diligently pursued to completion; provided, however, that one (1) 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 permit shall be deemed to authorize only the particular use for which it was issued and such permit 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 twelve (12) consecutive months or more.

(g) *Appeals from board decisions.* Appeals from any decision of the board of appeals or, where applicable, the Planning Board respecting a conditional use permit shall be to superior court. (Code 1968, § 602.24.D; Ord. No. 437-74, 7-1-74; Ord. No. 407-83, 2-2-83; Ord. No. 467-83, § 2, 4-20-83; Ord. No. 237-83, 10-17-83; Ord. No. 222-13/14, 5-5-2014)

Sec. 14-475. Reserved.

***Editor's note**—Section 7 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed § 14-475, relative to nonconforming uses, which derived from Code 1968, § 602.24.E, and Ord. No. 437-74, adopted July 1, 1974.

Sec. 14-476. Successive applications.

Whenever any application, appeal or other request filed pursuant to this article 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 (1) 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. (Code 1968, § 602.24.F; Ord. No. 437-74, 7-1-74)

Sec. 14-477. 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 article when the provisions of this article or the conditions under which the relief was granted have not been complied with. (Code 1968, § 602.24.G; Ord. No. 437-74, 7-1-74)

Sec. 14-478. - 14-482. Reserved.

***Editor's Note**—Pursuant to Council Order 280-09/10 passed on 7/19/10 Division 29 (Preservation and Replacement of Housing Units) was repealed in its entirety and replaced with a new Division 29 (Housing Preservation and Replacement).

DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT

Sec. 14-483. Housing preservation and replacement.

(a) *Purpose.* The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;
2. To limit the net loss of housing units in the city;
3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

Dwelling unit. A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those dwellings, or dwelling units, or rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

Loss of dwelling unit for purposes of this section means the elimination or conversion to nonresidential use of a dwelling unit and dwelling units that remain vacant for three years or more or are lost due to demolition unless the vacancy or demolition results from accidents outside of the owner's control, fire, natural disasters, or acts of war.

Original site means the location where the demolition or conversion to non-residential use of dwelling units will take place.

(c) *Applicability.* Except as otherwise provided in this section, this section shall apply to the loss of three or more dwelling units in a five year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002.

Except as otherwise provided in this section, this section shall also apply to proposals that (a) result in the loss of fewer than three (3) dwelling units which were legally registered residential use as of July 1, 2002, and (b) creates surface parking.

Determination of number of the dwelling units within a structure or structures and the number of units lost will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

(d) *Exemptions.*

This section does not apply to:

1. Consolidation, elimination or reconfiguration of one (1) or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination or reconfiguration, except as provided by subsection 5 below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph.

The amendments to paragraph (d)(1) approved by the City Council on June 6, 2011 shall have an effective date of April 25, 2011 but not apply to any final determination regarding the applicability of this section made by the Planning Authority prior to April 25, 2011.

2. Proposals that result in a number of units equal to or greater than the number of units lost as determined by the Planning Authority; or
3. Grandfathered dwelling units existing in zones which no longer permit residential uses.
4. Property which has been ordered demolished by the City, pursuant to 17 M.R.S.A. §2851, et seq., as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.
5. Subparagraph 1, above notwithstanding, the conversion to a non-residential use of any dwelling units located on

the ground floor of a building within a business zone.

(e) *Site plan administrative authorization or approval required.* Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or site plan approval from the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

(f) *Tenant Notification Requirements.* Prior to elimination as a result of demolition or conversion to non-residential use, the owner shall:

1. Provide the Planning Authority a list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with tenant notice requirements of this section.
2. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than ninety (90) days from the date of receipt of the notice to vacate the unit; and
3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements.* In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied in any one of the following ways:

1. *Construction of Units.* The construction of housing units within a new structure or a new addition either on site

or off-site;

2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g) (1) or (2) above shall:

1. Be located within the same United States Census Block Group as the parcel from which the dwelling units are being removed or within 1,500 feet of the dwelling units being removed;
2. Not previously have been on the market as of the date of application;
3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application; and
4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.
2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 Year, and the numerator of which shall be the Index for the same month in each subsequent year. In the event that the Index is not then in

existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney, in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g. Such a performance guaranty shall be valid for no more than three years, after which the full amount due shall be provided to the City's Housing Trust Fund if replacement units satisfying the conditions of this Division 29 do not have Certificates of Occupancy.

(k) *Partial waiver of replacement requirements.* Any owner who has applied for site plan review for elimination or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

1. The proposed development is consistent with the comprehensive plan;
2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation;
3. The applicant demonstrates with objective evidence that

the imposition of the requirements of this section would impose such an economic burden upon the project relative to its scope that it renders the project impossible to develop; and

4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.

The Zoning Board of Appeals must make positive findings on each of the four (4) criteria above in order for any such adjustment to be valid. An applicant aggrieved of a decision of the Zoning Board of Appeals may appeal a decision under this subsection pursuant to Sec. 14-553 of the City Code.

(1) *Effect of Other City Ordinances.*

1. *Historic Preservation.* Nothing in this division shall permit the demolition or conversion to non-residential use, of dwelling units in residential property protected by the Historic Preservation Ordinance (Sections 14-601, et seq.), except as permitted by that ordinance.
2. *Conditional Zone.* A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

(m) *Appeals.* Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision. (Ord. No. 27-02/03, 10-7-02; Ord. No. 280-09/10, 7-19-10; Ord. No. 241-10/11, 6-6-11; Order 133-15/16, 1-4-2016)

DIVISION 30. AFFORDABLE HOUSING

Sec.14-484. Purpose.

It is in the public interest to promote an adequate supply of affordable housing for the city's residents. The purpose of this division therefore is to offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for

suitable housing, and helping to meet the housing needs of all economic groups within the city. The city believes that this division will assist in meeting the city's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare of its citizens.

(Ord. No. 98-06/07, 12-4-06; Ord. 82-15/16, 10-19-2015)

Sec. 14-485. Definitions.

Affordable means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and 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.

Low-income housing unit for rent means 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); and
- (b) Annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size.

Low-income housing unit for sale means a dwelling unit for which:

- (a) The sale price is affordable to a household earning 80% or less of the HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size, as calculated for the year in which the sale takes place.

Development fees means:

- (a) The following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; and administrative fees; and
- (b) Construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the city.

Dwelling unit has the same meaning as that term is defined in section 14-47.

Eligible project means a development project:

- (a) That is permissible under the provisions of this chapter in the zone in which it is proposed;
- (b) That will be a multi-family dwelling, as defined in section 14-47, and will not be located in an R-1 or R-2 zone;
- (c) Reserve; and
- (d) That creates new dwelling units, among which is at least one affordable housing unit for rent or sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

Workforce housing unit for rent means a dwelling unit which:

- (a) Is affordable to a household earning less than 100% of HUD AMI; and
- (b) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Workforce housing unit for sale means a dwelling unit for which:

- (a) The purchase price is affordable to a household at

120% of HUD AMI; and

- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

(Ord. No. 98-06/07, 12-4-06; Ord. No. 84-08/09, 10-20-08; Ord. 82-15/16, 10-19-2015)

Sec. 14-486. Reduction of fees.

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the city for an eligible project in the manner described in the following table:

Percentage of new units that are low-income or workforce units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The planning board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the planning board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the planning board shall promptly issue a decision on all such plans and applications before it for consideration.

(Ord. No. 98-06/07, 12-4-06; Ord. 82-15/16, 10-19-2015)

Sec. 14-487. Ensuring Workforce Housing.

(a) *Purpose.* Based on the city's Comprehensive Plan and the housing study completed in 2015, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.

(b) *Applicability/Conditional Use Requirement/Sunset.* This division shall apply to development projects that create ten or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

(c) *All Developments of Ten Units or More Conditional Uses.* Notwithstanding any language to the contrary in Chapter 14, all developments of ten units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this section, 14-487.

This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed by city planning staff or their agent and either this expiration date shall be deleted or the entire section shall be removed from the Code of Ordinances.

(d) *Workforce Housing Minimum.* At least ten percent (10%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per (e)2. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per (e)3. below.

(e) *Standards.*

1. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion

to the development of market rate units unless otherwise permitted through regulations.

2. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units.
3. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be 10 percent of the total number of bedrooms in the development. For the purposes of this section, for every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.
4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.
5. Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.
6. If at least 33 percent of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.
7. The term of affordability for the required 10 percent workforce units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability for Required Workforce Units
10%	Longest term permitted under federal, state and local laws and ordinances

25%	30 years
50%	20 years
100%	10 years

(f) *Implementing Regulations.* Regulations to further specify the details of this section shall be developed, including, but not limited to:

1. Specific methodology for income verification;
2. Situations where less than permanent affordability might be considered; and
3. Guidelines for meeting the requirement that off-site units be "in the same neighborhood".

(g) *Reporting to City Council.* In conjunction with the annual report on the Housing Trust, city planning staff shall annually report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

(Ord. No. 98-06/07, 12-4-06; Ord. 82-15/16, 10-19-2015)

Sec. 14-488. Density, parking and dimensional bonuses and reductions.

Notwithstanding any other provision of this chapter to the contrary:

- (a) *Density bonuses.* The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are low-income or workforce units	Percentage increase in maximum number of units allowed
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase

Projects Under Section 14-487	25% increase
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- (b) *Off-street parking.* Off-street parking is required as provided in Division 20 (off-street parking) of this article.
- (c) *Building height bonus.* The maximum structure height for an eligible project building:
1. That is located in a B-2 or B-2b community business zone;
 2. That contains five (5) or more dwelling units; and
 3. Of which 20% or more of new dwelling units created are affordable units for rent or sale, is an additional ten feet above the maximum structure height that would otherwise apply to the building pursuant to this chapter.

The total height of the eligible project, including any bonus received pursuant to this subsection, may not exceed the maximum height recommended for the location of the project pursuant to a height study that has been adopted as part of the city's comprehensive plan.

(Ord. No. 98-06/07, 12-4-06; Ord No. 240-09/10, 6-21-10; Ord. 82-15/16, 10-19-2015)

DIVISION 31. HOUSING TRUST FUND

Sec. 14-489. Housing trust fund.

- (a) *Purpose.* The purpose of enacting this section is:
1. To establish a City of Portland housing trust fund for the promotion, retention and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City.
 2. To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as set out in section 14-483 of this chapter.
- (b) *Definitions.*

Very low income household. A household having an income not exceeding fifty (50%) percent 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.

Low income household. A household having an income not exceeding eighty (80%) percent 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.

Moderate income household. A household having an income not exceeding one hundred twenty (120%) percent 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.

(c) *Establishment of the housing trust fund.* The city council shall establish a special revenue account under the name "City of Portland Housing Trust Fund." Deposits into the fund shall include:

1. Contributions from the city's housing replacement ordinance under 14-483(i);
2. Funds appropriated to be deposited into the fund by vote of the city council;
3. Voluntary contributions of money or other liquid assets to the fund;
4. Any federal, state or private grant or loan funds provided to the fund;
5. Interest from fund deposits and investments; and
6. Repayments of loans made from the fund.

(d) *Management of the trust fund.* The city manager, or his or her designee, shall serve as the manager of the housing trust fund. The responsibilities of the manager, subject to the orders of the city council, shall include:

1. Maintaining the financial and other records of the housing trust fund;

2. Disbursing and collecting housing trust fund monies in accordance with the housing trust fund annual plan; and
3. Monitoring the use of monies distributed to successful applicants for housing trust fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

(e) *Housing trust fund annual plan.* Each fiscal year, the city council shall adopt a housing trust fund annual plan. The city manager shall submit to the city council a recommended housing trust fund annual plan, utilizing the revenues of the housing trust fund as well as any other funds the manager may propose as appropriate. The housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action.

The housing trust fund annual plan shall include:

1. A description of all programs to be funded in part or in full by the housing trust fund;
2. A description of how funds from the housing trust fund will be distributed among very-low-income, low-income and moderate income households; and
3. The amount of funds budgeted for programs funded in part or in full from the housing trust fund.

Priority for the expenditure of funds collected pursuant to the housing replacement ordinance (see Sec. 14-483) shall be given to the creation of new housing stock, through either new construction or conversion of non-residential buildings to residential use.

(f) *Distribution and use of the housing trust fund's assets.*

1. All distribution of principal, interest or other assets of the housing trust fund shall be made in furtherance of the public purposes set out in section 14-483.
2. During each year, the housing trust fund shall

disburse as grants or loans so much of the housing trust fund's assets as the city council in its discretion has approved in the housing trust fund annual plan.

3. Funds shall not be used for city administrative expenses.
4. Funds shall not be used for property operating expenses or supporting services.
5. No grants or loans shall be awarded by the housing trust fund to corporations, partnerships or individuals who are delinquent, at the time of application in the payment of property taxes or other fees to the city of Portland, who Have been convicted of arson, who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current city electrical, plumbing building or housing codes or zoning ordinances.

(g) *Term of affordability.*

1. Whenever funds from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of an affordable rental or cooperative unit, the City of Portland shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of thirty (30) years.
2. Whenever funds from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of ownership housing, the city of Portland shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining and equitable balance between the interests of the owner and the interests of the city of Portland.
3. The affordability restriction requirements described in this section shall run with the land and the city of Portland shall develop appropriate procedures and

documentation to enforce these requirements and shall record such documentation in the Cumberland County Registry of Deeds.

(Ord. No. 281-09/10, 7-19-10)

Sec. 14-490. Reserved.

ARTICLE IV. SUBDIVISIONS*

***Cross reference(s)**--Ordinances dedicating or accepting any plat or subdivision in the city saved from repeal, § 1-4(h).

State law reference(s)--Land subdivisions, 30-A M.R.S.A. § 4403.

Sec. 14-491. Authority and purpose.

This article is adopted pursuant to the terms and provisions of 30-A M.R.S.A. Sections 3001 and 4403, as amended. The purpose of this article is to provide for the harmonious and economic development of the city; for the orderly subdivision of land and its development; for the orderly development of the general area surrounding such subdivision; for the coordination of streets within the general area; for adequate provisions for drainage, flood control, light, air and other public purposes; for the adequate and proper installation of streets, drainage, sanitary sewers, water and other utilities and facilities; for the dedication to the city of land for streets, alleys or other public purposes or the transfer to the city of easements or other rights or privileges; for the reservation for the city of land to be acquired for public facilities; and to protect public safety.

(Code 1968, § 603.1; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 155-89, § 1, 11-20-89)

Sec. 14-492. Jurisdiction.

This article shall govern each and every subdivision of land within the limits of the city unless specifically exempted in section 14-508. When application is made for the resubdividing of a previously recorded subdivision under the provisions of these regulations, it shall be treated as a new subdivision provided the applicant is the owner of rights in the recorded subdivision.

(Code 1968, § 603.3; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-493. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

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

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

Engineer shall mean a registered professional engineer in good standing with the state board of registration for engineers.

Esplanade shall mean that portion of a street right-of-way which is located between the curblineline and the edge of the sidewalk closest to the street.

Freshwater wetland shall mean freshwater swamps, marshes, bogs and similar areas which are:

- (a) Inundated or saturated by surface or groundwater 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; and
- (b) Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

Land development plan shall mean any part or element of the land development plan for the city as adopted by city council resolution No. 540 of 1974, as amended.

Lot shall mean a parcel or portion of land in a subdivision or plat of land, separated from other parcels or portions by description as on a subdivision of record or survey map or by metes and bounds, for the purpose of sale or lease to another.

Nonresidential subdivision shall mean a subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Performance guarantee shall mean a letter of credit or escrow

account in an amount and form meeting the requirements of section 14-501.

Planned unit development shall mean a residential subdivision consisting of attached dwellings or a series of attached dwellings intended for separate ownership, with open spaces, recreational areas, access ways and buildings which are designed, built and controlled in accordance with a unified development plan.

Recording plat shall mean the completed subdivision plat in form for approval and recording.

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

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

Sketch plan shall mean a very simple layout to show the location of the subdivision to gain informal comments of city staff.

Street shall mean a public way for vehicular and pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place or however otherwise designated, excepting, however, an alley.

- (a) *Arterial street* shall mean a heavily traveled street of considerable continuity used primarily as a traffic artery among large areas.
- (b) *Collector street* shall mean a nonarterial street which carries traffic from a minor street to arterial streets, including the principal entrance to streets of a residential development and streets for circulation within such a development.
- (c) *Marginal access street* shall mean a minor street which is adjacent to and substantially parallel with an arterial street and which provides access to abutting properties and protection from through traffic.
- (d) *Minor street* shall mean a street which services one (1) or more minor streets used primarily for access to abutting properties.

- (e) *Cul-de-sac or dead-end street* shall mean with only one (1) outlet.

Subdivider or applicant shall mean 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 or for another.

Subdivision shall mean the division of a lot, tract or parcel of land into three (3) or more lots, including lots of forty (40) acres or more, within any five-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 (3) or more dwelling units within a five-year period and the division of an existing structure or structures previously used for commercial or industrial use into three (3) or more dwelling units within a five-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 multifamily housing condominiums, time-share units and apartments.

Subdivision plat shall mean a plan of the proposed subdivision for presentation to the Planning Board and the public.

Surveyor shall mean a qualified registered surveyor of good standing with the state board of registration.

Tract (or parcel) of land shall mean 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.

Vicinity sketch shall mean a sketch of the proposed subdivision location, not necessarily drawn to scale, showing the proximity of the subdivision to surrounding streets and highways. (Code 1968, § 603.5; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 127-87, § 1, 2-18-87; Ord. No. 247-88, 11-28-88; Ord. No. 155-89, § 2, 11-20-89; Ord. No. 25-11/12, 8-15-11)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-494. Guidance to subdivider.

The purpose of the preapplication procedure is to afford the subdivider an opportunity to avail himself of the advice and assistance of the Planning Board, and to consult early and informally with the board staff before preparation of the subdivision plat and before formal application for its approval, to insure the development of a subdivision plan with mutual benefits for the subdivider and the city.

(Code 1968, § 603.2; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-495. Procedure for approval of a subdivision.

(a) *Application for approval:*

1. To obtain approval of a proposed subdivision the subdivider or applicant shall prepare for the Planning Board a subdivision plat, a vicinity sketch, and a recording plat in accordance with the requirements and standards established by this article.
2. The sketch plan may be prepared for staff and Planning Board review if desired by the applicant prior to formal submission of the subdivision plat.
3. The subdivider shall supply and submit five (5) copies of the complete subdivision plat and the vicinity sketch to the office of the planning authority at least fifteen (15) days prior to a regularly scheduled meeting of the Planning Board, to be in order for consideration by the board at the meeting.
4. The planning authority shall forward a copy of the subdivision plat and vicinity sketch to the public works authority, parks authority, fire department and building authority, all of which shall submit recommendations to the planning authority by the time of the initial hearing on the subdivision plat.
5. Prior to the date upon which the planning authority meets to consider the subdivision plat the applicant shall pay all costs incurred in providing public notice. The planning authority shall determine the amount of this fee based on the actual costs incurred in newspaper advertising and postage, and shall also be responsible for collecting and accounting for such fee. Public notice in the form of newspaper advertisement shall be provided as required under 14-32.

6. Notice shall be provided in accordance with section 14-32. Notice shall also be sent to the clerk and the reviewing authority of municipalities that abut or include any portion of a proposed subdivision.
7. The city council may from time to time establish by order reasonable application fees to defray the costs of reviewing subdivisions.

(b) *Timing of subdivision review:* A public hearing shall be commenced within thirty (30) days following the receipt of a complete subdivision application. The staff shall notify the applicant in writing either that the application is complete or, if it is determined to be incomplete, the specific additional materials needed to make it a complete application. The Planning Board shall render its decision on any application submitted to it within sixty (60) days following receipt of a complete application, or such other time as may be mutually agreed to by the Planning Board and the applicant.

(c) *Engineering requirements:*

1. The applicant shall furnish the public works authority with all engineering data and plans necessary for the completion of the required improvements, as enumerated in section 14-496(b). Such plans may be furnished apart from but at the same time as the subdivision plat and vicinity sketch and shall be certified by a registered professional engineer.
2. The public works authority shall review the plans submitted as required in subsection (c)(1) above and shall approve, approve conditionally, or disapprove same within ten (10) days of submission as to whether such plans are in conformance with the standards set forth in this article.

(d) *Subdivision plat approval:* The Planning Board shall approve, approve conditionally or disapprove such subdivision plat at a public meeting. If approved conditionally, the conditions and reasons shall be stated and given in writing to the subdivider and, if necessary, the Planning Board may require the subdivider to submit a revised subdivision plat. If the Planning Board should disapprove the subdivision plat, the reasons for such action shall be stated and given in writing to the subdivider, and the board may state the conditions under which the proposed subdivision would be

approved. One (1) copy of the subdivision plat as acted upon by the Planning Board shall be retained in its office, one (1) copy forwarded to the public works authority and one (1) copy returned to the subdivider.

(e) *Effect of subdivision plat approval:* Receipt of the approved copy of the subdivision plat of the subdivider is not authorization that he may proceed with the construction of any improvements. No construction will proceed until the recording plat has been approved by the Planning Board and has been properly recorded as required hereinafter in subsection (g).

(f) *Recording plat approval:*

1. The applicant shall submit the recording plat and five (5) copies thereof to the planning authority at least fifteen (15) days prior to the date of the meeting of the Planning Board at which it is intended to be considered, which copies shall be distributed as hereinafter provided.
2. Consideration of the recording plat, however, shall not take place until approvals required in subsections (c) and (d) are obtained.

(g) *Recording:*

1. When the recording plat is approved, the subdivider shall pay the actual cost of recording and reproducing five (5) copies of the plat, one (1) of which shall be on mylar for the public works authority records.
2. The recording plat shall be recorded in the office of the county registry of deeds by the subdivider.
3. The registry book and page numbers will then be recorded on the five (5) copies of the plan, of which one (1) shall be kept at the office of the Planning Board, one (1) sent to the building authority, one (1) copy on mylar sent to the public works authority, one (1) to the assessor's office and one (1) to the subdivider.
4. Unless the subdivider shall record his or her approved recording plat within three (3) years after the Planning Board has approved the subdivision plat, the recording plat approval shall become null and void. The preceding sentence notwithstanding, if the Planning Board's initial

approval of a subdivision is based in part upon the granting of a variance from any of the applicable subdivision approval standards, no such variance shall be valid unless that fact shall be expressly noted on the face of the recording plat and shall be noted in a certificate, each of which shall conform to 30-A M.R.S.A. Section 4406, and such recording plat or such certificate or both of them are recorded in the Cumberland County Registry of Deeds within ninety (90) days of final subdivision approval.

(h) *Sectional recordings:* Following subdivision plat approval, the Planning Board may permit the subdivision to be divided into two (2) or more sections for recording purposes subject to any conditions that the board deems necessary in order to insure the orderly development of the plan. The applicant may seek approval of and record a sectional recording plat with the county registry of deeds only if the section constitutes at least twenty (20) percent of the total number of lots contained in the approval plat and, in addition, shows the entire tract or parcel. In these circumstances, if the first section of the plat has been recorded within three (3) years after Planning Board approval, subdivision plat approval of the remaining sections of the plat shall remain in effect for five (5) years after Planning Board approval.

(Code 1968, § 603.6; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 692-81, 5-18-81; Ord. No. 123-85, 10-7-85; Ord. No. 127-87, §§ 2--4, 2-18-87; Ord. No. 94-88, 7-19-88; Ord. No. 155-89, §§ 3, 4, 11-20-89; Ord. No. 227-01, 4-2-01)

***Editor's note--**Ord. No. 94-88, adopted July 19, 1988, amended § 14-495(g) (4) to read as herein set out. See also the editors note to Art. III of this chapter for additional provisions relative to Ord. No. 94-88.

Sec. 14-496. Plat requirements.

Each and every modification of the information required to be shown on the plat in this section shall be applied for in writing by the subdivider. The decision of the Planning Board on such request shall be final.

(a) *Information on subdivision plat.* The following information shall be shown on one (1) subdivision plat unless otherwise indicated:

1. Date, north point, title and graphic scale. Scale shall not be more than sixty (60) feet to the inch

unless lots are more than an acre, but in no event more than one hundred (100) feet to the inch;

2. Based on a recent survey by the subdivider, existing contours at two (2) feet intervals or as otherwise required by the public works authority. Existing structures which are to remain will be delineated;
3. Names of proposed streets, width of rights-of-way, and typical cross section reservation, and depth of construction materials;
4. Locations, widths and purposes of other rights-of-way or easements to be recorded;
5. All appropriate street curve information, including point of curvature, point of tangency, tangent distance, radii and interior angle, in standard engineering format;
6. Location of those utilities existing on or adjacent to the tract to be subdivided, including size and elevation of buried or underground utilities (may be shown on separate plan);
7. Tract boundary lines and property lines of lots, with accurate dimensions and either bearings or deflection angles. All lots shall be numbered;
8. Names of adjacent property owners with parcels over twenty-five thousand (25,000) square feet or names of adjacent subdivision;
9. Designation of flood hazard areas, as defined by the National Flood Insurance Program and shown on the city flood hazard boundary map, as well as any other areas in the subdivision subject to inundation by storm water or storm sewer overflow;
10. Existing historic sites and structures which either appear on the National Register or are nominated to the National Register by the state historic preservation officer;
11. Proposed private and public utility system including water, gas, telephone, fire hydrants, and

any other services which shall supply the area (may be shown on separate plan);

12. Sanitary sewer and storm drain plans and profiles showing size, kind and slope of pipe, proposed manhole rim and invert elevations and catch basin locations and drains (may be shown on separate plan);
13. Lighting plan showing the location, design, height and spacing from each other of the support poles, in accordance with standards and specifications established by the public works authority (may be shown on separate plan);
14. Tree plan showing groups of existing, sizeable trees which the subdivider intends to preserve (may be shown on separate plan);
15. A detailed plan of the entire subdivision and the immediate vicinity showing all existing and proposed drainage both on and off-site including drainage swales, ditches, etc., with directional flow arrows and approximate slope grades, and showing proposed finished "spot elevations" around the perimeter of the subdivision. Proposed drainage shall be shown as it may affect or restrict development on individual lots and with reference to improvements for which a performance guarantee is required under this article. Where deemed feasible by the public works authority, proposed finished contours at intervals of two (2) feet shall be provided on the drainage plan upon request (may be shown on separate plat):
16. Location and designation of any zoning district boundaries affecting the subdivision;;
17. All future phases and sections of the subdivision proposed by the subdivider (may be shown on separate plat);
18. Proposed parks and school sites, or other public open space that the developer proposes to convey to the city;
19. Names and addresses of registered professional

engineer, subdivider and owner:

20. At the option of the subdivider, any other information that may be necessary for the full and proper consideration of the subdivision shall be submitted in writing;
21. Streets and right-of-way monuments and property line markers;
22. Vicinity sketch, as defined in section 14-493 (may be shown on separate plan);
23. Total site data, including total area of the subdivision, total area in streets, total area in recreation or open space and number of house lots;
24. Additional submission items if required by the Planning Board and insofar as feasible (may be shown on separate sheets or by other appropriate method):
 - a. When private sewage systems are used, the results and supporting data of a soil test of each lot in the subdivision conducted by a soil evaluator licensed in the state;
 - b. When the adequacy of the subdivision's load bearing capacity is in question, the results and supporting data of test borings conducted by a professional engineer registered in the state;
 - c. When conditions warrant, a program which shall be implemented by the subdivider to control dust, erosion and sedimentation and/or vehicular traffic during construction;
 - d. Evidence of the applicant's financial capability to carry out all phases of the proposed development;
 - e. Evidence of state and federal approvals, licenses or permits required by law, or the status of applications therefor;
 - f. Price range of houses that will be built in

the subdivision;

- g. Traffic impact analysis;
 - h. High intensity soil survey, if required by the planning authority;
 - i. Evidence of technical capacity to undertake the development;
 - j. Types and estimated quantities of solid waste to be generated by the development;
 - k. Construction plan outlining the anticipated sequence of construction of the major features of the project including without limitation roads, retention basins, sewer lines, seeding and other erosion and sedimentation control measures, and pollution abatement measures and also setting forth the approximate dates for commencement and completion of the project;
 - l. A narrative and a plan showing all proposed buffer strips, their dimensions, and maintenance plans and responsibilities; and
 - m. A description of any wetlands, wildlife and fisheries habitats, archaeological sites or unusual natural areas located on or near the project site and a description of the methods that will be used to protect such areas.
 - n. Where submission drawings are available in electronic form, the applicant shall submit any available electronic CADD.DXF files with final plans.
- (b) *Recording plat.* The recording plat shall be an original ink drawing on linen or mylar, or as necessary to be acceptable to the registry of deeds, and shall be tied to an accepted street or to a proposed street under construction and bonded to insure construction. This plat also shall show the following:
- 1. Title, date, graphic scale, north arrow, name, signature and registration number or seal of a registered land surveyor licensed in the state,

name and address of developer and owner;

2. Tract boundary lines and property lines of lots, with accurate dimensions and either bearings or deflection angles. All lots shall be numbered;
3. All appropriate street curve information, including point of tangency, tangent distance, radii and interior angles, in standard engineering form;
4. Street names, width of street rights-of-way and typical cross section showing only surface dimensions of roadway pavement, esplanade and sidewalk reservation;
5. Street and right-of way monuments and property markers. Iron pipes shall be designated by a small circle at the point of installation;
6. Locations, dimensions and purposes of any easement or right-of-way;
7. Purpose for which sites, other than residential lots, are dedicated or reserved; it being understood that any reservations of areas shall be subject to the proper zoning thereof;
8. Reference to recorded subdivision plats of adjoining platted land by book and page number;
9. Space for the signatures of the Planning Board and date of approval;
10. Where required by 30-A M.R.S.A. Section 4406, the fact that initial approval or subsequent amendment of a subdivision is based in part upon the granting of a variance from any of the applicable subdivision approval standards.

(c) *Alterations to an approved plot.* The planning authority may approve alterations to an approved recording plat when all of the following conditions are met; otherwise, a new subdivision plat must be submitted to the Planning Board:

1. The rearrangement of lot lines does not increase the number of lots within a block or other

subdivision unit or area;

2. The alteration will not affect any street, alley, utility easement or drainage easement;
3. The alteration meets all of the minimum requirements of this article, article III of this chapter on zoning and other applicable state and local codes:
4. The alteration is approved by the public works authority and the fire department.

Such approved alterations shall be properly recorded in the registry within thirty (30) days thereof or they shall be null and void. Recording of approved alterations also shall be in accordance with the requirements of 30-A M.R.S.A. Section 4406.

(d) *Vacation of plats.* Any such plat recorded, or any portion thereof, may be vacated with the consent of the city council as follows:

1. At any time before the sale of any lot therein, by written instrument, signed by the city and the owners of such subdivision, declaring the same to be vacated and describing therein the part or portion to be so vacated.
2. At any time after the sale of any lot therein and by written instrument, signed by the city and all owners of record of lots shown on the plat, declaring the same to be vacated and describing therein the part or portion to be so vacated.

Any instrument so executed vacating all or a portion of any plat shall be duly filed and recorded in the county registry of deeds. The execution and recording of the instrument described in subsection (d)2 above shall vest fee simple title to the centerline of the street, alley or easement for public passage so vacated in the owners of abutting properties. Title to property located within the vacated streets, alleys or easements for public passage shall pass to abutting property owners free and clear of any rights of the public or other owners of lots shown in the plan, but subject to the rights of the owners of any public utility installations which have

been previously erected therein.

(Code 1968, § 603.7; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 127-87, §§ 5, [12], 2-18-87; Ord. No. 95-88, §§ 1, 2, 7-19-88; Ord. No. 155-89, § 5, 11-20-89; Ord. No. 177-93, §§ 1, 2, 1-4-93; Ord. No. 165-97, 1-6-97)

***Editor's note**--Ord. No. 95-88, adopted July 19, 1988, amended subsections (b) and (c) of 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. 95-88.

Sec. 14-497. General requirements.

(a) *Review criteria.* When reviewing any subdivision for approval, the Planning Board shall consider, among others, the following review criteria and before granting approval shall determine that the proposed subdivision:

1. Will not result in undue water or air pollution. In making this determination it shall at least consider the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; the conformity to the applicable state and local health and water resources regulations;
2. Has sufficient water available for the reasonably foreseeable needs of the subdivision;
3. Will not cause unreasonable burden on an existing water supply;
4. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
5. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highway or public roads existing or proposed;
6. Will provide for adequate sanitary waste and storm water disposal and will not cause an unreasonable burden on municipal services if they are utilized;
7. Will not cause an unreasonable burden on the ability of the city to dispose of solid waste and sewage if municipal services are to be utilized;

8. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or by the city, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline. For subdivisions within historic districts designated pursuant to article IX of this chapter, the Planning Board shall apply the standards of section 14-651(c) of article IX. The Planning Board may request that the historic preservation committee prepare an evaluation of the proposed subdivision based upon the standards of section 14-651(c);
9. Is in conformance with the land development plan or its successor;
10. The subdivider has adequate financial and technical capacity to meet the standards of this section;
11. Whenever situated, in whole or in part, within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;
12. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
13. Is or is not in a flood-prone area, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one (1) foot above the 100-year flood elevation;
14. All potential wetlands within the proposed subdivision shall be identified on any maps submitted as part of the

application, regardless of the size of those wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district; and

15. Any river, stream or brook within or abutting the proposed subdivision shall be identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A. Section 480-B, subsection 9.

(b) *Burden of proof.* In all instances the burden of proof shall rest upon the person proposing the subdivision.

(c) *Conformity with Code.* Any proposed subdivision shall be in conformity with all relevant provisions of this Code.

(d) *Reserved.*

(e) *Construction records and inspection.*

1. The project engineer and city engineer shall have the right to enter and inspect the construction site during all phases of the project to ensure compliance with this article.
2. After approval of the subdivision plat and prior to the construction of any of the subdivision's public improvements, the subdivider shall supply the city engineer with a complete set of engineering drawings on mylar or linen showing all streets, sanitary sewers and surface water drains and all appurtenant work within the subdivision.
3. The subdivider shall provide the project engineer with a complete and accurate list of any changes from the engineering drawings as approved by the Planning Board prior to the release of the performance bond.

(Code 1968, § 603.8; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 127-87, §§ 6, [13], 2-18-87; Ord. No. 155-89, § 6, 11-20-89; Ord. No. 15-92, § 31, 6-15-92; Ord. No. 221-93, 5-17-93)

Sec. 14-497.5. Adjustment of dimensional requirements for subdivisions in the R-3 zone.

