



PLANNING BOARD REPORT

PORTLAND, MAINE

LAND USE CODE TEXT AMENDMENTS – SECTION 14-403. STREET ACCESS

City of Portland, Applicant

Submitted to: Chair Sean Dundon and Portland Planning Board	Prepared by: Barbara Barhydt, Development Review Services Manager
Public Hearing Date: May 8, 2018	Date: May 4, 2018

I. INTRODUCTION:

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be on addressing deferred maintenance and existing needs. As required by the Portland's Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

The legislative history and public purposes of the section are outlined in a memorandum prepared by Anne Torregrossa, Associate Corporation Counsel ([Attachment 1](#)). As stated in Anne Torregrossa's memo, "The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process." Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 "...in an attempt to streamline and clarify the requirements of the section...."

The basic elements of the proposal are as follows:

- 1- Simplifies and clarifies the language in Section 14-403
- 2- Reduces the minimum width required for the construction of new dwelling units on permanently paved and accepted streets from 35' to 25' for one and two-unit structures and 28' for other buildings

A workshop on the proposed text amendments was held with the Planning Board on March 22, 2018 and the material was presented at the Council's Housing Committee on March 28, 2018. The City is seeking the Planning Board's recommendation to City Council regarding the proposed amendments.

II. NOTICE AND PUBLIC COMMENT

This item was noticed in the Legal Ad that appeared in the Portland Press Herald on April 30 and May 1, 2018. It was posted on the City's web page on April 26th and sent to interested citizens through Notify Me on that same date. The public comments received to date are included in the packet under public comment, PC1 – PC6. At the workshop, 5 members of the public spoke. Several questioned the proposed regulations that pertain to accepted streets. Other comments addressed the expense of putting in a street and how it negatively impacts the cost of creating single family housing. One person sought to have consistency for all street proposals and another asked about creative financing to facilitate the development of single family homes.

III. PROPOSED TEXT AMENDMENTS

The proposal is to replace the existing Section 14-403, Street Access, with a rewritten section. Please refer to [Attachment 1](#) (Torregrossa memo) for a summary of the amendments and [Attachment 2](#) for the proposed ordinance text. A comparison of the existing and proposed language is below.

Current Section 14-403 Language	Proposed Section 14-403 Language
<p>a) <i>In general</i>. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47¹, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) an agreement by</p>	<p>A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.</p> <p>(a) <i>Permanently paved and accepted streets or island streets</i>. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:</p> <ol style="list-style-type: none"> 1. For one- or two-family dwellings – 25’; 2. For all other buildings – 28’.

¹ Street: A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

<p>such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.</p>	<p>These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.</p>
<p>(b) <i>Minimum requirements for street improvements on unimproved and improved but unpaved streets.</i> For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.</p>	<p>(b) <i>Streets to be upgraded in connection with development.</i> The owner or developer of the lot will do all of the following in connection with the development of that lot:</p> <ol style="list-style-type: none"> 1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code; 2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and 3. Obtain site plan approval for the work required under this subsection.
<p>I <i>Exceptions.</i> The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:</p> <p>Dingley Court;</p> <p>Morgan Court.</p>	<p>(c) <i>Other exceptions.</i> The building or structure is one of the following:</p> <ol style="list-style-type: none"> 1. An accessory building; or 2. Part of a Planned Residential Unit Development.

IV. HOUSING COMMITTEE and PLANNING BOARD WORKSHOP COMMENTS

The Housing Committee met on March 28th to discuss the proposed amendments. The Committee is composed of Councilors Duson, Ali and Cook. Councilor Ray also attended the meeting. The Committee is seeking the Board's recommendation to be submitted to the City Council and the Committee is not forwarding a separate recommendation. The Housing Committee did request additional information from the staff, which includes:

- a) Map of unaccepted streets and adjoining developable land;
- b) Cost estimates if the City were to accept and improve those streets;
- c) Any projects in recent history that have not moved forward because of the requirements in 14-403; and
- d) Clarification of the projects in the chart of street extensions that are improved streets under 14-403 and those that are new subdivision streets.

