

Order 221-17/18

Amended in 14-140.5 (d) 1. (a) by adding after “14-140.5.c-f.,” “except that flat roofs are permitted in buildings of 3 or more units”, and adding “also” in the next sentence: 9-0 on 6/4/2018

Amended by adding in 14-140.5 (b) “Where this Section imposes a standard that differs from the standards contained in Articles III, IV, and V of Chapter 14, the City of Portland Design Manual or City of Portland Technical Manual, the standards in this section shall control.” and by adding in (c) after “following dimensional” “standards “and adding after “supersede” “dimensional standards” and by adding in (d) after the word “standards” “shall apply in the District” and by adding after “conflicting” “design”: 9-0 on 6/4/2018

Amended in the table row titled Maximum Height by striking out “or for developments” and “on lots over 2000 sf. This” and adding “Workforce units shall be no smaller than 50% of the average size of the other units in the development, must meet the definition for such units”: 8-1(Cook) on 6/4/2018

Amended by changing in both subsection (e)5 and (e)5(b) 18 months to 12 months: 6-3 (Ray, Duson, Strimling)

Passage as amended: 8-1 (Cook)

ETHAN K. STRIMLING (MAYOR)
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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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AMENDMENT TO PORTLAND CITY CODE CHAPTER 14

**RE: ADDING A NEW SECTION 14-140.5 (MUNJOY HILL CONSERVATION
OVERLAY DISTRICT) REPLACING THE EXISTING SECTION 14-140.5
(MUNJOY HILL INTERIM PLANNING OVERLAY DISTRICT)**

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

*That Chapter 14, Section 14-140.5 is hereby enacted to read
as follows:*

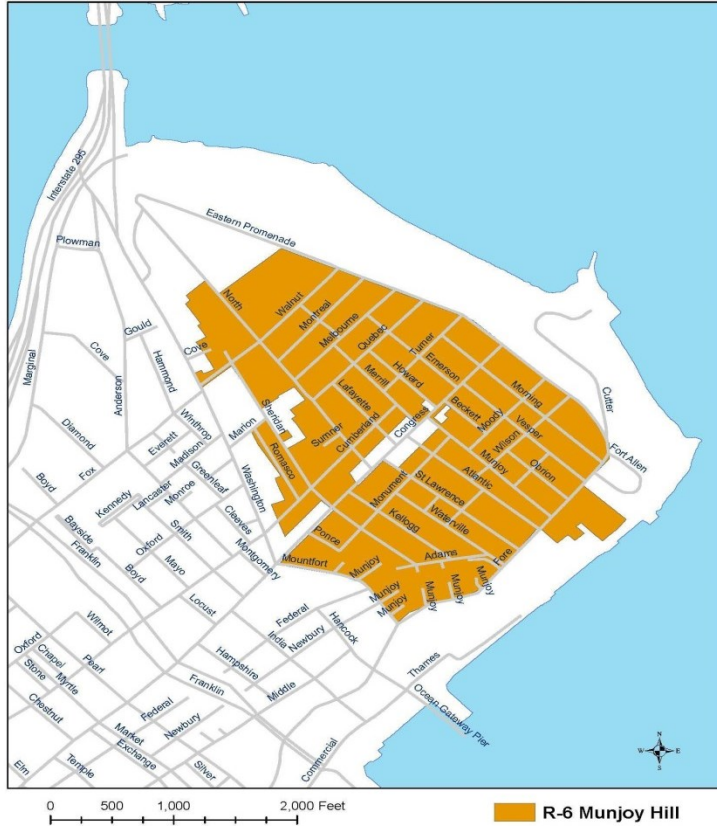
**Sec. 14-140.5. Munjoy Hill Neighborhood Conservation Overlay
District.**

The residential neighborhoods on Munjoy Hill are experiencing specific development pressures related to its location and the nature of the existing building stock, further documented in work by the City’s Planning & Urban Development Department in the winter of 2018. In order to address the negative impacts of these pressures and create a positive framework for investment in the area, there shall be a Munjoy Hill Neighborhood Conservation Overlay District (the “District”).

(a) Area of Effect.

This District will apply in the highlighted area depicted on the map below and includes all properties in the R-6 zoning district in an area east of Washington Avenue and Mountfort Street, north of Fore Street, and west of the Eastern Promenade.

Diagram 14-140.5.a.: Munjoy Hill Neighborhood Conservation District Boundaries



(b) Effect of the District.

In addition to the standards contained in Chapter 14, Division 7 of the Portland City Code that are applicable to properties in the R-6 zone all properties within this District shall meet the standards in this Section 14-140.5. Where this Section imposes a standard that differs from the standards contained in Articles III, IV, and V of Chapter 14, the City of Portland Design Manual or City of Portland Technical Manual, the standards in this Section shall control.