Notwithstanding section 14-90 and any other section of this chapter, up to twenty-five (25) percent of the lots in a subdivision located in the R-3 zone may have reduced street

frontage and/or lot widths, provided that the Planning Board finds as part of subdivision approval that the following standards are met:

- (a) The subdivision is approved for the first time on or after December 1, 1997;
- (b) The subdivision has a minimum land area of three (3) acres;
- (c) The fire department determines that the reduced street frontage is adequate to provide access required to provide emergency services to each lot; and
- (d) A lot with reduced lot width shall meet all required setbacks.

(Ord. No. 165-97, § 6, 12-1-97)

Sec. 14-498. Technical and design standards.

(a) *Adoption and amendment of standards:* The public works authority and the planning authority may promulgate technical and design standards for subdivisions and site plans. Such technical and design standards or any amendments thereto shall become effective only upon approval of the Planning Board following a public hearing before the Planning Board. In approving the technical and design standards, the Planning Board may direct staff to make changes with respect to format and text but, to the extent that standards are based upon sound engineering practice, shall not direct changes in the standards themselves. Such standards shall be additional to and consistent with the provisions of this article and shall be necessary and reasonable and shall be in accord with sound engineering practice. The public works authority and planning authority shall maintain for public inspection current copies of the effective standards.

(b) *Street plan:*

1. All streets shall be platted along contour elevations which result in minimum grades and greatest visibility whenever practicable, with consideration given for anticipated use of the land.
2. The proposed street layout shall be coordinated with the street system of the surrounding areas. All streets must provide for the continuation or appropriate projection of streets in surrounding areas and provide means of ingress

and egress for surrounding acreage tracts.

When connecting streets within residential neighborhoods, new streets shall contribute to a neighborhood street system characterized by a network of interconnected streets, which minimizes through-traffic in residential neighborhoods. The layout of subdivision lots, streets, and pedestrian ways shall promote multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto.

The interconnection of new and existing streets is further subject to the following provisions to minimize and mitigate through-traffic in residential neighborhoods:

- a. Where a determination is made that a proposed street connection will result in substantial increases in traffic volume and speed on the effected public streets, the planning board may require appropriate traffic calming solutions as set forth in the traffic calming ordinance. (Section 28-250) The department of public works (DPW) may by regulation and amendment to the *Technical Manual* establish standards for determining what is a "substantial increase in traffic volume and speed"; and
- b. In any circumstances where a street connection is allowed, the planning board may condition subdivision approval to require the developer to monitor future traffic patterns to determine whether, using existing traffic calming standards, new or additional traffic calming measures should be employed. The extent and design of traffic calming shall be determined by the DPW to mitigate the post development impact of connecting new and existing streets.

In cases where post development monitoring shows that increased traffic volume and speed is such that further traffic calming would be insufficient to mitigate traffic negative impacts of through-traffic, the DPW may require that the connection be modified to exclude regular vehicular traffic, while retaining bicycle, pedestrian, and where needed, emergency vehicle connections. The DPW

shall develop typical standards and specifications for bicycle, pedestrian, and emergency vehicle connections and/or turnarounds.

- c. Where a determination is made by the DPW that a proposed street connection will result in substantial increases in traffic volume and speed on the affected public streets, the planning board may disallow a proposed street connection for vehicular purposes in favor of a connection for non-vehicular purposes in situations where a proposed residential street connection meets all of the following criteria:
 - i. the new street would result in the connection of two arterials; and
 - ii. the street would be located in a neighborhood where there is no existing public through-street network connecting the same arterials; and
 - iii. there is no likelihood that other public street connections will be developed in the future that would connect the arterials, whether because of topography limitations, existing development patterns, or other similar reason.

In circumstances where vehicular connections are disallowed per section (c) above, the planning board shall require that adequate right-of-way is reserved to permit the extension of the street for pedestrian, bicycle, emergency use, and potential vehicle connections as may develop in the future.

3. Reserve strips or spite strips for unspecified or unacceptable purposes are prohibited.
4. Street right-of-way widths shall not be less than:
 - a. Fifty (50) feet for marginal access street;
 - b. Fifty (50) feet for minor street;
 - c. Sixty (60) feet for collector street.

Proposed subdivisions along existing, or dedicated, or platted streets where rights-of-way are inadequate shall provide additional land to meet the minimum standards.

5. Streets shall not occupy more land than needed to provide access nor create unnecessary fragmentation of the subdivision into small blocks. Streets will be designed to discourage outside traffic from traversing the development.
6. All dead-end streets shall provide for a cul-de-sac or, in the case of a dead-end street which will be extended, a temporary turn-around at the end of the street, subject to the approval of the public works authority.
7. The minimum roadway width including esplanades and sidewalks shall be:
 - a. Fifty (50) foot right-of-way, street pavement width, curbing, sidewalk width and esplanade width to conform to the requirements contained within the City of Portland Technical Manual.
 - b. Sixty (60) foot right-of-way, street pavement width, curbing, sidewalk width and esplanade width to conform to the requirements contained within the City of Portland technical and design standards and guidelines manual.
 - c. Street right-of-way on the islands in Casco Bay shall comply with article III of chapter 25.
8. Sidewalks and curbs:
 - a. Sidewalks shall be constructed on each side of each street in accordance with article III of chapter 25. Sidewalks to be used by pedestrians are to be so located as to minimize contacts with normal automotive traffic, with preference given to interior walks away from streets in common open space in block interiors.
 - b. Curbs shall be constructed on each side of each street. The curbing shall be constructed as provided in article VI of chapter 25.

(c) *Street design:*

1. Profiles of each street or way in the subdivision shall be shown on the subdivision plat. They shall be drawn to a longitudinal scale of forty (40) feet to one (1) foot and a vertical scale of four (4) feet to one (1) inch. Such profiles shall include separate profiles of each side line and center line of the street or way. Any buildings abutting on the street shall be shown in standard engineering format as requested by the public works authority.
2. Street grades in all proposed subdivisions shall be subject to the approval of the public works authority.
3. The public works authority shall establish the sequence in which work is to be accomplished. Where it is determined by the public works authority that work has been completed prior to the receipt of all approvals required by this article or which is out of sequence or is not in compliance with the standards of this section and of chapter 25, the director of parks and public works or an inspector from the public works authority may issue a stop work order. Work shall recommence only after the stop work order has been lifted by the director of parks and public works or an inspector from the public works authority. Violation of the stop work order shall be considered an offense.

(d) *Street and subdivision names:*

1. Street names for all subdivisions shall appear on the subdivision plat and be subject to approval by the Planning Board.
2. Subdivision names for plats shall be subject to approval by the Planning Board and not duplicate the name of any plat already recorded.

(e) *Exception for private streets within PRUD's and manufactured housing parks.* Private streets within PRUD's and manufactured housing parks shall be exempt from the street right-of-way and roadway width requirements set forth above, provided that no such street shall be accepted by the city unless it is first improved to the standards set forth above at the expense of those persons requesting the street acceptance. Private streets within a PRUD or a manufactured housing park shall meet specifications established by the public works department. All

private streets shall be designed by a professional engineer and shall be built according to accepted engineering standards.

(f) *Sewers and storm drains:*

1. The design of all sewers and storm drains shall be subject to approval by the public works authority.
2. All subdivisions shall be provided with adequate storm drain systems within the subdivision separate from any sanitary sewer system required in article III of chapter 25.
3. Any natural or manmade areas, systems or facilities designated for stormwater control purposes and intended for city maintenance shall, except for detention or retention ponds or basins and regularly free-flowing watercourses, be structurally enclosed in accordance with the standards of the public works authority, and shall be dedicated with sufficient land for maintenance purposes. Warranty deeds to such areas shall be submitted for acceptance by the city council at the same time as the acceptance of streets. All such areas as are not intended for city maintenance shall be permanently protected and maintained by private agreement, deed covenant or restriction, as appropriate, in form approved by the corporation counsel.
4. The approval of the plumbing inspector is required for all subdivisions involving the use of septic tanks and drainage fields for sewage disposal.
5. The subdivider shall be responsible for the construction of all sewers and storm drains including manholes, catch basins and any other appurtenances as may be deemed necessary by the public works authority. All work shall be in accordance with public works specifications.
6. The public works authority shall establish the sequence in which work is to be accomplished. Where it is determined by the public works authority that work has been completed prior to the receipt of all approvals required by this article or which is out of sequence or is not in compliance with the standards of this section and of chapter 24, the director of parks and public works or an inspector from the public works authority may issue a stop work order. Work shall recommence only after the

stop work order has been lifted by the director of parks and public works or an inspector from the public works authority. Violation of the stop work order shall be considered an offense.

(g) *Blocks:*

1. A maximum block length of eight hundred (800) feet, measured from the nearest street lines of intersecting streets, shall be observed except where, in the opinion of the Planning Board, conditions justify a departure from this standard. In general, block size should be the maximum consistent with the use and shape of the site and the convenience and safety of the occupants.
2. In blocks exceeding eight hundred (800) feet in length, measured from the nearest street lines of intersecting streets, the Planning Board may require where feasible the reservation of a twenty (20) foot wide easement to the city through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four (4) foot wide paved foot path be included.
3. The length, width and shape of blocks shall be determined on the basis of:
 - a. Provision of adequate building sites suitable to the special needs of the type of use contemplated;
 - b. Zoning requirements as to lot sizes, setbacks and dimensions;
 - c. Needs for convenient access, circulation, control and safety of street traffic;
 - d. Limitations and opportunities of topography.
4. Blocks with lots having double frontage on streets shall be avoided.
5. The foregoing dimensions may be adjusted by the Planning Board where type of use or topography requires such modification.

(h) *Lots:*

1. Lot sizes shall conform to the zoning ordinance in article III of this chapter and the city health code.
2. Where easements for public utilities, storm or sanitary sewers are contemplated, the lot lines shall be located in such a manner as to facilitate construction of such facilities and the maintenance thereof.
3. Lots which are reserved or laid out for business, commercial or industrial purposes shall have sufficient width and depth to accommodate the off-street parking and loading facilities required for the type of use and development contemplated, as established in article III of this chapter.
4. Where feasible, side lot lines shall be at right angles to street lines (or radial to curving street lines).
 - (i) *Public open space:*
 1. In all subdivisions open space may be provided for parks, recreational and other public areas. Where no public open space or recreational areas exist in close proximity to the subdivision, or where a lack of such areas in the subdivision would require its disapproval under section 14-497(a), general requirements, the Planning Board may require provision of land for park or recreational purposes. Such lands may be designated for public or private ownership in accordance with the conditions stated in this section, subject to the approval of the Planning Board.
 2. If a tract or parcel is intended for public ownership and is so designated on the subdivision plat, the acceptance of such land shall be first recommended by the various departments and the Planning Board and sent to the city council for final determination.
 3. If a tract or parcel is designed or intended to be owned and used in common for recreational or other public or semipublic purposes and such intent is so designated on the subdivision plat, appropriate documents in form approved by the corporation counsel shall be submitted to the Planning Board. Such documents shall clearly:
 - a. Set forth the nature of the permanent organization under which common ownership is to be established,

including its purpose; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property for its share of the cost of administering and maintaining such common property;

- b. Set forth the extent of common interest held by the owner of each individual parcel in the tract held in common with others.

(j) *Access to shoreline:*

1. In all subdivisions having shore frontage on the island of Casco Bay, existing legal rights of public access to the shoreline shall be preserved. The proposed street layout and circulation plan shall be suitably integrated with such existing public access in a manner that reasonably promotes the public use of such access. The proposed street layout and circulation plan shall also be designed to preserve any legal rights to any significant water views and scenic vistas from such rights-of-way.
2. In all subdivisions having any lots within the shoreland zone, legal rights of private access to waters shall, to the extent reasonably feasible, be established for the benefit of all lots within the subdivision not otherwise having such access.

(Code 1968, 603.9; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 41-84, § 1, 6-18-84; Ord. No. 98-85, § 1, 7-15-85; Ord. No. 127-87, §§ 7, 8, 2-18-87; Ord. No. 104-87, 10-19-87; Ord. No. 66-88, 7-18-88; Ord. No. 201-89, § 1, 12-18-89; Ord. No. 218-04/05, 5-2-05; Ord. No. 86-05/06, 10-17-05; Ord. No. 278-09/10, 7-19-10; Ord. 208-15/16, 11-16-2015)

***Editor's note**--Ord. No. 66-88, adopted July 18, 1988, amended § 14-498 by adding subsections (c) (3) and (f) (6). The ordinance further provided as follows:

Be it further ordained and determined by the city council that the above amendments are necessary in order to prevent further work being done which is not in accordance with City technical standards. Therefore, this enactment shall take effect immediately as an emergency pursuant to Article II, Section 8 of the Charter and shall further apply to all pending proceedings, applications, petitions and to all projects which have work that remains to be completed at the date of enactment of these amendments.

Sec. 14-499. Required improvements.

Prior to the release of the approved recording plat the subdivider shall file a guarantee as hereinafter provided, and

prior to release of such guarantee the subdivider shall have completed all improvements as follows:

- (a) All streets shall be graded in conformity with the requirements set out in section 14-498 and in accordance with article III of chapter 25.
- (b) On all streets, side streets, and alleys, a suitable hard surfaced permanent pavement shall be installed meeting the requirements set forth in article III of chapter 25.
- (c) Water, gas and sanitary sewer mains and storm drains shall be constructed prior to the installation of paving with all mains being extended from all lots having sufficient stub outs to avoid subsequent breaking of pavement.
- (d) Sidewalks and curbs shall be constructed as required in section 14-498.
- (e) Adequate storm drains shall be constructed subject to the provisions of section 14-496 and in accordance with the department of public works specifications.
- (f) A total of two (2) trees per lot, which shall be street trees, shall be planted near the street line in full public view on private property, as directed by the city arborist pursuant to "Standards for Landscaping and Landscape Preservation" contained in the City of Portland Technical Manual. Existing healthy trees may be credited toward this requirement, subject to the approval of the city arborist.
- (g) Permanent markers will be set as prescribed by the public works authority.
- (h) All utility lines shall be placed underground unless otherwise approved by the Planning Board.
- (i) Street lighting shall be installed in accordance with the standards of the public works authority.
- (j) A public water supply shall be installed subject to the approval of the Portland Water District.
- (k) Erosion control measures shall be taken both during and after construction in accordance with the standards of

the public works authority.

(Code 1968, § 603.10; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 127-87, § 9, 2-18-87; Ord. No. 105-87, § 1, 10-19-87; Ord. No. 278-09/10, 7-19-10)

Sec. 14-499.5. Additional requirements for manufactured housing parks.

All manufactured housing parks and subdivisions as defined in section 14-47 shall meet the requirements for residential subdivisions established by this article, the site plan and the zoning ordinance, in addition to the following requirements for manufactured housing parks:

- (a) The entire development shall be properly screened from abutting neighborhoods and uses. Such screen shall consist of plantings, or a combination of earth berm and plantings, not less than three (3) feet in width and six (6) feet in height at the time of initial occupancy of such development, and shall be set back on corner lots so as to comply with section 14-434. Individual shrubs or trees, as approved by the city arborist, shall be planted so as to establish a dense visual screen year round. At least fifty (50) percent of the plantings shall consist of evergreens. Such screen shall thereafter be permanently maintained in a condition meeting the specifications and intent of this subsection. In cases where such screen areas are to be separately owned, the deed of conveyance shall contain a requirement that the grantee shall likewise maintain the screen area. Such requirement shall be in a form acceptable to the corporation counsel. Any area intended to be owned and used in common shall thereafter be maintained by a permanent organization as set forth in section 14-498(i)(3). Existing vegetation may substitute for new plantings if it forms an acceptable dense visual screen consistent with the intent of this subsection.
- (b) All manufactured housing units and any accessory structure within such development shall be located at least fifty (50) feet from any external property boundary of the development where the proposed park density is two (2) or more times greater than the density of residential development on adjacent parcels or the maximum permitted density of adjacent vacant parcels.
- (c) All units within such development shall be set back from any existing collector or arterial street, as defined in

section 14-493, in accordance with the setback provisions for the underlying zone.

- (d) All fuel oil supply systems shall be constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.
- (e) All trash containers, bottled gas tanks, storage sheds, utility meters, or other similar items or accessory structures except parking garages, shall be located and suitably screened by plantings or fencing so as not to be clearly visible from the street or abutting properties.
- (f) All manufactured housing units shall be placed either on a foundation which forms a complete enclosure under exterior walls, or on suitable blocks on a foundation pad, in which case the unit shall be boxed or skirted with suitable material designed for such use.
- (g) All manufactured housing units shall be properly installed, blocked and leveled or affixed to a foundation wall, so as to rest on the wheels used to transport the unit. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation.
- (h) Notwithstanding the provisions of sections 14-498 and 14-499, private roads within a manufactured housing park shall be a minimum of twenty-three (23) feet wide, with a minimum pavement width of twenty (20) feet.

(Ord. No. 611-82, § 1, 7-7-82; Ord. No. 358-84, § 1, 12-17-84; Ord. No. 201-89, § 2, 12-18-89)

Sec. 14-500. Additional requirements for nonresidential subdivisions.

All nonresidential subdivisions must meet the requirements for residential subdivisions established by this article, the site plan in article V of this chapter and the zoning ordinance in article III of this chapter, in addition to the following considerations, except as waived by the Planning Board due to the commercial or industrial nature of the development:

- (a) Proposed industrial parcels shall be suitable in area and dimensions to the commercial or industrial development anticipated.
- (b) Street rights-of-way and pavement shall be adequate to accommodate the type, weight and volume of traffic

anticipated to be generated.

(c) The design and installation of public utilities including water, sewers and storm water drainage, shall be adequate to accommodate the anticipated usage.;

(d) Streets carrying truck traffic shall not normally be extended to the boundaries of adjacent existing or potential residential areas.

(Code 1968, § 603.11; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-501. Performance and defect guarantees; engineering review, inspection fees and administrative fees.

(a) The performance guarantee shall be a letter of credit or escrow account with a responsible financial institution or the deposit, with the finance department of the city, of a sum required for the guarantee. (The city shall hold such funds in a noninterest bearing account until the completion of all of the improvements.) The performance guarantee shall be in the name of the city and shall be approved by the finance director as to financial sufficiency and the corporation counsel as to proper form and legal sufficiency.

(b) Performance guarantees shall be required to ensure the fulfillment of all improvements as required by section 14-499, as well as the requirement in article III of chapter 25 that the subdivider shall give to the city, prior to the release of the performance guarantee a warranty deed (with metes and bounds description) to the property within each street within the subdivision, as well as delivery to the city of the warranty deeds to all other improvements intended for city maintenance. Such guarantee shall specify the completion date of the improvements required in the subdivision and the delivery date to the city of such deed or deeds prior to the expiration of the performance guarantee. The performance guarantee shall be for a term not less than one (1) year. Furthermore, the performance guarantee shall be released only upon the completion, to the satisfaction of the city, of the public improvements and the tendering of a defect guarantee as required in subsections (e) and (f).

(c) The guarantee shall be equal in value to one hundred (100) percent of the estimated cost of the improvements as determined by the public works authority and the planning authority. The guarantor shall not be released from the guarantee except by a release in writing from the public works authority and the planning authority.

(d) Performance guarantees may be reduced periodically by the public works authority and the planning authority in the manner provided herein. Upon request, but in no event more than three (3) times in any calendar year, the developer shall be eligible to receive reductions in the performance guarantee equal to the estimated cost of the completed improvements. In no case, however, shall any performance guarantee be reduced (1) by less than one hundred thousand dollars (\$100,000.00) or fifty (50) percent of the initial amount of the performance guarantee, whichever is less, at any one (1) time; or (2) in any line item where improvements remain to be completed; or (3) to a value which is less than the estimated cost of completing all remaining prescribed improvements for which a performance guarantee is required by section 14-530 as determined by the public works authority. Notwithstanding any other provision of this section, no performance guarantee shall be reduced to less than the amount of the defect guarantee to be posted upon completion of the improvements.

(e) Upon the satisfactory completion of the subdivision's prescribed improvements, excepting tree planting and other landscaping if in the opinion of the city arborist the installation of such plantings is not feasible due to weather conditions, and following the city's receipt of the warranty deeds referred to in (b) above, the subdivider shall file a defect guarantee with the city. The defect guarantee shall ensure the workmanship and the durability of all materials used in the construction of the roadways, curbing, esplanades, sidewalks, sanitary sewerage systems (including manholes and house drain laterals), storm drainage systems (including manholes, catch basins and catch basin drains), street lighting, tree planting, other appropriate landscaping and all other public improvements which may become defective within one (1) year period, all as determined by the public works authority. The defect guarantee shall also ensure the proper installation of any required tree plantings or landscaping which were not installed prior to the filing of the defect guarantee during the next appropriate planting season, as determined by the city arborist. The defect guarantee shall be filed prior to the release of the performance guarantee and it shall not expire between October 30 and April 15 of the following year.

(f) The defect guarantee shall be a letter of credit or escrow account with a responsible financial institution or the deposit, with the finance department of the city, of a sum required for the guarantee (the city shall hold such funds in a noninterest bearing account until the completion of all of the improvements), equal in value to ten (10) percent of the estimated cost of public

improvements. It shall be in the name of the city and shall be approved by the finance director as to financial sufficiency and the corporation counsel as to proper form and legal sufficiency. A guarantee which contains appropriate terms and conditions to cover both the performance and defect guarantee provisions as specified in subsections (a)--(e) above is an acceptable form of guarantee.

(g) A performance guarantee and defect guarantee shall also be required to ensure the completion of all improvements as required by section 14-499.5, as well as all improvements for the circulation, recreation, landscaping, light, air, drainage and service needs of a planned unit development which are not subject to section 14-501(b). For purposes of this subsection, sections 14-501(c) and (d) shall also apply. The planning authority may waive all or any portion of this requirement if it determines that the developer has a proven record of satisfactory performance and sufficient financial capability.

(h) At the same time that the developer posts a performance guarantee, the developer shall also pay to the city the subdivision inspection fee equal to two (2) percent of the estimated costs of improvements required by this article, with actual inspection costs in excess of two (2) percent invoiced by the city at the completion of the project or as deemed necessary by the city. If a performance guarantee is extended beyond its original expiration date, then an additional inspection fee in an amount to be determined by the city shall be required.

(i) The developer shall also pay a fee to cover the engineering review costs and administrative costs to be incurred by the city. The fee shall be based upon the actual hours of review time and prevailing hourly rate for reimbursement of city costs, and shall be invoiced periodically by the city.

No land use permits or applications of any kind shall be processed, reviewed or issued, no signed subdivision plats shall be released or recorded, and no building permits of any kind shall be issued, for any project whose permit fee is governed by this ordinance unless all charges due under this ordinance have been paid and the developer is otherwise in compliance with the city code. No performance guarantee shall be released until all fees generated by the project are paid to the city, including but not limited to engineering, inspection and administrative fees as provided in section 14-530.

(Code 1968, § 603.12;.Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 611-82, §§ 2, 3, 7-7-82; Ord. No. 127-87, § 10, 2-18-87; Ord. No. 524-87, §§ 1, 2, 5-18-87; Ord. No. 122-91, § 1, 9-16-91; Ord. No. 262-96, §§ 1, 2, 5-20-96; Ord. No. 227-00, §2, 5-15-00; Ord. No. 278-09/10, 7-19-10; Ord. 108-

Sec. 14-502. Extension of the guarantee period.

When the subdivider constructs improvements for which a performance guarantee is required and the public works authority has reasonable doubt concerning the stability or proper construction of such improvements, the subdivider shall be required to do such further work on the improvements as the public works authority shall order before the improvements will be accepted by the city. If the subdivider's current performance guarantee shall expire before the extent or necessity for such further work can be determined, the subdivider shall be required to extend his or her guarantee covering such improvements, or secure a new guarantee, for such further period and in such amount as the public works authority shall deem necessary.

(Code 1968, § 603.13; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 127-87, § 11, 2-18-87)

Sec. 14-503. Sale of partially completed subdivisions.

The purchasing party or other succeeding owner of a subdivision for which a recording plat has received prior approval shall assume full responsibility for completion of the subdivision's improvements until acceptance of such improvements by the city. The purchaser or other succeeding owner of an unaccepted subdivision shall be required to comply with all the provisions of this article as if he were the original subdivider, and shall become responsible for completing such improvements in the same manner as the original subdivider.

(Code 1968, § 603.14; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-504. Enforcement, conveyance, markers and recording.

(a) No person may sell, lease, develop or build upon or convey for consideration, offer or agree to sell, lease, develop or build upon or convey for consideration any land in a subdivision unless the subdivision has been approved by the Planning Board, and unless a recording plat showing permanent marker locations at all lot corners has been recorded in the county registry of deeds.

(b) The term permanent marker is limited to the following: A granite monument for street monumentation and an iron pin or drill hole in ledge for property delineation, or as otherwise approved by the public works authority. No subdivision plan shall be recorded by the registry of deeds which has not been approved as required by this article. Approval for the purpose of recording shall appear in writing on the recording plat. No public utility, water district,

sanitary district or any utility company of any kind shall install services to any lot in a subdivision which has not received Planning Board approval.

(c) Any person who sells, leases, develops or builds upon or conveys for consideration any land in a subdivision which has not been approved as required by this article shall be punished by a fine of not more than five hundred dollars (\$500.00) for each such occurrence. The city may institute proceedings to enjoin any violation of this section.

(d) Notwithstanding the foregoing, alterations may be made to a site with a pending subdivision application if:

- (1) At minimum, a performance guarantee for the proposed site alterations has been posted and final site plans have been submitted to the planning authority; and
- (2) Written permission has been received from the director of planning and urban development or his designee that such site alterations may proceed pending subdivision approval. Such permission is solely within the discretion of the director of planning and urban development and shall be granted only after submission of a written request setting forth the work proposed to be done on the site. All such work shall be done in compliance with information provided with the subdivision application. An erosion control plan shall also be submitted when deemed necessary by the planning authority. Such written permission shall not be required when the only work proposed is the digging of test pits.

(Code 1968, § 603.15; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 95-01/02, 11-5-01)

Sec. 14-505. Appeals.

An appeal from any final decision of the Planning Board regarding subdivision approval may be taken by the applicant or his authorized agent to superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(Code 1968, § 603.16; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-506. Modifications.

(a) Except for the requirements set forth in sections 14-498 and 14-499 pertaining to the provision and construction of curbs and sidewalks, the Planning Board if it finds that extraordinary conditions exist or that undue hardship may result from strict

compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

(b) Where the Planning Board or planning authority finds that, for each of the requirements listed below, two or more of the conditions exist with respect to compliance with the requirements set forth in sections 14-498 and 14-499 pertaining to the provision and construction of curbs and/or sidewalks, it may waive, in whole or in part, the regulations so that substantial justice may be done and the public interest secured:

Sidewalks-

1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.
2. There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.
3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.
4. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
5. The street has been constructed or reconstructed without sidewalks within the last 24 months.
6. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.

Curbing-

1. The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.

2. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
3. The street has been rehabilitated without curbing in the last 60 months.
4. Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.
5. Runoff from the development site or within the street does not require curbing for stormwater management.

In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.

At its discretion, the planning authority may refer any petition for a waiver from the curb and sidewalk requirement to the Planning Board for decision.

(c) The standards and requirements of this article may be modified by the Planning Board in the case of a plan and program for a planned unit development which in the judgment of the Planning Board provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the land development plan.

(d) If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the project engineer and the public works authority that unforeseen conditions make it necessary or preferable to modify the design of the required improvements, the public works authority may authorize modifications provided that the modifications do not amount to a waiver or substantial alteration of the function of any improvements required by the Planning Board. (Code 1968, § 603.17; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 41-84, §§ 2, 3, 6-18-84; Ord. No. 204-02/03, 5-29-03)

Sec. 14-507. Conditions.

In granting variances and modifications, the Planning Board and city council may require such conditions as will, in their judgment, secure substantially the objectives of the standards or requirement so varied or modified.

(Code 1968, § 603.18; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-508. Exemptions.

(a) This article does not apply to subdivisions approved prior to June 6, 1979, nor to subdivisions in existence prior to June 6, 1979, nor to subdivisions which have been legally recorded in the registry of deeds prior to June 6, 1979.

(b) A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this article, or by transfer of any interest in land to the owner abutting thereon shall not be considered to create a lot or lots for purposes of this article.

(Code 1968, § 603.19; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

Sec. 14-509. - Sec. 14-520. Reserved.

ARTICLE V. SITE PLAN*

***Editor's note--**Ord. No. 355-89, adopted July 17, 1989, amended Art. V, site plan, in its entirety, in effect repealing former §§ 14-521--14-530 and enacting similar new provisions in lieu thereof as §§ 14-521--14-528. The ordinance was enacted as an emergency in order for the Planning Board to have the necessary tools to protect the health, safety and welfare of the citizens and further provided that such amendments would be applicable to any alterations, modifications, revisions, amendments or filed changes to any previously approved site plan as provided in the article but would not be construed to invalidate any prior approval. Formerly, Art. V derived from §§ 604.1--604.6, 604.7.B, 604.8 and 604.9 of the city's 1968 Code, as amended by the following:

Ord. No.	Section	Date	Ord. No.	Section	Date
348-74		5-20-74	316-87	1	3- 4-87
442-78		8- 7-78	524-87	3-5	5-18-87
691-81		5-19-81	365-88		5- 4-88
88-84	2--6	7-16-84	301-88		5-31-88

292-84	1	11-19-84	67-88		7-18-88
294-84	1	11-19-84	96-88	2	7-19-88
359-84	1	12-17-84	97-88		7-19-88
370-85	1--3	1-21-85	98-88		7-19-88
128-87	1	2-18-87			

***Editor's Note**—Pursuant to Council Order 277-09/10, passed on 7-19-10 Article V, Site Plan was repealed in its entirety and replaced with a new Article V, Site Plan.

Sec. 14-521. Purposes.

Pursuant to Portland's Comprehensive Plan, the Site Plan Ordinance advances the vision for a sustainable City with shared goals for the environment, community and economy. The Site Plan Ordinance complements the regulations of the Zoning Ordinance in Article III of this chapter and the Subdivision Ordinance in Article IV of this chapter.

(Ord. No. 277-09/10, 7-19-10)

Sec. 14-522. Definitions.

For the purposes of this article all terms and words shall have their ordinary meanings, except as defined herein.

Approval by any board or department under this article shall include any approval with conditions.

Building addition: Any attached structure which increases the total floor area of the structure.

Building Authority: The Director of the Department of Planning and Urban Development or his/her designee.

Change of use: Any change in use of an existing building, whether or not alterations are involved, from any use in the following list to any other uses on the list:

1. Manufacturing or processing, storage and warehouse, and

other industrial;

2. Residential
3. Transportation
4. Institutional
5. Retail and Commercial
6. Water-dependent use and marine use
7. Office

Development: Any construction, site alteration or change of use which is identified in Section 14-523, Required Approvals and Applicability.

Dwelling, two-family: A single building containing two dwelling units used exclusively for occupancy by two (2) families living independently of each other.

Final Plan: A site plan meeting the requirements of Section 14-527.

Master development plan: A Master Development Plan is a regulatory option for sites with one acre or more in cumulative lot area that's designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements built in phases over an extended timeframe. This option shall not apply in residential zones except for institutional uses.

Multiple-family development; The construction or creation of three (3) or more dwelling units on any parcel of land or the addition of two (2) or more dwelling units cumulatively within a three-year period.

Owner: Any person that has any interest, legal or beneficial, in any parcel proposed for development.

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

Preliminary Plan: A site plan that provides an existing site inventory and analysis along with the potential design layout for a proposed development that meets the criteria of Section 15-527.

Public Works Authority: The Director of the Department of

Public Works or his or her designee.

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.

Temporary parking: The parking of vehicles permitted by a temporary certificate of occupancy for a limited period of time not to exceed one (1) year in anticipation of future development. (Ord. No. 277-09/10, 7-19-10; Ord. No. 176-12/13, 4-22-13; Ord. 108-15/16, 11-16-2015)

Sec. 14-523. Required Approvals and Applicability.

(a) *Required Approval.* An application for site plan approval shall be reviewed by the Planning Board or Planning Authority as specified below. The Planning Board or Planning Authority shall approve, approve with conditions or deny an application pursuant to the standards, procedures, technical criteria and design criteria contained in this article, as demonstrated by the applicant.

1. The Planning Authority shall administratively authorize developments that meet all of the requirements of Section 14 - 523 (c).
2. Level I Site Plan Review shall require the approval of the Planning Authority.
3. Level II Site Plan Review shall require the approval of the Planning Authority only, except as otherwise expressly provided by this article.
4. Level III Site Plan Review shall require the approval of the Planning Board, except as otherwise expressly provided by this article.
5. Master Development Plan Review shall require the Master Development Plan approval of the Planning Board as provided in Section 14-524(d) (9).

(b) *Applicability.* No person shall undertake development identified in Section 14-523 without obtaining a site plan improvement permit under this article.

(c) *Administrative Authorization.* Administrative Authorization means the Planning Authority may grant administrative authorization to exempt a development proposal

from complete or partial site plan review that meet the standards below, as demonstrated by the applicant.

1. The proposed development will be located within existing structures, and there will be no new buildings, external demolitions, or building additions other than those permitted by subsection 2 of this subsection;
2. Any building addition shall have a new building footprint expansion of less than five hundred (500) square feet;
3. The proposed site plan does not add any new curb cuts, driveways, or parking areas; the existing site has no more than one (1) curb cut and will not disrupt the circulation flows and parking on-site; and there will be no drive-through services provided;
4. The curbs and sidewalks adjacent to the lot are complete and in sound condition, as determined by the Public Works Authority, with granite curb with at least four-inch reveal, and sidewalks are in good repair with uniform material and level surface and meet accessibility requirements of the Americans with Disabilities Act;
5. The use does not require additional or reduce existing parking, either on or off the site, and the project does not significantly increase traffic generation;
6. There are no known stormwater impacts from the proposed use or any existing deficient conditions of stormwater management on the site;
7. There are no evident deficiencies in existing screening from adjoining properties;
8. Existing utility connections are adequate to serve the proposed development and there will be no disturbance to or improvements within the proposed right-of-way;
9. There are no current zoning violations;
10. Any emergency generators are to be located to minimize noise impacts to adjoining properties and documentation

that routine testing of the generators occur on weekdays between the hours of 9 a.m. to 5 p.m. Documentation pertaining to the noise impacts of the emergency generator shall be submitted; and

11. There are no anticipated noise, vibration, glare, fumes or other foreseeable impacts associated with the project.

(d) *Level I Site Plan Review*. Minor residential development and site alterations meeting the criteria below will undergo Level 1 Site Plan Review as follows.

