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#001

Posted by **Patrick Boothe** on **11/20/2019** at **2:57pm**

*Type: Observation*

*Agree: 1, Disagree: 0*

I love how you can click on the Chapters and jump to the chapter! Sooooo much better!

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## 1 INTRODUCTORY PROVISIONS

### 1.1 TITLE

The title of this Chapter is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

### 1.2 ZONING MAP

The City of Portland Zoning Map is incorporated by reference.

### 1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, the relationship of private development to the public realm and Portland's open spaces, and the environment.

### 1.4 APPLICABILITY

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

### 1.5 ENFORCEMENT

#### 1.5.1 Enforcement

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

#### 1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or

premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

### 1.6 RELATIONSHIP WITH OTHER LAWS

#### 1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

#### 1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this Code, the more restrictive provision shall control.

#### 1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

#### 1.6.4 Comprehensive Plan

The Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current Comprehensive Plan.

#### 1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not

#002

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

*Type: Question*

*Agree: 3, Disagree: 0*

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

replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

#### **1.6.6 Private agreement**

This Land Use Code does not nullify any private agreement or covenant. However, where this Code is more restrictive than a private agreement or covenant, this Code controls. The Code does not enforce private agreements.

### **1.7 DELEGATION OF AUTHORITY**

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

### **1.8 RULES OF INTERPRETATION**

#### **1.8.1 Meaning of words and terms**

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

#### **1.8.2 Graphics and illustrations**

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text controls.

#### **1.8.3 Lists and examples**

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as”, or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

#### **1.8.4 Time**

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

#### **1.8.5 Fractions**

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

#### **1.8.6 Obligatory terms and conjunctions**

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

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

#003

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

*Type: Suggestion*

*Agree: 1, Disagree: 0*

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

**1.8.7 Gender**

Words denoting one gender apply to all genders.

**1.8.8 Abbreviations**

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

**Council.** The Portland City Council.

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

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

**1.9 AMENDMENTS**

**1.9.1 Authority**

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

**004 1.9.2 Procedure**

**A. Application.** An application for a text or Zoning Map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be 1,000 feet. The notice hereunder shall include a brief description of the application, the address or location of the property involved, and contact

information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- B. Required neighborhood meeting.** A private applicant for a map amendment that would permit a development subject to major site plan review, shall conduct neighborhood outreach according to the provisions for neighborhood outreach under Article 13.
- C.** The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- D.** The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- E.** The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

**1.9.3 Review standards**

Except as otherwise required by law, amendments to the City’s Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

**1.10 TRANSITION RULES**

**1.10.1 Existing uses**

- A.** A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6.
- B.** A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a

#004

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

*Type: Suggestion*

*Agree: 0, Disagree: 0*

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

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





## INTRODUCTORY PROVISIONS

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

### 1.10.2 Continuation

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



## 2 ADMINISTRATION

### 2.1 PLANNING BOARD

#### 2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the city. Members shall serve without compensation.

#### 2.1.2 Appointments

- A. **Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly elected and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term.
- B. **Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

#### 2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

#### 2.1.4 Officers

- A. **Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to

fulfill the customary functions of that office.

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

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

#### 2.1.5 Committees

The chair of the Planning Board shall assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The Board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq.

#### 2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The concurring vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks

#005

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

*Type: Question*

*Agree: 0, Disagree: 0*

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

at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

### 2.1.7 Conflicts

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

### 2.1.8 Meetings and procedures

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

1. Workshops of the Planning Board or any of its committees may be held at the call of the Board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, his or her staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. shall be

informational only and shall not be deliberative in nature, shall not be used by the Board or committee for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board or committee for the formulation of tentative or final decisions on any matter.

2. Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code and the rules of the Board.

**B. Notice.** The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. Site plan and subdivision. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, except that for subdivisions within industrial zones the notice range shall be 1,000 feet.
2. Land Use Code or Zoning Map amendment. Notice of public hearing



shall be publicly posted at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 10 calendar days in advance of the workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

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

The cost of noticing shall be charged to the applicant.