(c) Dimensional Standards.

Within the District, the following dimensional standards requirements supersede those dimensional standards outlined elsewhere in Chapter 14:

<p><u>Maximum Height</u></p>	<p><u>35'; 45' for developments of 3 units or more on lots over 2000 sf. that include at least one "workforce housing unit for rent" or "workforce housing unit for sale", defined elsewhere in this ordinance. Workforce units shall be no smaller than 50% of the average size of the other units in the development, must meet the definition for such units and only be sold or rented to a household at or below the applicable income levels. These requirements shall be deed restricted for affordability for the longest term possible under state and federal law.</u></p> <p><u>Rooftop appurtenances other than chimneys shall not exceed permitted heights, except that HVAC equipment is permitted for up to 5' above these maximum heights if (a) out of view from public rights-of-way, screened adequately, and integrated with the building design and (b) set back at least 5' from the building edge. In addition, height limits and placement of alternative energy equipment is permitted as specified in 14-430, Height Limits, and as specified in Article X, Alternative Energy.</u></p>
<p><u>Minimum Side Yard Setback</u></p>	<p><u>Buildings of height up to 35': As per the underlying zoning</u> <u>Buildings more than 35': 10' for all side yards, except that a side yard no less than 5' is permitted when used to continue a documented built pattern of the surrounding streetscape, in which case a proportional increase in another side yard must be provided.</u></p>
<p><u>Stepbacks</u></p>	<p><u>None</u></p>
<p><u>Minimum Side Yard Setback on a side street</u></p>	<p><u>5'; or the minimum depth of the immediately abutting street-facing yard (see Diagram 14-140.5.b.), whichever is less. 0' when</u> <u>demonstrated that reduced setbacks are necessary to facilitate the provision of underground parking.</u></p> <div data-bbox="477 1514 980 1904"> </div>


<u>Minimum Rear Yard Setback</u>	<u>Buildings of height up to 35': 10'</u> <u>Buildings more than 35': 15'</u> <u>As measured from rear decks, porches, or similar unenclosed space: 7.5'</u> <u>As measured from accessory structures with a ground coverage of 144 square feet or less: 5'</u>
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(d) Design Standards.
1. In addition, the following design standards shall apply in the District and shall supersede any conflicting design standards:

a. All buildings shall use simple, traditional roof forms as illustrated in Diagrams 14-140.5.c-f., except that flat roofs are permitted in buildings of 3 or more units. This requirement may also be modified through (d)2 below. Dormers and cross gables are allowed but where readily visible from the public right-of-way shall be clearly subsidiary to the primary roof form (see Diagram 14-140.5.g);

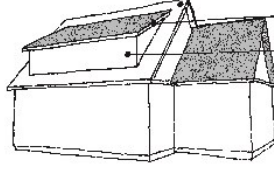
Allowed slope for gable roofs
10:12 to 12:12

Allowed slope for hip roofs
4:12 to 6:12



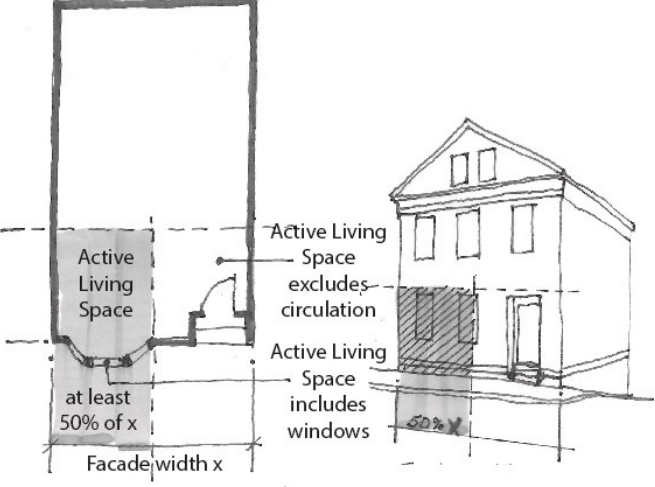
c. Side Gable d. Front-end Gable e. Mansard f. Hipped