1. Level I: Minor Residential Development:

- a. With respect to development of a single-family or a two-family building, excluding building additions, decks, or accessory structures, such development shall be deemed minor residential development for purposes of this article regardless of its size.
- b. The addition of one or two dwelling units to a two-family dwelling or multifamily structure shall be deemed a Level I minor residential development for purposes of this article, if the additional dwelling unit or units does not require subdivision review under Maine State Statutes and Portland's Subdivision Ordinance.

2. Level I: Site Alteration:

- a. Alteration of a watercourse or wetland as defined in Section 14-47 of the City Code.
- b. Alteration of a site. The disturbance of land areas of less than one (1) acre that are stripped, graded, grubbed, filled or excavated. The Planning Authority shall exempt from review the loam and seeding of lawns and the cumulative placement of less than fifteen (15) cubic yards of fill on any lot provided such loaming or placement does not alter a drainage course, swale, wetland or redirect water onto adjoining property and does not violate any other provision of the Portland City Code or state or federal law. "Disturbed area" does not include routine maintenance, but does include re-

development and new impervious areas.

- c. The construction of any temporary or permanent parking area, paving of existing unpaved surface parking areas between 1,000 and 7,500 square feet, or creation of other impervious surface areas between 1,000 and 7,500 square feet.
- d. The rehabilitation or reconstruction, but not new construction, of piers, docks, wharves, bridges, retaining walls, and other structures located within the shoreland zone.
- e. A site alteration in which vehicle access is proposed from more than one (1) street;

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

- 1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty thousand (50,000) square feet;
- 2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;
- 3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.
- 4. Park improvements consisting of new structures or

buildings of less than 10,000 square feet and/or facilities encompassing an area of greater than 7,500 square feet and less than 20,000 square, excluding the rehabilitation or replacement in kind of existing facilities.

5. The new construction of piers, docks, wharves, bridges, retaining walls, and other structures located within the shoreland zone.
6. The disturbance of land areas of between one and three acres that are stripped, graded, grubbed, filled or excavated.
7. A change in the use of a total floor area of between ten thousand (10,000) and twenty thousand (20,000) square feet in any existing building cumulatively within any three-year period in all zones.
8. Lodging houses and bed and breakfast facilities;
9. Emergency shelters
10. Special needs independent living units;
11. Construction or installation of any signage for which approval is sought pursuant to section 14-526(d)8.a.(iv).
12. The construction of any new major or minor auto service station with a structure of less than ten thousand (10,000) square feet of building area in any permitted zone other than the B-2, or B-5 zones;
13. The creation of day care facilities or home babysitting services in a residential zone not permitted as a home occupation under section 14-410 in any principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use, where such facilities serve more than twelve (12) children;
14. Any drive-through facility that is not otherwise reviewed as a conditional use under Article III.

(f) *Level III Site Plan Review.* Development meeting the criteria listed below will undergo Level III Site Plan Review as

follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;
2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;
3. The construction of any building addition(s), cumulatively having a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.
4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,
5. Multiple-family development except for in the IS-FBC zone;
6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;
7. The construction of any new major or minor auto business in the B-2 or B-5 zone, or the construction of any new major or minor auto business with a structure greater than ten thousand (10,000) square feet of building area in any other permitted zone; or
8. Correctional prerelease facilities.

9. Park improvements consisting of new structures greater than 10,000 square feet and/or facilities encompassing an area of 20,000 square feet or greater, excluding the rehabilitation or replacement of existing facilities. Any park improvements including the provision of new nighttime outdoor lighting or sports, athletic or recreation facilities not previously illuminated.
10. The disturbance of land areas of three (3) acres or more that are stripped, graded, grubbed, filled or excavated.

(g) *Master development plan:* A Master Development Plan meeting the criteria listed below will undergo a master development plan review as follows:

1. A Master Development Plan for a site with one acre or larger in a cumulative lot area that is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.
2. The Master Development Plan option shall not apply in residential zones, except for institutional uses, multifamily, congregate care, intermediate, extended and long term care facilities in the R5A and R6A zones.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11; Ord. No. 176-12/13, 4-22-13; Ord. 276-14/15, 6-15-2015; Ord. 108-15/16, 11-16-2015; Ord. 83-15/16, 11-2-2015)

Sec. 14-524. Site plan review processes.

(a) The site plan review process for each applicable development review type is listed below.

1. *Administrative Authorization:*
 - a. *Filing the Application.* An applicant seeking an administrative authorization under this subsection shall submit an administrative authorization application for review, detailing the site plan with dimensions of proposed improvements and distances from all property lines, and stating that the proposal meets all of the provisions in standards a-k of Section 14-423 (b)1.
 - b. *Review.* Upon receipt of such a complete

application, the Planning Authority will process it and render a written decision of approval, approval with conditions or denial, with all associated findings.

- c. *Decision.* If a full administrative authorization is granted, the application shall be approved without further review under this article, and no performance guarantee shall be required. In the event that the Planning Authority determines that standards 1 and 2 of section 14-523 (c) and at least four (4) of the remaining standards have been met, the Planning Authority shall review the site plan according to all applicable review standards of Section 14-526 that are affected by the standards in this subsection that have not been met. If an exemption or partial exemption from site plan review is not granted, the applicant must submit a site plan application that will undergo a full review by the Planning Board or Planning Authority according to the standards of section 14-526.

2. *Level I site plan review:*

a. *Filing the application.*

- (i) Every application submitted to the building authority or planning authority for a level I minor residential development or site alteration shall include a digital set of the plans and documents that shall be uploaded to the City's designated web site for an electronic review of the material.

b. *Public notices.*

- (i) When an application for a level I: minor residential development is submitted, all public notices will be sent according to the section 14-525.b of the site plan ordinance.
- (ii) When an application for a level I: site alteration is submitted, all public notices will be sent according to the section 14-525.b of the site plan ordinance.

c. *Review.*

- (i) The planning authority shall approve, approve with conditions or deny the level I: minor residential development plan and shall advise the building authority in writing of its action. Such decision shall be made part of the building authority's review.
- (ii) The planning authority shall approve, approve with conditions or deny the level I: site alteration plan with all associated findings and shall advise the applicant in writing of its action.

d. *Standards of review.*

- (i) Level I: Minor residential site plans shall only be subject to the following site plan standards, as applicable, as contained in Section 14-526:

- (a) Transportation Standards

- 2.a. Site Access and Circulation:
(i) and (ii)
- 2.c. Sidewalks: if site plan is a two-family or multi-family building only.
- 4.a. Location and required number of vehicle parking spaces: (i) and (iv)

- (b) Environmental Quality Standards

- 1. Preservation of significant natural features.
- 2.a. Landscaping and landscape preservation.
- 2.b. Site landscaping: (iii)
Street trees.
- 3. Water quality, stormwater management and erosion control:
a., d. e. and f.

- (c) Public Infrastructure and Community Safety Standards

- 1. Consistency with city master

plans.

- 2. Public safety and fire prevention.
- 3. Availability and adequate capacity of public utilities: a., c., d., and e.

(d) Site Design Standards

- 5. Historic resources and 9. Zoning related design standards.

Except as provided in article III, or to conditions imposed under section 14-526(e) only, or to those submission requirements set forth in section 14-527 as relate solely thereto.

(ii) Level I: Site alteration plans shall only be subject to the following site plan standards, as applicable, as contained in section 14-526:

(a) Transportation standards

- 1. Impact on surrounding street systems, 2. Access and circulation, and 4 Parking.

(b) Environmental quality standards

- 1. Preservation of significant natural features, 2. Landscaping and landscape preservation, and 3. Water quality, stormwater management and erosion control.

(c) Public infrastructure and community safety standards.

- 1. Consistency with city master plans.

(d) Site design standards

- 5. Historic resources, 6. Exterior lightning, 8. Signage and wayfinding and 9. Zoning related design standards.

Except as provided in article III, or to conditions imposed under section 14-526(e) only, or to those submission requirements set forth in section 14-527 as relate solely thereto.

e. *Decisions.*

- (i) The planning authority shall approve, approve with conditions or deny a level I site plan application based upon the applicable review standards. All improvements are subject to the applicable standards of the Technical Manual and the Design Manual, incorporated herein by reference. In apply said standards, the planning authority, as applicable, may vary or modify them as provided in section 14-506.

f. *Performance Guarantees.*

- (i) Performance Guarantees for Level I: Site Alteration plans work shall be required subject to the provisions of Section 14-530 (b)4.d.
- (ii) Level 1: Minor residential development shall be subject to an inspection fee, but shall be exempt from the performance guarantee provisions set forth in section 14-525, except as provided by section 14-403 and 14-530 (c)4 as provided herein, such development shall otherwise be fully subject to the provisions of this article.

3. *Level II and level III site plan review:*

a. *Pre-application Conference.*

- (i) Applicants for site plan review for a Level II, Level III, or Master Development Plan applications are encouraged to schedule a pre-application conference with the Planning Authority or designated staff to introduce the development concept. The purpose of this meeting is to familiarize the applicant with

the review procedures, application submission requirements and applicable review standards.

A pre-application conference shall not cause the plan to be a pending application or proceeding under Title 1 MRSA 302. No decisions relative to the plan shall be made. Nor shall any advice or information provided by the city be construed as a decision.

b. *Preliminary Plan.*

- (i) *Application Process:* Applicants for Level II or Level III site plan reviews may submit an application for preliminary plan review prior to the submission of a final site plan. A preliminary plan must contain a preliminary site assessment for potential development.
- (ii) *Filing the Application:* Every application submitted to the Planning Authority for preliminary site plan review shall include a digital set of the plans and documents that shall be uploaded to the City's designated web site for an electronic review of the material. Any proposed revisions to that site plan and any amended statement(s) shall be filed in the same way as the original submission.
- (iii) *Public Notices:* All public notices will be sent according to the Section 14-525 of the Site Plan Ordinance.
- (iv) *Complete Application:* The Planning Authority shall determine whether the application contains all of the items required in (Sec 14-527) and the Zoning Administrator will conduct a preliminary zoning review for compliance with article III of this chapter. If the application is deemed incomplete or not in compliance with Chapter III, the applicant will be contacted in writing of the finding and the additional material required to complete the submission. A review of the application will not be conducted until the application is complete. These steps shall be repeated until the application is found to be complete.

- (v) *Staff Review:* When the application meets the submittal requirements, the preliminary plan will be distributed to the City departments for review and comments.
 - (vi) *Written review:* Written comments from the reviewers shall be provided to the applicant, which will include a planning staff recommendation to submit a revised preliminary plan or to submit an application for a final site plan.
- c. *Master Development Plan Review.*
- (i) *Application process:* Applicants for Level III site plan reviews may submit a Master Development Plan for a large, multi-phase development program consisting of multiple buildings and associated site improvements on a site of one (1) acre or more of total land area, which is designed as a cohesive and integral development program. The purpose of a Master Development Plan is to provide for a mix of land development responsive to the assets of a site. A Master Development Plan is a well-integrated development in terms of land uses, functional activities, and major design elements such as buildings, roads, utilities, drainage systems and open space. The Master Development Plan is deemed appropriate to large scale mixed use projects that are intended to be developed in phases. The Master Development Plan shall be reviewed by the Planning Board and may be reviewed independently or concurrently with review as a site plan for a phased development. A Master Development Plan must address the submission requirements of Section 14-527.
 - (ii) The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan, as detailed in Sec. 14-524 (3) (b) (ii)-(vi).
 - (iii) *Standards of Review.* A Master Development

Plan shall adhere to the following general requirements and features, and shall meet the Master Development Plan Site Plan Standards of 14-526 (d) (9):

- a. A designated tract of land consisting of a parcel or parcels of contiguous land or land on both sides of a public street, totaling one (1) acre or more;
- b. Developed in a comprehensive, design-integrated manner, according to an overall master development plan;
- c. Consistent with the objectives of this ordinance;
- d. Consistent with the City's Comprehensive Plan and consistent with City Council approved master plans and facility plans for off-premise infrastructure, including but not limited to, trails, pedestrian and bicycle network, view corridors, environmental management, sewer and stormwater, streets, or other facilities (see Section 15 of the Technical Manual);
- e. Developed so as to locate buildings and improvements in a manner that provides usable open space, preserves significant natural features, as defined by the site plan ordinance standards, and preserves existing trees to the maximum extent possible;
- f. Developed so as to be in conformance 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 one hundred (100) feet of designated landmarks, historic districts or historic landscapes, the Master Plan shall be developed so as to be generally compatible with the major character-

defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development;

- g. An efficient use of land which properly considers topography and protects significant natural features including, but not limited to, waterways, wetlands, floodplains and wildlife;
- h. An efficient use of land demonstrating full coordination of its own site development and surrounding context including, but not limited to, the land uses and functions contemplated, architecture, open space and pedestrian networks, vehicular access and circulation, and all other infrastructure;
- i. Linked and coordinated with surrounding land uses, infrastructure and off-site public facilities, including but not limited to the public school system, where appropriate, in a manner that is safe, efficient, non-injurious to the public, and an improvement or benefit to the public where possible;
- j. Designed with sizing of street and other infrastructure systems to accommodate the overall service demand of the Master Plan;
- k. Designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity;
- l. Designed as to create a cohesive identity through building scale, massing, and articulation; use of quality exterior materials, architectural detailing at pedestrian scale; consistency of design and materials for streetscape and pedestrian amenities; framing of outdoor open space and linkages; a clear conveyance of the function and

significance of various buildings, entrances, and features; and to generally comply with design and development standards of the zone in which it is located;

- m. Inclusive of provisions for the ownership and maintenance of usable open space as appropriate; and
- n. For areas proposed as future development phase(s), the proposed interim conditions shall be managed and maintained to ensure stable, safe and attractive site conditions.

(iv) *Phasing.* One or more phases of the Master Development Plan may be reviewed as a final level III site plan concurrently with the review and approval of the Master Development Plan.

d. *Neighborhood Meetings for Level III Site Plans and Master Development Plan Applications.*

(i) *Neighborhood Meeting for Level III Site Plans:*

Timing and location of meeting. An applicant for a subdivision of five or more units or lots and all other Level III site plan review categories shall conduct at least one neighborhood meeting within thirty (30) calendar days of filing a preliminary site plan, if applicable, or within twenty-one calendar days of filing a final site plan and the neighborhood meeting will be held on a date no less than seven (7) calendar days before a public hearing, if no preliminary plan is submitted. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant.

(ii) *Neighborhood Meeting Required for Master Development Plan:* An applicant for a Master

Development Plan shall conduct at least one (1) neighborhood meeting within thirty (30) calendar days of filing a Master Development Plan application. The meeting(s) will be held on a date no less than seven (7) calendar days from a public workshop or public hearing. The neighborhood meeting for a Master Development Plan shall not be combined with any required neighborhood meeting for the Level III applications associated with the overall phased development. The meeting shall be held at a convenient location within the City of Portland neighborhood surrounding the proposed site. All costs associated with the neighborhood meeting shall be borne by the applicant. The workshop shall meet all other provisions of section 14-524 (d)(i).

(iii) *Procedures for the meeting.* The following procedures shall be followed in noticing and conducting the neighborhood meeting. At least ten (10) calendar days prior to the neighborhood meeting, the applicant shall do the following:

- a. *Mail notice.* Mailed notice of said meeting to all property owners within five hundred (500) feet of the subject property lines, except that the notice range for subdivisions within industrial zones shall be one thousand (1000) feet, and to all others, including neighborhood organizations, as may be required by the Planning Authority.
- b. *Digital Copy.* Provide the Planning Authority with a digital copy of the neighborhood notice, which the City shall forward by e-mail to the City's list of interested citizens.
- c. *Notice Description.* Such notice shall contain a brief description of the application and the date, time and place of the neighborhood meeting.

- d. *Attendance Sheet.* At the neighborhood meeting the applicant shall circulate a sign-in sheet for those in attendance who choose to sign. Such sheet shall be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board.
 - e. *Minutes.* The applicant shall keep minutes of the meeting to be submitted to the Planning Authority and shall become part of the Planning Authority report submitted to the Planning Board. Any other individual or entity also may submit comments on the neighborhood meeting to the Planning Authority and said comments shall become part of the Planning Authority report submitted to the Planning Board.
 - f. *Presentation.* At the neighborhood meeting the applicant shall explain the pending proposal and provide an opportunity for public questions and comment.
- e. *Planning Board Workshops.*
- (i) *Request a Workshop:* The applicant may request a workshop(s) with the Planning Board for a Level III site plan. The workshop will be scheduled on a date that follows the scheduled date of the neighborhood meeting, if applicable. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-525.
 - (ii) *Required Workshop for Master Development Plan:* A workshop with the Planning Board is required for a Master Development Plan application. The workshop will be scheduled on a date that follows the scheduled date of the required neighborhood meeting. The proposal will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in section 14-524.

(iii) *Workshop Procedures:* The Planning Board workshop shall be informational and shall not result in any formal approval or disapproval of the project. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints of the site and proposed development, air public comments questions and issues, and provide direction to the applicant regarding issues to be addressed during the final review process.

f. *Planning Board Master Development Plan Decisions.*

(i) *Review and approval:* An applicant proposing a Master Development Plan is seeking approval for an overall concept of development that may be brought for Final Plan approval in two or more phases and in a phase sequence that extends beyond the timeframes allowed above for Final Plan expiration of approvals. Master Development Plan approval may be sought separately or currently with the Phase I Final Level III site plan approval, and shall have an initial approval period of six (6) years, with potential extension periods as provided for in section 14-532(d).

(ii) *Review process.* The site plan review process for a Master Development Plan shall proceed in the same manner as a Preliminary Site Plan as detailed above, Sec. 14-524 (3) (b) (i)-(vi) and as a Master Development Plan as detailed above, Sec. 14-524 (3) (c) (i)-(iii).

(iii) *Public hearing.* The Planning Board shall consider a Master Development Plan at a public hearing that meets all public noticing requirements contained in Section 14-32 and the Site Plan ordinance.

(iv) *Decisions.* The Planning Board shall approve, approve with conditions, or deny a Master Development Plan application based upon the applicable review standards. The Planning Board may waive site plan or technical

standards related to the Master Development Plan application based upon the applicable review standards. An approval, including an approval of waivers, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area ratio and/or residential density, general types of uses, building coverage, generalized open space plans and infrastructure systems.

A Master Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the master Development Plan approval remains valid, including permissible extensions if granted.

All Level III site plans for each phase shall be in general conformance with the Master Development Plan.

g. *Final Plan.*

- (i) *Application Process:* All applications for Level II or Level III site plans shall submit a final plan for review by the Planning Authority or the Planning Board.
- (ii) *Filing Application:* Every application submitted to the Planning Authority for site plan approval shall be submitted as required under Section 14-527. Any proposed revisions to that site plan and any amended statement(s) shall be filed in the same way as any original submission.
- (iii) *Phased Development:* A phased development plan may be proposed for a Level III site plan. The Planning Board may permit the Level III site plan to be divided into up to three (3) sections for phased development purposes and subject to any conditions that the board deems necessary in order to insure the orderly

development of the plan. The applicant may seek approval of a phased development only if the section constitutes at least twenty (20) percent of the total development and in addition, shows the entire tract or parcel. Each phase of such project shall conform to all standards of this article in the event that subsequent phases do not go forward. The Planning Board may extend the site plan approval for all phases up to three years from the date of approval.

(iv) **Public Notices:** All public notices will be sent according to the Section 14-525 of the Site Plan Ordinance.

(v) **Development Review Process for Final Plan:**

(a) *Complete Application.* The Planning Authority shall determine whether the application contains all of the items required in (Sec 527) and the Zoning Administrator will conduct a zoning review for compliance with article III of this chapter. If the application is deemed incomplete or not in compliance with Chapter III, the applicant will be contacted in writing of the finding and the additional material required to complete the submission. A review of the application will not be conducted until the application is complete. These steps shall be repeated until the application is found to be complete.

(b) *Plan Distribution.* When the application is complete, the final plan will be distributed to the departments for review and comments.

(c) *Review.* Written comments from the reviewers shall be provided to the applicant, which will include a planning staff recommendation to submit a revised final plan or to proceed to a public hearing with the Planning Board if it is a Level III site plan. The applicant may

request that the Level III final site plan be submitted for a public hearing rather than submit a revised set of plans.

- (d) *One Revised Plan Set.* Only one set of revised plans may be submitted for review at the final plan stage. The revised plans undergo the same review steps as the original submittal.
- (e) *Staff Recommendation.* At the completion of the staff review of the final plans, the planning staff will make a recommendation to the Planning Authority or the Planning Board to approve, approve with conditions or deny the final site plan.
- (f) *Referral of plans to Planning Board.* If at any time before approval or disapproval of a site plan for Level II development by the Planning Authority, the applicant may request a referral to the Planning Board review and a decision. The application will be scheduled for the next available planning board meeting where all public noticing requirements contained in Section 14-32 and the site plan ordinance can be met.
- (g) *Public Hearing.* When a final site plan for a Level III development is ready to proceed to a Planning Board public hearing, it will be scheduled for the next available Planning Board meeting that meets all public noticing requirements contained in Section 14-32 and site plan ordinance.
- (h) *Decisions.* The Planning Authority or the Planning Board shall approve, approve with conditions or deny a final site plan application based upon the applicable review standards. All improvements are subject to applicable standards of the Technical Manual and Design Manual,

incorporated herein by reference. In applying said standards, the Planning Board or authority, as applicable, may vary or modify them as provided in section 14-506.

1. *Level II Site Plan.* The Planning Authority shall not approve a Level II Site Plan until at least ten (10) days after the required public notice has been mailed. The Planning Authority shall render a written decision to approve, approve with conditions, or deny, with all associated findings, after receipt and review of a complete final site plan and accompanying statements for Level II development.
2. *Level III Site Plan:* When a site plan requires approval by the Planning Board, a public hearing shall be scheduled. The Planning Board shall notify the applicant in writing of its approval or disapproval of the project with all associated findings after the board's final vote to approve or disapprove the project.

4. *Expiration of Application:*

A site plan application must be diligently pursued from the date of submission. Notwithstanding the submission of a complete application, any applicant shall delineate on the plan or supply such other information, studies or reports from qualified professionals when determined by the Planning Board or the Planning Authority to be reasonably necessary to make any of the determinations required by this article. Failure to submit required information within one hundred twenty (120) days of the date upon which the written request was made shall cause the application to expire and be deemed null and void.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11; Ord. No. 176-12/13, 4-22-13)

Sec. 14-525. Public notices.

(a) *Administrative authorization.* Administrative authorization applications are exempt from noticing requirements for section 14-525.

(b) *Level I site plan: minor residential development:*

1. *Receipt of Application.* When an application for Level I: Minor Residential Site Plan is submitted for review, the Planning Authority shall notify by mail the owners of all property abutting the proposed site and any property owners directly across the street from the site.

2. *Site Plans: Level I Site Alteration, Level II, Level III and Master Development Plan.*

a. *Receipt of Application.* When an application for Level I Site Alteration Level II or Level III development is submitted for site plan review, the Planning Authority shall notify, by mail the following, where applicable:

(i) *Notice for Level I: Site Alteration and Level II Site Plans* shall be sent to all property owners within five hundred (500) feet of the subject property lines and to all others, including neighborhood organizations, as may be required by the Planning Authority.

(ii) *Notice for Level III Site Plans and Master Development Plan applications* shall be sent to all property owners within five hundred (500) feet of the subject property lines or within one thousand (1,000) feet if it is a subdivision within an industrial zone, unless the Planning Authority, in its discretion, chooses to notice a larger area and incur the additional expense for the expanded notification and notices shall be sent to all others, including neighborhood organizations, as may be required by the Planning Authority.

b. *Planning Board Workshop or Public Hearing.*

(i) In the case of workshops and public hearings, notice as described above shall be given to

the general public by publication in a newspaper of general circulation in the City of Portland at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. The legal notice shall appear on the City's web site.

- (ii) In the case of workshops and public hearings, notice shall be sent by regular United States mail to the applicant, to the owner(s) of the subject property and to all owners of property located within five hundred (500) feet of the subject property lines or within one thousand (1,000) feet if it is a subdivision within an industrial zone unless the Planning Authority, in its discretion, chooses to notice a larger area and incur the additional expense for the expanded notification and notices shall be sent to all others, including neighborhood organizations, as may be required by the Planning Authority.

c. *Content of the Public Notice*

- (i) The public notice shall contain a brief description of the proposed development the address or location of the property involved, and contact information for the City where additional information may be obtained. The cost of said notice shall be charged to the applicant.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25, 11-12, 8-15-11; Ord. No. 176-12/13, 4-22-13)

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

(a) *Transportation Standards*

1. *Impact on Surrounding Street Systems:*

The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of

traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the 1985 Highway Capacity Manual published by the Transportation Research Board of the National Research Council, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D";

2. *Access and Circulation:*

a. Site Access and Circulation.

(i) The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site and shall comply with the standards set forth in Sections 1 of the Technical Manual.

(ii) Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.

(iii) Where drive up features such as gasoline pumps, vacuum cleaners and menu/order boards are permitted, they shall not extend nearer than twenty five (25) feet to the street line. The site must have stacking capacity for vehicles waiting to use these service features without impeding on-site vehicular circulation or creating hazards to vehicular circulation on adjoining streets.

b. Loading and Servicing.

(i) All developments served by delivery or other service vehicles shall provide a clear route and travel way geometric design that permits safe turning and backing for the maximum vehicle length that would service the development and

does not impede site access, vehicle circulation, pedestrian movements or parking.

c. Sidewalks.

- (i) All proposed developments shall provide sidewalks along all frontages in accordance with Sections 14-498 and 14-499 of the City Code, installed to City specifications as described in Section 1 of the Technical Manual. An applicant may request a waiver from curb and sidewalk installation requirements if they meet applicable waiver criteria listed in Section 14-506 (b) of the City Code.
- (ii) Where sidewalks already exist but are in substandard condition, they shall be repaired or replaced in conformance with Chapter 25 of the City Code and Section 1 of the Technical Manual.
- (iii) Continuous internal walkways shall be provided between existing or planned public sidewalks adjacent to the site, transit stops and street crossings and primary building entrances on the site.

3. *Public Transit Access:*

- a. For any residential development consisting of twenty (20) or more dwelling units or commercial or institutional development of at least 20,000 square feet gross floor area, a transit facility shall be constructed where the following criteria are met:
 - (i) The development is proposed along an existing public transit route on a local principal or minor arterial roadway, as shown in the Federal Street Classification Map provided in Section 1 of the Technical Manual.
 - (ii) The nearest existing transit shelter and/or bus pullout on the route is $\frac{1}{4}$

mile(1,320 feet) or more away from the closest primary building on the site, lmeasured along rights-of-way.

- b. Transit facilities shall consist of a transit shelter and a transit pullout bay.
- c. Transit facilities shall be connected to the public sidewalk system.
- d. Waiver: All or some of this standard may be waived if the Reviewing Authority determines one or more of the following:
 - (i) That some or all of the required improvements cannot reasonably be made due to site constraints and/or insufficient right of way width; or
 - (ii) That the development is not anticipated to generate public transit usage due to particular characteristics or proposed use of the development.

4. *Parking*:

- a. Location and Required Number of Vehicle Parking Spaces:
 - (i) Off-street parking shall meet the applicable zoning requirements, except the Planning Board shall determine the parking requirement, based upon the applicant's parking study and a recommendation from the City Transportation Engineer, for new structures, building additions and changes of use with a total floor area of 50,000 sf or more and for projects, regardless of size, in the B-6, B-7 and USM Overlay zone.
 - (ii) Where a parking study is required, the City encourages Transportation Demand Management (TDM) strategies to be employed.

- (iii) Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.
 - (iv) Parking spaces and aisles shall meet applicable dimensional standards as detailed in Section 1 of the Technical Manual.
 - (v) Parking lots, except for temporary lots to be used for less than one year, shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion.
- b. Location and Required Number of Bicycle Parking Spaces:
- (i) The site plan shall provide secure bicycle parking in conformance with Section 1 of the Technical Manual and shall meet the following requirements:
 - (a) *Residential structures.* Two (2) bicycle parking spaces for every five (5) dwelling units shall be required.
 - (b) *Non-residential structures.* Two (2) bicycle parking spaces for every ten (10) vehicle parking spaces for the first one hundred (100) required vehicle parking spaces, plus one (1) bicycle parking space for every twenty (20) required motor vehicle parking space over one hundred (100) required vehicle parking spaces.
 - (c) Development with zero (0) to ten (10) required vehicle parking spaces shall provide at least two (2) bicycle parking spaces.
 - (ii) *Waiver:* The reviewing authority may

reduce the required number of bicycle parking spaces if it is determined, based on evidence submitted by the applicant, that the proposed development is expected to generate reduced demand for bicycle parking due to characteristics or uses such as elderly or disabled persons housing or industrial uses located in outlying areas.

c. *Motorcycle and Scooter Parking.*

(i) The site plan shall accommodate access and parking for two-wheeled motorized vehicles such as motorcycles and scooters.

d. *Snow Storage.*

(i) The site plan shall include areas for snow storage or shall include an acceptable snow removal plan.

(ii) Snow storage areas may not encroach on areas designated to meet minimum parking requirements or on pedestrian walkways and shall not be located where they would adversely impact the functionality of bioretention or other stormwater management systems. Landscaping in designated snow storage areas shall be such that it can withstand the snow pile.

5. *Transportation Demand Management (TDM):*

a. The following types of development shall design and implement a Transportation Demand Management (TDM) plan:

(i) All Level III development in the B7 zone;

(ii) All commercial or institutional uses of 50,000 sf or more total floor area;

(iii) All commercial or institutional uses designed to accommodate 100 or more employees and, for educational

institutions, 100 or more students.

- b. The TDM Plan shall establish trip reduction targets and shall employ a combination of the following elements to achieve these targets:
 - (i) Public transit incentives;
 - (ii) Parking cash-out;
 - (iii) Car sharing;
 - (iv) Car and van pooling incentives;
 - (v) Guaranteed ride home programs;
 - (vi) Other such strategies that reduce single occupancy vehicle trips to and from the development.
- c. The development shall comply with the City of Portland TDM standards as described in Section 1 of the Technical Manual.

(b) *Environmental Quality Standards*

1. *Preservation of Significant Natural Features:*

- a. The site plan shall preserve and protect significant natural features by incorporating them into site design. Significant natural features shall be defined as:
 - (i) Populations of trees and plants listed on the Official List of Endangered and Threatened Plants in Maine, published by the Maine Natural Areas Program.
 - (ii) Habitat for species appearing on the official state or federal list of endangered or threatened animal species;

- (iii) High and moderate value waterfowl and wading bird habitat including nesting and feeding areas, as defined by the Department of Inland Fisheries and Wildlife;
 - (iv) Aquifers on islands in Casco Bay, as identified in the City of Portland Island Groundwater Management Study and/or by the Maine Geological Survey;
 - (v) Waterbodies including wetlands, watercourses, significant vernal pools and floodplains. These features may also be regulated by Division 26, Shoreland Regulations, Division 26.5, Flood Plain Management Regulations and Division 26.7, Stream Protection Ordinance of the City Code, along with Sections 5 and 8 of the Technical Manual or other State regulations.
- b. Where areas set aside for preservation are part of a larger existing habitat block extending beyond the boundaries of the site, the contiguity of these features shall be preserved, where possible.
 - c. Waiver: Where complete preservation of significant natural features substantially compromises development of the site otherwise permitted by zoning, the Reviewing Authority may reduce the requirement to accommodate development provided that the applicant demonstrates compliance with applicable state and federal regulations and implements preservation measures to the extent practicable.

2. *Landscaping and Landscape Preservation:*

a. *Landscape Preservation.*

- (i) Site development shall be designed to incorporate, and limit disturbance to or removal of existing trees, as specified below. Preserved trees may be counted

towards site landscaping requirements.

- (ii) All development subject to zoning setbacks shall preserve a minimum of 30% of existing trees ten (10) inches DBH or greater within the required setback area unless trees are non-native invasive species, as identified in Section 4 of the Technical Manual, or are deemed unsalvageable by the Portland City Arborist or their designee.
- (iii) Protection during Construction: The site plan shall include adequate measures to protect vegetation to be preserved from construction impacts, in accordance with the tree preservation standards listed in Section 4 of the Technical Manual.
- (iv) Waiver: Where the applicant can demonstrate that preservation of existing vegetation would compromise development of the site, the Reviewing Authority may permit the substitution of replacement landscaping in other areas of the site, and/or a financial contribution to the City of Portland Tree Fund for an amount proportionate to the cost of trees removed, as described below:
 - (a) For each tree required to be preserved that is removed and is greater than 16" in caliper DBH, two (2) replacement trees of a species identified on the City of Portland Recommended Tree List shall be planted on the site as detailed in Section 4 of the Technical Manual).
 - (b) For each tree required to be preserved that is removed and is between ten (10) and sixteen (16) inch DBH, one (1) replacement tree of a species identified on the City of Portland Recommended Tree List shall be planted on the site as

detailed in Section 4 of the Technical Manual).

- (c) Where the planting of replacement trees on the site is not feasible, the applicant shall contribute an amount proportionate to the cost of required replacement trees to the City of Portland Tree Fund, as detailed in Section 4 of the Technical Manual.
 - (v) In addition to the provisions of this section, all development within the Shoreland Zone shall meet the requirements of Division 26, Shoreland Regulations.
- b. *Site Landscaping.*

(i) Landscaped Buffers:

- (a) *Screening.* Loading and servicing areas, dumpsters, storage areas and utility structures, except for renewable energy systems, shall be screened from view from public sidewalks, streets and adjacent properties by dense evergreen landscaping, fencing, masonry wall building walls, or a combination thereof.
- (b) *Understory Plantings.* All development subject to required zoning setbacks shall include a minimum of six (6) shrubs per forty five (45) linear feet of all frontages as measured along the property line. A shrub shall be defined as one shrub, one ornamental grass, and/or 3 perennials. Required shrubs may be installed anywhere on the site, including a green roof, if proposed, and may be planted in any arrangement. Existing vegetation to be preserved

on the site may be counted towards this requirement as detailed in Section 4 of the Technical Manual.

