

Order 33-17/18

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14
Re: WATERFRONT PORT DEVELOPMENT ZONE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That Chapter 14, Sections 14-47, 14-318, 14-318.5, 14-319, 14-320, 14-320.1, 14-320.2, and 14-320.3, are hereby amended as follows:

Sec. 14-47. Definitions.

...

Cold Storage Facility: Refrigerated facility used for the storage of perishable freight awaiting shipment or wholesaling.

...

Truck terminal: A ~~building and premises~~ facility primarily devoted to handling and temporary warehousing storage of goods transported by tractor trailers, including the fueling, servicing, and storage of those vehicles which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), ~~fueling and storage of trucks or tractor-trailer combinations~~ as well as facilities for drivers, such as food, restrooms and showers, lodging, and retail related to truck supply. This definition does not apply to truck activity incorporated into or ancillary to an Intermodal Transportation Facility.

...

DIVISION 18.5. WATERFRONT PORT DEVELOPMENT ZONE*

Sec. 14-318. Purpose.

Transport of goods by water to and from Portland is an

important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep—water channel of the Fore River and Portland Harbor.

The Port of Portland is integral to the city's economic, cultural and fiscal health. ~~Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity.~~ This zone exists, ~~therefore,~~ to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by ~~the same~~ similar performance standards as other industrial zones, are primarily limited to those uses which are dependent upon deep water and which contribute to port activity.

Nonmarine ~~industrial~~ activity may be allowed only ~~on an temporary basis and only~~ to the extent it will not have any adverse impact on marine uses. ~~preclude or impede any future water-dependent development.~~

Sec. 14-318.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development ~~opportunities~~. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

...

Sec. 14-319. Permitted and Conditional Uses.

Subject to a determination that the proposed use meets the standards of section 14-318.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront port development zone:

<u>Group</u>	<u>Use</u>	<u>Use Category</u>
<u>Marine</u>	<u>Marine repair services and machine shops</u>	<u>P</u>
<u>Marine</u>	<u>Tugboat, fireboat, pilot boat and similar services</u>	<u>P</u>

<u>Group</u>	<u>Use</u>	<u>Use Category</u>
<u>Marine</u>	<u>Harbor and marine supplies and services and ship supply such as fueling and bunkering of vessels</u>	<u>P</u>
<u>Marine</u>	<u>Shipbuilding and facilities for construction, maintenance and repair of vessels</u>	<u>P/C¹</u>
<u>Marine</u>	<u>Marine cargo handling facilities, including docking, loading and related storage</u>	<u>P/C¹</u>
<u>Marine</u>	<u>Boat repair yards</u>	<u>P/C¹</u>
<u>Marine</u>	<u>Facilities for marine construction and salvage</u>	<u>P/C¹</u>
<u>Marine</u>	<u>Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices</u>	<u>P</u>
<u>Marine</u>	<u>Marine Retail and Wholesale Sales, including Yacht Brokerage</u>	<u>C</u>
<u>Marine</u>	<u>Boat storage facilities</u>	<u>P/C¹</u>
<u>Marine</u>	<u>Seafood processing</u>	<u>C</u>
<u>Marine</u>	<u>Seafood packing and packaging</u>	<u>C</u>
<u>Marine</u>	<u>Fabrication, storage and repair of fishing equipment</u>	<u>C</u>
<u>Marine</u>	<u>Ice-making services</u>	<u>C</u>
<u>Marine</u>	<u>Fabrication of marine-related goods</u>	<u>C</u>

<u>Group</u>	<u>Use</u>	<u>Use Category</u>
<u>Marine</u>	<u>Fish by-products processing, provided that;</u> <u>i. Any fish by-product processing facility has a valid rendering facility license under chapter 12; and</u> <u>ii. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.</u>	<u>C</u>
<u>Marine</u>	<u>Commercial Berthing</u>	<u>P</u>
<u>Industrial</u>	<u>Intermodal transportation facilities principally for vessels with regularly scheduled destination service or for railroad transportation service</u>	<u>P/C¹</u>
<u>Industrial</u>	<u>Marine cargo container and chassis maintenance and repair</u>	<u>P</u>
<u>Industrial</u>	<u>Facilities for combined marine and general construction</u>	<u>C¹</u>
<u>Industrial</u>	<u>Cold storage facility, warehousing, and storage of goods which are awaiting shipment via cargo carriers</u>	<u>C¹</u>
<u>Industrial</u>	<u>Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, manufacture of products, assembly of electrical components, tool and die shops, and the packaging of food, provided that such uses shall be subject to the performance standards set forth in §14-252</u>	<u>C</u>
<u>Public</u>	<u>Public uses including pedestrian and bicycle trails</u>	<u>P</u>