14-140.5 c, d, e, f. Roof Forms NTS



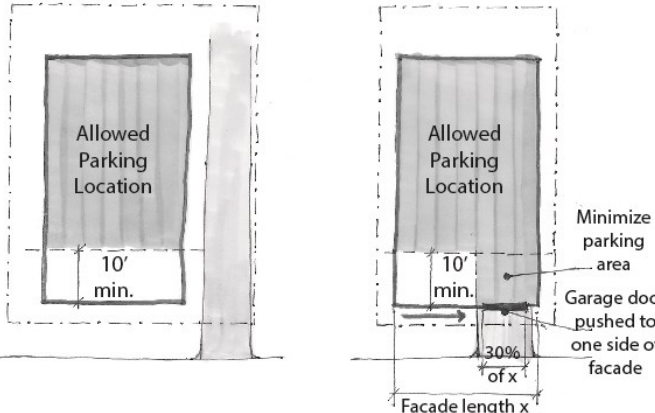
Flat roofs are not allowed on dormers readily visible from the right-of-way
 Roof form can be made subsidiary through scale, placement, height
 Maintain clear primary roof form visible from the public right-of-way

14-140.5 g. Dormers and Subsidiary Roofs NTS



Active Living Space excludes circulation
 Active Living Space includes windows
 at least 50% of x
 Facade width x

14-140.5 h. Front Facade - Active Living Space NTS



Allowed Parking Location
10' min.

Minimize parking area
 Garage door pushed to one side of facade
 30% of x
 Facade length x

h. Normal Lot - Parking Location i. Small Lot - Parking Location

14-140.5 i and j. Parking Location NTS

b. The first floor shall contain active living space, such as a living room or bedroom, with windows for at least 50% of the width of the front façade in total (see Diagram 14-140.5.h). Active living space does not include space intended primarily for circulation or storage;

c. Use of tandem spaces to meet desired parking levels, consistent with the built pattern of the neighborhood, is strongly preferred. Parking shall be located on the side or in the rear of a building, and not within the front 10' depth of the building. The only exception shall be for lots smaller than 2,000 sf., which shall be permitted one garage door on the front façade no wider than 30% of the building width, but no less than 9'. In that case, the garage door shall (1) be of high quality design, consistent with the character and pattern of the rest of the façade, including windows as appropriate; and (2) be located on one side of the façade (see Diagrams 14-140.5.i-j).

2. Within the District, developments are only eligible for the R-6 "Alternative Design Review" as outlined by the following process, which shall supersede the process in the City of Portland Design Manual in cases of conflict:

a. Any use of Alternative Design Review must be approved by a majority of the Historic Preservation Board after a required public hearing;

b. Alternative Design Review does not permit waivers of the additional design requirements in section (d)1 above except as explicitly stated; and

c. Alternative Design Review is a privilege and is granted at the discretion of the Historic Preservation Board. The applicant has the burden of demonstrating that their proposal meets the criteria for Alternative Design Review Design Certificate.

(e) Demolition Review.

1. The purpose of this section is to preserve and protect buildings within the District that contribute significantly to one's understanding and appreciation of the architectural, cultural, and/or social history and development pattern of Munjoy Hill and which are outside any designated historic district ("Preferably Preserved Buildings") encouraging owners of such Preferably Preserved Buildings to explore alternatives to demolition. To achieve this purpose, the issuance of demolition permits for Preferably Preserved Buildings is regulated and may be delayed as provided below.

2. Definitions: For the purposes of this section, the following words and phrases shall have the meanings set forth below:

Demolition: Removal of more than 10% of the front façade of any building, removal of the primary roof line, or removal of 50% or more of the building surface, determined cumulatively over a three year period. In kind replacement or similar replacement (such as new windows or siding that may differ from the original) is not considered demolition.

Preferably Preserved Building: Any building which is determined to be in the public interest to be preserved or rehabilitated rather than demolished based on findings that the building meets the following criteria:

- a. It was constructed prior to 1930;
- b. It is representative of a building type and/or architectural style that contributes to the identifiable historic visual character of Munjoy Hill; and
- c. It retains sufficient integrity of design, materials, condition and craftsmanship that adaptive reuse is a viable option.

Voluntarily Demolished: Any act(s) done by design or intention, which is proposed, intended, or not accidental, that result in demolition. Results of weather events or natural hazards are not considered voluntary demolition. For the purposes of this chapter, the destruction of a preferably preserved building for failure to properly

secure it or by neglect shall be considered voluntary demolition.

3. Exclusions: This section shall not apply to (a) any building either individually designated as a local landmark or located within the boundaries of any designated historic district; (b) accessory structures with a ground coverage of 144 square feet or less; (c) buildings that the Building Authority has determined are dangerous to life or property due to fire, accidental catastrophic damage, or a natural disaster; and (d) buildings that have received a previous determination that they are not Preferably Preserved.