- (c) *Industrial and Commercial Zones.* For non-residential development proposed in an industrial or commercial zone subject to required zoning setbacks and abutting a residential zone, an evergreen, densely landscaped buffer of not less than ten (10) ft wide and six (6) ft tall is required along the side abutting the residential zone. Where site constraints prevent such a buffer from being established, the width of the landscaped buffer may be reduced but shall include architectural quality fencing of not less than six (6) ft tall and a mix of evergreen and deciduous trees spaced no further than twenty (20) ft apart along the abutting the residential zone.
 - (d) *Buffer from Surrounding Development.* All residential development shall provide and/or preserve evergreen vegetated buffers where necessary to buffer the development from detrimental impacts of existing surrounding development.
- (ii) *Parking Lot Landscaping:*
- (a) Developments with five (5) or more parking spaces shall include at least two (2) trees (or one (1) tree and three (3) shrubs) per five (5) parking spaces planted in landscaped islands to screen shade and break up parking. Trees and shrubs in parking lots may be in informal groups, straight rows, or concentrated in clusters as detailed in Section 4 of the Technical Manual.
 - (b) Landscaped islands shall be

distributed so that uninterrupted pavement does not exceed forty (40) parking spaces.

- (c) Landscaped islands shall be curbed and a minimum of eight (8) feet in width, not including curbing. The incorporation of bioretention into landscaped islands is strongly encouraged.
- (d) Vehicle display lots shall be subject to the parking lot landscaping standards of **this section.**
- (e) Waiver: Where site constraints prevent implementation of all or a portion of required parking lot landscaping, as determined by the Reviewing Authority, the requirements may be all or partially waived and the applicant shall contribute an amount proportionate to the cost of required parking lot trees to the City of Portland Tree Fund.

(iii) *Street Trees:*

- (a) All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees shall be planted in the right of way, as specified in Section 4 of the Technical Manual. Street trees shall be of a species identified on the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee.
- (b) Waiver. Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of

way, the Reviewing Authority may permit the planting of street trees in the front yard, within ten feet of the property line. Existing preserved healthy trees that are six (6) inches or more in caliper and are on the site within ten (10) feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees.

3. *Water Quality, Stormwater Management and Erosion Control:*

- a. All development must demonstrate that the proposed site improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The stormwater management plan must demonstrate the following:
 - (i) Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;
 - (ii) Any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;

- (iii) Any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the City's property; and
 - (iv) Any increase in volume or rate of stormwater draining from the lot into the City's separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.
- b. All development, except Level I minor residential development, shall comply with the standards of Section 5 of the Technical Manual including basic, general and flooding standards, as applicable, to prevent and control the release of pollutants to waterbodies, watercourses, wetlands and groundwater, and reduce adverse impacts associated with increases or changes in flow, soil erosion and sedimentation.
- c. All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to Maine DEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.
- d. Level I: minor residential development shall comply with basic erosion control standards, as described in Section 6 of the City of Portland Technical Manual.
- e. Development shall not pose a risk of groundwater contamination either during or post-construction, as described in Sections 5 and 9 of the Technical Manual.

- f. Development shall provide for adequate and sanitary disposal of sewage as described in Section 2 of the Technical Manual.

(c) *Public Infrastructure and Community Safety Standards.*

1. *Consistency with City Master Plans:*

- a. All developments shall be designed so as to be consistent with City Council approved master plans and facilities plans and with off-premises infrastructure, including but not limited to sewer and stormwater, streets, trails, pedestrian and bicycle network, environmental management or other public facilities (see Section 15 of the Technical Manual).
- b. The site plan shall include suitable easements, rights and improvements to connect or continue off-premises public infrastructure as may be required by the reviewing authority.

2. *Public Safety and Fire Prevention:*

- a. The development shall incorporate the following public safety principles for Crime Prevention through Environmental Design (CPTED) into site design to enhance the security of public and private spaces and to reduce the potential for crime:
 - (i) Natural surveillance that promotes visibility of public spaces and areas.
 - (ii) Access control that promotes authorized and/or appropriate access to the site.
 - (iii) Territorial reinforcement that promotes a sense of ownership and responsibility through environmental design.

- b. Provide adequate emergency vehicle access to the site in accordance with City standards for street widths and turning radii, as described in Section 1 of the Technical Manual.
 - c. Be consistent with City public safety standards, Section 3 of the City of Portland Technical Manual, including but not limited to availability and adequacy of water supply and proximity of fire hydrants to structures.
3. *Availability and Adequate Capacity of Public Utilities:*
- a. The development shall not overburden sanitary sewers and storm drains, water lines, or other public infrastructure and utilities. Development shall provide adequate utility capacity and distribution network on-site and in connection to surrounding locations and facilities.
 - b. Electrical service shall be underground unless otherwise specified for industrial uses, or if it is determined to be unfeasible due to extreme cost, the need to retrofit properties not owned by the applicant or complexity of revising existing overhead facilities.
 - c. Installation of new or upgrades to existing sanitary sewers, storm drains, water lines or other utilities shall meet the provisions outlined in Section 2 and Section 9 of the Technical Manual.
 - d. All development within 200 feet of a public sanitary collection and treatment system shall connect sanitary sewer lines into the nearest available public sewer. If a public sanitary collection and treatment system is not available, a private wastewater system may be used according to the requirements of Chapter 24 of the City Code and Section 2 of the Technical Manual.
 - e. All sanitary sewer and stormwater utilities proposed as part of the development shall be

designed to City standards as specified in Section 2 and Section 4, Chapter 500 Stormwater Management Standards, of the Technical Manual.

- f. All residential development of 20 units or more, commercial development and industrial development shall provide for the temporary storage and timely removal of all trash and recyclable materials including, at a minimum, paper, corrugated cardboard, plastics and metals. Storage containers for recyclable materials shall be separated from trash containers. All exterior storage of trash and recyclables shall be screened from view from public sidewalks, streets and adjacent properties.

4. Reserved.

(d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact:*

- a. The bulk, location or height of proposed buildings and structures shall not result in health or safety problems from a reduction in ventilation to abutting structures or changes to the existing wind climate that would result in unsafe wind conditions for users of the site and/or adjacent public spaces.
- b. The bulk, location or height of proposed buildings and structure shall minimize, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to a legal servitude in favor of the site being developed.
- c. Development shall locate all HVAC venting mechanisms to direct exhaust away from public spaces and residential properties directly adjacent to the site.

2. *Shadows:*

- a. All development outside the B3, B5, B6 and B7 zones shall be designed to avoid and/or mitigate the adverse impacts of shadows cast by new structures or building additions from falling on publicly accessible open space where such shadowing would adversely affects the viability of its use and/or the viability of existing vegetation. Examples of publicly accessible open spaces that may require direct sunlight for a portion of the day to maintain the viability of existing vegetation and/or use(s) include but shall not be limited to sitting or sunning areas, community gardens, grass sports fields, landscaped areas, children's play areas). For submittal requirements and additional information, please refer to Section 11 of the Technical Manual.

3. *Snow and Ice Loading:*

- a. The development shall be designed to prevent significant amounts of accumulated snow and ice from loading or falling onto adjacent properties or public ways.

4. *View corridors:*

- a. The massing, location and height of development shall not substantially obstruct public views corridors identified in the Downtown Vision View Corridor Protection Plan, as provided in the City of Portland Design Manual, Appendix 1.

5. *Historic Resources:*

- a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a certificate of appropriateness under article IX (historic preservation) of the land use code shall be exempt from the following design standards, as described in the Design Manual:
- (i) Section (b) of the Design Manual (development in B-3 zone), except for (b) (1) e.2. (increasing setback beyond street build-to line), (b) (1)f. (shadow impact on open space), (b) (1)h. (wind impacts), and (b) (1)g. (setbacks from existing structures);
 - (ii) Section (c) of the Design Manual (development in B-5 and B-5b zones), except for (c)a. (shared infrastructure) and (c)d. (parking lot location);
 - (iii) Section (k) of the Design Manual (small residential lot development in R-6 zone);
 - (iv) Section (e) of the Design Manual (University of Southern Maine);
 - (v) Section (f) of the Design Manual (development in B-7 zone), except for (f) (1)a. (transportation demand management);
 - (vi) Section (g) of the Design Manual (development in Eastern Waterfront zone); and
 - (vii) Section (l) of the Design Manual (IS-FBC Building Design Standards)
- b. Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, except the India Street historic district, or historic landscape district, such development

shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

- c. Preservation and/or Documentation of Archaeological Resources. Where a state or local archaeological resource is known to exist or is discovered on the site, the developer shall inform the City and State and shall protect and/or document such resources.
 - (i) Protection shall include leaving archaeological resources untouched beneath a new development through adaptation of foundation design or architectural layout.
 - (ii) Where the applicant can demonstrate that complete protection is not feasible, the applicant shall excavate and document archeological resources. Such measures shall be conducted in consultation with the City Historic Preservation Program and Maine Historic Preservation Commission. For resources of state significance, excavation and documentation shall be conducted by a qualified professional, in coordination

with Maine Historic Preservation Commission. Local archeological resources may or may not be recognized by the Maine Historic Preservation Commission as significant and shall include the following:

- (a) Original seawall structure located landward of Commercial Street.
- (b) Inactive historic family cemetery plots.
- (c) Historic railroad beds including but not limited to the Portland-Lewiston interurban railroad.
- (d) Original structure and/or landforms associated with the Cumberland and Oxford Canal.
- (e) Buried portions of colonial and post-colonial period structures or built features located on the Portland Peninsula predating the Great Fire of 1866.
- (f) Pre-colonial occupation sites identified by shell middens or other evidence.
- (g) Sites listed or eligible for listing on the National Register of Historic Places.

(iii) Waiver Criteria: In order to preserve archeological resources, the Planning Authority may waive standards listed in the City of Portland Technical Manual where necessary if it is determined that such a waiver would not jeopardize the health, safety or welfare of the development's occupants, the public, or the natural environment.

6. *Exterior Lighting:*

a. *Site Lighting.*

- (i) All exterior site lighting, including lighting of building entrances, shall be full cutoff with no light emitted above the horizontal plane or spilled onto adjacent properties and streets. Illumination levels shall be adequate but not excessive for the safety, comfort and convenience of occupants and users of the site, and shall conform to applicable standards of Section 12 of the Technical Manual.
- (ii) For major or minor site plans within or abutting a residential use or zone where light from the proposed development may adversely impact adjacent residential properties, exterior lighting shall employ house-side shielding.

b. *Architectural and Specialty Lighting.*

- (i) Architectural and specialty lighting, but not up-lighting, of such features as architectural details, monuments, public art or other site features shall be designed to illuminate specific details or attributes only and shall meet the standards of Section 12 of the Technical Manual.
- (ii) Up-lighting by any method is prohibited except for public buildings and parklands, clock towers and steeples, landscape features, designated historic landmarks, flags of state, federal or national jurisdictions, and public art. Such light fixtures, brackets, conduits and all other components shall be designed by a lighting professional and shall be scaled and placed to minimize their visibility and installed in accordance with the standards contained in Section 12 of the Technical Manual.

c. *Street Lighting.*

- (i) Municipal street lighting shall be adequate for the safety and comfort of pedestrians and motorists and, where applicable, shall conform to specific lighting district requirements, as specified in Section 10 of the Technical Manual.

7. *Noise and Vibration:*

Projected noise levels for all developments shall meet applicable zoning requirements.

a. *HVAC and Mechanical Equipment.*

- (i) All heating, ventilation and air conditioning equipment (HVAC), air handling units (AHU), emergency generators, and similar equipment shall meet applicable state and federal emissions requirements and shall comply with the following:
 - (a) Be located to the interior of the site, away from abutting residential properties;
 - (b) Be screened from view from any public street and from adjacent sites by structure walls, evergreen landscaping, fencing, masonry wall or a combination thereof.
- (ii) In addition to the requirements listed above, emergency generators shall not be activated for more than one hour per week for routine maintenance and testing. Noise levels shall not exceed City standards except in designated emergencies or for emergency generator testing. Emergency generator testing is permitted only between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

8. *Signage and Wayfinding:*

a. All signage shall meet applicable requirements of Division 22 of the City Code, in addition to provisions listed below:

(i) **Historic Preservation:** Any new sign or change in appearance of an existing sign located on a designated Historic Landmark or in a Historic District or Historic Landscape District shall be subject to the standards of Article IX and shall require a Certificate of Appropriateness. If there is a conflict between the standards of Article IX and of Division 22 or other provisions of the City Code, the stricter standards shall apply.

(ii) **Commercial Signage and Directional Traffic Signage:** The size, scale, proportions, design, materials, placement and source and intensity of illumination of all permanent or freestanding building signs shall be designed to complement the subject building and its immediate context, as follows:

(a) Signage shall not conceal architectural features such as window sills, lintels or cornices from view.

(b) Signs shall be designed and sized to fit the scale and proportions of the building and the feature or area of the building to which it is affixed.

(c) Freestanding signs shall not adversely affect visibility at intersections or access drives.

(d) Sign lighting shall be downwardly directed, internally illuminated and/or shielded to avoid glare and light spillover towards the sky.

(e) Signs shall not be affixed to

rooftop mechanicals, mechanical penthouses or other rooftop appurtenances unless those appurtenances have been screened and integrated into the architecture of the development.

(iii) On-site directional traffic signage may be provided to enable users to safely and easily navigate into, around and out of the site. Directional signage shall not adversely affect visibility at intersections on or off the site.

(iv) Waiver Criteria: An applicant for site plan review that was either denied for failure to comply with the requirements of or is seeking a waiver as part of their site plan application from Section 14-369.5 shall meet the following standards for approval:

(a) Signs shall meet the requirements of Section 14-526 (e) 2. - Signage and Wayfinding;

(b) The size, scale, proportions, design, materials, placement, quantity and source and intensity of illumination of any approved signage shall be designed to complement and enhance the architectural attributes of the building(s) to which they are attached or to which they are visually related. In addition, such signs shall be appropriate to the scale and character of the neighborhood in which it is located and shall be designed to suit the conditions from which it will be viewed, especially in relation to the distance, travel speed, and mode of travel of the viewing public;

(c) The signage shall either be of special design merit or shall respond to unique circumstances or

characteristics associated with the subject property;

- (d) The provisions of this subsection shall be limited to commercial uses in business or industrial zones, industrial uses or institutional uses.

9. *Zoning Related Design Standards:*

- a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:
 - (i) B3, B5, B5-b, B7 Zones, and B6 and EWPZ Waterfront Zones: Development in the B3, B5, B5-b, B7 business zones and in the B6 and EWPZ waterfront zones shall be designed to support the development of dense, mixed-use neighborhoods with attractive, safe and convenient street level pedestrian environments as demonstrated by compliance with all applicable design standards listed in the Design Manual. New development along the Eastern Waterfront should avoid large monolithic massing along all street frontages and should promote permeability through and within the development at a scale compatible with the existing street networks of the Eastern Waterfront. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that

are in scale with the context to which they most closely relate.

- (ii) RP Zone: Development in the RP Residential Professional zone where there is a discernable architectural style or character to existing structures in the immediate vicinity in which the development is proposed shall not be incongruous to that established style or character as demonstrated by compliance with all applicable design standards listed in the Design Manual.
- (iii) B1, B1-b, B2, B2-b Zones: Development in the B1, B1-b, B2 and B2-b business zones shall provide an established street wall with entrances and public portions of the building oriented to and directly accessible from the public sidewalk and shall be designed and scaled to be compatible with surrounding residential and commercial development as demonstrated by compliance with all applicable design standards listed in the Design Manual.
- (iv) USM Overlay Zone: Development in the University of Southern Maine (USM) Overlay Zone shall be designed to support a cohesive campus environment while integrating with and respecting the residential character of surrounding neighborhoods as demonstrated by compliance with all applicable design standards listed in the Design Manual.

- (v) Residential Developments: Residential developments, as listed below, shall integrate with and respect the character of surrounding residential development in terms of architectural form, landscaping and open space, façade materials, roof pitch, massing and height as demonstrated by compliance with all applicable design standards as listed in the Design Manual.
- (vi) Residential Development in the following districts:
 - (a) Planned Residential Unit Developments (PRUDS) in the R3, R5 and R5a residential zones;
 - (b) Multiple family and multiplex developments in the R5 zone;
 - (c) Small residential lot development of single family homes in the R5 zone;
 - (d) All residential development in the R6 zone.
- (vii) Residential Development of the following types:
 - (a) Manufactured housing parks;
 - (b) Two-family and multiple family housing not already specified in (a) above;
 - (c) Special needs independent living units;
 - (d) Lodging houses;
 - (e) Bed and breakfasts;
 - (f) Emergency shelters.
- (viii) *B-7 Design Standards for Additional Height in District A:* In the B-7 zone, the Planning Board, when conducting

review of a Master Development Plan or a Level III Site Plan, as applicable, may modify the stepback provisions of Section 14-296(a)(5)(b), relating to buildings allowed as a conditional use to exceed one hundred and twenty-five (125) feet up to one hundred and sixty-five (165) feet in height, provided the following conditions are met:

- (a) Each building exceeding one-hundred and twenty-five (125) feet shall contain at least 20 dwelling units per building.
- (b) Building wall stepback requirements along public street frontage:
 - i. Building with frontage on one street: minimum ten (10) foot stepback between third and fifth stories and a minimum ten (10) foot stepback between the one hundred twenty-five (125) and one hundred forty-five (145) foot level.
 - ii. *Building with frontage on multiple streets:* Above paragraph (i) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (i) 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.
 - iii. The Planning Board shall have

the authority to waive one or more of the required stepbacks provided the following is met:

1. The depth of the building lot precludes a building having an average minimum lot depth dimension of one hundred seventy (170) feet; or
2. 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;
3. 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:
 - a. Along all public street frontages and public open spaces, all buildings (regardless of height) shall meet the B-7 Design Standard E-4 Articulation to 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.

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

- c. In order to preserve view corridors and to maintain a varied skyline, all buildings above one hundred twenty-five (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 fifty percent (50% of the total development site distance parallel to Marginal Way. Buildings over one hundred twenty-five (125) feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the fifty percent (50%) building requirement in aggregate for all such buildings over one hundred twenty-five (125) feet in height in the Master Development Plan, provided that view corridors are

retained as each phase is built.

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

b. *Master Development Plan Design Standards:* A Master Plan shall comply with the design and development standards of the zone in which it is located, and shall achieve a cohesive land development consistent with the assets of the site, land uses, functional activities, and major design elements, such as buildings, roads, utilities, drainage systems and open space as well as with the Master Development Plan Standards of Review contained in Section 14-524.

10. *Reserved.*

(e) *Conditions*

1. Notwithstanding the provisions of subsections (a) through (d) of this section, the Planning Authority or Planning Board may impose any condition upon its approval of any site plan: (1) to minimize or abate any adverse impact of the proposed development on the value or utility of other private property, or on public property or facilities, to the extent feasible; or (2) to bring the development into compliance with the requirements of subsections (a) through (d); or (3) to minimize any other adverse environmental effects of the proposed development. Such conditions may include, but are not limited to, enclosing of equipment or operations, imposing limitations upon the hours of operation, or requiring the employment of specific design technologies, modes of operation, or traffic patterns, and may also include the construction of, or financial contribution to the construction of, on- or off-premises public facilities including, without

limitation, streets and sewers impacted by the development. All such conditions shall be consistent with the purposes set forth in section 14-521.

(f) *General Waiver*

1. Except for the requirements set forth in Section 14-526 (a)-(d) for which individual waiver criteria are provided, the Reviewing Authority if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 175-12/13, 4-22-13; Ord. No. 176-12/13, 4-22-13; Ord. 209-14/15, 5/4/2015; Ord. 184-14/15, 6-1-2015; Ord. 83-15/16, 11-2-2015)

Sec. 14-527. Content of site plan applications.

(a) *Level I General Submissions.* The applicant shall submit for review a packet of materials and submissions in a form and content as specified by the Department of Planning and Urban Development. Such submissions shall contain, at a minimum, the following elements:

1. Application Form;
2. Applicable Fees;
3. Project Description;
4. Evidence of Right, Title and Interest;
5. Evidence of State and/or Federal Approvals, if applicable;
6. Written assessment of project compliance with applicable zoning requirements;

7. Summary of existing and/or proposed easements, covenants, public or private rights-of-way, or other burdens on the site;
8. Written requests for waivers from the City's Site Plan or Technical Standards, if applicable;
9. Boundary survey stamped by a professional surveyor licensed to practice in the State of Maine, drawn to scale and tied into the State Plane Coordinates, NAD 1983, Maine West Zone, as specified in Section 13 of the Technical Manual.

(b) *Level I Site Plan Submissions.* Site plans submitted as part of a Level I site plan application for a minor residential or site alteration proposal shall include a site plan based upon the boundary survey showing the following information:

1. Existing and proposed structures, as applicable, and distance from property lines;
2. Existing and proposed paved areas, if applicable;
3. For minor residential only, proposed ground floor area and finish floor or sill elevation;
4. For minor residential only, exterior building elevation drawings (all sides);
5. Location of proposed utilities;
6. Identification and proposed protection measures for any significant natural features, as defined in Section 14-526 (b);
7. Identification and proposed protection for alterations of watercourses, if applicable;
8. Identification and, if applicable, proposed impacts and protection measures for wetlands;
9. For Level I minor residential projects only, soil type;

10. Existing and proposed grades and contours;
11. Location, dimensions and ownership of easements, public or private rights of way, both existing and proposed;
12. Proposed stormwater management control;
13. Soil erosion control plan;
14. Existing vegetation to be preserved, proposed site landscaping, screening and proposed street trees, if applicable;
15. Existing and proposed curb and sidewalk;
16. Location, area, and limits of the proposed site disturbance or alteration;
17. Proposed Pier, Dock, Wharf, Pier, or Slope Stabilization reconstruction in the Shoreland Zone, if applicable.

(c) *Level II, III, and Master Development Plan General Submissions.* The applicant shall submit for review a packet of materials and submissions in a form and content as specified by the department of planning and urban development. Such submissions shall contain, at a minimum, the following elements.

1. Application form;
2. Applicable fees;
3. Project description;
4. Evidence of right, title and interest;
5. Evidence of state and/or federal approvals, if applicable;
6. Written assessment of project compliance with applicable zoning requirements;
7. Summary of existing and/or proposed easements, covenants, public or private rights-of-way, or other burdens on the site;
8. Written requests for waivers from the city's site plan or technical standards, if applicable;

9. Evidence of financial and technical capacity;
10. Boundary survey stamped by a professional survey or licensed to practice in the State of Maine, drawn to scale and tied into the State Plane Coordinates, NAD 1983, Maine West Zone, as specified in section 13 of the Technical Manual. A boundary survey of the site, may be waived by the Planning Authority for a review of Master Development Plan, where an existing conditions plan is available. The Boundary Survey requirement shall be met for each phase of development.

(d) *Level II and Level III Preliminary Site Plan Submissions.* A preliminary site plan is an optional submittal as part of the Level II and III site plan application review process. If the applicant elects to submit a preliminary site plan for review, it shall include the following information:

1. Proposed grading and contours;
2. Existing structures with distances from property lines;
3. Proposed site layout and dimensions for all proposed structures, paved areas, and pedestrian and vehicle access ways;
4. Preliminary design of proposed stormwater management system in accordance with Section 5 of the Technical Manual;
5. Preliminary infrastructure improvements;
6. Preliminary Landscape Plan in accordance with Section 4 of the Technical Manual;
7. Location of significant natural features located on the site as defined in Section 14-526 (b)(1);
8. Proposed buffers and preservation measures for significant natural features, as defined in Section 14-526(b)(1);
9. Location, dimensions and ownership of easements, public or private rights of way, both existing and proposed.
10. Exterior building elevations.

(e) *Master Development Plan.* A Master Development Plan is an optional submittal as part of the Level III site plan application review process. If the applicant elects to submit a Master Development Plan for review, it shall include the following information in addition to the general submission requirements of Sec. 14-527 (c) (d):

1. A neighborhood context map, at a scale not less than one (1) inch equals one hundred (100) feet, providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed Master Development Plan upon the area, indicating how the Master Development Plan relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks, waterfront, etc.) or other neighboring tracts (if applicable).
2. A conceptual site plan drawn to a scale of not less than one (1) inch equaling fifty (50) feet, or series of drawings at the same scale, and any necessary supporting information, showing:
 - (i) The approximate boundary lines of existing and proposed lots within and immediately adjacent to the Master Development Plan, with approximate areas and dimensions. With respect to residential areas, the proposed density, lot configuration, circulation and a typical plot plan shall be included in the application.
 - (ii) An analysis of the natural features of the site, including existing and/or adjacent natural waterways, wetlands, floodplains, topography, soil conditions and other natural features requested or required by the Planning Authority.
 - (iii) An analysis of the designated view corridors, historic resources, and archeological resource associated with the site.
 - (iv) Existing/proposed buildings and other significant structures, building groupings, exterior building

elevations and entrances, parking areas, and other significant physical features of the site.

- (v) Context drawings, perspective renderings, photographic montages, or computer generated graphics depicting the proposed development within the surrounding building and environmental context. Building elevation drawings shall include the following:
 - a. Illustrations of all sides of the structures;
 - b. Views of major entries or prominent building features;
 - c. Illustration of building articulation and elements;
 - d. Building finish composition; and
 - e. Pedestrian and streetscape elements of the Master Development Plan.

The submission shall include a digital three-dimensional model tied to a specific location that is submitted as a KML, KMZ, DXF, or DWG file on a CD or DVD or such format as approved by the Planning Authority. It is the applicant's responsibility that the model is complete and represents the proposed development accurately using best practice modeling techniques and layering standards.

- (vi) Major circulation patterns surrounding and serving the site, the existing and proposed lines of streets (including the street width), ways, easements and any public areas within or next to the site.
- (vii) Major landscaping elements, features, open space, and plans for preservation of natural features.
- (viii) An analysis of the public safety services needed to support the master plan.
- (ix) An analysis of the anticipated impacts on the

public school system to support the Master Development Plan.

- (x) A generalized drainage plan for the site, indicating drainage ways, flow, points of outfall, and indicating impacts of development on affected drainage basins. The plan shall include contour information at not less than two-foot (2') contour intervals and document anticipated quantities of run-off characteristics. General statements concerning storm water management techniques shall also be submitted with the application.
- (xi) The plan shall clearly show Master Development Plan boundaries, north arrow, date, scale, legend, the title "Master Development Plan Concept Site Plan" followed by the formal project name, and the name(s) of applicant(s), engineer(s), designer(s) and/or agent(s).
- (xii) A traffic analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies, including current traffic counts for streets surrounding the project, analysis of the existing capacity of those streets, projections of the amount of traffic that will be generated by the proposed development, and the ability of the street system to absorb the increased traffic without decreasing the level of service below an acceptable level - said level to be determined by the Planning Authority in concert with the Department of Public Works. In cases where the Master Development Plan is subject to a Traffic Movement Permit (TMP) for all phases, the TMP submissions and review shall supersede these requirements.
- (xiii) A utilities analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies. Said analysis shall contain an inventory of existing utilities including, but not limited to, storm sewers and drains, sanitary sewers, electrical lines, fire alarm boxes and lines, gas lines/mains, water mains, lighting, curb

and gutter, etc. Said inventory shall illustrate utility locations, sizes, diameters, carrying capacity and present load on the system. The engineer's report shall state if the current system is capable of adequately serving the proposed development. If the current utility system is found to be inadequate for the proposed development, the report shall confirm the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the City; and

(xiv) Any other supportive information the applicant feels may be beneficial in the evaluation of the request.

(xv) The Planning Authority or Planning Board may reduce the level of information required at the Master Development Plan review stage, provided more detailed supportive documentation is provided at final Level III Site Plan Review of the Master Development Plan or phases thereof.

(f) *Level II and III Final Site Plans.* A final site plan for a Level II or III site plan application shall be based upon a standard stamped boundary survey meeting City of Portland standards, be stamped by a professional engineer licensed to practice in the State of Maine, shall be submitted with all required written submittals and shall include the following information:

1. Existing and proposed structures, as applicable, and distance from property lines;
2. Approximate location of structures on parcels abutting the site;
3. All streets and intersections adjacent to the site and any proposed geometric modifications to those streets or intersections;

4. Location, dimensions and materials of all existing and proposed driveways, vehicle and pedestrian access ways, and bicycle access ways, with corresponding curb lines;
5. Engineered construction specifications and cross-sectional drawings for all proposed driveways, paved areas, sidewalks;
6. Location and dimensions of all proposed loading areas including turning templates for applicable design delivery vehicles;
7. Existing and proposed public transit infrastructure with applicable dimensions and engineering specifications;
8. Location of existing and proposed vehicle and bicycle parking spaces with applicable dimensional and engineering information;
9. Location of all snow storage areas and/or a snow removal plan;
10. A traffic control plan as detailed in Section 1 of the Technical Manual;
11. Proposed buffers and preservation measures for significant natural features, where applicable, as defined in Section 14-526(b) (1);
12. Location and proposed alteration to any watercourse;
13. A delineation of wetlands boundaries prepared by a qualified professional as detailed in Section 8 of the Technical Manual;
14. Proposed buffers and preservation measures for wetlands;
15. Existing soil conditions and location of test pits and test borings;
16. Existing vegetation to be preserved, proposed site landscaping, screening and proposed street trees, as applicable;

17. A stormwater management and drainage plan, in accordance with Section 5 of the Technical Manual;
18. Grading plan;
19. Ground water protection measures;
20. Existing and proposed sewer mains and connections;
21. Location of all existing and proposed fire hydrants and a life safety plan in accordance with Section 3 of the Technical Manual;
22. Location, sizing, and directional flows of all existing and proposed utilities within the project site and on all abutting streets;
23. Location and dimensions of off-premises public or publicly accessible infrastructure immediately adjacent to the site;
24. Location and size of all on-site solid waste receptacles, including on-site storage containers for recyclable materials for any commercial or industrial property;
25. Plans showing the location, ground floor area, floor plans and grade elevations for all buildings;
26. A shadow analysis as described in Section 11 of the Technical Manual, if applicable;
27. A note on the plan identifying the Historic Preservation designation and a copy of the Application for Certificate of Appropriateness, if applicable, as specified in Section Article IX, the Historic Preservation Ordinance;
28. Location and dimensions of all existing and proposed HVAC and mechanical equipment and all proposed screening, where applicable;
29. An exterior lighting plan in accordance with Section 12 of the Technical Manual;
30. Signage: A signage plan showing the location, dimensions, height and setback of all existing and proposed signs;

31. Location, dimensions and ownership of easements, public or private rights of way, both existing and proposed.

(g) *Level II and III Final Written Materials*

1. Construction Management Plan;
2. A traffic study and other applicable transportation plans in accordance with Section 1 of the Technical Manual, where applicable;
3. A narrative describing any significant natural features, wildlife and fisheries habitats or archaeological sites subject to the provisions of Section 14-526(a) that are located on or near the project site and a description of the methods that will be used to protect such areas or sites during and post construction;
4. A narrative describing site layout, on and off-site watershed hydrology, new and existing buildings and facilities, total impervious area, disturbed area and developed area created by the project;
5. Stormwater runoff calculations as described in Section 5 of the Technical Manual;
6. A narrative describing the development's consistency with applicable City Master Plans;
7. Evidence of Utility Capacity to Serve;
8. Estimated types and quantities of solid waste to be generated by the development. For new commercial and industrial development, a description of the estimated amount and type of recyclable material to be generated;
9. A code summary referencing NFPA 1 and all Fire Department technical standards;
10. Where applicable, an assessment of the development's consistency with any applicable design standards contained in Section 14-526(a) and/or in the City of Portland Design Manual;

11. Manufacturer's verification that all proposed HVAC and manufacturing equipment meets applicable state and federal emissions requirements.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11; Ord. No. 176-12/13, 4-22-13; Ord. 108-15/16, 11-16-2015)

Sec. 14-528. Reserved.

Sec. 14-529. Appeals.

(a) When the planning authority has approved, approved with conditions, or denied a site plan, or has approved a request to extend the expiration date of a Master Development Plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application or request for an extension shall be reviewed as a new application or request.

(b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11; Ord. No. 176-12/13, 4-22-13)

Sec. 14-530. Development review fees and post approval requirements.

(a) *Development Review Fees.*

1. Payment of fees and costs: Prior to the issuance of permits of any kind or the release of a signed subdivision plat for recording for any project whose permit fee is governed by this ordinance, all current charges due under this ordinance shall be paid and the developer must otherwise be in compliance with the provisions of the City Code.

2. Development Review and administrative fees:

- a. Review Fees. The developer shall pay the development review fees to cover the third-party review costs for engineers or other professional reviews and administrative costs for all Levels of review unless otherwise noted below, including but

not limited to staff review, legal ads, plan duplication, and mailed public notices, incurred by the City. The fee shall be based upon the hours of review time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the developer for the development review and administrative costs incurred by the City, which invoice shall be paid promptly by the developer. Prior to the issuance of permits of any kind or the release of a signed subdivision plat for recording for any project whose permit fee is governed by this ordinance, all current charges due under this ordinance shall be paid. The balance of any remaining engineering and administrative costs invoiced or incurred after a permit has been issued shall be paid promptly in full by the developer prior to the issuance of any temporary or permanent certificate of occupancy.

3. The City Council, shall, from time to time, establish by order, reasonable application and administrative fees to defray the costs of administering this article.