These requests are addressed below under the staff analysis.

The Housing Committee also made specific requests for the Planning Board's consideration:

- a) With respect to unaccepted streets, specifically consider the fairness of requiring one lot owner to pave the entire street, benefiting the remaining lot owners; and
- b) With respect to accepted streets, consider the impact of the minimum width requirements

At the March 22 Planning Board workshop, the question was raised whether the addition of a dwelling unit to a lot, as proposed, is too restrictive. In general, the Board supported forwarding the proposed amendments for a public hearing.

V. STAFF ANALYSIS

A. Purpose of Section 14-403

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access, which is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. The section applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. The proposed amendments address both situations by allowing development on undersized built streets that meet minimum standards for public safety access and continues to require undeveloped streets be improved to meet current city street standards. Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on updating Section 14-403 to improve the clarity of the ordinance and retain the underlying public purposes of encouraging development where adequate public safety access is available without imposing significant new City expenses for street construction and maintenance. Again, the proposed text amendments seek to simplify and clarify Section 14-403, while retaining the substance of the current public policy.

B. Built Streets That Do Not Meet Standards

In terms of the specific amendments, subsection (a) address development on existing streets that are built, but do not meet today's standards. The current standards for a local street require a right-of-way width of 50 feet with a pavement width of 28 feet. There are streets, particularly on the peninsula and islands, that do not meet current dimensional standards and in some cases are inaccessible for emergency and public works vehicles. Recent development has occurred on some of these undersized streets, such as Tate and Oak Streets. During those reviews, staff members sought to ensure public safety with careful consideration of public safety access, parking regulations, and street improvements on a case by case basis.

The proposed text amendments are proposed to provide clearer and more transparent regulations for the built streets. The proposed revisions establish a minimum clear street width between curbs as follows:

- (d) The minimum clear width shall be as follows:
 1. For one- or two-family dwellings – 25’;
 2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

Again, the intent is to be transparent about the minimum clear widths required for development to occur on such street. At the workshop, Acting Fire Chief Keith Gautreau noted that safe and adequate public safety access is vital to serve each new unit on a substandard street. The proposed waiver is intended to allow for flexibility or fairness within the city's built infrastructure, where both the Fire Chief and Public Works Director find that public services and public safety access are not unreasonably impaired. Thus, new development may occur on existing undersized developed streets that meet minimum requirements or where services and access can be achieved without being unreasonably impaired. However, the burden of meeting these criteria will be on the developer. This approach should help to clarify the standards and avoid issues that had previously not always become apparent until site plan review began on a project and substantial funds were expended by the applicant; while at the same time, allowing for certain flexibility from the city.

C. Unimproved Streets for New Development

Subsection (b) addresses streets that are unimproved for new development. It requires the street to be improved to current street standards by the applicant, which is consistent with the City's current policy. The intent is to provide adequate access for city services, while not burdening the tax base with street construction costs. This includes building streets within right-of-ways where no improvements have been made or only dirt and gravel surfaces exist. Since the adoption of Sec 14-403 over 30 years ago, new development along undeveloped streets requires an applicant to bring the road up to standards from where the existing street pavement ends and along the full extent of lot frontage.

The Department of Public Works is preparing a map of paper streets, which is expected in time for the hearing. Many, but not all, paper streets are located off-peninsula with numerous abutting lots (both vacant and developed lots). At the workshop, Mr. McGovern noted that his property was part of a subdivision recorded in 1916 and his home was built in 1918. He has a pending application to upgrade Hingham Street to city standards. Section 14-403 addresses unimproved streets or dedicated and undeveloped right-of-ways by requiring streets to be upgraded to city standards in order to construct a new home or add a dwelling unit.

The Department of Public Works is preparing cost estimates for street construction, which will be available for the public hearing. Street construction costs can be prohibitive, particularly for small scaled projects or if the length of the street to be improved is significant. While a log of inquiries is not maintained, there have been inquiries about street extensions for development that have not been brought forward.