<u>Group</u>	<u>Use</u>	<u>Use Category</u>
<u>Public</u>	<u>Utility substations, including sewage collection and pumping stations, water pumping stations, transfer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water.</u>	<u>C</u>
<u>Commercial</u>	<u>Off-street parking lots, excluding parking structures</u>	<u>C</u>
<u>Other</u>	<u>Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, including food trucks and other similar retail and service support uses shall only be permitted as accessory uses if all such uses do not exceed two thousand (2,000) square feet in total floor area of the building and each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.[m2]</u>	<u>P</u>
<u>Other</u>	<u>Renewable energy systems, as defined and allowed in Article X, Alternative Energy</u>	<u>C</u>

1. Uses that may be located in buildings that exceed the maximum permitted height. Uses marked P/C will be considered Permitted Uses when occupying buildings with a maximum height equal to or less than the maximum applicable height allowable under the permitted use dimensional

standards, and Conditional Uses when above that height.

- ~~2. Tugboat, fireboat, pilot boat and similar services;~~
- ~~3. Harbor and marine supplies and services and ship supply such as fueling and bunkering of vessels;~~
- ~~4. Shipbuilding and facilities for construction, maintenance and repair of vessels;~~
- ~~5. Marine cargo handling facilities, including docking, loading and related storage;~~
- ~~6. Boat repair yards;~~
- ~~7. Facilities for marine construction and salvage;~~
- ~~8. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.~~

~~(b) Commercial:~~

- ~~1. Intermodal transportation facilities principally for vessels with regularly scheduled destination service or for railroad transportation service;~~
- ~~2. Warehousing and storage of goods which are awaiting shipment via cargo carriers;~~
- ~~3. Marine cargo container and chassis maintenance and repair.~~

~~(c) Public:~~

~~Public uses including pedestrian and bicycle trails.~~

~~(d) Other:~~

- ~~1. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of~~

~~and located within the lot lines of a use set forth in section 14-319(a)3, 6, or (b)1, if all such uses do not exceed two thousand (2,000) square feet in total floor area of the building or twenty-five (25) percent of the total floor area of the building, whichever is less, and if each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.~~

~~2. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront port development zone: on Commercial Street from the intersection of India Street to the westerly side of the Maine State Pier.~~

~~3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

Sec. 14-320. Conditional Use Standards.

(a) ~~The following Conditional uses shall be permitted as conditional uses in the Waterfront Port Development Zone,~~ provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority. ~~, and provided further that i~~

In addition to the provisions of section 14-474(c)(2) such uses will:

- not impede or preclude existing or potential water-dependent development on other lots; and
- allow for adequate access to the water; and
- be compatible with water dependent and marine uses; and
- operationally support one or more water dependent use(s), or is located in a building or structure that is physically adaptable or relocatable to make way for future development of water-dependent uses; and

- meet any additional performance and dimensional standards set forth below.

~~not impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses, and meet any additional standards set forth below:~~

~~1. Marine:~~

- ~~a. Marine products, wholesaling and retailing;~~
- ~~b. Boat storage facilities, excluding rack storage;~~
- ~~c. Seafood processing;~~
- ~~d. Seafood packing and packaging;~~
- ~~e. Fabrication, storage and repair of fishing equipment;~~
- ~~f. Ice-making services;~~
- ~~g. Fabrication of marine-related goods;~~
- ~~h. Fish by-products processing, provided that:
 - ~~i. Any fish by-product processing facility has a valid rendering facility license under chapter 12; and~~
 - ~~ii. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.~~~~

~~2. Commercial:~~

~~Off-street parking lots, excluding parking structures.~~

~~3. Industrial:~~

- ~~a. Storage of goods in existing structures;~~
- ~~b. Facilities for combined marine and general~~

~~construction;~~

- ~~e. Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, manufacture of products, assembly of electrical components, tool and die shops, and the packaging of food, provided that such uses shall be subject to the performance standards set forth in §14-252.~~

~~4. Public:~~

~~Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water.~~

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

- ~~1. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:~~
 - ~~a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and~~
 - ~~b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and~~
 - ~~e. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and~~

- ~~d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and~~
- ~~e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and~~
- ~~f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and~~
- ~~g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and~~
- ~~h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.~~

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

Sec. 14-320.1. Prohibited uses.

