



MEMORANDUM

PLANNING AND URBAN DEVELOPMENT DEPARTMENT

PLANNING DIVISION

To: Brandon Mazer, Chair, and Members of the Portland Planning Board
From: Christine Grimando, Director
Nell Donaldson, Director of Special Projects
Matt Grooms, Senior Planner
Date: February 14, 2019
Re: ReCode Update
Meeting Date: February 18, 2019

I. INTRODUCTION

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

In Fall of 2019, Planning staff completed a first draft of the new land-use code as envisioned under Phase I and initiated the public review process. This review is framed around a series of special Planning Board meetings dedicated to ReCode, where the Board sequentially reviews between three and five new articles of the draft code at a given time, as well as proposed edits into previously reviewed articles, based upon feedback from the Board, public and other City departments.

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

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

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

II. GENERAL FEEDBACK ON PROCESS

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

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

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

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

III. RECODE: REVISIONS TO ARTICLES 1 to 7

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

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

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

2. **Document Structure and Format:** A few of the comments received related to the organization of the document and its interface. For example, one member of the Planning Board requested that the Table of Contents be broken out further to improve navigability. Similarly, one member of the public questioned why definitions related to signage were so prevalent in that chapter. In response, the table of contents has been modified to reflect more of the document hierarchy, and definitions related to signs have now been relocated to the Signs article.
3. **Content Changes based on Board/Public Feedback:** At the January workshop, some of the feedback received resulted in more substantive amendments to existing or proposed policy. For example, one member of the Planning Board requested clarification on the Rule of Measurement related to 'Fractions', which resulted in that rule being eliminated. This was a new rule being introduced, that was perceived to impact how certain measurements are calculated, with the examples cited being setbacks and building height. Moving forward, rules for fractions will be evaluated on a case by case basis, as is currently practiced.

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

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

4. **Topics for Future Consideration – R-6 Dimensional Changes:** In concert with a separate effort to amend the R-6 design standards, at the January workshop staff included a tie-in change to the R-6 dimensional requirements, limiting building widths based upon stories and the number of residential units. Members of the public and the Planning Board voiced a concern that the R-6 design changes were being conflated with the rest of ReCode, and also that there should be a more robust public process to discuss those changes. In light of this feedback, staff are tabling discussion of the R-6 design changes and are in the process of discussing the best format for additional public outreach on the topic of the R-6 zone more broadly. Similarly, the building width requirement has been removed from this draft. It should be noted that staff has received some public comment in support of the inclusion of a building width standard for the R-6 zone at this time.
5. **Alternative Energy:** At present, wind energy systems are broken out into one of ten separate categories based upon either the structure's height or its mounting form (freestanding or roof mounted), are allowed as either accessory or principal uses and are permitted either by-right (building permit), permitted under site plan review, or permitted as a conditional use (ZBA). These provisions are supplemented by a series of performance and dimensional standards that often overlap with other applicable regulations, such as those of the site plan ordinance. Solar energy systems, while not as complicated as wind energy systems, still feature five separate categories of form and a similarly complex permitting scheme.

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

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

6. **B-2 Drive-Through Amendment:** In the time since Articles 5-7 were released to the public in December, the City Council approved a text amendment to the B-2 zone, which allows drive-throughs only where such accessory use is coupled with a residential use consisting of three or more residential units. This text has now been added to the draft.
7. **Topic for Future Consideration - Accessory Dwelling Units (ADUs):** At the last workshop, staff heard feedback from the non-profit affordable housing group HomeStart and one member of the Planning Board that they were supportive of staff removing the affordability and deed restriction requirement for ADUs on Peaks Island. Staff are requesting that the Planning Board weigh in at this next workshop with direction on this approach.

III. RECODE: OVERVIEW OF ARTICLES 8 to 13

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

A. Article 8: Overlay Zones

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

B. Article 9: Form-Based Zones

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

C. Article 10: Waterfront Zones

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

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

D. Article 11: Shoreland Zone

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

E. Article 12: Floodplain Management

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

F. Article 13: Resource Protection Zone

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

V. PUBLIC COMMENT

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

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

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

VI. NEXT STEPS

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

VII. ATTACHMENTS

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