In response to the Housing Committee's question as to the equity of the 14-403 as applied to unaccepted and improved streets we would like to clarify that the only time an owner is required to build out the roadway is when they propose constructing a new dwelling. There is also no prohibition on their obtaining contributions from abutting owners who will benefit from the road. The requirement is only that the road be brought up to the legal standards before any additional housing units are brought online. There is no question there is substantial inconsistency with how service provision and residential constructions on unaccepted streets has been managed in Portland over the last century; however, the goal here is to minimize the perpetuation of these practices not incentivize them.

D. Review Process

Street extensions under 14-403 are reviewed administratively under the site plan ordinance as either a Level I or Level II application. The level of review is based upon the amount of impervious surface area that is being added. The standards of review are the same for both applications. Briefly, the review process requires a survey stamped by a licensed surveyor and engineered plans for the street meeting the City's technical standards. Portland's Technical Manual contains the engineering specifications for streets, sidewalks, public utility installations, and stormwater management (<http://www.portlandmaine.gov/756/City-Codes-Ordinances-Regulations-Maps>). Over the past five years there have been five approved street extensions that are summarized in Table 1 below. Two applications are currently undergoing review and are also listed on the table 1. To address the Housing Committee's question of how many streets were vacant versus some level of improvement, this chart has been updated with this information.

Table 2 on the following page lists single family subdivisions approved over the past 5 years. Skylark is a subdivision that had paper streets, but the lots and streets were reconfigured to meet current standards. The other subdivisions created new street right-of-ways and lots. Under Portland's Subdivision Ordinance, recording plats cannot be recorded without posting a performance guarantee for the street infrastructure work to be completed.

Table 1: Approved& Pending Street Extensions within Dedicated Right of Ways under 14-403

All approved applications had a 50 foot wide ROW and a 28 foot wide pavement width

Street Name	Street Length	Turn Around	Granite Curbs	Side-walks	Development	Initial Condition	Status
Hingham	357	yes	seeking waiver	seeking waiver	5 lots with frontage and 2 side yards	gravel and vacant	Pending Review
Florida Ave	165	no-gravel road beyond	seeking waiver	seeking waiver	2 property owners for 2 sf lots	gravel	Pending Review
Pomeroy	200	yes	yes		Single Family	vacant	Built
Gertrude	93	no-gravel road beyond	yes	waived	Single Family	gravel	Built
Hillcrest	200	no-gravel road beyond	no- open drainage	waived	Single Family	gravel	Built
Pamela	585	no- linked existing Pamela & Alice St	yes	yes	10 Single Family House Lots	vacant	Built
Motley	94	no- gravel road beyond	no-open drainage	waived	2 Single Family House Lots	gravel	Built
Van Vechten	584	no - gravel road beyond	no-open drainage	waived	4 House Lots	gravel	Approved

Table 2							
Approved Subdivisions with New Streets or Street Extensions							
All approved applications had a 50 foot wide ROW and a 28 foot wide pavement width							
Sudvision Name	Street Name	Street Length	Turn Around	Granite Curbs	Side-walks	Development	Status
Skylark Subdivision-Phase I	Skylark Drive	530	yes	yes	one	Phase I: 7 sf lots & 1 existing vacant lot, plus existing home	Phase I complete
Knight Farm	Abner Lane	445	yes	yes	one side	8 sf lots & 1 existing house lot w/ house	Under Construction
Brandy Lane Subdivision	Brandy Lane	970	yes	yes	one side	16 sf lots	Approved
Stroudwater Preserve-Phase 1	(not named yet)	2,074	yes	yes	one-side	47 lots	Under Construction
Stroudwater Preserve-Phase 2	(not named yet)	2,325	No/connects to streets	yes	one side	48 lots	Approved
Stroudwater Preserve-Phase 3	private road- PRUD	800	cul-de-sac	no	one	25 townhouses	Approved

E. Waivers

Under the present version of Section 14-403, an applicant may seek to have the sidewalk waived, if the street is not a school walking route and the curbing may be waived by the Public Works Director. The proposed draft eliminates the waiver language within Section 14-403, and instead allows waivers to be considered using provisions already established under the City Code. In regard to sidewalks and curbs, Section 14-506 Modifications in the Subdivision Ordinance establishes waiver criteria applied during subdivision and site plan reviews. The waiver criteria for curbs and sidewalks are excerpted below.