- B. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not

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

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

### 2.1.9 Record and decisions

- A. Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.
- B. Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

### 2.1.10 Jurisdiction and authority

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

- A.** To prepare and recommend a Comprehensive Plan to the City Council;
- B.** To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;
- C.** To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing and completing specific projects;
- D.** To hear, review and approve, conditionally approve, or deny major site plans;
- E.** To hear, review and approve, conditionally approve, or deny applications for subdivision approval;
- F.** To hear, review, and approve or deny applications for conditional uses listed in Article 6;
- G.** To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;
- H.** To review and offer its recommendations to the City Council on certain public projects;
- I.** To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- J.** To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;
- K.** Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- L.** To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;
- M.** To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other



expenses as may be necessary and proper; provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council;

- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances; and
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority or Historic Preservation Board.

**2.1.11 Administrative appeal procedures**

- A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The Planning Authority shall forthwith transmit to the reviewing Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the reviewing Boards in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the reviewing Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the

statutes of the state. The failure of the Board to act within 30 days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the reviewing Board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

**2.1.12 Appeals**

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

**2.2 HISTORIC PRESERVATION BOARD**

**2.2.1 Composition**

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

**2.2.2 Appointments**

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not

#006

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

*Type: Suggestion*

*Agree: 0, Disagree: 0*

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



more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.

- B. Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

### 2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

### 2.2.4 Officers

- A. Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.
- C. Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

### 2.2.5 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which he or she has an interest.

### 2.2.6 Meetings and procedures

- A. Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may be called by the chair or any four members or at the request of the chair of the Planning Board.
- B. Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:
  1. Landmark or district nomination. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant and to the owner(s) of the subject property or properties.
  2. Certificate of appropriateness review. Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
  3. Major site plan review. For alteration or new construction that is classified as a



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

The cost of noticing shall be charged to the applicant.

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

### 2.2.7 Record and decisions

- A.** The Director of the Department of Planning & Urban Development or his or her designated staff representative shall attend all its meetings. The staff shall provide for the keeping of tape recordings or minutes of the proceedings of the Historic Preservation Board, showing the vote of each member on every question or his or her absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be

filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.

- B.** No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 16.4.
- C.** Every recommendation or recommended decision of the Historic Preservation Board shall include written findings of fact and shall specify the reason or reasons for such action.
- D.** Staff shall mail notice of any final action of the Historic Preservation Board to the applicant.

### 2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects;
- B.** To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and Council for the designation of those areas, sites, structures and objects as local landmarks or districts;

- C. To investigate and recommend to the Planning Board and Council the designation of areas, sites, structures, and objects not listed in the National Register of Historic Places as local landmarks and districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts;
- D. To keep and make available to the public a register of all areas, sites, structures, and objects that have been designated as landmarks or districts, including all information required as part of each designation;
- E. Upon request, to advise and assist owners of landmarks and property, sites, structures or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation and reuse and for procedures for inclusion on other registers of significant areas, sites, structures and objects, including the National Register of Historic Places;
- F. To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established;
- G. To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission; and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H. To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non-profit organizations;
- I. To, upon request by the Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act; attend informational and educational programs sponsored by the Maine Historic Preservation Commission; and prepare an annual report of the activities of the Historic Preservation Board;
- J. To inform and educate the citizens of Portland concerning the cultural, historic, architectural and archeological heritage of the city by publishing appropriate maps, newsletters, brochures and pamphlets and by sponsoring programs and seminars;
- K. To hold meetings and public hearings to review applications for certificates of appropriateness affecting proposed or designated landmarks and districts; to recommend approval or disapproval of certificates of appropriateness;
- L. To provide testimony to the Board of Appeals in connection with any application for a certificate of economic hardship;
- M. To develop design guidelines affecting landmarks or districts for review and approval by the Planning Board;
- N. To advise the Planning Board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise;



- O. To advise the Planning Board as to the administration of such gifts, grants and money as may be appropriated for the purposes of this article upon authorization and approval by the Council;
- P. To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland;
- Q. To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers;
- R. To assist the Planning Board in the development of a preservation component in the Comprehensive Plan of the City of Portland; and
- S. To periodically review the Land Use Code and to make recommendations to the Planning Board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures or objects within districts.

