

Order 249-18/19

Motion to postpone: 8-0 (Thibodeau absent) on 6/3/2019

Motion to amend Section 14-306 in the paragraph following the paragraph beginning

"Commercial Street Overlay Zone with the following redline changes:

The geographic limits of the CSOZ are defined by parcels of land and piers within the Waterfront Central Zone located on the landward side of a line established one hundred ~~twenty-five~~ ~~fifty~~ (12550) feet southerly of the southerly sideline of Commercial Street and modified as follows: the seaward limit of the CSOZ extends to a line three hundred (3500) feet southerly of from the southerly sideline of Commercial Street in the area between the easterly and westerly sideline of Long Wharf ~~to the westerly sideline of Union Wharf~~. Additionally, all areas subject to this provision are set back landward at least twenty-five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. Where the one hundred twenty-five (125) foot offset intersects with the footprint of a building existing as of May 2019 and such intersection leaves 75% or more of the building within the CSOZ, the entire building shall be considered included in the CSOZ. All offset distances are measured horizontally.

9-0 on 6/17/2019

Motion to amend with the attached changes in the document called "Amendment to Order 249-18/19 for the Planning Board Re: WCZ Language Discrepancy": 9-0 on 6/17/2019

Passage as amended as an Emergency: 9-0 on 6/17/2019

Effective 6/17/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: DIVISION 18, WATERFRONT CENTRAL ZONE**

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

1. That Chapter 14, Division 18 is hereby amended to read as follows:

Sec. 14-305. Purpose.

The Waterfront Central Zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper

in the present and into the future in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure.

Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Commercial Street is recognized as an important economic center for the city and region. Marine compatible uses

are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

Sec. 14-306. Definitions.

For the purposes of the Waterfront Central Zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot: any abutting property under common ownership.

Commercial Street Non-Marine Use Overlay Zone (CSOZ NMUOZ): The Commercial Street non-marine Overlay Zone (CSOZ NMUOZ) is a portion of the Waterfront Central Zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the CSOZ NMUOZ are defined by parcels of land and piers within the Waterfront Central Zone located on the landward side of a line established one hundred ~~fifty-twenty-five~~(150/125) feet ~~southerly~~ of the southerly sideline of Commercial Street and modified as follows: the seaward limit of the CSOZ NMUOZ extends to a line three hundred 500—(300) feet ~~southerly of from~~ the southerly sideline of Commercial Street in the area between the easterly and westerly sideline of Long Wharf ~~to the westerly sideline of Union Wharf~~. Additionally, all areas subject to this provision are set back landward at least twenty-five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. Where the one hundred twenty-five (125) foot offset intersects with the footprint of a building existing as of May 2019 and such intersection leaves 75% or more of the building within the CSOZ, the entire building shall be considered included in the CSOZ. All offset distances are measured horizontally.

All applicants for development within the CSOZ NMUOZ are responsible for demonstrating their location within the CSOZ NMUOZ according to the findings of a site-specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the CSOZ NMUOZ shall be shown on all site plans and subdivision plats for proposed development within the CSOZ NMUOZ. ~~A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in determining whether a proposed development is located within the NMUOZ.~~

On-Site shall mean that portion of any lot included within or directly impacted by a proposed development.

Sec. 14-307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-311, as applicable, the following uses listed under 14-307 (a), (b), (c) and (d) are permitted anywhere in the ~~W~~waterfront ~~C~~central ~~Z~~zone~~+~~. Uses listed under 14-307(e) are only permitted in the CSOZ.

(a) Marine:

1. Marine products wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;

8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-308(b)(3) below);
11. Seafood processing and retailing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of a maximum of fifty (50) linear feet per pier. A non-commercial berth may not displace a commercial berth.

Parking for any non-commercial berthing is subject to the provisions of section 14-311(d)8.

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;

24. Bait sales and processing;
25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol and Coast Guard.

26. Commercial parking for water-dependent uses business owners and employees.

(b) Non-marine commercial and industrial uses: Non-marine uses permitted by this section are subject to the standards listed in section 14-311.