4. *Site Plan Review Expenses.*

a.	Level I: Minor Residential	\$300 (flat fee)
b.	Level I: Site Alteration	\$200
c.	Level II: Site Plan	\$400
d.	Level III: Site Plan	
	i. Under 50,000 sf	\$500
	ii. 50,000-100,000 sf	\$1,000
	iii. 100,000-200,00 sf	\$2,000
	iv. 200,000-300,000 sf	\$3,000
	v. Over 300,000 sf	\$5,000
	vi. Parking lots over 100 spaces	\$1,000
e.	Master Development Plan	\$1,000

- f. After the Fact Review \$1,000 plus application fee
- g. Amendment to Site Plans
 - i. Planning Board Review \$500
 - ii. Administrative Review \$250
- h. Other Site Plan Reviews
 - i. Administrative Authorization \$50
 - ii. Special Exception Sign Review \$75
 - iii. Section 14-403 Street Extensions \$400 plus \$25 per lot
- i. Fee for Development Review Services
 - i. Planning fee per hour \$40
 - ii. Legal fee per hour \$75
 - iii. Third-party Review Fees assessed by the Third Party Professional
- j. State Delegated Review Fees
 - i. Site Location of Development \$3,000, except for residential projects which will be \$200 per lot.
 - ii. Traffic Movement Permit \$1,000
 - iii. Stormwater Quality Permit \$250
- k. Performance Guarantee
 - 1. As required in Section 14-530 (b) (4).
- l. Inspection Fees, as required in Section 14-530 (b) (5)
 - i. Level I: Site Alteration, Level II and Level III: 2% of the performance guarantee or as assessed by Planning or Public Works Engineer at \$45 an hours with minimum inspection fee

of \$300 Level I: Minor Residential
Inspection Fee \$100 (flat fee).

m. Street vacation \$2,000

(b) *Post-approval submissions.*

1. *Final Plans.* Following final site plan approval and prior to issuance of any building permit, the developer shall submit final plans meeting all the conditions of the site plan approval, including without limitation all streets, sewers, drainage structures and landscaping. Thereafter, limited and minor departures from the approved site plan shall be approved by the Public Works Authority as field changes pursuant to Section 14-532 below. Amendments or revisions to the approved site plan shall be reviewed by the Planning Authority pursuant to 14-532.
2. *As-built plans.* Upon completion of a Level II or Level III development, the applicant shall submit the as-built plans as specified in the Technical Manual.
3. *Performance Guarantee and Defect Guarantee:*
 - a. *Performance Guarantee Required.* Following approval of Level I, II and III site plan applications and prior to the issuance of a building permit, the developer shall post with the City a performance guarantee in the form and amount specified in section 14-501 specifying the completion of the required site plan improvements within two (2) years from the origination date of such guarantee. In no case shall the term of such guarantee be for a period of less than one (1) year, nor shall any performance guarantee expire between October 30 and April 15 of the following year.
 - b. *Required site improvements.* Development improvements include, but are not limited to, sanitary sewers, storm drains, drainage systems, erosion control, catch basins, manholes, other improvements constructed chiefly below grade, slope stabilization, curbing, paving, sidewalks, lighting, landscaping and buffers.

- c. *Phased Project.* A project may be reviewed and approved for up to three (3) phases. A performance guarantee shall be posted for each phase. Each phase of such project shall be independent of subsequent phases and shall conform to all standards of this article in the event that subsequent phases do not go forward.

- d. *Exemptions.*
 - i. Level I minor residential development is exempt from performance guarantee requirements except for those projects that complete construction in the winter and the site work is incomplete due to weather conditions. A performance guarantee will be required that is sufficient to complete the remaining site work as approved on the site plan. The performance guarantee must be reviewed and approved by the Planning Authority prior to the release of a temporary certificate.

- e. *Abandoned site.* In the event that a development is abandoned or the site improvements do not meet City standards as approved in the site plan, the performance guarantee may be utilized to stabilize, secure, complete and/or restore the site as may be necessary, including, but not limited to, revegetation of areas, grading and fencing.

- f. *Performance Guarantee Reductions.* The developer shall be eligible to receive up to three reductions in the performance guarantee in a calendar year equal to the estimated cost of the completed improvements. The developer shall submit a written request for a reduction that reports what work has been done and what is left to complete along with the associated costs to complete that work. In no case, however, shall any performance guarantee be reduced:
 - i. In any line item where improvements remain to be completed; or

 - ii. To a value which is less than the estimated cost of completing all remaining prescribed improvements for which a performance guarantee

is required by section 14-530(b)4.b.

- g. Notwithstanding any other provision of this section, no performance guarantee shall be reduced to less than the amount of the defect guarantee to be posted upon completion of the improvements.
 - h. *Required One Year Defect Guarantee.* Prior to the release of the performance guarantee, the developer shall provide an one-year defect guarantee, which shall not expire between October 30 and the following April 15. The amount of the defect guarantee shall be ten (10) percent of the initial amount of the performance guarantee.
4. *Inspection fee:*
- a. *Inspection fees and costs.* At the same time that the developer posts a performance guarantee, the developer shall also initially pay to the City a site plan improvement inspection fee equal to two (2) percent of the estimated costs of required site improvements for which a performance guarantee is to be posted. At the conclusion of the project, and before a temporary or permanent certificate of occupancy is issued, the developer shall pay to the City the balance of any inspection fees actually incurred by the City in its review of the project.
 - b. The required inspection fee for all Level I Minor Residential Development plans minimum—shall be one hundred dollars (\$100.00) and for all other development the minimum inspection fee shall be three hundred dollars (\$300.00).
5. *Certificates of Occupancy:*
- a. *Temporary Certificates of Occupancy.*
 - i. Notwithstanding sections 14-463, 14-524(b) or any other provision of this Code, a certificate of occupancy may be issued for a development or portion of a development which has otherwise been completed in accordance with final site plan approval and

all applicable provisions of this Code where the applicant submits a written request therefore to the Planning Authority stating those improvements which remain to be completed, the reasons why such improvements have not been completed, and the cost and time to complete the remaining work. In no event shall any temporary or permanent certificate of occupancy be issued where:

- (a) Conditions exist which would justify denial of a certificate of occupancy under chapter 6; or
 - (b) Required improvements to the City right-of-way remain to be completed by the developer; or
 - (c) All access roads and any other roads and driveways required for the building or building(s) for which the certificate(s) are requested have not been improved to a passable condition; or
 - (d) A remaining balance for fees incurred by the City exists; or
 - (e) The developer otherwise is in violation of the City Code.
- ii. Where a temporary certificate of occupancy is sought for a portion of any development prior to the completion of the entire development, the following standards shall be met, in addition to all applicable requirements set forth above, prior to the issuance of any certificate of occupancy:
- (a) Those parking areas required for the portion of the development for which a certificate of occupancy is sought shall be available for use. Alternative arrangements must be made on-site for parking for any periods during which such parking areas will not be available for use.

- (b) All foundation plantings and other landscaping required for the portion of a development for which a certificate of occupancy is sought shall be installed prior to the issuance of a certificate of occupancy. This requirement may only be waived where, in the opinion of the public works authority, landscaping improvements cannot practically be completed due to seasonal weather conditions.
 - (c) A performance guarantee shall be in place and in an amount sufficient to cover all remaining required improvements and not less than 10% of the initial performance guarantee amount.
- iii. No temporary or permanent certificate of occupancy shall be issued to any portion of development where, in the opinion of the reviewing authority, the site conditions or work required to complete the development will endanger the health or safety of persons visiting or inhabiting the completed portion.
- b. *Final Certificate of Occupancy.*
- i. *Final Certificate.*
 - (a) All improvements which are not completed prior to the issuance of any temporary certificate of occupancy must be completed prior to the completion date specified in the performance guarantee required by section 14-525(j) or by the temporary certificate of occupancy, whichever occurs first, in order for a final certificate of occupancy to be issued by the City.
- c. *Non-compliance.*
- i. Non-compliance with temporary certificate of occupancy. Where any person accepts a temporary certificate of occupancy and does

not complete the improvements as specified in the certificate, the City is authorized to enter upon such property itself or through its agents or contractors to complete such improvements with no liability therefore and may recover the costs thereof through the mechanic's lien procedure for the improvement of real property to the extent that the performance guarantee may be inadequate.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 25-11/12, 8-15-11; Ord. No. 176-12/13, 4-22-13; Ord. 108-15/16, 11-16-2015)

Sec. 14-531. Reserved.

Sec. 14-532. General requirements and enforcement.

(a) *Approved site plans and required permits.*

1. An approved site plan is a prerequisite to issuance of building, street opening or certificate of occupancy permits for development subject to the provisions of this ordinance, except the Planning Authority may grant written authorization for the release of a demolition or interior building permit upon written request of the applicant describing the extent of proposed work. Any exterior demolition requires a performance guarantee for site stabilization.
2. Neither the acceptance of any application nor any determination or approval hereunder shall authorize the issuance of a permit under Chapter 6 (Building Code) for any use which would violate the provisions of Article III of this chapter.
3. No building permit, certificate of occupancy or street opening permit shall be issued until a final site plan, or applicable components thereof, has been approved under this article and such permit is determined to be consistent with the plan and any conditions of approval. In the event of any inconsistency between the approved site plan and any permit issued, the approved site plan shall control; provided, however, site plan approval shall not excuse failure to meet any independent requirement of any other law or ordinance.
4. The site shall be developed and maintained as depicted in

the site plan and the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of this article. Any such parcel lawfully altered prior to the enactment date of these revisions shall not be further altered without approval as provided herein. Modification or alteration shall mean and include any deviations from the approved site plan including, but not limited to, topography, vegetation and impervious surfaces shown on the site plan.

(b) *Revisions and amendments to Master Plans and approved site plans.*

1. *Amendments to a Master Development Plan.*

a. *Minor amendments.* A minor amendment to a Master Development Plan shall be defined as a change which is generally consistent with the approved Master Development Plan layout of buildings, circulation infrastructure, and open spaces, and:

- (i) Does not propose any new general type of use beyond those approved initially;
- (ii) Does not increase the building ground coverage, floor area ratio or residential density of the Master Development Plan;
- (iii) Does not decrease any specified area regulations or enumerated parking ratios; and
- (iv) Does not substantially change access, circulation, or infrastructure on or adjacent to the site.

The Planning Authority shall be authorized to approve such minor amendments to a Master Development Plan upon written application and explanation of the change(s) by the owner (or its agent) of the property. No further public hearings shall be required.

2. *Approved site plan:* If at any time before or during development the applicant requests minor amendments to an approved plan for Level III development, the Planning Authority may approve such minor amendments under the procedures for minor development, provided that they do not amount to a waiver or substantial alteration of the site plan, and do not affect any condition or requirement of the Planning Board. The applicant shall supply an application and written statement of the proposed amendment(s) and proposed amended plans to the Planning Authority, whose decision as to whether the amendment is minor shall be final. The Planning Authority shall determine if a notice of amendment shall be required and the extent of such notice based on the extent and nature of the proposed amendment to plan and the demonstrated public interest related thereto.
 3. *Limited In-Field Changes:* approved by the Public Works Authority must be in writing and submitted to the Planning Authority and are specifically limited to minor variation necessary to deal with unforeseen difficulties that arise during the course of construction involving such technical detail as utility location and substitution of equivalent plantings and shall not include any substantial alteration of the approved plan or change any condition imposed by the Planning Board or Planning Authority.
- (c) *Expiration of site plan approval.*
1. A site plan approved under this article shall expire twelve (12) months from the date of approval unless:
 - a. Development has been undertaken in accordance with the approved plan and site work or building construction is ongoing. Any lapse in construction for a period in excess of twelve (12) months shall result in an expiration of the site plan; or
 - b. Prior to the expiration of the site plan, such other time period is agreed upon, in writing, by the Planning Authority and the applicant, not to exceed three (3) years from the date of approval;

Provided that such extensions may not be granted if changes to the City's zoning ordinance would render the development nonconforming in any respect or if changes in the subdivision or site plan ordinance or in the Public Works Technical Standards Manual or Planning and Development Design Standards would otherwise significantly impact the approved site plan as determined by the Director of Planning and Urban Development.

2. Where the approval or any related land use approval granted to the same applicant by any agency of the City with respect to the same development is appealed to any court by an opponent of the development, the applicant shall be granted further extensions, beyond the expiration of said period, where the applicant has exercised due diligence with respect to defending such appeal, which extensions shall not last beyond one (1) year from entry of final judgment.

(d) *Expiration of Master Development Plan:*

1. A Master Development Plan approved under this article shall expire six (6) years from the date of approval unless:
 - a. Prior to the expiration of the Master Development Plan, an applicant may submit a written request to the Planning Authority for an extension of a Master Development Plan approval and associated waivers. Only two (2) such extensions may be granted by the Planning Authority, and each such extension shall be limited to two (2) years from the date of expiration of the Master Development Plan. Provided there have not been substantial changes to the underlying zoning or site plan standards since the date of the Master Development Plan approval that would have a substantial impact on the Master Development approval, the Planning Authority may grant an extension. The Planning Authority may condition the extension on an amendment of the Master Development Plan to comply with such applicable ordinance or site plan standard changes provided that the Planning Authority may not require changes in the uses approved on the Master Development Plan or changes that would reduce the gross floor area of the buildings described or

shown on the approved Master Development Plan. For the purposes of this provision, gross floor area includes the sum of the gross horizontal areas of each floor of each building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor to ceiling height is less than six (6) feet. Any decision by the Planning Authority regarding the granting of an extension may be appealed to the Planning Board as provided for in Section 14-529;

- b. Approved major or minor amendments to a Master Development Plan do not alter the expiration date for the Master Plan that is based upon the original date of approval.

(e) *Enforcement.*

1. All construction or alterations to the site performed under authorization of building permits or certificates of occupancy issued for development within the scope of the article shall be in conformance with the approved final site plan or an amendment thereto under section 14-532. The Department of Planning and Urban Development shall institute or cause to be instituted any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this article. Where work is required pursuant to the terms of chapters 24 or 25 as part of an approval granted under this article, such work shall be accomplished in the sequence established by the Public Works Authority. Where the Public Works Authority determines that work has been completed prior to the receipt of all approvals required by this article or which is out of sequence or is not in compliance with the standards of chapters 24 and 25, the Public Works Authority or an inspector from the Department of Planning and Urban Development may issue a stop work order. Work shall recommence only after such order has been lifted by the Department of Public Works or the Building Authority on the basis of an approved mitigation plan or action by the developer.
2. No alterations shall be made to a site with a pending or approved site plan application until:

- a. The performance guarantee has been posted and final site plans have been submitted to the Planning Authority.
 - b. Written permission has been received from the Director of Planning and Urban Development or his/her designee. Such permission shall be granted only after submission of a written request describing the proposed scope of work to be conducted on the site and the planning authority concludes that the request is reasonable, time is imperative and the work will not compromise any aspect of the ensuing review process. All such work shall be done in compliance with information provided with the site plan application including, but not limited to, an erosion control plan. Such written permission shall not be required if the only work proposed is the digging of test pits.
3. Where construction, alteration or modification to a site is performed without a valid site plan improvement permit, an after-the-fact permit shall be obtained from the Planning Board or Planning Authority, as applicable. The cost of an after-the-fact permit shall be as provided in section 6-18 of this code, plus the cost of engineering and administrative costs associated with the review and processing of the after-the-fact permit.

(Ord. No. 277-09/10, 7-19-10; Ord. No. 176-12/13, 4-22-13; Ord. 108-15/16, 11-16-2015)

Sec. 14-533. Reserved.

Sec. 14-534. Reserved.

Sec. 14-535. Reserved.

Sec. 14-536. Reserved.

Sec. 14-537. Reserved.

Sec. 14-538. Reserved.

Sec. 14-539. Reserved.

Sec. 14-540. Evaluation of article V.

Within five years from adoption of the site plan ordinance, the planning board will evaluate the effectiveness of the ordinance in advancing Portland's vision for a sustainable City and report their findings to the City Council along with any recommendations for site plan ordinance amendments.

(Ord. No. 277-09/10, 7-19-10)

ARTICLE VI. BOARD OF APPEALS*

*Cross reference(s)--Administration, Ch. 2; boards generally, § 2-31 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.

Sec. 14-541. Creation; composition.

There shall be a board of appeals of seven (7) 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.

(Code 1968, § 605.1; Ord. No. 438-74, 7-1-74; Ord. No. 107-76, § 1, 3-1-76; Ord. No. 545-76, § 1, 10-6-76; Ord. No. 147-79, § 1, 8-6-79)

Sec. 14-542. Appointment; terms.

The members of the board of appeals shall be appointed by the city council for terms of three (3) years. Terms shall be staggered so that the terms of no more than three (3) 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 twenty (120) days after expiration of their term.

(Code 1968, § 605.1; Ord. No. 438-74, 7-1-74; Ord. No. 107-76, § 1, 3-1-76; Ord. No. 545-76, § 1, 10-6-76; Ord. No. 148-79, § 1, 8-6-79; Ord. No. 278-83, 11-7-83; Ord. No. 122-85, 8-19-85)

Sec. 14-543. Compensation.

Members of the board of appeals shall serve without compensation.

(Code 1968, § 605.1; Ord. No. 438-74, 7-1-74; Ord. No. 107-76, § 1, 3-1-76; Ord. No. 545-76, § 1, 10-6-76; Ord. No. 148-79, § 1, 8-6-79)

Sec. 14-544. 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.

(Code 1968, § 605.1; Ord. No. 438-74, 7-1-74; Ord. No. 107-76, § 1, 3-1-76; Ord. No. 545-76, § 1, 10-6-76; Ord. No. 148-79, § 1, 8-6-79)

Sec. 14-545. 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 own defense at a public hearing.

(Code 1968, § 605.1; Ord. No. 438-74, 7-1-74; Ord. No. 107-76, § 1, 3-1-76; Ord. No. 545-76, § 1, 10-6-76; Ord. No. 148-79, § 1, 8-6-79)

Sec. 14-546. Chair.

The members of the board of appeals shall annually elect one (1) of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. 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.

(Code 1968, § 605.2; Ord. 47-15/16, 8/3/2015)

Sec. 14-547. Secretary.

The members of the board of appeals shall annually elect one (1) of their number as secretary. The secretary shall act as chair in the absence of the chair and shall fulfill the duties provided by statute and this article and have such other duties as may from time to time be provided by the rules of the board. 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

(Code 1968, § 605.3; Ord. 47-15/16, 8/3/2015)

Sec. 14-548. Quorum and necessary vote.

No business shall be transacted by the board of appeals without a quorum, consisting of four (4) members, being present. The concurring vote of at least four (4) 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 (4) votes shall be deemed to have been denied.

(Code 1968, § 605.4; Ord. No. 545-76, § 2, 10-6-76; Ord. No. 106-07/08, 12-17-07)

Sec. 14-549. Meetings, hearing, and procedures.

(a) 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 (2) 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.

(b) 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 secretary and 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.

(Code 1968, § 605.5)

Sec. 14-550. Public hearings.

(a) *Setting hearing.* 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.

(b) *Notice.* The secretary shall give notice of such public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven (7) 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 all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than thirty (30) nor less than five (5) days before the date of the hearing, and by mail to each of the following persons, each of whom shall be made a party of record in each case: The applicant, the city council and the Planning Board;
2. In the case of hearings related to a use variance, nonconforming use, or a conditional use involving a particular parcel or tract of land, by mail to the owners of all the property within five hundred (500) feet of such parcel or tract;
3. In the case of hearings related to variances or appeals other than use variances, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property;
4. 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.

(c) *Conduct of hearings:*

1. *Rights of all persons.* 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.
2. *Rights of parties.* The applicant and any interested party shall in addition have the following rights:
 - a. To present witnesses on their own behalf and offer rebuttal evidence;
 - b. To cross-examine all witnesses testifying in opposition to their position through the chair; and
 - c. To examine and introduce any documents produced at the hearing.
3. *Board rules to govern.* 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.

(Code 1968, § 605.6; Ord. No. 349-78, 6-26-78)

Sec. 14-551. Records and decisions.

(a) The transcript of testimony, if any, together with the minutes of the secretary 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) 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.

(c) The secretary shall cause notice of any decision of the

board to be delivered or mailed to the applicant, city council and Planning Board within five (5) days of such decision.
(Code 1968, § 605.7)

Sec. 14-552. Conflicts.

No member of the board of appeals shall participate in the hearing or disposition of any matter in which he 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.
(Code 1968, § 605.8)

Sec. 14-553. 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.
(Code 1968, § 605.9)

- Sec. 14-554. Reserved.**
- Sec. 14-555. Reserved.**
- Sec. 14-556. Reserved.**
- Sec. 14-557. Reserved.**
- Sec. 14-558. Reserved.**
- Sec. 14-559. Reserved.**
- Sec. 14-560. Reserved.**
- Sec. 14-561. Reserved.**
- Sec. 14-562. Reserved.**
- Sec. 14-563. Reserved.**
- Sec. 14-564. Reserved.**

ARTICLE VII. CONDOMINIUM CONVERSION

Sec. 14-565. Purpose.

The purpose of this article is to regulate the conversion of rental housing to condominiums; to minimize the potential adverse impacts of such conversion on tenants; to ensure that converted such housing is safe and decent; and to maintain a reasonable balance of housing alternatives within the city for persons of all incomes. To these ends, this article shall be liberally construed.
(Ord. No. 213-81, § 608.1, 11-16-81)

Sec. 14-566. Applicability.

This article shall apply to the conversion of any rental unit to a condominium unit.

(Ord. No. 213-81, § 608.2, 11-16-81)

Sec. 14-567. Definitions.

For the purpose of this article, the following terms shall be defined as follows, unless otherwise clearly implied:

Condominium means 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.

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

Tenant means and includes any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Unit means any building, or portion thereof, used or intended to be used primarily as a separate dwelling.

(Ord. No. 213-81, § 608.3, 11-16-81)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-568. Protection of tenants.

(a) *Notice of intent to convert.* A developer shall give to each tenant written notice of intent to convert at least one hundred twenty (120) days before the tenant is required by the developer to vacate. If a tenant has been in possession of any unit within the same building for more than four (4) consecutive years, the notice period shall be increased by thirty (30) additional days for each additional year, or fraction thereof, to a maximum of two hundred forty (240) additional days. The notice shall set forth specifically the rights of tenants under subsections (a) and (b) of this section and section 14-569, and shall contain the following statement:

If you do not buy your apartment, the developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer,

you may contact the Building Inspection Division, Department of Planning and Urban Development, City of Portland, 389 Congress Street, Portland, Maine 04101 (telephone: 874-8703).

If the notice specifies a date by which the tenant is required to vacate, the notice may also serve as a notice of termination under the applicable law of forcible entry and detainer, if it meets the requirements thereof. The notice shall be hand-delivered to the tenant or mailed, by certified mail, return receipt requested, postage prepaid, to the tenant at the address of the unit or such other address as the tenant may provide. The notice shall be effective when actually received. No tenant may be required by a developer to vacate without having been given notice as required herein, except for the reasons specified in the applicable law of forcible entry and detainer, and in accordance with the procedures thereof. The terms of a tenancy, including rent, may not be altered during the notice period, except as expressly provided in a preexisting written lease. If, within one hundred twenty (120) days after a tenant is required by a developer to vacate, the developer records a declaration of condominium without having given notice as required herein, the developer shall be presumed to have converted in violation of this article.

(b) *Option to purchase.* For a sixty-day period following the giving of notice as required in subsection (a), the developer shall grant to the tenant an exclusive and irrevocable option to purchase the unit of which the tenant is then possessed, which option may not be assigned. If the tenant does not purchase or contract to purchase the unit during the sixty-day period, the developer may not convey or offer to convey the unit to any other person during the following one hundred eighty (180) days at a price or on terms more favorable than the price or terms previously offered to the tenant, unless the more favorable price or terms are first offered exclusively and irrevocably to the tenant for an additional sixty-day period. This subsection shall not apply to any rental unit that, when converted, will be restricted exclusively to nonresidential use. If, within two (2) years after a developer records a declaration of condominium, the use of any such unit is changed such that but for the preceding sentence, this subsection would have applied, the developer shall be presumed to have converted in violation of this article.

(Ord. No. 213-81, § 608.4, 11-16-81)

Sec. 14-569. Relocation payments.

If the tenant does not purchase the unit, the developer shall, before the tenant is required by the developer to vacate, make a

cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two (2) months; provided that this requirement shall not apply to any tenant whose gross income exceeds eighty (80) percent of the median income of the Portland SMSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development at the time notice is given as required in section 14-568(a). Additionally, the developer shall, upon demand, provide assistance to the tenant in the form of referrals to other reasonable accommodations and in determining the tenant's eligibility for relocation payments as provided herein.

(Ord. No. 213-81, § 608.5, 11-16-81)

Sec. 14-570. Conversion permit.

Before conveying or offering to convey a converted unit, the developer shall obtain a conversion permit from the building inspection division of the department of planning and urban development. The permit shall issue only upon receipt of a completed application therefor in a form to be devised for that purpose, payment of a fee of one hundred and fifty dollars (\$150.00) per unit, and a finding, upon inspection, that each unit, together with any common areas and facilities appurtenant thereto, is in full compliance with all applicable provisions of article II of chapter 6 (building code), article III of chapter 6 (electrical installations), article V of chapter 6 (minimum standards for dwellings) and article II of chapter 10 (fire prevention code) of this Code, and the Life Safety Code as adopted by the state. The developer shall post a copy of the permit in a conspicuous place in each unit, and shall make copies available to prospective purchasers upon request.

(Ord. No. 213-81, § 608.6, 11-16-81)

Sec. 14-571. Variation by agreement.

No provision of, or right conferred by, this article may be waived by a tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage, or induce a tenant to waive any provision hereof, or right conferred hereby, shall be a violation of this article. Nothing herein shall be construed to void any term of a lease which offers greater rights than those conferred hereby.

(Ord. No. 213-81, § 608.7, 11-16-81)

Sec. 14-572. - 14-582. Reserved.

ARTICLE VIII. REGULATION OF EXPLOSIVES*

***Editor's note--**Ord. No. 125-98, adopted Oct. 19, 1998, repealed Art. VIII, §§ 14-583--14-585, relative to moratorium on residential developments. Formerly, such provisions derived from Ord. No. 152-81, §§ 607.1--607.3, adopted Aug. 17, 1981, and Ord. No. 180-87, adopted Nov. 2, 1987. The new Article VIII, regarding regulation of explosives, was passed on March 17, 2003.

Sec. 14-583. Purpose.

The purpose of this ordinance is to protect the public's health, safety and general welfare by regulating and controlling blasting operations within the City.

(Ord. No. 177-02/03, 3-17-03)

Sec. 14-584. Applicability.

This ordinance shall apply to all blasting operations related to construction and development of real estate within the City. The City of Portland Technical Manual is incorporated into this section by reference. Standards listed in the Technical Manual shall be additional to the provisions of this article.

(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-585. Definitions.

For the purposes of this Article, the following words and phrases shall have the respective meanings ascribed to them:

Blasting plan means the detailed plan for conduct of any blasting operations, and any amendments thereto where over three hundred (300) cubic yards of material shall be removed, which plan has been reviewed by the Planning and Urban Development Department in accordance with the provisions of this ordinance.

Blasting operations means 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 means a permit issued by the City Fire Department in accordance with the provisions of this ordinance to allow blasting operations within the City.

Blasting submittal means the plan for conduct of any blasting operation where between fifty (50) and three hundred (300) cubic yards of material shall be removed, which plan has been submitted to the Planning and Urban Development Department in accordance with

the provisions of this ordinance.

Explosives means 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.

(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-586. Administration.

(a) This ordinance shall be administered by the Planning and Urban Development Department and the Fire Department, which departments shall have the ability to promulgate amendments to the standards listed in the City of Portland Technical Manual that implement this ordinance.

(b) City Council shall enact the initial Rules required for implementing this Article.

(c) The procedure for amendment of rules shall be as follows:

1. Department staff shall draft proposed rule amendments to the technical standards for presentation to the Planning Board.
2. The Planning Board shall hold a public hearing on the proposed rule amendments and provide interested parties an opportunity for comment, both written and oral, on the proposed rule amendments.
3. The department shall review comments made by the Planning Board and interested parties and make changes to the proposed rule amendments at its discretion. The amendments to the rules shall go into effect within thirty (30) days of the public hearing held by the Planning Board.

(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-587. Permit Required.

No person may conduct blasting operations within the City without first obtaining a permit from the Fire Department, as

required by the National Fire Protection Association 1 Fire Prevention Code, as adopted and amended in section 10-16 et seq. Of this Code. Fees for this permit shall be as established by Order of the City Council.

(Ord. No. 177-02/03, 3-17-03)

Sec. 14-588. Application Requirements.

Prior to the issuance of a permit pursuant to section 14-587 the following information shall be submitted to the City:

- (a) A blasting plan shall be submitted by the applicant to the Planning and Urban Development Department for all projects where more than three hundred (300) cubic yards of material shall be removed. The blasting plan shall conform to the provisions of this section and of Section 3 of the City of Portland Technical Manual.
- (b) A blasting submittal shall be submitted to the Planning and Urban Development Department where between fifty (50) and three hundred (300) cubic yards of material shall be removed. The blasting submittal shall conform to the provisions of this section and of Section 3 of the City of Portland Technical Manual.
- (c) A blasting application shall be submitted to the Planning and Urban Development Department where less than fifty (50) cubic yards of material shall be removed, or where utility trench work in the accepted public right of way, including City or Portland Water District infrastructure is proposed. Small blasts where less than fifty (50) cubic yards of material shall be removed, are not required to submit either a blasting plan or blasting submittal. Such projects must conform to the National Fire Protection Association Fire Prevention Code and applicants shall submit a monitoring report upon request. Information provided in the blasting application shall confirm that the proposed small blast conforms to all applicable provisions of this ordinance and of Section 3 of the City of Portland Technical Manual.
- (d) A blasting plan or blasting submittal may be required for any blasting operation at the discretion of the Planning and Urban Development Department when it determines that conditions at or near the site of the blasting operations warrant the provision of a plan.

(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-589. Storage and handling.

All explosives shall be stored and handled in accordance with the provisions of this code, the laws of the State of Maine and the National Fire Protection Association 1 Fire Prevention Code.
(Ord. No. 177-02/03, 3-17-03)

Sec. 14-590. Enforcement.

(a) This ordinance shall be enforced by the Planning and Urban Development Department and the Fire Department. Either department shall have the authority to issue a written stop work order in the event of a violation of this ordinance or a failure to follow the approved blasting plan.

(b) The issuance of a stop work order may be appealed to the Director of Planning and Urban Development within two (2) business days of its issuance. The decision of the Director of Planning and Urban Development on the appeal shall be final.
(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-591. Penalties.

(a) In addition to the stop work order which may be issued pursuant to section 14-590, the Permittee shall be subject to the following penalties:

1 st offence	\$500.00
2 nd offence	\$1,000.00
Subsequent offences	\$1,000.00.

(b) In the event that there are more than three documented violations of the blasting plan, blasting submittal, or blasting permit, the Planning and Urban Development Department and/or Fire Department shall have the right to issue a stop work order on all construction or development related to the permitted operation. The Permittee shall then be required to submit a revised blasting plan to the Planning and Urban Development Department for review and approval. Work shall not be allowed to continue until the revised blasting plan is approved.
(Ord. No. 177-02/03, 3-17-03; Ord. No. 74-10/11, 11-15-10)

Sec. 14-592. Notice requirements.

(a) At least ten (10) days prior to the start of any blasting operation, notice shall be published in a newspaper of local publication and shall be mailed by first class mail to all property owners within the distance specified below of the perimeter of the

blasting site:

Small blast (trench blast or under fifty (50) cubic yards of rock removed): All property owners within two hundred and fifty (250) feet of the perimeter of the blasting site.

Medium blast (removal of 50-300 cubic yards of rock material): All property owners within five hundred (500) feet of the perimeter of the blasting site.

Large blast (removal of over 300 cubic yards of rock material): All property owners within six hundred (600) feet of the perimeter of the blasting site.

(b) Notice shall conform to the model notice contained in Section 3 of the City of Portland Technical Manual and shall include a description of the proposed blasting operations, estimated schedule and duration of blasting operations, description of the blasting signals to be used during operations, the complaint protocol and the complete address, telephone numbers and email contact for the blasting contractor, Planning and Urban Development Department and Fire Department where neighbors and property owners may request further information and notification.

(c) For medium blasts where 50-300 cubic yards of rock material is to be removed, and large blasts where over 300 cubic yards of rock material is to be removed, additional notification requirements shall apply during construction, as detailed in Section 3 of the City of Portland Technical Manual.

(d) If blasting operations are to occur within two hundred and fifty (250) feet of any structure, additional notification requirements shall apply, as detailed in Section 3 of the City of Portland Technical Manual, in order to prevent adverse public health and safety impacts due to blasting-related carbon monoxide migration.

(Ord. No. 74-10/11, 11-15-10)

Sec. 14-593. Hours of blasting.

Blasting shall occur Monday through Friday, between the hours of 9am and 4pm, unless otherwise approved by the Planning and Urban Development Department. Requests for extension of hours of blasting must be submitted by the applicant in writing.

(Ord. No. 74-10/11, 11-15-10)

Sec. 14-594. Waiver provision.

Upon written request by the applicant, the Planning and Urban Development Department, based on a positive recommendation by the Fire Department, may waive all or a portion of the blasting provisions of Section 3 of the City of Portland Technical Manual, provided thall all waivers are consistent with the purposes set forth in Section 14-583.
(Ord. No. 74-10/11, 11-15-10)

Sec. 14-595. Suspension of blasting operations.

If it is determined that blasting operations pose any risk to public health, safety or general welfare, the Director of Planning and Urban Development or the Fire Chief or their designee shall have the authority to suspend the blasting permit at any time until they deem it safe for blasting operations to continue.
(Ord. No. 74-10/11, 11-15-10)

Sec. 14-596. - Sec. 14-600. Reserved.

ARTICLE IX. HISTORIC PRESERVATION

DIVISION 1. GENERALLY

Sec. 14-601. Purpose.

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

- (a) Creating a mechanism to identify, preserve and enhance distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance;
- (b) Providing a resource of information and expertise to help those interested in rehabilitation or new construction in a district or restoring a landmark;
- (c) Applying design standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles;
- (d) Fostering civic pride in the city's history and

development patterns as represented in such distinctive areas, sites, structures and objects;

- (e) Protecting and enhancing neighborhood character;
- (f) Stabilizing and improving the values of designated properties and areas;
- (g) Protecting and enhancing the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers;
- (h) Fostering and encouraging preservation, restoration and rehabilitation that respects the historic, cultural, architectural and archeological significance of distinctive areas, sites, structures and objects.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-602. Definitions.

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

Applicant: A person who submits an application for issuance of a certificate of appropriateness.

Application: A form submitted for approval of alteration, construction, demolition or removal that requires issuance of a certificate of appropriateness.

Business day: A day on which the department is open for business.

Certificate of appropriateness: A certificate issued by the department evidencing approval of specific plans for alteration of a structure or new construction on a site in accordance with this article.

Certificate of economic hardship: A certificate issued by the department evidencing a hardship variance approved by the board of appeals in accordance with division 8 of this article.

Certificate of non-applicability: A certificate issued by the

department evidencing a determination that specific plans for alteration of a structure or new construction on a site do not require approval under this article.

Contributing: A classification applied to a site, structure or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural or archeological significance as embodied in the criteria for designating an historic district, but without being itself a landmark.

Council: The city council.

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

Department: The department of planning and urban development.

Design guideline: Any design standard specified for alteration or new construction which is unique to a particular landmark, historic district or historic landscape district.