Uses which are not enumerated in either section 14-319 or 14-320 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses ~~(not in existence on May 5, 1987).~~
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Restaurants and drinking establishments.
- e. Marinas, including marina associated boat storage facilities.
- f. Truck Terminals.

Sec. 14-320.2. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the waterfront port development zone shall be subject to the following requirements:

(a) Dimensional Table

For additional bulk, height and location standards, see Section 14-320.2(b) below.

	<u>Permitted Use Dimensional Standards</u>	<u>Conditional Use Dimensional Standards</u>
<u>Minimum Yard Setbacks</u>	<u>N/A</u>	<u>N/A</u>
<u>Minimum Lot Size</u>	<u>N/A</u>	<u>5 acres, limited to 1 building greater than the maximum applicable height allowed under the permitted use dimensional standards.</u>
<u>Minimum Setback from Pier Line, wharf, or bulkhead, including any attached aprons.</u> (See note 1)	<u>5ft</u>	<u>5ft</u>

	<u>Permitted Use Dimensional Standards</u>	<u>Conditional Use Dimensional Standards</u>
<u>Max. Lot Coverage</u>	<p><u>50% east of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.</u></p> <p><u>100% west of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.</u></p>	<p><u>50% east of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.</u></p> <p><u>100% west of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.</u></p>
<u>Max. Building Height (Inclusive of Roof Forms and Rooftop Appurtenances)</u> (See Note 2)	<p><u>55ft east of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive and west of Casco Bay Bridge.</u></p> <p><u>60ft west of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive.</u></p> <p><u>In no case may any permitted heights exceed 50ft within 100ft of West Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.</u> (See Note 5)</p>	<p><u>60ft west of the Casco Bay Bridge</u> (See Note 7), <u>except as follows:</u></p> <p><u>75ft in the area east of a line projected due south from the centerline intersections of West Commercial Street and the easterly most Cassidy Point Drive and west of Casco Bay Bridge, on lots 5 contiguous acres or larger.</u> (See Note 4)</p> <p><u>130ft for bulk storage</u> (See note 3) <u>facilities west of the projection of the westerly most Cassidy Point Drive segment.</u></p> <p><u>In no case may any conditionally permitted heights exceed 50ft within 100ft of West Commercial Street and</u></p>

	<u>Permitted Use Dimensional Standards</u>	<u>Conditional Use Dimensional Standards</u>
		<u>all area of the WPDZ east of the Casco Bay Bridge. (See Note 5)</u>
<u>Maximum Building Length</u> (See Note 6)	<u>450ft</u> <u>300ft within 100ft of West Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.</u>	<u>450ft</u> <u>300ft within 100ft of West Commercial Street and all area of the WPDZ east of the Casco Bay Bridge.</u> <u>300ft for buildings or portions of buildings exceeding the maximum applicable height allowed under the permitted use dimensional standards.</u>

1. The setback area may be utilized for activities related to the principal uses carried on in the structure, but shall not be utilized for off-street parking.
2. Buildings and/or structures shall be limited to an absolute height measured from average grade with no portion of the structural roof system or roof top appurtenances exceeding the limits set forth under Sec. 14-320.2(a) with the exception of moveable elements or connection devices as listed under Section 14-320.2(b) (1) (a).
3. Bulk storage dedicated to materials delivered or awaiting transportation to a site by waterborne transportation.
4. A projection of the street centerline shall consist of an extension of the centerline to the water side boundary of the waterfront port development zone.
5. Height limitations east of the Casco Bay Bridge are intended to protect vistas of the harbor from public open space.
6. As measured by a line parallel with the southern edge of the West Commercial Street ROW.
7. Only those conditional uses so designated in Note 1 of the Waterfront Port Development Zone Use Table, Sec. 14-319, may be located in buildings taller than 60 feet.