1. Professional, business, government, and general offices, except for offices for health care practitioners or health clinics which are only permitted in the CSOZ;
2. ~~Retail and service establishments, including craft and specialty shops.~~ Convenience stores with gas pumps shall not be permitted under this section. Cabinet and carpentry shops, studios for artists and crafts people;
3. ~~Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing.~~ Intermodal transportation facilities;
4. ~~Banking services without drive-up services~~ Cold storage facilities;
5. ~~Laundry and dry cleaning services~~ Commercial kitchens; and
6. ~~Cabinet and carpentry shops, studios for artists and crafts people;~~ Outside accessory activities.
7. ~~Intermodal transportation facilities;~~
8. ~~Cold storage facilities;~~
9. ~~Museums and art galleries; and~~
10. ~~Outside accessory activities.~~

(c) Public:

1. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

(d) Other:

1. Accessory uses:

- a. Interior 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 14-307(a)(1), (a)(7), (a)(11), or (a)(22); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual accessory 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. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and
- b. Interior meeting or classroom space accessory to uses permitted in section 14-307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b, but shall only be permitted as accessory uses if the total of all support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per

building, whichever is less.

2. ~~Street vendors licensed pursuant to Chapter 19.~~
 3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.
- (e) Uses permitted only within the Commercial Street Overlay Zone. Uses permitted by this section are subject to the standards listed in section 14-311(b).
1. Retail and service establishments, including craft and specialty shops;
 2. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
 3. Banking services without drive-up services;
 4. Museums and art galleries;
 5. Street vendors licensed pursuant to chapter 19.
 6. Offices of health care practitioners or health care clinics.
 7. Personal service establishments.

Sec. 14-308. Conditional use.

The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471 and 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 further provided that in addition to the provisions of section 14-474(c)(2), they shall also meet the applicable Waterfront Central Zone development standards in section 14-311:

- (a) Commercial marine conditional uses:

1. Fish by-products processing, provided that:

- a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;
 - b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available odor control technology) to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the I-M zone; and
 - c. 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. Boat rack storage facilities, provided that:
- a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-311(d)7, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.
 - b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.

~~(b) Residential: The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy upper floor space with a residential use, provided the following conditions are met:~~

- ~~1. The applicant demonstrates a compelling business related need for living on site that cannot otherwise be accomplished;~~
- ~~2. The residential living space shall not exceed one thousand (1,000) square feet, inclusive of all exterior porches and decks;~~
- ~~3. The occupancy of said space shall be limited to the~~

~~primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;~~

~~4. The residential use shall be limited to one unit per wharf;~~

~~5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and~~

~~6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.~~

~~For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine business listed under section 14 307(a), permitted marine uses.~~

Utility substations: Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:

1. The facility is located more than one-hundred (100) feet from the water's edge;

2. The facility occupies no more than fifty (50) square feet of structure above ground;

3. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available

for marine uses, including but not limited to parking, travel ways, and/or storage; and

4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(c) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:

1. 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
2. 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
3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
4. 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
5. 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
6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
7. 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

8. 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.

(d) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

Section 14-309. Prohibited uses.

Uses which are not enumerated in either section 14-307 or 14-308 as permitted or conditional uses are prohibited. Uses enumerated in section 14-307(e) shall be considered prohibited uses outside of the CSOZ. Those uses that are prohibited shall include, without limitation:

- (a) ~~Residential Uses Except as provided in section 14-308, residential uses (not in existence on May 5, 1987);~~
- (b) Hotels, motels, hostels, bed and breakfasts, inns, lodging houses, tourist homes, short-term rentals or boatels;
- (c) Auditoriums, civic centers, convention centers, or other meeting facilities not accessory to an otherwise permitted use;
- (d) Drinking establishments, private clubs, or non-profit social and recreational facilities;
- (e) Ground mounted telecommunication towers, antennas, and/or disks; and
- (f) Drive-up services for any use other than a permitted use listed under 14-307(a) or 14-308(a)(1).
- (g) Major and minor auto service stations.

- (h) Laundry and dry-cleaning services.
- (i) Convenience stores with gas pumps.
- (j) Commercial parking for non-marine uses.

Sec. 14-310. Dimensional requirements.

In addition to the provisions of division 25 of this article, lots in the Waterfront Central Zone shall be subject to the following requirements:

- (a) Minimum lot size: None.
- (b) Minimum frontage along Commercial Street: Seventy-five (75) feet.
- (c) Minimum lot width within the CSOZ ~~NUMUOZ~~: Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the CSOZ ~~NUMUOZ~~.
- (d) Minimum yard dimensions:
 - 1. Front setback: None.
 - 2. Side setback: None
 - 3. Rear setback: None.
 - 4. Setback from pier edge: Notwithstanding the above requirements, a minimum first-floor setback of ten five(105)feet from the edge of any pier, wharf or bulkhead shall be required for any structure, (exclusive of structurally necessary posts supporting upper floors, and deck mounted equipment for loading and unloading vessels. The edge of any pier, wharf or bulkhead shall include any attached apron(s). Floats, rafts, and or barges not structurally integral to the pier, wharf or bulkhead may not be used to satisfy this requirement. Parking for non-marine uses shall not occupy the 10-foot setback.
- (e) Maximum lot coverage: One-hundred (100) percent.