## 2.3 ZONING BOARD OF APPEALS

### 2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments. Members shall serve without compensation.

### 2.3.2 Appointments

- A. **Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall

serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over one hundred 120 days after expiration of their term.

- B. **Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

### 2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his/her own defense at a public hearing.

### 2.3.4 Officers

- A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office.
- B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the Board.
- C. **Pro tempore officers.** In the absence of both the chair and the secretary, the Board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving

as chair, the Board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

### 2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the Board shall be necessary to grant any request or application or to sustain any appeal. Any matter that receives fewer than four votes shall be deemed to have been denied.

### 2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify him shall be decided by a majority vote of the members, except the member who is being challenged; where such a vote results in a tie, the challenged member shall be deemed disqualified.

### 2.3.7 Meetings and procedures

- A. **Staff.** The Building Authority or his/her designee shall serve as staff to the Board of Appeals.
- B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings

and hearings of the Board shall be open to the public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.

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

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



5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract;
6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property;
7. For purpose of this section, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board. The cost of noticing shall be charged to the applicant.

**D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the Board upon good cause being shown.

1. Conduct of hearings:
  - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.

- b. The applicant and any abutter or similarly interested party shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.

#### **2.3.8 Records and decisions**

- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications and requests filed in any proceeding before the Board of Appeals and the decision of the Board shall constitute the record.
- B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

### 2.3.9 Jurisdiction and authority

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

- A. To hear and decide appeals from, and review orders, decisions, , or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 8oB;
- B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and
- C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

### 2.3.10 Administrative appeal procedures

- A. **Application procedures.** Application for any appeal to the Board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the

Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

### 2.3.11 Variances

#### A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority
- 2. A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- 3. All decisions by the Board shall be rendered in a manner and form not inconsistent with the statutes of this state.

#### B. Undue hardship variance.

An undue hardship variance may be granted by the Board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

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



3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or prior owner.

**C. Disability variance**

1. By the Board of Appeals. Notwithstanding the provisions of subsection (B) above, the Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.
2. By the Building Authority. Notwithstanding the provisions of subsections (B) and (C.1) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person

with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to egress from the dwelling for the person with a disability.

**D. Practical difficulty variance.** Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, **100807** coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;



## #007

Posted by **Patrick Boothe** on **11/20/2019** at **3:41pm**

*Type: Suggestion*

*Agree: 1, Disagree: 0*

To piggyback on Benjamin's comment. Would it be reasonable to hyperlink defined terms in the body of sections to their location in the land use code (particularly as some are in different Chapters). It would be similar to the hyperlinks you have for the table of contents. Wikipedia does this well as an example. Another option is a "hover-over-the-link" where you could simply hover over a word and either define it directly or at least say "go to Chapter 3 (or Chapter x) for definition"

Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**

*Agree: 0, Disagree: 0*

\*Articles...not Chapters

## #008

Posted by **Benjamin McCall** on **11/15/2019** at **5:16pm**

*Type: Observation*

*Agree: 0, Disagree: 0*

"Lot area" and "lot coverage" are undefined in draft Article 3. It would be helpful if they could be defined, or alternatively, if this section could be amended to specify whether these terms include standards like landscaped area, or other similar categories.

3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

**E. Specified variances prohibited**

1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial zone. The general use categories are listed below:
  - a. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
  - b. Medium- and high-density residential: R-4, R-5, R-6.
  - c. Mixed-use/Office: B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-4, B-5/B-5b, B-6, B-7, I-B, R-P, O-P.
  - d. Industrial: I-L/I-Lb, I-M/I-Ma/I-Mb, I-H/I-Hb, A-B
2. No variance shall be granted which would permit the creation of a lot or parcel that

cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.

3. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
4. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.
6. No variance shall be granted from the requirements in Section 6.4.11.

**F. Conditions on variances; variances less than requested.**

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the



vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

**G. Limitations on variances.** No variance permitting the erection or alteration of a building shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.

**H. Recording of variances.** No variance shall be valid unless, within 90 days of final approval of

the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4353(5).

#### **2.3.12 Successive applications**

Whenever any application, appeal, or other request filed pursuant to this section has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless, in the opinion of the officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

#### **2.3.13 Violations**

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this section or the conditions under which the relief was granted have not been complied with.

#### **2.3.14 Appeals**

An appeal from any final decision of the Board of Appeals may be taken by any aggrieved party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.





### 3 DEFINITIONS

**Adult business establishment.** Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S.A. §§ 2911, 2912.

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

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

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

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

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

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

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

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

**Auto service station.** A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities. Such businesses may also include car-washes and/or vacuums.

#009

Posted by **Patrick Boothe** on **11/20/2019** at **2:51pm**

*Type: Suggestion*

*Agree: 1, Disagree: 0*

Recommend adding a list of all definitions found specific in this Chapter 3 or other cross reference mechanism. This is particularly useful when some definitions appear in other Chapters. As an example, refer to section 802 of the 2015 IBC or section 1002 where pertinent definitions specific to a chapter are either listed or at least noted where to find elsewhere

Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**

*Agree: 0, Disagree: 0*

\*Articles...not Chapters

**Back office use.** An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to educational institutions, social service agencies, or business headquarters.

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

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

**Bar.** Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

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

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

**Blasting operations.** The use of explosives for purposes of breaking up and removing soil, rock and ledge, related to construction and development of real estate within the City.

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

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

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

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

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

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

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

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



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

**Building, principal.** The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

**Clinics.** Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

**Coastal wetland.** All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Commercial message.** A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or

services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

**Commercial vessel.** Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit or emergency purposes; but not including pleasure craft used principally for recreational purposes.

**Common areas.** Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

**Communication studio.** A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

**Community hall.** A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.



**Condominium.** Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

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

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

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

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

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

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

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



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

**Drive-through features.** Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom



systems, menu boards, service windows, kiosks, mechanical devices, etc.

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

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

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

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

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

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

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

**Emergency operations.** Operations conducted for the public health, safety or general welfare, such as

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

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

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

**Esplanade.** That portion of a street right-of-way which is located between the curblin and the edge of the sidewalk closest to the street.

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

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

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

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

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

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

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

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

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

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

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning Map; and
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**General office.** An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

**General services.** Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.



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

**Helistop.** An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

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

**Hospital.** An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

**Hostel.** An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter.

**Hotel.** A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

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

**Industrial, high-impact.** Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial and lower impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

**Industrial, low-impact.** Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries, breweries, bottling, coffee roasters, commercial kitchens, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, plant and tree nurseries, and the packaging of foods. Low impact industrial uses do not include the processing of raw materials or salvaging operations. Low impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

**Intermediate care facility.** A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the

State of Maine Department of Health and Human Services.

**Kitchen facilities.** Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

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

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

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

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

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

**Low-income household.** A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

**Low-income housing unit for rent.** A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD);
- B. The unit is rented to a household earning 80% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance..

**Low-income housing unit for sale.** A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of AMI;
- B. The unit is sold to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

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



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

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

**Manufactured housing.** A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

- A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer

voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

- B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state’s Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

**Manufactured housing park.** A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing.

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

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

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

**Marijuana cultivation facility.** A cultivation facility required to be licensed pursuant to 22 M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale.

**Marijuana manufacturing facility.** A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

**Marijuana product.** As defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

**Marijuana retail store.** A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

**Marijuana testing facility.** A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

**Marina.** A commercial operation providing floats, slips and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and

repairs, which may be provided both to tenants and non-tenants.

**Military personnel berthing.** A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

**Moderate-income household.** A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

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

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

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

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



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

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

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

**Non-commercial vessel berthing.** The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

**Normal high-water line (non-tidal waters).** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the

river during the period of normal high-water are considered part of the river.