Design manual: The historic resources design manual described in section 14-675.

District: An historic district or historic landscape district.

Historic district: An area designated as an "historic district" by the council.

Historic landscape district: An area designated as an "historic landscape district" by the council.

Landmark: A property, site, structure or object designated as a "landmark" by the council as having a high degree of historical, cultural and/or architectural significance.

Level I site plan: As defined in article V of this chapter.

Level II site plan: As defined in article V of this chapter.

Level III site plan: As defined in article V of this chapter.

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

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

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

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

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

Owner: The person or persons holding record title to the building, site or property; provided, however, the last previous tax roll in the records of the city assessor's office may be relied upon as showing record ownership in the absence of substantial evidence to the contrary.

Property: Land and improvements identified as a separate lot for purposes of subdivision, site plan, or zoning regulation.

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

Restoration: Any act which returns a structure or a feature of a structure to a prior state of historic significance.

Sign: As defined in section 14-47.

Site: The location of an event, activity, structure or object.

Street: The entire width between boundary lines of every way publicly owned and maintained or which way is open to the use of the public for purposes of vehicular or pedestrian traffic.

Structure: Anything constructed or erected, having a permanent or semi-permanent location on another structure or in the ground, including without limitation buildings, garages, fences, gazebos, advertising signs, billboards, antennas, satellite sending or receiving dishes, and swimming pools.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 1, 5-17-93; Ord. No. 165-08/09, 3-16-09; Ord. No. 278-09/10, 7-19-10)

DIVISION 2. HISTORIC PRESERVATION BOARD

Sec. 14-603. Composition.

The historic preservation board shall consist of seven (7) voting members who shall serve without compensation. Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.
(Ord. No. 235-90, 2-26-90)

Sec. 14-604. Appointment and terms.

(a) Members shall be appointed by the council for terms of three (3) years. Appointments shall be staggered so that the terms of not more than three (3) members expire in any calendar year.

(b) Vacancies on the historic preservation board shall be filled within sixty(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.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

Sec. 14-605. Removal of historic preservation board member.

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.

(Ord. No. 235-90, 2-26-90)

Sec. 14-606. Officers.

(a) Officers of the historic preservation board shall consist of a chair and vice-chair.

(b) Officers shall be elected by the historic preservation board and shall serve a term of one (1) year and shall be eligible for re-election. No person shall serve as chair for more than two (2) consecutive years.

(c) The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.

(d) 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 from time to time be provided by the rules of the historic preservation board.

(e) The director of the department or his or her designated representative shall serve as staff secretary to the historic preservation board and shall attend all its meetings. The secretary 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. The secretary shall publish and distribute copies of the minutes, reports and decisions of the historic preservation board to historic preservation board members and to others upon approval of the historic preservation board. The department shall assign necessary staff to assist the historic preservation board and the planning board in carrying out their responsibilities under this article.

(Ord. No. 235-90, 2-26-90)

Sec. 14-607. Meetings, hearing, procedures and decisions.

(a) 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 (4) members or at the request of the chair of the planning board.

(b) 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 secretary and with the

city clerk. All such rules shall be subject to veto, in whole or in part, by the council within forty-five (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.

(c) 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 division 5.

(d) Every recommendation or recommended decision shall include written findings of fact and shall specify the reason or reasons for such action.

(e) The secretary shall mail notice of any final action of the historic preservation board to the applicant and any designated interested parties and send a copy thereof to the planning board within five (5) business days following such action.

(Ord. No. 235-90, 2-26-90)

Sec. 14-608. Conflicts of interest.

No member of the historic preservation board shall participate in the hearing or disposition of any matter in which he or she has a pecuniary interest.

(Ord. No. 235-90, 2-26-90)

Sec. 14-609. 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 adoption of ordinances designating those areas, sites, structures and objects as landmarks or districts.

- (c) To investigate and recommend to the planning board the adoption of ordinances designating areas, sites, structures and objects not listed in the National Register of Historic Places as 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 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) To create an appropriate system of plaques for identification of individual landmarks and make recommendations for the design and implementation of specific marking of streets and routes leading from one (1) landmark or district to another.
- (f) 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.
- (g) 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.
- (h) At the direction of the council, to prepare application for, and participate in, the "certified local government" program of the National Historic Preservation Act Amendments of 1980 and the Main 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; upon request of 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.

- (i) 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.
- (j) 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.
- (k) To provide testimony to the board of appeals in connection with any application for a certificate of economic hardship.
- (l) To develop design guidelines affecting landmarks or districts for review and approval by the planning board.
- (m) 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.
- (n) 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.
- (o) To provide comment, as appropriate, to the planning board and/or city council on matters pertaining to historic preservation in Portland.
- (p) To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers.
- (q) To assist the planning board in the development of a preservation component in the comprehensive plan of the City of Portland.
- (r) To periodically review this 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.

(s) To annually report to the council with respect to the following matters:

1. Survey work in progress or completed;
2. The number of projects reviewed (by type);
3. How many certificates of each type were issued.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

DIVISION 3. CATEGORIES AND CRITERIA FOR DESIGNATION

Sec. 14-610. Minimum criteria for designation.

(a) The historic preservation board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure or object for designation by ordinance as a landmark or district:

1. Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;
2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;
3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;
4. Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;
5. Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or

6. Its representation of a significant cultural, historic, architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.

(b) In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, sites, structures or objects have a high degree of cultural, historic, architectural or archeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures or objects which, while not of such cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it.

(c) In the case of a nominated historic landscape district, the historic preservation board shall also consider its significance as a geologic, natural or man-made landscape feature associated with the development, heritage or culture of the City of Portland, State of Maine, New England region, or the United States.

(d) The planning board and council shall apply the criteria of subsections (a), (b) and (c) but shall also consider the effect of such designation on other aspects of the comprehensive plan of the city.

(Ord. No. 235-90, 2-26-90)

Sec. 14-611. Integrity of landmarks and historic districts.

Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration.

(Ord. No. 235-90, 2-26-90)

Sec. 14-612. Designation of historic landscape districts.

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

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 2, 5-17-93)

Sec. 14-613. Reserved.

DIVISION 4. NOMINATION, CONSIDERATION AND DESIGNATION

Sec. 14-614. Procedure.

The provisions of this division shall govern the nomination, consideration and designation of landmarks and districts.
(Ord. No. 235-90, 2-26-90)

Sec. 14-615. Initiation of nomination.

(a) Nomination of an area, site, structure or object for consideration of designation as a landmark, historic district or historic landscape district shall be submitted to the department, on a form provided by the department, by the following:

1. Any two (2) members of the historic preservation board on their own initiative, by written notice to the department; or
2. By written petition of any owner, in the case of a landmark; or
3. By written petition of one (1) or more owners of affected property in the case of a district; provided two (2) members of the historic preservation board must sponsor the petition.

(b) A nomination shall be completed and filed with the department with all required signatures and any fees specified therefor for the nomination to be pending.

(c) Upon nomination, the department shall notify the owner or owners of the nomination and shall transmit the nomination to the historic preservation board for its consideration at its next scheduled meeting, which in no event shall be held later than thirty (30) days following nomination.

(d) At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the historic preservation board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the historic preservation board that the structure is eligible for a permit shall be conclusive.
(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-616. Notification of nomination and public hearing.

(a) A public hearing on the nomination shall be held by the historic preservation board within thirty (30) days following the first scheduled meeting referred to in section 14-615(c), but in no event later than sixty (60) days following receipt of the completed nomination form by the department. Notice of the nomination and of the public hearing shall be in accordance with the procedures for public hearings before the planning board for site plan approval.

(b) The hearing shall be conducted in accordance with procedures adopted by the historic preservation board. The historic preservation board shall consider all testimony or evidence relating to the designation criteria in division 3 from any person who makes written submissions or appears at the public hearing. Historic preservation board members may also present testimony or make submissions. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in division 3.

(Ord. No. 235-90, 2-26-90)

Sec. 14-617. Recommendation by historic preservation board.

Within thirty (30) days following the close of the public hearing, the historic preservation board shall make recommendation to the council in the case of a landmark, or to the planning board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in division 3. Such recommendation shall be approved by at least four (4) members of the historic preservation board and shall be accompanied by a report to the council or planning board containing the following information:

- (a) Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.
- (b) Explanation of the integrity or lack of integrity of a nominated landmark or historic district.
- (c) Proposed design guidelines for review of alteration or construction. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of division 7.
- (d) Relationship of the nominated landmark or district to the ongoing effort by the committee to identify and nominate

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

- (e) A map showing the location of the nominated landmark and the boundaries of the nominated district.
- (f) A list, including the address, of every site, structure and object in each nominated historic district indicating their degree of cultural, historic, architectural or archeological significance by classification as of a landmark or contributing significance.

Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four (4) members, the item shall automatically be tabled to the next regularly scheduled meeting.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 3, 5-17-93)

Sec. 14-618. Reserved.

Sec. 14-619. Notification of historic preservation board recommendation.

(a) The recommendation of the historic preservation board, including a copy of the report, shall be transmitted to the city council in the case of a landmark and to the planning board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within ten (10) business days following adoption of the recommendation and report.

(b) If the recommendation of the historic preservation board is that the property or district not be designated, the nomination process shall terminate and no new nomination shall be submitted for the identical property or area for a period of one (1) year from the date of termination, except upon a showing of substantial and material newly discovered information.

(Ord. No. 235-90, 2-26-90)

Sec. 14-620. Determination by planning board.

(a) The planning board, upon receipt of a recommendation and a report from the historic preservation board concerning nomination of a district, may hold a workshop meeting pursuant to the provisions of section 14-26. After review of the historic preservation board recommendation and report, the planning board shall hold a public hearing.

(b) All meetings, hearings and deliberations of the planning board to consider the recommendation and report of the historic preservation board shall be held in conformity with sections 14-24 through 14-28.

(c) The planning board may request the chair of the historic preservation board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any recommendation or report.

(d) The planning board shall make its final determination including written findings as to whether the nominated district meets the criteria for designation in division 3 within forty-five (45) days following receipt of the recommendation and report from the historic preservation board. A copy of the determination of the planning board shall be sent by regular mail to all owners within a nominated district within ten (10) business days following the determination.

(Ord. No. 235-90, 2-26-90)

Sec. 14-621. Planning board recommendation to city council.

The recommendation of the planning board regarding a nominated district shall be filed with the city clerk within ten (10) business days. It shall be accompanied by a copy of the report and recommendation of the historic preservation board and, in the case of a recommendation that the council designate a draft of a proposed designation ordinance, including any proposed design guidelines for review of alteration, construction, removal or demolition. The recommendation of the planning board may include proposed changes in other city ordinances, policies, infrastructure, or recommendations with respect to the comprehensive plan of the city relating to the proposed designation.

(Ord. No. 235-90, 2-26-90)

Sec. 14-622. Action by city council.

(a) Within sixty (60) days after the filing of a recommendation on the nomination with the city clerk pursuant to section 14-620, the council shall designate the landmark or district or reject designation. Any designation ordinance may include design guidelines for the designated landmark or district.

(b) Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district which is determined to be a landmark or considered to be contributing or noncontributing, indicating their degree of

cultural, historic, architectural or archeological significance. This list may be amended thereafter by the council upon recommendation from the planning board under the same procedures as set forth above. Where there are no express findings by the council in the designation ordinance, there shall be a presumption that the council found that all requirements of sections 14-610 and 14-611 were met.

(c) Notice of the proposed action of the council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to council action. The notice shall include a copy of the resolution or designation ordinance and design guidelines.

(d) Notice of council action to the same persons shall be sent within ten business days following the council action. A copy of each designation ordinance and design guidelines shall be sent to the planning board, the historic preservation board and the department. A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the department as part of the design manual and shall be available for public inspection and copying during ordinary business hours.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-623. Amendment and rescission of designation.

Amendment and rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the council, and shall follow the procedure set forth in division 4 for designation. The council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the committee, planning board and council shall be limited to those provided in section 14-610(a) and section 14-611. Amendments may include refinement or correction of design guidelines, maps, and other parts of any designation ordinance.

(Ord. No. 235-90, 2-26-90)

Sec. 14-624.- Sec. 14-627. Reserved.

***Editor's note** - Order No. 197-03/04 adopted 9/8/04, repealed §14-625 Projects of Special Merit in its entirety.

Sec. 14-628. Time limits.

(a) Any time limit specified for any step in the process for nomination or designation of a landmark may be extended with the consent of the property owner.

(b) Any time limit specified for any step in the process for nomination or designation of a district may be extended where at least ten (10) percent of the owners of property within the boundaries of the proposed district have given written consent to the extension.

(c) Failure to comply with any time limit in the nomination and designation process as provided in divisions 3 or 4 shall not affect the validity of any designation nor the interim protection provided by division 5.

(Ord. No. 235-90, 2-26-90)

Sec. 14-629. Reserved.

DIVISION 5. INTERIM PROTECTION FOR NOMINATIONS

Sec. 14-630. Nominated landmarks and districts.

(a) From the time of nomination until the historic preservation board acts upon such nomination, a site, structure, object or area nominated but not yet designated as a landmark or district shall be subject to all of the provisions of divisions 8 and 10 governing demolition and minimum maintenance, to the same extent as if designated. Upon final action of the historic preservation board recommending designation, the site, structure, object or area nominated shall be subject to all of the protection of this article until a final decision on designation by the council becomes effective. If the council rejects designation or fails to designate a property, that property shall no longer be subject to the provisions of divisions 8 and 10 of this article.

(b) Alteration or new construction commenced pursuant to a building permit issued prior to nomination shall not require a certificate of appropriateness, unless such permit has expired, been canceled or revoked. No project for which any application is pending, and which has received substantive review by the planning board prior to nomination, shall be affected by nomination. Substantive review, as used in this paragraph, shall include workshop review of any completed application under articles IV or V of this chapter.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 4, 5-17-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-631. National Register of Historic Places.

(a) Every property, landmark or district listed in the National Register of Historic Places prior to adoption of this article, as shown in the design manual, is hereby designated as a landmark or district and shall be subject to all of the protection of this article, until such time as such designation is amended or rescinded as provided by section 14-623. Listed properties which would qualify for designation as historic landscape districts shall be subject to the applicable provisions of this article. If there is any inconsistency between the boundaries of any landmark or district as shown in the designation ordinance, if any, the design manual and/or the National Register, such inconsistency shall be resolved in favor of such ordinance and the design manual in that order. A certificate of appropriateness shall be obtained for every alteration or new construction affecting said listed properties and districts.

(b) Upon notice to the city that a property or area has been listed in the National Register after the adoption of this article, a nomination shall be deemed submitted to the historic preservation board for designation of such property or area as a landmark, historic district or historic landscape district under this article, and the procedures of this division shall be applicable thereto.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-632. Properties eligible for listing on National Register or for local designation.

A certificate of economic hardship shall be obtained prior to demolition of any structure which has not been designated in accordance with this article but which is eligible for listing on the National Register of Historic Places under the criteria established by 16 U.S.C. Section 470(a) or its successor statute and/or regulations made thereunder or which is eligible for local listing under the criteria for designation of this article. The determination of eligibility for listing shall be made by the department, which may refer such a determination to the historic preservation board, and by the board of appeals if an appeal is taken. Upon determination of eligibility, the structure so determined shall also be subject to the provisions of division 10 until a final decision by the council on designation becomes effective. If the council rejects designation or fails to designate a structure which has been determined to be eligible under the terms of this section, that structure shall no longer be subject to

the provisions of divisions 8 and 10 of this article.
(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 5, 5-17-93)

Sec. 14-633. Reserved.

DIVISION 6. CERTIFICATES OF APPROPRIATENESS AND NONAPPLICABILITY

Sec. 14-634. Certificate of appropriateness required.

(a) Except as provided in sections 14-635 and 14-636, a certificate of appropriateness shall be required before the following actions affecting any landmark, contributing or noncontributing structures, objects, sites or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:

1. Any exterior alteration or new construction requiring a building permit from the City of Portland, including, but not limited to the following:
 - a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings and cornices;
 - b. Moving of structures or objects on the same site or to another site;
 - c. Construction of rooftop additions or decks;
 - d. Alteration of accessory structures such as garages;
 - e. Porch replacement or new construction of porches;
 - f. Installation of exterior access stairs;
 - g. Window or door replacement requiring enlargement of openings;
 - h. Installation of antennas and satellite receiving dishes;
 - i. Installation of solar collectors.
2. Any exterior alteration that does not require a building permit but which involves any one (1) of the following activities:

- a. Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built-in gutter systems and the installation or replacement of siding;
 - b. Window and door replacement whether or not it requires enlargement of openings;
 - c. Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning;
 - d. Site features other than vegetation including, without limitation, fencing, walls, paving and grading. However, required review for alterations to cemeteries designated under this article shall not include review of alterations to headstones made for the purpose of recognition of additional decedents or installation of grave markers and/or tombs;
 - e. Landscaping within an historic landscape district;
 - f. Exterior lighting where proposed in conjunction with commercial and institutional signage or awnings, where placed on street-fronting facades of designated structures;
 - g. Exterior utilities including mechanical, plumbing and electrical, where placed on street-fronting facades.
3. Installation or alteration of any exterior sign.
 4. Any relocation of a landmark or contributing structure within a district.

(b) There shall be a rebuttable presumption that no structure within a district shall be noncontributing unless the design manual expressly identifies it as such. Where the department or the owner believes that the identification is erroneous, the historic preservation board shall determine whether the structure is noncontributing.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 6, 5-17-93; Ord. No. 62-93, 8-2-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-635. Exceptions to requirement of certificate of appropriateness.

A certificate of appropriateness is not required:

- (a) Where a certificate of non-applicability has been issued within the previous twelve (12) months;
- (b) Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details;
- (c) Where the work consists solely of emergency repair of a temporary nature;
- (d) Where a certificate of economic hardship has been issued and remains valid;
- (e) In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a certificate of appropriateness shall not be required where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights, when viewed at any height between four (4) and six (6) feet from any open space or street. Where a certificate of appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04; Ord. No. 165-08/09, 3-16-09)

Sec. 14-636. Exterior work within historic landscape districts.

A certificate of appropriateness shall be obtained before any alteration or new construction within an historic landscape district may be undertaken, except where a certificate of non-applicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior certificate of appropriateness within five (5) years of commencement.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-637. Applications for certificate of appropriateness.

(a) Application for a certificate of appropriateness shall be made on a form prepared by the city and shall be submitted to the department along with the applicable fee. Upon receipt of a

complete application, the item shall be scheduled for the next available historic preservation board meeting, provided that the notice requirements of this article can be met prior to that meeting. The department shall transmit a copy of the complete application to the Planning Board and the historic preservation board, as applicable, at least four (4) days prior to their next scheduled meeting. The department shall not issue or act upon the application until the historic preservation board and the planning board, as applicable, have completed their review and approval process.

(b) An application for a certificate of appropriateness shall be treated as an application for a certificate of economic hardship under division 8, whenever the historic preservation board or the Planning Board, as applicable, determines that the proposed alteration includes any demolition which would:

1. Have the effect of causing the structure to no longer meet the criteria for designation of division 3; or
2. Materially impair the significance and integrity of the structure.

(c) Where a determination under paragraph (b) is made by the historic preservation board, the planning board shall review that decision as a preliminary matter, whether the historic preservation board has taken final action with respect to the application or not. Upon any final determination that an application for a certificate of appropriateness is required to be treated as an application for a certificate of economic hardship, no further action shall be taken with respect to the application until that certificate is applied for and is granted.

(d) Where the applicant has done work or caused work to be done on a structure or a property for which a certificate of appropriateness is sought and such work is either not done in compliance with an approval received under this article or was performed without the approvals required under this article, no application for such structure or property shall be considered by the department or by the historic preservation board until such work is brought into compliance with the requirements of this article. The historic preservation board may waive this requirement if the historic preservation board determines that the work does not alter the essential character of the structure or district and one (1) or more of the following standards are also met:

1. The work was needed to bring a building into conformance

with any building or safety code;

2. The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work; or
3. The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.

Review of any application by the department or by the historic preservation board shall not constitute waiver of any future claims by the city concerning violations and shall not stop the city from prosecuting any violation.

(e) Once a completed application has been submitted, it shall be diligently pursued. Failure of an applicant to attend two (2) or more historic preservation board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the department determines that good cause is shown for the failure to attend. Where good cause is shown for a failure to attend, the historic preservation board shall table an application to a date mutually agreed upon in writing.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 7, 5-17-93)

Sec. 14-638. Review process for certificate of appropriateness, except as provided elsewhere in this division.

(a) The process for review of an application for a certificate of appropriateness shall be as follows, except to the extent specifically provided elsewhere in this division:

1. The department shall review the application and make a recommendation to the historic preservation board based upon the standards in division 7, except as provided in subsection (b) for historic plaques or markers. The recommendation of the department shall be made within (30) days of receipt of a complete application.
2. Whenever the recommendation of the department is that the application shall be approved, the application shall be placed upon the next consent agenda of the historic preservation board, except as provided in subsection (b). Any member of the historic preservation board may remove an application from the consent agenda for the purpose of giving it a public hearing.

3. Whenever the recommendation of the department is that the application not be approved or there is no timely recommendation, the application shall be scheduled for a public hearing at the next meeting of the historic preservation board which allows for adequate notice.
4. The historic preservation board shall either conduct a public hearing or make a decision on the application within thirty (30) days following receipt of the application from the department. The historic preservation board shall review the application and any negative recommendation of the department. If an item is scheduled for historic preservation board review, the historic preservation board shall cause notice of the application to be given to all property owners within one hundred (100) feet of the property at least seven (7) days prior to the date of the hearing.
5. The historic preservation board shall enter findings of fact concerning the relationship between the application and the applicable standards of division 7 immediately following a denial or conditional approval of any certificate of appropriateness.
6. Written notice of the determination of the historic preservation board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant and to the planning board within ten (10) business days following its determination.
7. The applicant and any owner of abutting property or of property located within the same district aggrieved by the decision may object to the proposed decision by filing a notice of objection with the department within thirty (30) days following the mailing of the notice of determination of the historic preservation board; provided, however, only the applicant may object where no building permit or site plan review is required for the work which requires the issuance of the certificate of appropriateness, and a proposed decision approving any such application shall be deemed final upon being reduced to writing and provided to the applicant. In the absence of filing of such objection, upon expiration of said thirty (30) days the proposed decision shall become final. If a timely objection is received, the application shall be placed on the planning board agenda and shall be

disposed of in accordance with section 14-639. The planning board shall deny the appeal unless it finds that the action of the historic preservation board was arbitrary or capricious or was not based on substantial evidence. Review by the planning board under this section is intended to be appellate in nature. Except where the planning board determines that injustice would result, the planning board shall determine the appeal without considering any facts or arguments which were not presented to the historic preservation board. Where the planning board finds it necessary to consider such new evidence in order to do substantial justice, it shall remand the matter to the historic preservation board for further consideration, unless it determines that the resulting delay is likely to result in undue hardship to the applicant.

(Ord. No. 235-90, 2-26-90; Ord. No. 371-91, § 2, 6-5-91; Ord. No. 220-93, § 8, 5-17-93; Ord. No. 197-03/04, 9-8-04)

Sec. 14-639. Review process involving level III site plans.

The process for review of an application for alteration or new construction that is also a level III site plan as defined in Article V of this chapter shall be as follows:

- (a) Site plan review by the planning board and historic preservation review by the historic preservation board shall, to the extent feasible, proceed concurrently. Any proposed level III site plan required to obtain a certificate of appropriateness under this article shall be exempt from the design standards included in article V as provided for in Sec. 14-526 (d)5a. of the site plan ordinance.
- (b) Upon receipt of the application for a certificate of appropriateness, the department shall review the application and schedule a workshop for preliminary review by the historic preservation board. The historic preservation board shall conduct a workshop on the application within thirty (30) days following receipt of the application from the department. The department shall prepare an analysis of the application based upon the standards in division 7 for consideration at the workshop. The historic preservation board shall cause notice of the workshop to be given to all property owners within five hundred (500) feet of the property at least seven (7) days prior to the date of the meeting.

Additional workshops may be scheduled by the historic preservation board with the consent of the applicant.

- (c) Following preliminary workshop(s) and upon determination by the historic preservation board that the application is complete, the historic preservation board shall conduct a public hearing and make a final decision on the application. The historic preservation board shall cause notice of the public hearing to be given consistent with the procedures outlined in (b) above.
- (d) If the historic preservation board finds that the application meets the applicable standards of division 7, it shall issue a certificate of appropriateness, with or without conditions. If the action by the historic preservation board is a denial or conditional approval, the historic preservation board shall make findings of fact concerning the relationship between the application and the applicable standards of division 7.
- (e) Written notice of the determination of the historic preservation board on the application, including a copy of the findings of fact, if any, shall be sent by regular mail to the applicant within ten (10) business days following its determination.
- (f) The applicant and any owner of abutting property or of property located within the same district aggrieved by the decision may object to the proposed decision as provided in Section 14-638(7).

(Ord. No. 235-90, 2-26-90; Ord. No. 63-97, 8-18-97; Ord. No. 197-03/04, 9-8-04; Ord. No. 165-08/09, 3-16-09; Ord. No. 278-09/10, 7-19-10)

Sec. 14-640. Review process involving installation or alteration of any exterior sign; minor alterations; and temporary alterations, construction or improvements.

(a) An application for a certificate of appropriateness for installation or alteration of any exterior sign; minor alterations; and temporary alterations, construction or improvements shall be reviewed by the department for compliance with the standards of division 7 and the design manual. Where the department determines that such an application meets these requirements, the certificate of appropriateness shall be issued by the department without presentation to the historic preservation board for approval. The department shall provide the historic preservation board with written notice of such action at the next historic preservation board meeting.

(b) If the department approves an application with conditions, the applicant may request review by the historic preservation board. The application shall then be subject to review by the historic preservation board pursuant to section 14-638.

(c) If the department determines that the application does not meet the requirements of division 7 and the design manual, the application shall be scheduled for review by the historic preservation board pursuant to section 14-638, unless the applicant withdraws the application.

(d) For purposes of this section only, temporary is defined as either a one-time occurrence that does not exceed fourteen (14) days or as an annual occurrence that does not exceed one (1) fourteen-day period each year. Minor alterations are defined as incidental changes or additions to a building, site features or exterior utilities which require building permits but will neither result in substantial changes to any significant historic features nor obscure such features. In no event shall any change be deemed minor when, in the opinion of the department, such change shall alter the historic character of the building or site.
(Ord. No. 220-93, § 9, 5-17-93)

Sec. 14-641. Action by planning board.

Upon any appeal from the historic preservation board determination pursuant to section 14-638, the planning board shall review the appeal and the decision of the historic preservation board and shall take final action appeal within sixty (60) days following receipt of appeal; provided, however, whenever the planning board also is considering a site plan for development of the site, it shall proceed in accordance with the time frames applicable to site plan review. The planning board shall notify the applicant by regular mail within ten (10) business days following its decision on appeal.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

Sec. 14-642. Issuance of certificate of appropriateness.

(a) The department shall issue the certificate of appropriateness within ten (10) business days following a proposed affirmative decision by the historic preservation board becoming final.

(b) Unless work authorized by a certificate of appropriateness shall be commenced within six (6) months of the date of issuance of the certificate of appropriateness, the

certificate of appropriateness shall expire and shall become null and void. The department may approve additional extensions of this six-month period, not to exceed a total of two (2) years, provided that a written request for extension is received prior to the expiration date of the certificate of appropriateness. In the event of litigation arising out of the granting of a certificate of appropriateness, the certificate shall remain valid until one (1) year after the entry of final judgment in the litigation or until the end of the two-year period, whichever is later.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 10, 5-17-93; Ord. No. 197-03/04, 9-8-04)

Sec. 14-643. Certificate of non-applicability.

(a) The department shall issue a certificate of non-applicability as to property subject to this article when requested to do so when:

1. The department determines that none of the proposed work requires a certificate of appropriateness;
2. The department determines that all of the proposed work is ordinary maintenance, restoration, or a combination thereof;
3. In the case of the alteration of a structure other than a landmark or of new construction within a district, where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any open space or street when viewed from any height between four (4) and six (6) feet above such space or street. Where a certificate of appropriateness is required for such changes, a certificate of non-applicability shall be issued upon request for those portions of the structure or structures not visible at such heights; provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition; or
4. After any appeal where the historic preservation board, planning board or any court determines that paragraphs (1), (2) or (3) of this subsection are applicable.

(b) The department shall act upon any application for a certificate of non-applicability within five (5) business days of receiving a complete written description of all work to be undertaken.

(Ord. No. 235-90, 2-26-90)

Sec. 14-644. Amendments to approved certificates of appropriateness.

If at any time before or during work approved under the procedures set forth in this division the applicant requests minor amendments to approved work, the department may approve such minor amendments under the procedures set forth in section 14-638(b), provided that such amendments will not result in a waiver or substantial alteration of the approval or any condition attached to the approval. The applicant shall supply a written statement of the proposed amendment and amended plans or drawings to the department. The decision of the department as to whether an amendment may be reviewed under this section shall be final.

(Ord. No. 220-93, § 11, 5-17-93)

Sec. 14-645. Review process for demolition of landmarks or structures within a district.

(a) Any applicant seeking demolition of a landmark or contributing structure must apply for a certificate of economic hardship to the board of appeals in accordance with division 8 of this article. Said application must be approved by the board of appeals before a demolition permit can be issued.

(b) Any applicant seeking demolition of a noncontributing building as defined in this article may apply directly for a demolition permit without receiving approval from the historic preservation board or a certificate of economic hardship from the board of appeals.

(c) Any applicant seeking demolition of a portion of a contributing or landmark structure may request that the historic preservation board make a determination as to whether such portion of the structure is non-contributing based on the definition of that classification contained in Sec. 14-602 of the ordinance. IF the board determines the portion to be noncontributing, the applicant may apply directly for a demolition permit.

(Ord. No. 165-08/09, 3-16-09)

Sec. 14-646. - Sec. 14-649. Reserved.

DIVISION 7. STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

Sec. 14-650. Standards for review of alteration.

In considering an application for a certificate of appropriateness involving alteration, the historic preservation board and the Planning Board shall apply the following general standards, as further described in the design manual and any design guidelines in the ordinance designating the landmark or district:

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

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

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 12, 5-17-93)

Sec. 14-651. Standards for review of new construction.

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) *Scale and form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.

2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the structures, public ways and places to which they are visually related.
6. *Applicability to Congress Street historic district.* In the Congress Street historic district, for new construction within the B3 zone, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements (Sec 14-220) of the B3 zone.
7. *Applicability to India Street historic district.* For new construction within the India Street Historic District, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

(b) *Composition of principal facades:*

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a

structure shall be visually compatible with structures, public ways and places to which it is visually related.

3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways and places to which they are visually related.
4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.
5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark within an historic district or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the design manual.

(c) *Relationship to street:*

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

whether this be vertical character, horizontal character or nondirectional character.

4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to, or on a landmark, within an historic district or within an historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the design manual.

(d) *Other standards:*

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

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

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 13, 5-17-93; Ord. No. 165-08/09, 3-16-09; Ord. 83-15/16, 11-2-2015)

Sec. 14-651.5. Standards for review of alternations to or redesign of noncontributing structures.

(a) In considering an application for a certificate of appropriateness involving alteration(s) to a noncontributing structure the standards for review of alterations set forth in section 14-650 shall apply as applicable. The intent of the review shall be to ensure no further erosion of any existing architectural character of the subject structure determined to be significant by the historic preservation board and, where practicable, to guide projects toward a more compatible relationship with the surrounding context.

(b) In considering an application for a certificate of appropriateness involving comprehensive redesign of a noncontributing structure, the standards for review of construction set forth in section 14-651 shall apply.

(Ord. No. 165-08/09, 3-16-09)

Sec. 14-652. Standards for review of relocation.

In acting upon an application for a certificate of appropriateness involving relocation, the historic preservation board and the planning board shall apply the following general standards and any design guidelines in the ordinance designating the landmark or district:

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

- (d) Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.

(Ord. No. 235-90, 2-26-90)

Sec. 14-652.5. Standards for review of signage.

In considering an application for a certificate of appropriateness involving the installation or modification of sign(s), including awning(s) which incorporate signage, the following standard shall apply:

- (a) Signs shall be compatible with the subject building and its surrounding context as detailed in the signage design guidelines included in the historic resources design manual. If there is a conflict between this standard and the requirements of Article III, Division 22. Signs, the stricter standard shall apply.

(Ord. No. 165-08/09, 3-16-09)

Sec. 14-653. Qualification of applicant.

Prior to issuance of any certificate of appropriateness, any applicant shall demonstrate sufficient right, title or interest in the property, technical capacity and financial capacity to complete any change proposed to be undertaken under the certificate of appropriateness, upon reasonable request of the department. If the department determines that the applicant has failed or refused to demonstrate an ability to complete the proposed activity, it shall refer the issuance to the Planning Board, which shall make a final determination as to whether the applicant has demonstrated a sufficient capability to complete the proposed activity. Notwithstanding any other provision of this article, the historic preservation board or Planning Board may include reasonable conditions, including the provision of adequate financial security, to ensure that actions taken under a certificate of appropriateness will be successfully prosecuted to completion, as approved, in a timely and workmanlike manner.

(Ord. No. 235-90, 2-26-90)

Sec. 14-654. - Sec. 14-659. Reserved.

DIVISION 8. CERTIFICATE OF ECONOMIC HARDSHIP

Sec. 14-660. Applicability.

(a) Any applicant denied a certificate of appropriateness by the planning board within thirty (30) days thereafter and any applicant seeking demolition of a landmark or a contributing structure within a district may make application for a certificate of economic hardship from the board of appeals. The application shall be submitted to the department, together with the applicable fee.

(b) The department shall transmit a copy of the application to the board of appeals, with copies to the Planning Board and the historic preservation board, within ten (10) business days following receipt of a properly completed application.
(Ord. No. 235-90, 2-26-90)

Sec. 14-661. Standard to be applied.

(a) The board of appeals shall approve an application for a certificate of economic hardship only upon a determination that the denial of approval of the proposed activity or of the proposed demolition will result in the loss of all reasonable use of the structure as required by sections 14-664 and 14-666.

(b) In applying this standard, the board of appeals shall consider among other things any evidence presented concerning the following:

1. Any opinions from a licensed engineer or architect with experience in renovation, restoration or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.
2. Any estimates of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the planning board for changes necessary for it to be approved.
3. Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition or removal; after any expenditures necessary to comply with the recommendations of the planning board for changes necessary for it to approve a certificate of appropriateness; and in the case of a proposed demolition, after renovation of the existing structure

for continued use.