~~(a) Minimum lot size: None.~~

~~(b) Minimum frontage: None.~~

~~(c) Minimum yard dimensions:~~

~~Front setback: None.~~

~~Side setback: None.~~

~~Rear setback: None.~~

~~Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-319 and 14-320, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).~~

~~(d) Maximum lot coverage: One hundred (100) percent.~~

~~(e) Maximum building height: Forty-five (45) feet, except as follows:~~

~~1. In the areas bounded as described below, facilities for bulk storage of materials delivered to a site by waterborne transportation or awaiting transportation from the site by means of waterborne transportation may be erected up to the maximum heights indicated (above mean sea level):~~

~~a. In the area that lies between Danforth Street and the Veterans Memorial Bridge: One hundred forty-five (145) feet.~~

~~b. In the area between Danforth Street and the projection of the centerline of Vaughn Street between its intersections with Orchard Street and Danforth Street: Seventy (70) feet.~~

~~c. In the area between the projection of the centerline of Vaughn Street between its intersections with Orchard Street and Danforth Street and the projection of the centerline of Fletcher Street between its intersections with Orchard Street and Danforth Street: Seventy-five (75) feet.~~

~~d. In the area formed by the projection of the centerline of Fletcher Street between its intersections with Orchard Street and Danforth Street easterly to the projection of the centerline of Emery Street between its intersections with Taylor Street and Danforth Street: Seventy-five (75) feet.~~

~~e. In those areas where the maximum height may not exceed forty-five (45) feet above grade, no structure may exceed sixty-five (65) feet in height above mean sea level.~~

~~For purposes of this section, a projection of the centerline of a street shall consist of an extension of the centerline of the street to the water side boundary of the waterfront port development zone.~~

2.(b) Additional bulk, height and location standards:

1. ~~For structures exceeding the maximum applicable height allowed under the permitted use dimensional standards: forty-five (45) feet in height above grade within the waterfront port development zone:~~

~~a. The maximum horizontal diagonal measurement of portions of a structure, cluster of structures or equipment exceeding forty-five (45) feet in height above grade shall not exceed one hundred (100) feet, except that for each foot that the structure, cluster of structures, or equipment is lowered from the maximum permitted height, the maximum horizontal measurement may increase by one (1) foot.~~

~~b. In addition to any other setback requirements, portions of structures or clusters of structures exceeding forty-five (45) feet in height above grade shall be set back a minimum of one (1) foot from the exterior property line of the owner of the underlying fee interest for each foot that the structure or cluster of structures~~

~~exceeds forty five (45) feet in height above grade.~~

~~e. No structure or cluster of structures exceeding forty five (45) feet in height above grade may be located closer than one hundred fifty (150) feet from any other such structure or cluster of structures.~~

~~d. The cumulative width of the portion of structures exceeding forty five (45) feet in height above grade shall not exceed more than thirty (30) percent of the average width of the lot as measured by a line drawn parallel to the water.~~

~~e. No structure shall exceed forty five (45) feet in height above grade within the view corridors established by the projection of the street right-of-way lines of Vaughn Street or Emery Street.~~

~~f.a. For purposes of this section only, mMoveable elements such as cranes and gantries, and connection devices such as conveyors or bridges shall not be subject to the space and bulk requirements, but shall be subject to a determination by the Federal Aviation Administration that the location of such equipment will not create a hazard to navigation. ~~Other rooftop appurtenances shall not exceed the maximum height limits set forth in this section.~~~~

~~g.b. The applicant must provide a determination from the Federal Aviation Administration that structures and equipment will not exceed the applicable height guidelines for the runway approach and will not create a hazard to navigable airspace. Such a determination shall be accepted as conclusive evidence that the proposed development will not create a hazard.~~

2. For each lot, at least one view corridor of at least ninety (90) feet in width shall be left unbuilt to preserve a clear line of sight between West Commercial Street and the water.

~~h. Accessory uses in structures which exceed forty five (45) feet in height above grade shall not be located higher than forty-five (45) feet within the structure.~~

Sec. 14-320.3. Performance standards.

Proposals in the Waterfront Development Zone that qualify for Site Plan review shall submit, in addition to the submission requirements of section 14-527, an impact mitigation narrative summarizing how the project intends meets the applicable performance standards.

All uses in the waterfront port development zone shall comply with the following standards:

(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

...

(n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses.

(o) Design and Visual Character shall:

1. In building design, including placement and screening of mechanical equipment, take into consideration long views to minimize negative visual impact and provide visual interest, and architecturally integrate exposed industrial systems and equipment where practical;

2. Organize massing to emphasize certain parts of the building such as entries, corners, or

different uses;

3. Treat all facades, including the roof, with equal level of detail, and articulation;
4. Vary and articulate building facades to add scale and avoid large monotonous walls. Treatments such as texture, color, material changes, or shadow lines or murals must be used to add visual interest and avoid dull, flat, repetitive facades; and
5. Use a scaling or articulation element such as stepback, canopy, or fenestration, as required for any street-facing façade within fifty (50) feet of West Commercial Street.