4. Procedure: When the Building Authority receives a demolition permit application for a building within the District, s/he shall, within three business days, notify the Planning Authority in writing that a demolition permit application has been received.

a. Determination of Preferably Preserved.

i. Initial Determination: The Planning Authority shall make an initial written determination as to whether the building that is the subject of the demolition permit application is a Preferably Preserved Building within thirty days of receiving a copy of the application. In making this determination, the Planning Authority may request additional information from the applicant, including photos of the existing building and the surrounding context or other data that s/he determines may be relevant to making an initial determination. If the Planning Authority determines that the building is not Preferably Preserved, this determination shall be transmitted to the Building Authority and the applicant of record. The applicant will not be required to take any further steps and the permit may be reviewed by the Building Authority under the standards in Chapter 6.

ii. If the Planning Authority makes an initial determination that the building is Preferably Preserved, it shall notify the Building Authority and the applicant.

- iii. If the Planning Authority fails to act in accordance with this section or within the prescribed time periods, the Building Authority may grant the demolition permit, provided that the applicant has met all other required by Chapter 6 for a permit, and shall notify the Planning Authority that the permit has been granted.
- iv. Right to Appeal Planning Authority Determination: After the Planning Authority's initial determination that a demolition permit application involves a Preferably Preserved Building, the applicant for a demolition permit may appeal the determination to the Historic Preservation Board with any background information regarding the structure and its context that may be deemed relevant to or appropriate for that review. Such material shall include plans for any replacement use of the parcel that may assist in making a determination. Such appeal must be made within thirty days of the initial determination.
- v. Public Hearing: The Historic Preservation Board shall conduct a hearing on the appeal and the initial determination within forty-five days of the Planning Authority's initial determination. The Board shall give the public notice of the hearing at least fourteen days prior to the hearing. The Board shall also mail a notice of the public hearing to the applicant, the building owner and all property owners within 100 feet of the subject property at least ten days prior to the hearing.
- vi. Final Determination of Preferably Preserved Building: Within twenty-one days following the date of the public hearing, the Historic Preservation Board shall file a final determination with the Building Authority. If the Board determines that the demolition of the building would be detrimental to the architectural, cultural, or social heritage of

Munjoy Hill, it must uphold the initial determination of the Planning Authority of a Preferably Preserved Building. In a case where the initial determination of the Planning Authority is not appealed, that determination shall be considered a final determination upon lapse of the appeal period in 4., above, in which case the Planning Authority shall forward a final determination to the Building Authority.

5. Upon the final determination of Preferably Preserved status, the Building Authority shall not issue a demolition permit for a period of up to 12 months except as specified in b. below. During this period, the applicant and the owner should actively pursue alternatives to demolition of the Preferably Preserved Building. Should the Historic Preservation Board determine that the building is of sufficient historic and/or architectural significance that it should be designated a landmark or otherwise gain historic designation, that process will proceed as it would for any other building.

a. Upon a determination of Preferably Preserved status, the owner shall be responsible for properly securing the building.

b. Notwithstanding the preceding, the Building Authority may issue a demolition permit for all or any portion of subject building at any time upon authorization from the Planning Authority in the event the Historic Preservation Board approves a development for the site as consistent with the Historic Resource Design Standards as applied to a new building prior to the conclusion of the 12-month delay period. Examples of such proposals may include but are not limited to:

- Demolition of a portion of the building while maintaining the principal structure and/or most architecturally significant portion of the building;
- Demolition of the Preferably Preserved Building but with a replacement proposal that is acceptably contextual in the surrounding

neighborhood. In this case, the Board may condition demolition on construction of a project substantively consistent with the approved replacement proposal, and any substantive variation from that plan would be treated as a violation under 7. below; or

- Notwithstanding the initial determination, demonstration by the applicant, substantiated by the written opinion of a licensed engineer with experience in renovation, restoration or rehabilitation and confirmed by the Building Authority, that the structural condition of the building is so severe as to make it infeasible to rehabilitate.

6. Emergency demolition: Nothing in this article shall interfere with the ability of the Building Authority to permit demolition of buildings determined dangerous to life or property due to a condition that pre-dates the effective date of this section or is the result of fire, accidental catastrophic damage, or a natural disaster.

7. Enforcement.

a. The Planning Authority and Building Authority are each specifically authorized to institute any and all actions and proceedings, in law or in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this article, or to prevent a threatened violation thereof.

b. No building permit shall issue for a new building on any premises where a significant building is voluntarily demolished in violation of this ordinance for a period of two years after the date of demolition.

8. A demolition review shall be reported to the City Council annually as a Communication.

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective

on June 5, 2018, when the Moratorium Re: Development and Demolition of Structures in the R-6 Zone on Munjoy Hill and Munjoy Hill Interim Planning Overlay District expire.