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

(Ord. No. 235-90, 2-26-90)

Sec. 14-662. Information to be supplied by applicant.

(a) The applicant shall submit by affidavit the following information for an application to be considered to be complete:

1. The assessed value of the property and/or the structure in the case of a demolition for the two (2) most recent assessments.
2. Real property taxes paid for the previous two (2) years.
3. The amount paid for the property by the owner, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
4. The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two (2) years.
5. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with purchase, offerings for sale, financing or ownership of the property, or state that none were obtained.
6. All listings of the property for sale or rent, price asked and offers received, if any, within the previous four (4) years, or state that none were obtained.
7. All studies commissioned by the owner as to profitable renovation, rehabilitation or utilization of any structures or objects on the property for alternative use, or a statement that none were obtained.
8. For income-producing property, itemized income and expense statements from the property for the previous two

(2) years.

9. Estimate of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the planning board for changes necessary for it to approve a certificate of appropriateness.
10. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other.

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

(c) Notwithstanding the submission of the above information, the board of appeals may require additional evidence as provided in section 14-680.

(Ord. No. 235-90, 2-26-90)

Sec. 14-663. Public hearing.

(a) The board of appeals shall hold a public hearing on the application within thirty (30) days following receipt of the completed application form. Where the application requests the demolition of a landmark or a contributing structure within a district, the public hearing shall not be held less than ninety (90) days following receipt of the completed application, unless the applicant makes a clear showing that the delay will result in undue hardship of a unique or exceptional character which could not reasonably be or have been avoided. Upon such a showing, the department may waive all or any part of the ninety-day period and schedule the hearing before the board. Undue hardship shall not include mere inconvenience or incidental financial loss. No such waiver shall be granted without the department giving best practical notice to all persons entitled to notice of the hearing.

(b) Notice of the application and of the public hearing, and conduct of the hearing, shall be in accordance with the provisions of section 14-550. Where the application requests the demolition of a landmark or a contributing structure within a district, the department shall promptly notify any persons interested in historic preservation, who have registered in writing with him or her, give

notice by mail to all owners of property within five hundred (500) feet of the structure, and shall require that the applicant immediately place a notice, to be supplied by the building official, in a prominent place on the structure and to maintain it there at all times during the pendency of the demolition application. The notice shall be substantially in the following form:

"This structure has been proposed to be demolished by its owner. For further information, contact Inspection Services of the City of Portland. 874-8300"

(c) The failure to give any notice required hereunder shall not affect the validity of any action taken by the department or the board of appeals.

(d) The Planning Board may provide a report or any other information, documentation or evidence or request the historic preservation board to assist the board of appeals in considering the extent of variance necessary, an appropriate incentive plan, or reasonable condition to be imposed.

(e) The board of appeals may continue a proceeding for such additional time as it reasonably takes an applicant, any other interested person, the historic preservation board or the planning board to comply with a request for additional information or evidence. The applicant shall be afforded the right to present rebuttal evidence.

(Ord. No. 235-90, 2-26-90)

Sec. 14-664. Determination by the board of appeals.

(a) The determination by the board of appeals shall be made within forty-five (45) days following close of the public hearing and submission of all information, documentation or evidence requested by the board. The determination shall be accompanied by findings of fact.

(b) The board of appeals shall not grant approval of an application involving demolition, unless the board determines, upon clear and convincing evidence, that one (1) or more of the following circumstances apply:

1. The structure is not subject to this article; or
2. Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively

deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his predecessors in title occurring in whole or in part after August 1, 1988.

(Ord. No. 235-90, 2-26-90)

Sec. 14-665. Disapproval by board of appeals.

If the determination of the board of appeals is to disapprove the application for a certificate of economic hardship, the applicant shall be notified within five (5) business days. The notice shall include a copy of the findings of fact and report.

(Ord. No. 235-90, 2-26-90)

Sec. 14-666. Determination of no reasonable use.

(a) If the determination of the board of appeals is that the denial of the certificate of appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of new construction, then the certificate of economic hardship shall be issued by the department ninety (90) days following the determination unless during that time the council approves an incentive plan pursuant to section 14-667.

(b) A copy of the determination of the board of appeals, together with the findings of fact, shall be mailed to the applicant and filed with the city clerk, the planning board and the historic preservation board within five (5) business days following the determination of economic hardship.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-667. Incentive plan.

The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the historic preservation board and the owner, may prepare a report and recommend to the board of appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the City of Portland or other public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning

regulations, including a transfer of development rights, or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.

(Ord. No. 235-90, 2-26-90)

Sec. 14-668. City council consideration of incentive plan.

(a) Upon receipt of a report from the board of appeals recommending an incentive plan to assure reasonable use of the property, the council shall give prompt consideration to the determination of economic hardship and the report of the board, including the recommended incentive plan. The council shall approve or disapprove the incentive plan determined by the board of appeals to allow reasonable use of the structure within ninety (90) days following the determination by the board of appeals.

(b) A copy of the ordinance enacted by the council, together with the incentive plan, if any, shall be mailed to the applicant and transmitted to the board of appeals, the planning board and the historic preservation board within five (5) business days following the enactment of the ordinance.

(Ord. No. 235-90, 2-26-90)

Sec. 14-669. Issuance of certificate of economic hardship.

(a) Upon receipt by the board of appeals of a copy of council action disapproving an incentive plan, or upon failure of the council to act to either approve or disapprove an incentive plan within the time specified, the board of appeals shall approve a certificate of economic hardship to the applicant within thirty (30) days. The certificate may be subject to conditions including design guidelines for subsequent new construction not inconsistent with the standards set forth in this article and the design manual. The certificate of economic hardship shall be valid for a period of one hundred twenty (120) days from approval by the board of appeals, except as provided in section 14-666 where an incentive plan has been proposed. Certificates of economic hardship shall not be transferable from the applicant to another subsequent owner of the same property.

(b) Upon presentation by the applicant of a valid certificate of economic hardship to the department, the certificate of appropriateness shall be issued to the applicant within five (5) business days.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-670. - Sec. 14-674 Reserved.

DIVISION 9. ADMINISTRATION

Sec. 14-675. Historic resources design manual.

(a) The historic preservation board may provide further guidance on how to meet the standards of this article in the historic resources design manual, which shall supplement this article, which may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the National Register or for local designation, a glossary of terms and architectural styles, descriptions, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports and design guidelines. All provisions of the design manual shall be consistent with the standards of this article and any designation ordinance adopted hereunder.

(b) Amendments to the design manual shall be forwarded to the council as a communication and shall become effective forty-five (45) days from the date on which said amendments are sent to the council, unless the council takes official action disapproving the amendments, in whole or in part, prior to the expiration of the 45-day period.

(c) The design manual shall be maintained by the department and available for inspection and copying during regular business hours.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 14, 5-17-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-676. Reserved.

Sec. 14-677. Costs.

Any project may be subject to one or more of the following fees:

(a) Project Review.

1. Administrative review, \$50.00.
2. Historic Preservation board review: \$100.00
3. Historic preservation board review for projects involving new construction or building additions exceeding 1000 square feet or comprehensive rehabilitation or redesign of existing structures: \$750.00

4. After-the-fact review \$1,000.00 plus applicable application fee.
5. Historic preservation sign review \$75.00
6. Applicant shall also pay a fee to cover the professional and administrative costs for review and analysis associated with project review, including but not limited to planning, legal, or other services. The fee shall be based on the hours of review and processing time and prevailing hourly rate for reimbursement of city costs. The city shall periodically invoice the applicant for such costs incurred by the city, which invoice shall be paid promptly by the applicant. No certificate of appropriateness, building, demolition, or other permit shall issue until all current charges due under this ordinance have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.

(b) Advertising expenses.

Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 15, 5-17-93; Ord. No. 119-01/02, § 5, 12-3-01; Ord. No. 165-08/09, 3-16-09; Ord. No. 223-09/10, 5-17-10)

Sec. 14-678. Notices and public comment.

(a) Except as provided in sections 14-638 and 14-639, notice of proceedings upon any application for a certificate of appropriateness shall be given only when the proposed activity otherwise constitutes level III site plan. Notice of such proceedings also shall be furnished to any persons interested in historic preservation who have registered with the department, and to the historic preservation board and/or the planning board when the proceeding is pending before a different body. The failure to give any notice required by this article shall not affect the validity of any action taken.

(b) The historic preservation board, the planning board, the board of appeals and the council shall each invite public comment at a public meeting in accordance with their respective rules, prior to any final action being taken under this article.

(c) The department shall advise the historic preservation board and the planning board of any demolition permit application received by the department as to structures or objects that are noncontributing within nominated or designated districts, but there shall be no historic preservation board review of such permit applications.

(Ord. No. 235-90, 2-26-90; Ord. No. 278-09/10, 7-19-10)

Sec. 14-679. Expiration of approval.

An approval shall expire and become null and void upon the expiration of the authorization for the work, or for the development, under the applicable provisions of chapter 6 or of articles IV or V of this chapter.

(Ord. No. 235-90, 2-26-90)

Sec. 14-680. Applicant to supply necessary evidence.

In determining the existence of the circumstances specified in this article, the historic preservation board, planning board or board of appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings and elevations, and notwithstanding any time limit for action or decision specified in this article, it may continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.

(Ord. No. 235-90, 2-26-90)

Sec. 14-681. Appeals.

(a) The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of the application, may appeal to superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure from:

1. Any final action of the planning board, provided, however, only the applicant may appeal where no building permit or site plan review is required for the work which requires the issuance of the certificate of appropriateness; or
2. Any final decision of the board of appeals. If the decision of the board of appeals is subject to an incentive plan, the decision shall not be considered

final until final action on the incentive plan by the council becomes final.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

- Sec. 14-682. Reserved.**
- Sec. 14-683. Reserved.**
- Sec. 14-684. Reserved.**
- Sec. 14-685. Reserved.**
- Sec. 14-686. Reserved.**
- Sec. 14-687. Reserved.**
- Sec. 14-688. Reserved.**
- Sec. 14-689. Reserved.**

DIVISION 10. MAINTENANCE

Sec. 14-690. Preservation of protected structures.

(a) Minimum maintenance requirement. All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:

1. Deteriorated or inadequate foundation which jeopardizes its structural integrity;
2. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
3. Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration which jeopardize its structural integrity;
4. Structural members of ceilings and roofs, or other horizontal structural members, which sag, split or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
5. Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity;

6. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs or foundation.

(b) The owner or such other person shall repair such building, object or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by subsection (a) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.

(c) Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the department for reasonable periods to allow the owner to secure financing, labor or materials. Any such order may be appealed to the board of appeals within thirty (30) days. The board shall reverse such an order only if it finds that the department had no substantial justification for requiring action to be taken, that the measures required or time periods specified were not reasonable under all of the circumstances. The taking of an appeal to the board or to court shall not operate to stay any order requiring structures to be secured or requiring temporary support, unless the board or court expressly stays such order. The court of competent jurisdiction to enforce any order.

(Ord. No. 235-90, 2-26-90)

Sec. 14-691. Reserved.

Sec. 14-692. Reserved.

Sec. 14-693. Reserved.

Sec. 14-694. Reserved.

DIVISION 11. PENALTIES, ETC.

Sec. 14-695. Fines for violation.

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

(Ord. No. 235-90, 2-26-90)

Sec. 14-696. Additional penalties for willful violation or gross negligence.

(a) In addition to the penalties authorized by section 14-695, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

1. No permit shall be issued under chapter 6 of this Code for any alteration or new construction affecting such property for a period of five (5) years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the planning board that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.
2. For a period of twenty-five (25) years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural or archeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.
3. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore or replicate the structure or object on the property.

(b) Paragraphs (1) and (2) of subsection (a) shall not apply to violations which are limited to noncontributing structures.
(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-697. Other remedies.

Notwithstanding the provisions of sections 14-695 and 14-696, the city may institute appropriate proceedings in law and equity to prevent or remedy any violation of this article.
(Ord. No. 235-90, 2-26-90)

Sec. 14-698. Liberal construction of article.

This article shall be liberally applied and construed to effectuate the purpose of preservation set forth in section 14-601.
(Ord. No. 235-90, 2-26-90)

Sec. 14-699. Exception for dangerous buildings.

This article shall not apply to any structure which has been

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

(Ord. No. 235-90, 2-26-90)

Sec. 14-700. Severability; effective date.

The provisions of section 1-14 shall apply to this chapter.

The provisions of this article shall be effective August 1, 1990.

(Ord. No. 235-90, 2-26-90)

DIVISION 12. LANDMARKS

Sec. 14-701. Structures designated as landmarks.

In addition to those structures designated as landmarks pursuant to section 14-631, the structures which are depicted as landmark buildings on the Map of Historic Districts with landmarks and historic landscape districts as adopted by the council and as amended from time to time shall be so designated.

(Ord. No. 42-91, 9-4-91; Ord. No. 165-08/09, 3-16-09)

Sec. 14-702. Historic landscape districts.

In addition to those areas designated as historic landscape districts pursuant to section 14-631, the areas which are depicted as historic landscape districts on the Map of Historic Districts with landmarks and historic landscape districts as adopted by the council and as amended from time to time shall be so designated.

(Ord. No. 61-93, 8-2-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-703. Historic districts.

In addition to those areas designated as historic districts pursuant to section 14-631, the following areas are depicted as historic districts on the Map of Historic Districts with landmarks and historic landscape districts as adopted by the council and as amended from time to time shall be so designated.

(Ord. No. 59-93, 8-2-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-704. Historic landmark sites.

In addition to those areas designated as historic landmark sites pursuant to section 14-631, the areas which are depicted as historic landmark sites on the Map of Historic Districts with landmarks and historic landscape districts as adopted by the council and as amended from time to time shall be so designated. (Ord. No. 60-93, 8-2-93; Ord. No. 165-08/09, 3-16-09)

Sec. 14-705. Reserved.
Sec. 14-706. Reserved.
Sec. 14-707. Reserved.
Sec. 14-708. Reserved.
Sec. 14-709. Reserved.
Sec. 14-710. Reserved.
Sec. 14-711. Reserved.
Sec. 14-712. Reserved.
Sec. 14-713. Reserved.
Sec. 14-714. Reserved.
Sec. 14-715. Reserved.
Sec. 14-716. Reserved.
Sec. 14-717. Reserved.
Sec. 14-718. Reserved.
Sec. 14-719. Reserved.
Sec. 14-720. Reserved.
Sec. 14-721. Reserved.
Sec. 14-722. Reserved.
Sec. 14-723. Reserved.
Sec. 14-724. Reserved.
Sec. 14-725. Reserved.
Sec. 14-726. Reserved.
Sec. 14-727. Reserved.
Sec. 14-728. Reserved.
Sec. 14-729. Reserved.
Sec. 14-730. Reserved.
Sec. 14-731. Reserved.
Sec. 14-732. Reserved.
Sec. 14-733. Reserved.
Sec. 14-734. Reserved.
Sec. 14-735. Reserved.
Sec. 14-736. Reserved.
Sec. 14-737. Reserved.
Sec. 14-738. Reserved.
Sec. 14-739. Reserved.
Sec. 14-740. Reserved.
Sec. 14-741. Reserved.
Sec. 14-742. Reserved.
Sec. 14-743. Reserved.

Sec. 14-744. Reserved.
Sec. 14-745. Reserved.
Sec. 14-746. Reserved.
Sec. 14-747. Reserved.
Sec. 14-748. Reserved.
Sec. 14-749. Reserved.
Sec. 14-750. Reserved.

ARTICLE X. ALTERNATIVE ENERGY.

Sec. 14-751. Purpose.

The intent of this article is to allow the reasonable use of locally generated alternative sources of energy supply that help reduce greenhouse gas emissions consistent with the Sustainable Portland Report which was adopted on June 7, 2010. Alternative energy systems include but are not limited to wind, solar and geothermal energy generation.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-752. Reserved.

DIVISION 1. WIND ENERGY GENERATION.

Sec. 14-753. Purpose.

The purpose of this division is to allow for the construction and operation of public or private wind energy generation systems to produce energy for use on site or off site, by establishing appropriate locations and standards to ensure safe, effective and efficient use of wind energy systems compatible with surrounding uses.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-754. Applicability.

(a) No wind energy system, expansion of any existing wind energy system, or installation of any associated facilities, shall be installed unless it has been approved under this ordinance and has obtained a building permit and any other necessary state or local approvals prior to its installation. Wind energy generation systems determined to be permitted uses shall be reviewed and approved by the Zoning Administrator; wind energy systems determined to be conditional uses shall be reviewed and approved by the Zoning Board of Appeals (ZBA).

(b) Any physical modification to an existing and permitted wind energy system which alters the total rated capacity, the size or type

of the system or its associated equipment shall require approval under this ordinance. Like-kind replacements or non-structural maintenance and repair shall not require approval under this ordinance but shall require a building permit.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-755. Definitions.

For the purposes of this division, the following words and phrases shall have the following meanings:

Abandonment: The date at which a wind energy system has been out of service for a continuous period of 6 months.

DEP certification: Certification issued by the Maine Department of Environmental Protection (Maine DEP) pursuant to Title 35-A M.R.S.A. § 3456 for a wind energy development.

Horizontal wind energy system: A wind energy system that utilizes a generator shaft that is parallel to the ground and usually mounted on a tower.

Lattice tower: A tower constructed of vertical metal struts and cross braces forming a square or triangular structure in horizontal cross-section, which may or may not be supported by external guy wires and anchors.

Monitoring and maintenance plan: For permitted systems this would constitute the owner's manual requirements. For systems that may be allowed as a conditional use, this would constitute a more detailed and customized document.

Monopole tower: A tower constructed of a single, self-supporting metal tube, anchored to the foundation without guy wires.

Public industrial or utility facility: A facility operated by the City of Portland or Portland Water District that contains a major industrial or utility operation, such as a treatment plant, solid waste facility, materials storage yard or similar operation.

Residential building: A residence, nursing home/assisted living facility, or other building that is in use as an overnight residence but excluding hotels.

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

building and the wind energy system taken together.

Total rated capacity: The maximum rated output of electric power generation by the system in kilowatts (kW) as identified by the manufacturer.

Useful life of the wind energy system: 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.

Vertical wind energy system: A wind energy system that utilizes a generator shaft that is positioned perpendicular to the ground.

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

Wind energy system associated facilities: All elements of a wind energy system, other than its generating facilities, that are necessary for the proper operation and maintenance of the system, including but not limited to guy wires, remote electronic enclosures and fixtures, transformers, inverter, batteries, substations and similar equipment.

Wind energy generator: The device that converts kinetic wind energy into rotational energy that generates electricity, which may include components such as a base, blade, nacelle, rotor, tower, turbine, or vane.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-756. Reserved.

Sec. 14-757. Permitted uses.

(a) Freestanding wind energy systems that are accessory to the lawful principal use of the lot, primarily for the generation of energy for on-site consumption, and at or below 25 feet in total height, may be allowed as permitted uses in all residential, B1, I-B and residence-professional zones subject to the standards listed below in Section 14-761 (General Standards), 14-763 (Maintenance and Removal), and 14-765 (Submittal Requirements).

(b) Freestanding wind energy systems that are accessory to the lawful principal use of the lot, primarily for the generation of energy for on-site consumption, and meet the applicable height standards of the zone in which they are located and are no higher than 45 feet, may be allowed as permitted uses in all business zones except B1 and I-B, and in the office park, industrial zones, airport business zone, subject to the standards listed below in section 14-761 (General Standards), 14-763 (Maintenance and Removal), and 14-765 (Submittal

(c) Roof mounted wind energy systems that are accessory to the lawful principal use of the lot, primarily for the generation of energy for on-site consumption, meet the applicable height standards of the zone in which they are located and are less than 10 feet above the highest part of the roof, may be allowed as permitted uses in all zones except stream protection zone and recreation open space zone, subject to the standards listed below in section 14-761 (General Standards), 14-763 (Maintenance and Removal), and 14-765 (Submittal Requirements).
(Ord. No.33-11/12, 1-18-12)

Sec. 14-758. Conditional uses.

(a) Wind energy systems that do not meet the requirements for a permitted system may be allowed as conditional uses in all zones (including overlay zones but excluding stream protection and resource protection zones), subject to the provisions of section 14-430 (height and bulk exceptions/use exceptions); section 14-474 (conditional uses); and to the requirements and performance standards listed below in section 14-761 (general standards), 14-763 (maintenance and removal), and 14-765 (submittal requirements). For the purposes of this provision, wind energy may be an accessory use in all zones or a principal use in all zones except residential zones, B1 zone, I-B zone, residence-professional zone and resource protection zone.

(b) Wind energy systems within recreation open space zones (including the island transfer station overlay zone) are allowed as a conditional use where they are co-located with public industrial or utility facilities as defined in section 14-755.
(Ord. No. 33-11/12, 1-18-12)

Sec. 14-759. Prohibited uses.

(a) Wind energy systems of any kind are prohibited in the stream protection and historic landscape districts [excepting the sewage treatment plan corner of Eastern Prom] and historic cemeteries.

(b) Wind energy systems are prohibited where they exceed the height limitations set out in Table 1 (below) and described in provision 14-761(c) (3).

Table 1: Summary Table of Permitting

Type and scale of wind energy system	Stream Protection, Historic Landscape Districts & Historic Cemeteries	Resource Protection Zone	All Residential Zones, and Residential Professional Zone; B1 Zone; I-B Zone	Historic Districts*, and within 1000 ft of specified landmarks (see**)	Water-front Zones and B6	Business Zones B2 & B5 Industrial Zones I-L, I-Lb and I-Ma	Business Zones B3 and B7	B4 Zone, Office -Park Zone	Recreation Open Space (ROS) Zone where Co-located with public industrial or utility facilities as per 14-758(b)	Industrial Zones I-M, I-Mb, I-H; Airport Bus. (w/FAA approval)
Roof mounted, accessory, <10 ft above roof) & below permitted height of zone	X	P	P	P	P	P	P	P	C	P
Freestanding; accessory; up to 25 ft	X	X	P	P	P	P	P	P	C	P
Freestanding or roof mounted: accessory; at or below permitted height of zone AND no higher than 45 ft	X	X	X if <.5 acre except C if .5 acre or larger	P	P	P	P	P	C	P
Freestanding or roof mounted; at or above permitted height of zone AND no higher than 45 ft	X	X	X Except C only where accessory & on institutional sites over 5 acres	C	C	C	C	C	C	C
Roof mounted or free-standing; at or below permitted height for that zone AND no higher than 65 ft	X	X	X Except C only in USM Overlay Area & for college, university or trade schools in the R5 zone	X Except C in B3 part Congress St. Historic District	C	C	C	C	C	C
Roof mounted or free-standing; above permitted height for that zone AND no higher than 65 ft	X	X	X	X Except C in B3 part Congress St. Historic District	C	C	C	C	C	C
Roof mounted; at or below permitted height for that zone AND no higher than 85 ft	X	X	X	X Except C in B3 part Congress St. Historic District	X	X	C	C	C	C
Freestanding; at or below permitted height for that zone AND no higher than 85ft	X	X	X	X Except C in B3 part Congress St. Historic District	X	X	X	C	C	C
Freestanding; above permitted height for that zone AND no higher than 85 ft	X	X	X	X	X	X	X	X	C	C
Roof mounted or freestanding; above 85 ft and no higher than 160 ft	X	X	X	X	X	X	X	X	C with increased setbacks (see 14-761(d)(6))	C with increased setbacks (see 14-761(d)(6))+

P= Permitted Use; needs Zoning Administrator approval plus building permit; if within 100 feet of a designated landmark, historic district or historic landscape district, also needs planning authority (HP) approval;

C=Conditional Use; needs ZBA approval plus building permit; if within 100 feet of a designated landmark, historic district or historic landscape district, also needs planning authority (HP) approval;

X=Prohibited

*Historic districts only (wind systems are prohibited in historic landscape districts and historic cemeteries); in historic districts if the maximum allowed height in this section is different from the allowable height associated with the underlying zone, the lower of the two height limits would apply regarding wind energy systems. Within the B3 part of the Congress Street Historic District, the height limits in this ordinance for the B3 zone shall apply.

**Specified landmarks are: Portland Observatory; Cathedral of Immaculate Conception; St Dominic's Cathedral; St Luke's Cathedral; State Street Church; and City Hall

Sec. 14-760. Reserved.

Sec. 14-761. General standards.

(a) *General*

1. *Application requirements:* All applications for approval under this ordinance shall address the submittal requirements set out in section 14-765 submittal requirements.
2. *Approvals:* All applicable state and local approvals shall be obtained prior to installation of any wind energy system, including FAA approval and MDEP certification for all systems 100kW and above in total rated capacity.
3. *Conditions:* The zoning administrator or zoning board of appeals (ZBA) may impose conditions to ensure compliance with the standards and purposes set out in this ordinance, including but not limited to post-construction certification of compliance by a licensed professional engineer or authorized factory representative.

(b) *Historic Resource*

1. Where any part of the proposed wind energy system (including associated facilities) is within an historic district, such development shall be reviewed and approved by the planning authority (historic preservation) in accordance with article IX historic preservation prior to a review under this ordinance by the zoning board of appeals.
2. Where any part of the proposed wind energy system (including tower base and associated facilities) is within one hundred (100) feet of any designated landmark, historic district or historic landscape district, such development shall be determined by the planning authority (historic preservation) to be generally compatible with the major character-defining elements of the landmark or portion of the

district in the immediate vicinity of the proposed system; such determination shall be made prior to a review under this ordinance by the zoning board of appeals. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports. An appeal of the planning authority (historic preservation) determination may be made in accordance with section 14-767 (appeals).

(c) *Siting*

1. *Location on site:* In residential zones, B1 zone, I-b zone and residence-professional zone where the lot is less than .5 acre, 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.
2. *Number per lot:* In residential zones, I-B zone and residence-professional zone and all business zones excluding B3, B4 and B7, a maximum of one (1) wind energy system shall be permitted per lot.
3. *Overall height:* The total height (including the supporting structure or building and the rotors or blades of the generator) of the wind energy system when operating shall be at or below the following maximum height limits.

These limits do not apply within historic districts (except the Congress Street historic district) or within 1000 feet of Portland Observatory; Cathedral of the Immaculate Conception; St Dominic's Cathedral; St Luke's Cathedral; State Street Church; and City Hall where the overall height of wind energy systems may be no higher than 45 feet.

Within the Congress Street historic district, the overall height of wind energy systems may be no

higher than 45 feet in those areas outside of the B3 zone and within the B3 zone the height limits below shall apply.

In addition, the actual height of any roof mounted wind energy system, as measured above the roof from the point of attachment, where allowed as a conditional use shall not exceed 35% of the height of the building on which it is mounted.

a. *Maximum of 45 feet:*

i. Roof mounted in R-6 zone if 10 feet or less above highest part of the roof and permitted by that zone.

ii. Residential zones, B1 zone, I-B zone and residence-professional zone if lot is .5 acre or larger and height permitted by that zone.

iii. Institutional uses in residential zones, B1 zone, I-B zone and residence-professional zone where lot is over 5 acres.

iv. Resource protection zone (roof mounted and up to height permitted by zone).

b. *Maximum of 55 feet:* College, university or trade school in R5 zone where conditional use requirements of the zone are met (14-118(b)(6)(g)).

c. *Maximum of 65 feet:*

i. Waterfront zones.

ii. Business zones B2, B5 and B6.

iii. Industrial zones I-L, IL-b and I-Ma

iv. Freestanding in business zones B3 and B7.

v. USM overlay zone if allowed by overlay heights.

- d. *Maximum of 85 feet:*
 - i. Roof mounted in B3 and B7 if height permitted by overlay heights.
 - ii. Business zone B4 if height permitted by that zone.
 - iii. Office-park zone up to 75 feet where requirements of the zone are met (14-230.14(e)).
- e. *Maximum of 160 feet (Increased setbacks if over 85 feet):*
 - i. Industrial zones I-M and IMb and I-H.
 - ii. Airport business zone.
 - iii. Recreation open space zones where allowed by 14-758(b).

(d) *Safety*

1. *Generation equipment:* All wind energy generation equipment shall be approved under a certification program certified by the US 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.
2. *Design safety:* 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 codes/regulations and Federal Aviation Administration regulations and requirements.
3. *Setbacks:* Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the wind energy 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/ROW. The setback from utility lines, easements and ROW lines may be reduced where the owner/benefitted party provides written permission.

4. *Safety setbacks (roof mounted systems):* All 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 4 times the height of the system as measured from the roof surface at the point of attachment (including attachment structure to roof). 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 as measured from the roof surface at the point of attachment (including attachment structure to roof) where the system is incorporated into the architecture of the building and a certified engineer confirms that it would not present any public safety risk. The setback distance shall be measured to the center of the wind generator base.
5. *Safety setbacks (freestanding systems no higher than 85 feet high):* All freestanding wind energy systems with a total height of 85 feet or less 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 2 times the total height of the system. The setback distance shall be measured to the center of the wind generator base.
6. *Safety setbacks (freestanding systems above 85 feet high):* All freestanding wind energy systems with a total height above 85 feet shall be set back from property boundaries and street right of way lines by a distance equal to or greater than 2 times the

total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than 4 times the total height of the system. 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 total height of the system where the Board determines it will be contrary to the public interest. The setback distance shall be measured to the center of the wind generator base.

7. *Control of systems:* Wind energy generators shall have automatic braking, governing or feathering systems to ensure rotational speeds remain within the design parameters of the proposed generator and its support structure and components and do not create intermittent high noise levels.
8. *Security:* The support structure (e.g. tower, pole) for freestanding wind generating systems shall not be climbable (no step bolts, ladder, or unshielded lattice structure readily accessible to the public) for a minimum height of twelve (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.
9. *Clearances:* All moving components of a wind energy system shall be a minimum of twelve (12) feet from ground level or accessible surface.
10. *Wiring:* 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.
11. *Guy wires:* 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.

(e) *Impacts*

1. *Sound impacts:* The audible sound levels generated by the wind energy system* shall comply with the requirements of the underlying zone, except that the method of measurement shall be in accordance with this provision and with technical standards set out in the City of Portland Technical Manual. In addition:
 - a. 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) 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.
 - b. 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.
 - c. 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 (55) decibels on the A scale as measured 50 feet from the base of the tower.

*The audible sound levels of the wind energy system shall include sounds generated in all conditions including low and high winds (furling, yawing, and flutter) and power outages (free wheeling).

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 technical standards set out in the City of Portland Technical Manual) the owner shall take (at the owners cost) remedial action to ensure compliance with these limits. Required action may include relocation nor removal of the system.

2. *Significant wildlife:* The proposed wind energy system shall not be located within 250 feet of any significant wildlife habitat, as defined by MDEP/MDIFW 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.
3. *MDIFW comments:* For all wind energy systems over 45 feet in height above the ground (however supported) or over 100kW the applicant shall provide evidence 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.
4. *Signal interference:* 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.
5. *Appearance:* The wind energy system 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. In the case of

conditional uses the system shall be screened with a vegetated buffer from public areas and residential buildings.

6. *Lighting:* No part of the system may be illuminated, except as required (in writing) 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.
7. *Signs and advertising:* 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 1 sq foot in size), appropriate warning signs, or lights if required by the FAA.
8. *Impact of construction:* The applicant shall avoid adverse impacts resulting from construction and maintenance of the wind energy system and obtain site plan approval (Article V, Site Plan) where applicable.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-762. Reserved.

Sec. 14-763. Maintenance and removal.

(a) A satisfactory monitoring and maintenance plan shall be required to ensure that all aspects of operation remain safe and in accordance with the approved design, engineering and installation details. All buildings, structures, fences, and property used in connection with a wind energy system shall be regularly inspected and maintained, through the life of the system, so that they remain: in good condition; in compliance with the standards set out in this ordinance (e.g., meeting sound limits); in safe working order; and so that paint and other external materials remain as approved and free from corrosion.

(b) The owner and operator shall, at their expense, complete the removal of the wind energy system within 6 months of the end of the useful life of the wind energy system or within 6 months of the date of abandonment.

(c) The City shall revoke any approvals and/or pursue removal of the wind energy system at the owner and operator's expense in the following circumstances:

1. The wind energy system is not installed and functioning within 12-months from the date of the approval under this ordinance; or
2. The wind energy system is at any time left in an unsafe condition in respect to federal, state and local safety standards (as determined by the City); or
3. The wind energy system has not been brought back to a safe condition/operation or removed from the site within required timeframe; or
4. The wind energy system is defective or abandoned and not been removed from the site within required timeframe.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-764. Reserved.

Sec. 14-765. Submittal requirements.

(a) The following information shall be submitted with an application for a review of a wind energy system and associated facilities under this ordinance.

1. A narrative describing the proposed wind energy system, including an overview of the project; the project location; the generating capacity of the wind energy system; dimensions and respective manufacturers, the sound levels generated by the wind energy system; and a description of associated facilities and how the system and associated facilities comply with the standards of this ordinance (including a plan or other graphics that demonstrate compliance with the required setbacks). Calculations of sound attenuation and anticipated sound levels shall be in accordance with technical standards set out in the City of Portland Technical Manual.
2. An accurate scaled site plan of the subject property showing the planned location of the proposed wind energy system and all associated facilities; property

lines, adjoining streets and access; topographic contour lines; existing and proposed buildings, fencing, structures, substations, vegetation, driveways, parking, and curb cuts on the subject property; and specifications for all proposed electrical cabling/transmission lines, accessory equipment, and landscaping. The site plan shall show any proposed off-site modifications to access the installation and/or to maintain the proposed wind energy system. [Note: separate site plan applications may be required for some or all of the associated modifications; see Article V Site Plan]

3. A boundary survey where the location and dimensions of the wind energy system are determined to be uncertain by the Zoning Administrator.
4. Names and addresses of the owners of abutting properties and the location, dimensions, and types of all existing structures and uses within 100 feet of the property line.
5. A scaled elevation drawing showing the proposed wind energy system and all proposed structures, foundations, supports, fencing, vegetation and landscaping, indicating the height, color and materials of the system.
6. The wind energy system specifications, including manufacturer, model, dimensions of all components, height, tower/support type, total rated capacity and information on any connections to the grid including a copy of the application for interconnection with the electric utility provider where to be connected to the grid.
7. Documentation that the wind generation equipment has been approved under a recognized certification program as set out in paragraph 14-761(d)1 of this ordinance and that the system complies with all applicable local, state and federal codes/regulations and with the standards regarding signal interference. Electrical component and connection information shall be in sufficient detail to allow for a determination that it meets Maine electrical codes.
8. Engineered drawings of the structure, its foundations

and associated facilities (stamped by a PE). In the case of conditional uses, the applicant shall provide a Safety Report prepared and stamped by a licensed professional engineer with their application that certifies that the proposed wind energy system design is safe and appropriate in terms of strength, stability, security, grounding, icing impacts, and maintenance, given local soil and climate conditions.