Sidewalks-

1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.
2. There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.
3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.
4. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
5. The street has been constructed or reconstructed without sidewalks within the last 24 months.
6. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.

Curbing-

1. The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.
2. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
3. The street has been rehabilitated without curbing in the last 60 months.
4. Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.
5. Runoff from the development site or within the street does not require curbing for stormwater management.

In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.

Lastly, the exceptions listed in subsection (c) of Section 14-403 for Morgan and Dingley Court. Both of these streets are improved and narrower than today's standards with development on the adjoining lots. The proposal is to remove these streets from the exception list and instead apply the new provisions for any further development on these streets. The proposed draft does exempt accessory buildings, such as garages and sheds, and Planned Residential Unit Developments (PRUD) from 14-403. PRUDs have separate requirements for the construction and maintenance of the private street network serving the development.

VI. **COMPREHENSIVE PLAN**

The central vision of Portland's Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic,

authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for housing production be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.



Portland's Plan 2030 has three goals under the Facilities and Services section that are relevant to this policy initiative. The goals are:

- Use planning and fiscal management to sustainably maintain a high level of service for existing infrastructure and programs.
- Coordinate infrastructure planning and investments with areas of greatest anticipated growth.
- Provide public safety, emergency response, and emergency management facilities and services that can effectively meet the needs of all residents.

As support for these goals there are three strategies and accompany actions that address the proposed amendments:

- Provide services to all residents
 - Ensure transparency and access to City services and facilities for all residents.
 - Operate City facilities and services in an efficient and effective manner that is responsive to all segments of the community.
- Develop asset management plans
 - Develop long-range asset management plans for public facilities in order to ensure that our limited public funds are maintained and investing in strategically.
- Plan for Fiscal Stability
 - Keep tax rate increases manageable and provide predictability and stability in tax rate increases while supporting City services and a stable labor force.
 - Make fiscal stability a factor in land use planning by considering both public investments and potential gains in the City's tax base when planning for a sustainable future for the city, while recognizing that not all land use decisions will be driven by the fiscal impacts of the development produced.

The policies and strategies of the Comprehensive Plan support a fix-it first approach to the extensive infrastructure within Portland. Portland seeks to provide quality public services and public safety for all residents. Thus, creating new infrastructure within the city is intended to be carefully evaluated, so that investments are strategic, sustainable, and manageable for the long-term responsibility of the City. The proposed amendments to Section 14-403 are proposed to provide clear regulations for street access for

private development that can be maintained effectively by the City without overburdening the Departments of Public Works and Fire.

The comprehensive plan also contains goals to increase housing. Two of the goals state the following:

- Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.
- Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.

The need for housing and affordable housing is clear in Portland. Again, the City is seeking to encourage housing where there are concentrations of services, transit and community facilities. Generally, the 14-403 road extensions support single family development in lower density neighborhoods. While this addresses the preferences for some Portland residents, the City is emphasizing more strategic investments that support higher levels of housing construction. Thus, the proposed amendments allow for private investments to occur for low density housing development that again can be served efficiently by the City without overburdening the tax base.

VII. STAFF RECOMMENDATION

The Planning Staff recommend a positive recommendation for the proposed amendments, which are intended to be clear and transparent regulations to provide adequate street access and public services for new development.

VIII. PROPOSED MOTION

On the basis of the material provided in this report, dated May 4, 2018, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed text amendments to Division 24, Use Regulations and Exceptions of the Land Use Code., Section 14-403, Street Access, **[are or are not]** consistent with the Comprehensive Plan and **[recommends or does not recommend]** adoption of the proposed amendments to the City Council.