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

**Office park.** Separate office buildings planned, constructed or managed on an integrated coordinated basis.

**Off-peninsula.** All land located north of I-295.

**On-peninsula.** All land located south of I-295.

**Open space.** Any park and any other area outside of a building open to the public.

**Owner.** Any person that has any interest, legal or beneficial, in any parcel or lot.

**Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary.** Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

**Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent.** Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

**Place of assembly.** A building or portion of a building used as a community hall, neighborhood



center, private club or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

**Place of religious assembly.** A building or portion of a building used for religious worship or instruction including, but not limited to, churches, synagogues, masjids, mosques and other places of worship.

**Planned residential unit development (PRUD).** A residential subdivision consisting of attached or detached dwellings intended for separate ownership, with open spaces, recreational areas, access ways and buildings which are designed, built, and managed in accordance with a unified development plan.

**Planned unit development (PUD).** A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

**Plant canopy.** As defined by 28-B M.R.S., §102.

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

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

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

**Recent flood plain soils.** Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Winooski

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

**Recreation and amusement centers.** Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

**Registered dispensary.** A registered medical marijuana dispensary as defined by 22 M.R.S. §2422.



**Registered patient.** As defined by 22 M.R.S. §2422.

**Repair services.** Establishments primarily engaged in rendering services related to the maintenance or repair of goods, not including motor vehicle repair services.

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

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

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

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

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

**Self-storage facility.** Fully enclosed buildings with individual, secured units (accessed with or without supervision) used for the exclusive purpose of

storage of non-hazardous business or personal materials.

**Sexually explicit.** The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A M.R.S.A. § 251.

**Sheltered care group home.** A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance or counseling services as a primary function of the facility.

**Shore frontage.** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

**Sidewalk.** That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

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

**Sign.** A structure, device, figure, display, message placard or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution,

business, product, service, message, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

**Sign, animated.** Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

**Sign, awning.** Any sign that is part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover over a door, entrance, window, storefront, or outdoor service area.

**Sign, A-Frame.** A pedestrian oriented self-supporting sign that is not permanently affixed to a structure or the ground.

**Sign, bandit.** Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in Article 19.

**Sign, blade.** A permanent sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.



**Sign, building identification.** A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

**Sign, building-mounted.** Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure with the exposed face of the sign in a plane parallel to the vertical face of the building or structure.



**Sign, bus shelter.** As specified in 23 M.R.S.A. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly owned bus shelter operated by a transit agency.



**Sign, cabinet.** A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that contains the lighting fixtures which illuminate the sign face from behind.



**Sign, changeable copy.** A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this Article, a sign whose message changes more than eight times per day is considered an animated sign (see Sign, animated) and not a changeable copy sign.



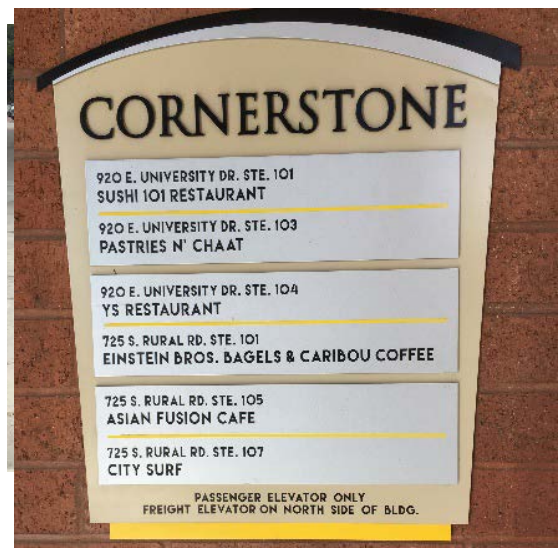
**Sign, canopy.** A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.