9. Evidence of compliance or non-applicability with FAA requirements, MDEP Certification pursuant to 35-A M.R.S.A. § 3456 for wind energy development (applies to systems over 100kW) and other federal and state regulations regarding potential impacts on wetlands, wildlife and other resources.
10. For any wind energy system that will exceed the height limit for buildings on the subject property, the following shall be submitted:
 - a. A scaled vicinity map showing the subject property and the proposed wind energy system and fencing in the context of all property located within a distance from the wind energy system equal to three (3) times the height of the wind energy system (in the case of a system 85 feet or higher, ten (10) times the height), showing within this area: all streets and existing buildings; significant structures: uses of any buildings; and topographic contours at five foot intervals.
 - b. Color photographs showing the current view of the wind energy system site from any adjoining public street or any other street within 200 feet of the proposed wind energy system and from the closest groupings of residential buildings located within an area from the proposed wind energy system equal to three (3) times the height of the proposed structure (ten (10) times the height for systems 85 feet), plus a second set of color photographs showing the same views with the proposed wind energy system superimposed onto the photographs.
11. Where lighting of the wind energy system is proposed (due to FAA requirements), a lighting plan for the

proposed win energy system, indicating the location, color and intensity of the lighting, both as it will appear in daylight and at night, and indicating any mechanisms to prevent glare on adjacent properties and streets and to shield the lighting from residences.

12. Where the wind energy system manufacturer's sound level analysis does not clearly meet the sound standard of this ordinance, a statement by a professional engineer licensed in the State of Maine certifying that the proposed wind energy system will meet the sound standard of this ordinance. The technical standards set out in the City of Portland Technical Manual outline further information which may apply in this case.
13. A monitoring and maintenance plan in accordance with section 14-763(a).
14. The following information shall be submitted with an application for a wind energy system proposed to be attached to the roof of a building or onto another structure:
 - a. Elevation drawings and details of the building or structure to which the proposed wind energy system will be attached, showing the placement of the wind system and its supports, indicating the location of any enclosures in relation to the surface to which it will be attached, and showing projection of the wind generator from the structure, marked with all necessary dimensions.
 - b. Design and engineering information for roof-mounted systems shall demonstrate that the structure on which it will be mounted has the structural integrity to carry the weight and wind loads of the system with minimal vibration impacts on the structure.

(Ord. No. 33-11/12, 1-18-12)

Sec. 14-766. Reserved.

Sec. 14-767. Appeals.

(a) Any aggrieved party may appeal a decision by the zoning administrator under the provisions of this ordinance by requesting in writing that it be referred to the zoning board of

appeals within thirty (30) days of the decision being rendered.
The date of the decision shall be the date of the letter from the zoning administrator documenting the decision.

(b) Any aggrieved party may appeal a decision of the planning authority determination under provision 14-761(b)(2) of this ordinance (compatibility if within 100 feet of a designated landmark, historic district or historic landscape district) by requesting in writing that it be referred to the historic preservation board within thirty (30) days of the determination. The date of the determination shall be the date of the letter from the planning authority documenting the decision. Appeals shall be considered by the historic preservation board as a de-novo review of the determination of compatibility.

(c) Any aggrieved party may appeal the final decision of the zoning board of appeals or the historic preservation board to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. The date of the final decision shall be the date of the board hearing or other board meeting at which a final decision was taken.
(Ord. No. 33-11/12, 1-18-12)

- Sec. 14-768. Reserved.**
- Sec. 14-769. Reserved.**
- Sec. 14-770. Reserved.**
- Sec. 14-771. Reserved.**
- Sec. 14-772. Reserved.**
- Sec. 14-773. Reserved.**
- Sec. 14-774. Reserved.**
- Sec. 14-775. Reserved.**
- Sec. 14-776. Reserved.**
- Sec. 14-777. Reserved.**
- Sec. 14-778. Reserved.**
- Sec. 14-779. Reserved.**
- Sec. 14-780. Reserved.**
- Sec. 14-781. Reserved.**
- Sec. 14-782. Reserved.**
- Sec. 14-783. Reserved.**
- Sec. 14-784. Reserved.**
- Sec. 14-785. Reserved.**
- Sec. 14-786. Reserved.**
- Sec. 14-787. Reserved.**
- Sec. 14-788. Reserved.**
- Sec. 14-789. Reserved.**
- Sec. 14-790. Reserved.**
- Sec. 14-791. Reserved.**

- Sec. 14-792. Reserved.
- Sec. 14-793. Reserved.
- Sec. 14-794. Reserved.
- Sec. 14-795. Reserved.
- Sec. 14-796. Reserved.
- Sec. 14-797. Reserved.
- Sec. 14-798. Reserved.
- Sec. 14-799. Reserved.
- Sec. 14-800. Reserved.
- Sec. 14-801. Reserved.
- Sec. 14-802. Reserved.
- Sec. 14-803. Reserved.
- Sec. 14-804. Reserved.
- Sec. 14-805. Reserved.
- Sec. 14-806. Reserved.
- Sec. 14-807. Reserved.
- Sec. 14-808. Reserved.
- Sec. 14-809. Reserved.
- Sec. 14-810. Reserved.
- Sec. 14-811. Reserved.
- Sec. 14-812. Reserved.
- Sec. 14-813. Reserved.
- Sec. 14-814. Reserved.
- Sec. 14-815. Reserved.
- Sec. 14-816. Reserved.
- Sec. 14-817. Reserved.
- Sec. 14-818. Reserved.
- Sec. 14-819. Reserved.
- Sec. 14-820. Reserved.
- Sec. 14-821. Reserved.
- Sec. 14-822. Reserved.
- Sec. 14-823. Reserved.
- Sec. 14-824. Reserved.
- Sec. 14-825. Reserved.
- Sec. 14-826. Reserved.
- Sec. 14-827. Reserved.
- Sec. 14-828. Reserved.
- Sec. 14-829. Reserved.
- Sec. 14-830. Reserved.
- Sec. 14-831. Reserved.
- Sec. 14-832. Reserved.
- Sec. 14-833. Reserved.
- Sec. 14-834. Reserved.
- Sec. 14-835. Reserved.
- Sec. 14-836. Reserved.
- Sec. 14-837. Reserved.
- Sec. 14-838. Reserved.

- Sec. 14-839. Reserved.**
- Sec. 14-840. Reserved.**
- Sec. 14-841. Reserved.**
- Sec. 14-842. Reserved.**
- Sec. 14-843. Reserved.**
- Sec. 14-844. Reserved.**
- Sec. 14-845. Reserved.**
- Sec. 14-846. Reserved.**
- Sec. 14-847. Reserved.**
- Sec. 14-848. Reserved.**
- Sec. 14-849. Reserved.**

ARTICLE XI. PUBLIC ART PROGRAM

----- *Editor's note—Ord. No. 174-00, passed 4-24-00, repealed §§14-851-14-860 of this article and enacted new provisions as herein set out.

Sec. 14-850. Preamble.

It shall henceforth be the policy of the City to provide on an annual basis regular funding for the preservation, restoration and enhancement of its public art collection. This ordinance and the funding contemplated are in recognition of the fact that only by instituting a steady stream of funding for this effort and standing by that commitment, will the City over time be able to fulfill its role as steward of its public art collection and help nurture and enrich thereby the quality of life in this City.
(Ord. No. 174-00, 4-24-00)

Sec. 14-851. Purpose.

The purpose of the public art ordinance is to promote the educational, cultural, economic and general welfare of the City of Portland by providing the means to fund the acquisition and care of art works by the City of Portland, which shall be the city's public art collection. The public art program seeks to:

- (a) Care for and maintain the public art collection of the City of Portland by documenting, preserving and restoring and repairing the collection;
- (b) Commission or acquire works of public art, and to seek donations of art work for the city's public art collection;
- (c) Provide curatorial expertise and project management for the care of Portland's public art collection;

- (d) Enhance and enrich the lives of the city's residents, visitors and employees by incorporating the visual arts into public spaces;
- (e) Contribute to the city's civic pride and sense of identity;
- (f) Increase access to works of art for residents and visitors to the area;
- (g) Enhance Portland's growing reputation as a city which celebrates the arts;
- (h) Celebrate the multi-cultural and diverse character of Portland's communities with place specific art; and
- (i) Encourage collaboration between artists, landscape architects, urban planners, architects, engineers and other designers.

(Ord. No. 246-91, 3-11-91; Ord. No. 174-00, 4-24-00; Ord. No. 140-08/09, 1-21-09)

Sec. 14-852. Definitions.

- (a) For the purposes of this section, *art work* shall include:
 - 1. Sculpture, statues or monuments in any material or combination of materials;
 - 2. Painting;
 - 3. Graphic arts, printmaking and drawing;
 - 4. Photography;
 - 5. Crafts in clay, fiber and textiles, wood, metal, plastics, glass and other materials; and
 - 6. Mixed media, any combination of forms or media, including collage.
- (7) Functional art such as street furniture, as defined on page two of the Portland public art committee guidelines.
- (8) Environmental art consisting of landforms and artistic landscape composition.

(b) For the purposes of this ordinance *public art* shall not include:

1. Reproductions by mechanical or other means of original works of art, except for limited editions, controlled by the artist, of original prints, cast sculptures, photographs or other works of art.
2. Decorative, ornamental, or functional elements which are designed by the building architect or consultants engaged by the architect which are a traditional and typical element of architectural design.
3. Those elements generally considered to be conventional components of a landscape architectural design including, but not limited to, plant materials, pools, paths, benches, receptacles, fixtures and planters except as allowed in subsection (a), paragraphs 7 and 8 above.
4. "Art objects" which are mass produced or of a standard design, such as playground sculpture or fountains, except pieces of historical significance to the city.
5. Directional or other functional elements, such as supergraphics, signage, color coding and maps, except where sculptural pieces are used to define gateways in the city.
6. Electrical, water or mechanical service for activation of the work.
7. Exhibitions and educational programs related to the work.
8. Performing Arts.
9. Art that displays slogans, logos, mascots or commercial advertising.

(c) *Public art collection*: Art objects that are owned by the City of Portland which are permanently installed in public, accessible locations. Permanent public art must be located in a public place with public visibility and impact, and shall have a permanence at least comparable to associated capital projects.

(d) *Public art guidelines*: The regulations adopted by the

committee and approved by the city council which establish procedures to carry out the purpose of this ordinance. The guidelines shall include but not be limited to criteria for selection of artists and art works, maintenance of a file of interested artists, procedures for artistic competitions, and requirements for the maintenance of works of art.

(Ord. No. 246-91, 3-11-91; Ord. No. 174-00, 4-24-00; Ord. No. 140-08/09, 1-21-09)

Sec. 14-853. Funding.

(a) Establishment of Public Art Fund

1. The city shall establish a special revenue fund designated as the "public art fund" in the city treasury from which expenditures may be made in accordance with this ordinance. The public art fund shall contain a capital account to fund permanent public improvements in the form of the purchase, acquisition or commission of new public art, or major restorations, and an operations and maintenance account. Authorized expenditures include, but are not limited to, associated site installation costs such as lighting and landscaping, and costs associated with the commission engineering, contract administration, unveiling and dedication activities. Also authorized are expenditures associated with preservation, conservation and repair of existing public art. Capital funds may come from any source, including the sale of general obligation bonds. The city's capital improvement program shall contain an annual appropriation for the public art fund calculated in accordance with paragraph (b) below. Funds for the operation and maintenance account may come from any source except bonds.

(b) City Funded Projects.

1. A percentage of the city's capital improvement program (CIP) shall be calculated and appropriated annually to the Portland public art fund. The annual appropriation shall be .5% of the total annual CIP.
 2. Nothing contained herein shall preclude funding the acquisition of art for municipal property in other ways.
- (Ord. No. 246-91, 3-11-91; Ord. No. 174-00, 4-24-00; Ord. No. 140-08/09, 1-21-09)

Sec. 14-854. Administration.

(a) The city public art program shall be administered by the public art committee whose members shall be appointed by the city council, and shall have the following responsibilities:

1. Develop an annual art plan for Portland which shall be presented to the city council for approval.
2. Establish such guidelines as are necessary to carry out the purpose of the ordinance. The guidelines shall include but not be limited to criteria for selection of artists and art work, maintenance of a file of interested artists, review criteria for proposed gifts of art work to the city, procedures for artistic competitions, and requirements for the maintenance of art work. Any and all guidelines or changes to guidelines shall be placed on a city council agenda as a communication. The guideline shall take effect forty-five (45) days after the date of placement on the council agenda, unless the city council takes official action disapproving the guidelines, in whole or in part, prior to the expiration of the 45-day period. If a part of a guideline is vetoed, the remainder shall continue in effect. Any guideline 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.
3. Recommend to the city council the expenditure of funds for the acquisition or commissioning of public art, for maintenance of public art and for administration of this program.
4. Seek private donations of funds and/or works of art for the purposes of expanding the public art collection, or the maintenance of the collection.
5. Oversee the maintenance, care and repair of the public art collection.
6. Review the appropriateness of proposed public art which is intended to fulfill all or part of the contribution required by this article.
7. Review potential gifts of art to the city on city property, and assist in the development process of such gifts, in accordance with the *Guidelines for the City of Portland Public Art Committee*.

8. Recommend appropriate locations and accessibility to the public for permanent art, with suggestion as to the type of art which is appropriate.
 9. Solicit advice from arts professionals, the business community, and from local residents on the appropriateness of proposed art.
 10. Recommend revisions to policies and guidelines for the improved implementation of this program.
 11. Develop an annual art plan for Portland.
 12. Ensure that the use of funds collected under this program will increase the amount of art in the city that is available to the public.
- (b) Public art committee - structure.
1. The public art committee shall be composed of eleven voting members who are appointed by the city council. The city council shall appoint one of its members, the city manager shall recommend a member, and the Portland arts and cultural alliance shall recommend one of its members to serve on the public art committee. The city council shall appoint the remaining six members who shall be volunteers and have interest and/or expertise in public art. Such experience may include, but shall not be limited to, education and experience as an architect, a landscape architect, a professional curator, a professional artist and/or an art educator. Persons appointed to the public art committee must live or work in Portland and shall be appointed through the city's annual appointment process.
 2. Each public art committee member shall serve for a period of three years. The appointments shall be staggered so that three appointments terminate each year.
 3. Whenever a vacancy shall occur, the vacancy shall be filled by the city council.
 4. The public art committee shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Any and all

rules or changes to rules shall be placed on a city council agenda as a communication. The rule or rules shall take effect forty-five (45) days after the date of placement on the council agenda, unless the city council takes official action disapproving the rules, in whole or in part, prior to the expiration of the 45-day period

5. The members of the public art committee shall annually elect one (1) of their members as a chair to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their members as vice-chair.

(Ord. No. 246-91, 3-11-91; Ord. No. 174-00, 4-24-00; Ord. No. 14-08/09, 1-21-09)

Sec. 14-855. Reserved.
Sec. 14-856. Reserved.
Sec. 14-857. Reserved.
Sec. 14-858. Reserved.
Sec. 14-859. Reserved.
Sec. 14-860. Reserved.

ARTICLE XII. RELOCATION OF DISPLACED TENANTS

Sec. 14-861. Purpose.

The purpose of this article is to encourage the retention of a diverse housing supply throughout the downtown and in areas readily accessible to the downtown; to ensure that persons displaced as the result of redevelopment of residential units to nonresidential uses within the B-3 downtown business zone are treated fairly and consistently; and to ensure that persons so displaced will be relocated at the reasonable expense of the developer to comparable housing at a location providing comparable access to services and amenities.

(Ord. No. 246-91, 3-11-91)

Sec. 14-862. Notice and eligibility for relocation assistance.

When a proposed development will result in the displacement of residents of an existing structure, the developer of the property shall give all tenants written notice as set forth below and shall provide relocation assistance as set forth below for any tenant whose gross income is eighty (80) percent or less of the median income of the Portland SMSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development

at the time the developer gives the tenant written notice of intent to cause removal of the residential unit. Such written notice shall be given to the tenant at least one hundred twenty (120) days before the tenant shall be required to vacate the premises and shall contain the following statement:

The developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer, you may contact the Department of Planning and Urban Development, City of Portland, 389 Congress Street, Portland, Maine 04101 (telephone 874-8300).

(Ord. No. 246-91, 3-11-91)

Sec. 14-863. Relocation assistance for all tenants.

The developer shall provide, upon demand, assistance to all tenants who will be displaced by the development in the form of referrals to other reasonable accommodations and in determining the tenants' eligibility for relocation payments as provided herein.

(Ord. No. 246-91, 3-11-91)

Sec. 14-864. Relocation payments for eligible tenants.

The developer shall make relocation payments to eligible tenants in accordance with the schedule adopted by the city council.

(Ord. No. 246-91, 3-11-91)

***Editor's Note:** By separate order (Order 126-04/05, 6-6-05) the City Council passed the adoption of relocation payments for qualifying displaced tenants in the B-3 zone as follows:

WHEREAS, the Portland City Code §14-864 (adopted in 1991) requires a developer to provide financial and other assistance to relocate qualifying residential tenants in the B-3 zone, where such tenants are displaced due to the conversion of residential property to nonresidential property; and

WHEREAS, the Portland City Council was charged with adopting a schedule of relocation payments to be utilized in such circumstances; and

WHEREAS, the schedule, if any, adopted at that time cannot be located;

WHEREAS, the Housing Committee recommends the adoption of a payment schedule equal to two months rent paid by a qualifying tenant.

NOW THEREFORE, it is hereby ordered that the City Council hereby adopts

the following schedule pursuant to §14-864 of the Portland City Code:

SCHEDULE OF RELOCATION PAYMENTS FOR ELIGIBLE TENANTS

The developer shall, before the tenant is required by the developer to vacate, make a cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two (2) months.

Sec. 14-865. Reserved.
Sec. 14-866. Reserved.
Sec. 14-867. Reserved.
Sec. 14-868. Reserved.
Sec. 14-869. Reserved.
Sec. 14-870. Reserved.
Sec. 14-871. Reserved.
Sec. 14-872. Reserved.
Sec. 14-873. Reserved.
Sec. 14-874. Reserved.
Sec. 14-875. Reserved.
Sec. 14-876. Reserved.
Sec. 14-877. Reserved.
Sec. 14-878. Reserved.
Sec. 14-879. Reserved.
Sec. 14-880. Reserved.
Sec. 14-881. Reserved.
Sec. 14-882. Reserved.
Sec. 14-883. Reserved.
Sec. 14-884. Reserved.
Sec. 14-885. Reserved.
Sec. 14-886. Reserved.
Sec. 14-887. Reserved.
Sec. 14-888. Reserved.
Sec. 14-889. Reserved.
Sec. 14-890. Reserved.
Sec. 14-891. Reserved.
Sec. 14-892. Reserved.
Sec. 14-893. Reserved.
Sec. 14-894. Reserved.
Sec. 14-895. Reserved.
Sec. 14-896. Reserved.
Sec. 14-897. Reserved.
Sec. 14-898. Reserved.
Sec. 14-899. Reserved.

ARTICLE XIII. RESERVED*

***Editor's note--**Ord. No. 127-98, adopted Oct. 19, 1998, repealed Art. XIII, §§ 14-900, 14-901, relative to moratorium on correctional prerelease facilities, which derived from Ord. No. 26-96, adopted June 17, 1996.

Sec. 14-900. Reserved.

Sec. 14-901. Reserved.

ARTICLE XIV. MORATORIUM ON DEMOLITION OF HOUSING UNITS

***Editor's Note:** Order No. 221-99 adopted February 1, 1999 enacted a moratorium on the demolition of buildings in the area of Bayside. The moratorium was in effect January 1, 1999 through May 1, 1999.

Sec. 14-902. Findings and declaration of emergency.

The city council hereby finds and declares:

- (a) The strong economy has increased the demand for housing beyond the supply available in the city and the surrounding area;
- (b) The rental vacancy rate in the city has been extremely tight (0 to 2%) for the last 3 years, well below the vacancy rate which is considered healthy for a community, allowing choice and maintaining moderate prices;
- (c) The lack of supply has pushed rent levels beyond the level which low and moderate income families and individuals can afford;
- (d) Due to high cost of construction and the lack of land, very few new affordable multifamily units are being built in the city;
- (e) The lack of supply of affordable housing and high rents hurt the vulnerable populations the most, e.g. those with disabilities, the working poor and the elderly;
- (f) Several pending developments in the City contemplate the demolition of residential property or its conversion to nonresidential use;
- (g) Housing, because of its scarcity and high costs, is an extremely valuable resource in the City of Portland. Once

lost, it is very difficult to replace; and

- (h) The City currently has under consideration methods to preserve and expand existing housing as well as proposals to require the replacement of housing which is either demolished or converted to nonresidential use:

Now, therefore, in order to permit the development and implementation of methods which will preserve Portland's existing housing stock as well as to require replacement of dwelling units which are demolished or converted to nonresidential use, it is found and declared that a temporary moratorium is necessary to allow the City to accomplish those goals.

(Ord. No. 26-02/03, 8-5-02)

Sec. 14-903. Moratorium on demolition of housing units.

Notwithstanding any other provisions of this Code, including, but not limited to, the provisions of Chapters 6 and 14, no permit shall be issued or granted and no new applications shall be accepted by the Building Authority or the Planning Authority from and after August 5, 2002 up to and including Monday, October 7, 2002, for the demolition of any dwelling or dwelling units, including single-family, two-family, and multi-family dwellings, lodging houses, sheltered care group homes, and rooming units anywhere within the City of Portland.

It is further found and determined that it is necessary that this article take effect immediately as an emergency, pursuant to article II, section 8 of the City Charter.

(Ord. No. 26-02/03, 8-5-02)

Sec. 14-904. Exceptions.

(a) The moratorium hereunder shall not apply to any building found to be a dangerous building pursuant to 17 M.R.S.A. Secs. 2851 et seq.

(b) The moratorium hereunder shall not apply to property which, although designed and intended for residential use, is, at the time of adoption of this section, a legally grandfathered non-residential use.

(c) Any demolition or conversion approved by the Portland Planning Board under the Site Plan Review and Conditional Use Standards of Chapter 14 of the Portland Code prior to July 1, 2002, so long as such approval is valid and in effect on the

date of this ordinance.
(Ord. No. 26-02/03, 8-5-02)

**ARTICLE XV. WATERFRONT CAPITAL IMPROVEMENT AND ECONOMIC
REDEVELOPMENT ZONE AND ORDINANCE**

Sec. 14-905. Title.

This ordinance shall be known as the Waterfront Capital Improvement and Economic Redevelopment Ordinance.
(Ord. No. 249-01, 6-4-01)

Sec. 14-906. Purposes.

The purpose of this ordinance is to implement those provisions of the Waterfront Economic Development Task Force Report, (Waterfront II) entitled "Investing in Our Working Waterfront: Final Report of the Mayor's Waterfront Task Force on Economic Development," dated September 2000, as adopted by the Portland City Council on June 4, 2001 which create a capital improvement plan for redevelopment on the Portland Waterfront. That plan includes funding the loan fund described in that report, the financing and installation of infrastructure to support the economy of that area of the City of Portland, such as parking facilities, utilities, traffic and congestion management installations, operating facilities for the cargo, fishing and other water-dependent, marine related industries, environmental protection and improvement, including the management and abatement of combined sewer overflows, appropriate assistance in the permitting and completion of dredging of siltation at piers, wharfs and weirs, and such other matters as the City Council shall approve from time to time. These activities shall be collectively known as the redevelopment program.
(Ord. No. 249-01, 6-4-01)

Sec. 14-907. Creation of the Waterfront Redevelopment Economic Zone (WREZ).

The Waterfront Redevelopment Economic Zone is hereby created.

Beginning at a point on the southerly side of the Eastern Promenade at the intersection of the Westerly side of the Portland House Condominium and the Easterly sideline of land now or formerly of Dan Haley.

Thence Southwesterly along the Southerly side of Eastern Promenade to Fore Street.

Thence Westerly along the Southerly side of Fore Street to the intersection of Fore Street and Mountfort Street.

Thence Northerly along Mountfort Street to the Southeast corner of the lot referenced as 20-C-2 on City of Portland Tax maps as of April first, 2001.

Thence Westerly along lot 20-C-2 about 72 feet.

Thence Northerly along 20-C-2 to 20-C-5.

Thence Westerly along 20-C-5 to the south corner of 20-C-5.

Thence Northwesterly along 20-C-5 to Newbury Street.

Thence Southwesterly along Newbury Street to Hancock Street.

Thence Southeasterly along Hancock Street to Middle Street.

Thence Southwesterly along Middle Street to 20-C-27.

Thence Southeasterly along the Northeast sideline of 20-C-27 about 99.99 feet.

Thence Southwesterly along the Southeast sideline of 20-C-27 to India Street.

Thence South along India Street to the Northern corner of 29-N-26.

Thence Westerly along the Northern side of lot 26 to lot 24.

Thence Westerly, Northerly, Westerly, and Southerly along 29-N-24 to Bradbury Court.

Thence Westerly along Bradbury Court to the Franklin Street Arterial.

Thence Northerly along Franklin Street Arterial to Fore Street.

Thence Westerly along Fore Street to Pearl Street.

Thence Southerly along Pearl Street to Gold Street.

Thence Westerly along Gold Street to Silver Street.

Thence Northerly along Silver Street to Fore Street.

Thence Westerly along Fore Street to Market Street.

Thence Southerly along Market to the dividing line between 32-S-3 and 32-S-4 & 5.

Thence Northerly along Moulton Street to Wharf Street.

Thence Westerly along Wharf Street to a passage between Assessor's map 32 blocks "T" and "U" leading to Commercial Street.

Thence Southerly along said passage about 28 feet to the dividing line between lots 32-U-3 and 32-U-5.

Thence Westerly, Southerly, and Westerly along the Southerly line of lot 5 to Dana Street.

Thence Westerly across Dana Street and following the Northern boundary of lots 32-V-2, 4, 5, 8, and 12 to Union Street.

Thence Northerly on Union Street to Fore Street.

Thence Westerly on Fore Street to parcel 38-F-8.

Thence Southerly along the Easterly sideline of 38-F-8.

Thence Westerly along the Southerly sideline of 38-F-8 to Cross Street.

Thence Northerly to Fore Street

Thence Westerly along Fore Street to 38-G-7.

Thence Southerly along the Easterly sideline of 38-G-7.

Thence Westerly along the Southerly sideline of 38-G-7 to the Easterly sideline of Center Street.

Thence Northerly along Center Street to the Southerly sideline of 40-F-11.

Thence Southwesterly along the Southerly sideline of 40-F-11 and 40-E-1.

Thence Westerly along the South side of 42-A-8.

Thence Northerly along the Westerly line of 42-A-7 to York Street.

Thence Westerly along the Southerly side of York Street to High Street.

Thence Southerly along High Street 44 feet ± to Southern sideline of 42-B-7.

Thence Westerly along the Southerly sideline of 44-B-2 to Park Street.

Thence Westerly across Park Street to the Southerly sideline of 43-C-7.

Thence Westerly along the Southern sideline of 43-C-7 to the edge of proposed State Street.

Thence Westerly across proposed State Street to the Southerly sideline of 43-E-8.

Thence Westerly along the Southerly sideline of 43-E-8 to the Casco Bay Bridge.

Thence Southeasterly along the Casco Bay Bridge to the Harbor Commissioner's Line.

Thence Northeasterly along the Harbor Commissioner's line to a point which is the intersection of the Harbor Commissioner's line and a line which is the extension of the lot line between the Southeasterly line of land now or formerly of Dan Haley and the Southwesterly line of the Portland House Condominium.

Thence Northwesterly along said line to the Southerly side of the Eastern Promenade at the point of beginning.

All as shown on a map dated April 13, 2001 entitled "Proposed Waterfront Redevelopment Area" on file in the Planning Office.

Any inconsistencies between this description and the map shall be controlled by the map.

(Ord. No. 249-01, 6-4-01)

Sec. 14-908. Financing Activities.

The following financing activities are authorized for the creation of funds to be used for the activities approved for

funding by this ordinance:

(a) Tax Increment Financing Districts Revenues.

1. Within the Waterfront Redevelopment Economic Zone (WREZ) all activity except minor changes as defined below, which results in an increase in assessed value due to new construction, development or redevelopment, renovation, refitting or other physical change to structures or uses, including acquisition of equipment, shall be subject to designation as a Tax Increment Finance (TIF) District to support redevelopment activities within the WREZ pursuant to 30-A M.R.S.A. §§ 251-526, as amended.

Minor changes shall mean those physical changes, minimal in scope or purpose, which when accumulated with previous and anticipated other changes, over a period of two years, increase the assessed value of the affected property by a cumulative total of \$400,000 or less.

2. Affected properties shall mean those properties within the zone which undertake activity, except minor changes as defined above, which results in a change in assessed value due to new construction, development or redevelopment, renovation, refitting or other physical change to structures or uses, including acquisition of equipment.

Affected properties within the WREZ shall be designated for inclusion in this redevelopment program as a TIF District, and the tax increment from the captured assessed value shall be applied to the redevelopment program purposes, subject to approval by the City Council on a TIF-by-TIF basis.

A property is an affected property if it otherwise so qualifies, and the total aggregate amount of captured assessment in the TIF Districts devoted to this redevelopment program does not exceed 1.25% (.0125) of the total taxable valuation of the City of Portland, when adjusted as necessary to reflect 100% valuation, as determined by the City Assessor.

3. Paragraphs (1) and (2) notwithstanding, the Council may by Council order determine that the increases in assessed value that would otherwise be designated for the first time as TIF districts under (1) and (2) above for the next succeeding fiscal year shall not be so designated.
4. The redevelopment program shall be that series of investments, expenditures, guarantees and supports which are planned for project fund expenditures.

(b) Program Income and Other Revenues.

The City Manager will budget the program activities, including the program income and expense, of the redevelopment program annually for approval and implementation by the City Council. The redevelopment program is authorized to receive program income, grants, participations, joint ventures, investments and other revenues for the purposes of the redevelopment program as approved by the City of Portland from time to time.

(c) Updates to development plan.

Periodically, the city manager shall evaluate and propose updates to the Development Plan, and identify properties developed in the redevelopment zone which qualify as TIF District properties. The city manager shall report to the council on conditions and changes in conditions addressing the economic circumstances of the waterfront economy, and shall include in said report detail on at least the following issues:

1. The utilization, adequacy and capital and operating position of the enterprise loan fund designed to assist water-dependant, marine-related properties and businesses;
2. The state of the fishing industry, the adequacy and demand for berthing space and operating facilities, financing, local markets and opportunities, and the operations of public operations pertaining to the fishing industry;
3. The status of other water dependant industries and operations along the Portland waterfront, including

opportunities to develop or promote water dependent and marine resource dependant economic opportunities;

4. The status of dredge operations and needs at public and private piers, the nature of impediments to maintaining full depths at all working Portland piers;
5. The status of cargo operations in the Port of Portland, including analysis of surface transportation capacities serving the Port cargo operations, whether public or private;
6. The status of parking availability, public access to the waterfront and to water dependent recreational activities and pursuits;
7. The status of environmental concerns, programs and issues along the Portland waterfront, and particularly in the inner harbor; and
8. Such other information, data or findings concerning conditions as affects the economic and environmental health of the waterfront area, or recommendations concerning the operations of the loan fund or the capital improvement program.

(d) Recommendations.

As often as he or she deems prudent, the city manager shall submit to the city council a recommended capital improvement plan, utilizing the revenues of the WREZ. The finance committee of the city council or such other committee as the Council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action.

(e) Adoption.

The City Council shall adopt amendments to the WREZ, designate TIF Districts and authorize expenditures and take such other actions as are necessary each year to implement this redevelopment plan and administer its revenues and expenses.

(Ord. No. 249-01, 6-4-01; Ord. No. 151-02/03, 2-3-03; Ord. No. 116-08/09, 12-1-08)

***Editor's Note:** Sec. 14-909 *Waterfront economic development advisory committee* was repealed in its entirety per council order no. 116-08/09 and passed on 12/1/08.

Sec. 14-909. Reserved.
Sec. 14-910. Reserved.
Sec. 14-911. Reserved.
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ARTICLE XVI. CITIZEN ADVISORY COMMITTEE

Sec. 14-1000. Purpose.

Pressures of growth in the community strain the relationship between neighborhoods and business and therefore a challenge exists to improve communication with, and timely participation by, Portland residents in the planning and development review process. There exists within Portland strong common ground and a desire to address the planning development challenges by constructively working and communicating with the public. The City desires a committee to meet on a quarterly basis that will 1) comment upon the integration and consistency of neighborhood plans with the Comprehensive Plan, 2) facilitate the exchange of information between existing and future planning task forces, 3) collate proposed, revised or amended components of the Comprehensive Plan to ensure internal consistency, 4) submit comments upon updates of and additions to the Comprehensive Plan to the Planning Board for further review, and 5) respond to other undertakings as directed by the City Council.

(Sub. Ord. 222-01, 4-2-01; Ord. No. 93-03/04, 11-03)

Sec. 14-1001. Created.

There is hereby created a citizen advisory committee.

(Sub. Ord. 222-01, 4-2-01)

Sec. 14-1002. Composition.

The Citizen Advisory Committee shall be comprised of one (1) representative appointed by each City Councilor, as well as an individual representative of the Islands who shall be appointed by the Mayor.

Fourteen (14) additional members of the Citizen Advisory Committee, appointed by the mayor subject to Council approval, shall represent each of the following areas:

Housing	Business and Industry
Social Services	Youth

Parks and Recreation
Transportation
Public Safety
Development
Open Space, Water Quality,
and Trails

Historic Preservation
Education
Arts
Waterfront
Residential Renter

All members of the Citizen Advisory Committee shall be Portland residents and all appointments shall be approved by the Council with the staggered terms of membership set by Council order.

(Sub. Ord. 222-01, 4-2-01; Ord. No. 93-03/04, 11-03-03)

Sec. 14-1003. Chair

The committee shall be chaired by a City Councilor and one (1) member of the Planning Board.

(Sub. Ord. 222-01, 4-2-01)