ATTACHMENTS:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
 1. Joe Gray memo, 1984
 2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403

Public Comment

- PC 1 Matt Power, 3-3-18
- PC2 Victoria Morales with Attachment, 3-9-18
- PC3 Liv Chase 3-11-18
- PC4 Brent Adler 3-11-18
- PC5 John McGovern 3-19-18
- PC6 John McGovern 3-27-18
- PC 7 Liv Chase 5-3-18
- PC8 Brent Adler 5-3-18

MEMORANDUM

TO: City of Portland Planning Board
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: March 5, 2018
RE: Proposed changes to § 14-403

Section 14-403 has been in place for more than thirty years. Initially, it prohibited the construction of residential buildings on streets less than 35' in width. In 1984, however, the City Council added to § 14-403 to require that streets be brought up to standard before any building could be constructed. This included paving, curbing, sidewalks, and sewers. The 1984 changes were spurred by concerns about the significant costs to the City to upgrade these streets at taxpayer expense, and the danger that undersized or substandard streets posed to the provision of City services and the response of emergency vehicles. As described by the City's then-Director of Planning & Urban Development, development on unimproved streets "tends to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain." A copy of that memorandum is attached.

Even as recently as 2012, the City Council reaffirmed its commitment to ensuring that streets are safe before they can be built upon, and that developers bear the cost of their development. In 2012, the Zoning Board of Appeals ("ZBA") granted a hardship variance to a developer, exempting his project from the requirements of § 14-403. In response, the City Council amended § 14-473, which governs the ZBA's authority over variances, to eliminate that possibility. In a memo to the Planning Board addressing the reasons for eliminating this loophole, then-Corporation Counsel wrote that, "the decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation." That memo is also attached.

The City Manager and staff recognized that the requirements in § 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process. In an attempt to streamline and clarify the requirements of that section, staff from the Planning Department, Fire Department, Department of Public Works, Permitting and Inspections Department, and Corporation Counsel collaborated on the attached proposed revision. The revision accomplishes the following:

1. Reduces the minimum width for permanently paved and accepted City streets from 35' to 25' for one- and two-family dwellings, and to 28' for other buildings. These widths may be further reduced with the determination of DPW and the Fire Department that ability of the City to provide services will not be impaired. This change makes the minimum required widths consistent with those provided for elsewhere in the Code and also provides flexibility where

2. Requires that all streets that are not accepted and paved, be upgraded and dedicated to the City. This is consistent with the previous version of § 14-403 but does remove many of the details from the ordinance, as they are all captured elsewhere, including the site plan review requirements and the technical standards. DPW has the ability under the technical standards to waive certain requirements, as appropriate.
3. Removes certain exceptions, including for Dingley Court, Morgan Court, and single-family dwellings that have been owned since November 19, 1984. These exceptions have been removed because they defeat the intent of the section to protect individuals who might want to build under those circumstances. Additionally, Dingley Court and Morgan Court appear to have been fully built, and there are few undeveloped lots remaining that have been in one ownership since 1984. Additionally, that provision had been abused by certain developers who simply “flipped” the house, rather than living there, as contemplated by the ordinance.
4. Retains the exceptions for island streets.

CITY OF PORTLAND, MAINE
MEMORANDUM

DATE: 9/17/84

TO: Stephen T. Honey, City Manager

FROM: Joseph E. Gray, Jr., Director of Planning & Urban Development

SUBJECT: Development on Unaccepted/Unimproved Streets

Please place the following item on the September 24th City Council Agenda:

Amendment to Portland City Code Chapter 14 (Land ^{USE} ~~UR~~), Article III (Zoning) Section 14-403 (Street Access) Re: Required Street Improvements.

Statement of Fact

Planning and Public Works officials have been concerned for some time about the accelerating pace of development on unimproved streets and in legally grandfathered subdivisions. Such developments tends to create incessent demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain.