**Sign, directional.** A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

**Sign, directory.** A permanent sign which provides information in a list, roster, or directory format.

**Sign, center identification.** A sign identifying the name of a building, office park, or shopping center only.



**Sign, Electronic Message.** A sign or portion of a sign that is capable of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.



**Sign, externally illuminated.** A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer.



**Sign, Feather Banner.** A temporary sign that is taller than it is wide and made of a flexible material

(typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

**Sign, freestanding.** A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

**Sign, fuel pump topper.** A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

**Sign, incidental.** A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

**Sign, individual letter.** A cut-out or etched letter or logo which is individually mounted on a building wall, or freestanding sign.



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



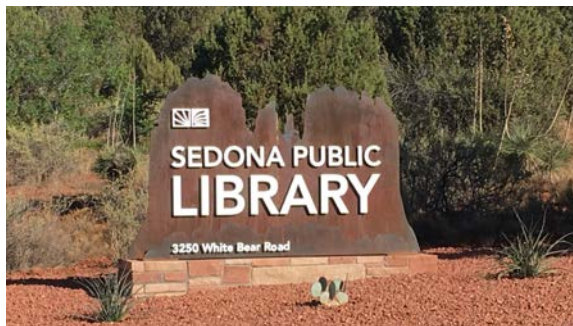
**Sign, landmark.** A permanent sign indicating individual historic landmarks, local historic districts or otherwise determined by the City to have attained a high degree of community, cultural, aesthetic, or historic significance.

**Sign, logo.** A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

**Sign, marquee.** A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.



**Sign, monument.** A permanent freestanding sign, with a solid base that is at least 60% the width of the sign face.



**Sign, off-premise.** Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

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

**Sign, permanent.** A sign constructed of durable materials and intended to exist for the duration of time that the use or occupant is located on the premises.

**Sign, pole.** An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

**Sign, projecting.** A permanent sign that is attached to and extends perpendicular from a building from the wall.

**Sign, service island canopy.** A permanent sign mounted on or under a service island canopy, including on a fascia.

**Sign, single-color or two-color LED:** A permanent or temporary sign composed of single-color or two-color LEDs, including signs with fixed and changeable copy.



**Sign, temporary.** A sign constructed of paper, cloth, or similar expendable material, which is intended for a definite and limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

**Sign, wall.** A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

**Sign, wall banner.** A temporary sign and constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

**Sign, window.** A permanent or temporary sign posted, painted, placed, or affixed in or on a

window, or otherwise exposed to public view through a window.

**Sign, Yard, Type I.** A small temporary sign typically constructed of corrugated plastic and supported on an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

**Sign, Yard, Type II.** A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

**Sign, Yard, Type III.** A temporary large sign mounted on two posts installed securely in the ground.

**Sign copy.** Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

**Sign face.** The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

**Sign structure.** The supports, uprights, bracing and/or framework of a sign.

**Site.** All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

**Small-scale marijuana caregiver.** A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any



one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

**Solar access.** Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

**Solar energy system.** A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems.

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying between 1,000 and 9,999 square feet of ground area.
- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either

a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

**Solar energy system, building-integrated.** A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

**Solar energy system, ground-mounted.** Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

**Solar energy system, roof-mounted.** A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

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

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



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

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

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

**Sports complex.** One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

**Stockpiling.** Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use.

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

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

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

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

**Street line.** The line of demarcation between private property and a public right-of-way.

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

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

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



products, publications and similar low impact arts and crafts activities.

**Subdivider.** Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

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

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

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

**Tasting room.** A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

**Telecommunication tower.** Radio masts or tower structures built primarily to hold telecommunication antennas.

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

**Tenant** Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

**Theater or performance hall.** Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

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

**Transient guest.** A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

**Tributary stream.** A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

**Upland edge of a wetland.** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tied level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

**Use.** The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

**Utility substation.** Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

**Vegetation.** All live trees, shrubs, ground cover, and other plants including, without limitation, trees both

over and under four inches in diameter, measured at four and one-half feet above ground level.

**Very low-income household.** A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

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

**Warehousing, storage, and distribution.** The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers.

**Water body.** Any river or stream.

**Watercourse.** Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

**Water-dependent uses.** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.



**Wetlands.** Those areas which have two or more of the following:

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

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

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

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

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

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

be the total of the building and the wind energy system taken together.

**Wind energy system, useful life.** The period for which the system has been designed by the manufacturer to operate in a safe manner, including the period during which new parts and refurbishment allow it to continue operating safely.

**Wholesale.** Sale for resale, not for direct consumption.

**Workforce housing unit for rent.** A dwelling unit which:

- A. The rent is affordable to a household earning 100% or less than of AMI
- B. The unit is rented to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

**Workforce housing unit for sale.** A dwelling unit for which:

- A. The purchase price is affordable to a household earning 120% or less of AMI;
- B. The unit is sold to a household earning 120% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.





### 4 NONCONFORMING USES, STRUCTURES, & LOTS

#### 4.1 CONTINUATION

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

#### 4.2 NONCONFORMING USES

##### 4.2.1 Increase in nonconforming use

- A. A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (B), below.
- B. A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.
- C. No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.
- D. Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in

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

##### 4.2.2 Change of nonconforming use

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

- A. In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.
- B. In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.
- C. In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
- D. In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

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

#### **4.2.3 Discontinuance of use of land for ninety days**

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

#### **4.2.4 Discontinuance of use of property**

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

Shoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties.

### **4.3 NONCONFORMING LOTS**

#### **4.3.1 Undeveloped lots of record**

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

- A.** The lot is a lot of record as of June 5, 1957, and 010
  - (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones;
  - (ii) can meet the applicable yard dimensions;
  - (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the city council as provided elsewhere in this article; and
  - (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less.
- B.** The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and
  - (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and
  - (ii) can meet the applicable yard dimensions..
- C.** The lot is a lot of record that conformed to the applicable lot size and width requirements and street frontage as of June 5, 1984, and can meet the applicable yard dimensions.
- D.** The lot is a lot of record as of July 15, 1985, and
  - (i) is in the IR-1 or IR-2 zones;
  - (ii) is held under separate and distinct ownership from adjacent lots;
  - (iii) meets the applicable street frontage requirements;
  - (iv) meets the applicable yard dimensions; and
  - (v) can be met and provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of the IR-

#010

Posted by **john phelan** on **11/22/2019** at **4:57pm**

*Type: Observation*

*Agree: 0, Disagree: 0*

That minimum lot size is too small! Cramming houses together destroys the rural character that we need. I very much enjoy seeing the new modern buildings going up on the peninsula but find it abhorrent when the last cow pasture in Portland turns into suburbia.

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



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

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

#### 4.4 NONCONFORMING BUILDINGS/STRUCTURES

##### 4.4.1 Restoration or reconstruction

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

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

##### 4.4.2 Alteration or modification

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

or other water bodies, which shall be regulated in accordance with Subsection 4.4.4.

**4.4.3 Building extensions**

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

- A. No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.
- B. No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.
- C. Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided the area of expansion meets all current dimensional requirements, except as provided in (D) below.
- D. A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided:
  - 1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.
  - 2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

**4.4.4 Expansions in the Shoreland zone**

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

- A. After January 1, 1989, if any portion of a structure is less than the required setback from

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

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

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

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
  2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
  3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- D. Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

#### 4.4.5 Nonconformity as to number of dwelling units

- A. **Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.
- B. **Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:

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

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

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

standards, and the minimum ventilation standards.

5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

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

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

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

- D. Approval of application.** The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of \$100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.
- E. Disapproval of application.** In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or objection, may appeal the matter to the Board of Appeals as a conditional use.
- F. Action by Board of Appeals.** The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.
- G. Dimensional and parking requirements.** In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in

the zones where the nonconforming dwelling units are situated.

- H. Exclusions.** The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.
- I. Prior judicial and administrative action.** Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

#### 4.4.6 Enclosure of porches in required setbacks

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

#### 4.5 NONCONFORMITY AS TO OFF STREET LOADING

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