In a related development, the Corporation Counsel recently determined that accepted streets which were abandoned between 1946 and 1976, and unaccepted streets which were dedicated before 1946, do not meet the Zoning Ordinance's requirements that buildable lots have frontage on an accepted or dedicated street. A copy of Mr. Lourie's opinion is attached for your reference.

Against this backdrop, a task force consisting of Planning, Public Works and Corporation Counsel staff has recommended enactment of the attached amendment dealing with development on unimproved streets. A summary of the amendment follows:

Legal Status of Streets

The first part of the amendment deals with the issue of "lapsed" and "abandoned" streets. The amendments would expressly reincorporate "lapsed" and "abandoned" streets into the category of buildable streets, provided that the property owner first gives to the City (1) a release and indemnification from and against all claims for damages in the event the City should decide to take the street by eminent domain, and (2) a release deed to any property rights he may have in the street.

Required Street Improvements

The remainder of the amendment deals with the issue of unimproved streets. The amendment would require that certain improvements be made in the following two instances as a condition precedent to development:

Improved but unpaved streets: For lots abutting an improved (i.e., in common and ordinary use) but unpaved portion of street, that portion which abuts the lot must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

Unimproved streets: For lots abutting an unimproved (i.e., not in common and ordinary use) portion of street, that portion which abuts the lot, and any portion between that portion and the nearest improved portion which is the principal access to the lot, must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

These Amendments were approved by the City Council Housing Committee at their meeting on September 12, 1984 by a vote of 3-0. The items are being sponsored by Councilor Abromson, Chairman of the Housing Committee.

CITY OF PORTLAND

MEMORANDUM

TO: Mayor and Council
FROM: Gary Wood
DATE: August 21, 2012
RE: **Amendment to Portland City Code Chapter 14, Section 14-473 (Variances)**

This amendment contains two components. The first component amends Section 14-473 so that the limitation on the Board of Appeals authority to grant variances references the specific limitations already articulated in subparagraph (c)(4), as well as referencing subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight. The reference to Paragraph (c)(3) in the current ordinance should be retained because there are some subsections contained within (c)(3) that make it clear that practical difficulty variances cannot be used in certain circumstances in the City's Shoreland Zone.

The second component of the amendment prohibits the Board of Appeals from granting variances from the standards set forth Section 14-403 by adding that section to subparagraph (c)(4).

"Paper" streets are rights of way designated on approved subdivision plans but never built to city standards or accepted by the City as city streets. The City has over 407 paper streets at this time that are shown on subdivisions recorded prior to September 29, 1987. Under state law the City has until September 29, 2017 to decide whether to continue the City's right to accept one or more of these streets or vacate the potential public rights in them. Current law also allows the Council to extend the deadline another 20 years.

Section 14-403 was created many years ago (see attached memo) to prevent individuals who own lots on paper streets from developing substandard access ways or driveway along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards.

The section avoids that result by imposing a requirement on property owners who wish to build residential units along a paper street to build the road to city standards for the entire length of the individual's property abutting the paper street.

The requirement that the road be built along the entire length of the abutting property prevents a property owner from stopping the construction of a road built to city standards at that

point along his property where he has established enough road frontage to meet city road frontage requirements thus leaving a potential gap for the next abutting property owner should that person subsequently wish to also build a residential unit on their lot.

Although the City's Board of Appeals has for the most part refused to grant variances from Section 14-403 nothing in the current ordinance prevents them from doing that and on June 21, 2012 the Board did grant a variance from Section 14-403 requirements.

In granting that variance, the Board acted within its current authority in the ordinance and also in a situation in which a large number of residential units could not be built along the roadway because of its short length. However, this decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.

In order to prevent developers or other property owners from taking advantage of the current authority in the ordinance to grant variances from Section 14-403 the proposed amendment has a retroactive date to the date upon which the Board of Appeals issued its decision. No additional applications have been filed since that decision seeking a variance from the Section 14-403 requirements although, there is one pending application that may be amended to do so.

Because the proposed amendment is to Chapter 14, it should be referred to the Planning Board for a recommendation back to the Council before the Council can act on it.

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25’;
2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.