- (f) Maximum building height: Fifty (50) feet. Except as provided in (h) below, a structure in the Waterfront Central Zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.
- (g) Minimum ground floor clearance: Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.
- (h) New non-marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (f) and (g) above, for new non-marine use buildings permitted within the CSOZ ~~NMUOZ~~, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-311. Development standards.

- (a) Standards for non-marine uses located outside of the CSOZ ~~NMUOZ~~: Non-marine uses listed above in Sec. 14-307(b) and 14-308(b) that are located outside of the CSOZ ~~NMUOZ~~ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:
 - 1. 55% marine use required on ground floors: At least 55% of the leasable ground floor area of all ~~of the~~ buildings on the a lot (defined in 14-306 above), ~~when calculated using the aggregate of all the leaseable area of such ground floors,~~ shall be occupied by marine uses, as listed under 14-307(a) or 14-308(a)(1).
 - 2. 55% marine use required for all open areas: After subtracting areas used for common circulation drives (defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the

aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308 (a)1.

3. Ground floor vacancies and change of occupancy offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the CSOZ NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.

- a. *Ground floor vacancy and change of occupant outside of the CSOZ NMUOZ advertised to marine users:* In any lot or portion of lot outside of the CSOZ NMUOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space, along with any associated parking spaces to be vacated, must be made available to new marine occupants.

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a one hundred eighty(180~~60~~) day period in targeted media and by other means reasonably calculated to reach marine users (e.g. local marine trade publications, marine trade websites, waterfront bulletins .) Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the CSOZ NMUOZ.)The property owner may stop advertising sooner than the end of the 180~~60~~ - day period if a lease is signed with a marine user. Should no marine user apply by the end of the 180~~60~~-day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use occupancy maximum of 45% of the ground floor area or open area.

- b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant

(tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

c. ~~Prior to changes of occupancy and/or as part of applications for new development Applicants for site plan review or a change of use permit~~ outside of the ~~CSOZ NMUOZ,~~ the property owner or applicant shall provide ~~the planning authority with~~ proof of compliance with the requirements of this section as a condition of approval.

~~d. The city planning authority shall compile and report inventories of ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.~~

~~e.~~

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding ~~anything contained in 14-311(c) Contract or conditional rezoning, or any other~~ any provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least tenfive (10) feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined

in 14-307(a)) or 14-308(~~ab~~). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) CSOZ ~~NMUOZ~~ standards: Non-marine uses listed under 14-307(b), 14-307(e) and 14-308 located within the CSOZ ~~NMUOZ~~, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. Vessel access: Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).
2. *Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage:* Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right-of-way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. *Investment in marine infrastructure:* All applicants for site plan review or a change of use permit for non-marine development in the CSOZ ~~NMUOZ~~ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed \$250,000. The value of the

investment shall be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the CSOZ ~~NMUOZ~~.

Required investment may occur by one or both the following methods:

- a. *Direct investment in marine infrastructure located on the same lot:* Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.
- b. *Financial contribution:* If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.

(c) No Contract or Conditional Rezoning Permitted

1. Purpose:—This section is intended to accomplish goals from Portland's Plan 2030. Specifically, these changes will:

- a. Prioritize and promote Portland's unique mix of water-dependent, marine-related uses and compatible non-marine uses;

- b. Recognize and reinforce the respective roles of the Eastern, Central and Western Waterfronts; and
- e. Celebrate, promote and protect Portland's lobster and fishing industry as a foundation of the region's economy and a feature of civic pride.

2.1. In light of this purpose and the significance of the central waterfront to the City's future, no contract or conditional rezoning applications may be approved in the Waterfront Central Zone.

~~(b) Contract or conditional rezoning standards: Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:~~

- ~~1. Conditional or contract rezoning located outside of the NMUOZ: The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of section 14-311(a) of this code.~~
- ~~2. Conditional or contract rezoning located within the NMUOZ: Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b)(3) (Investment in marine infrastructure).~~
- ~~3. Residential dwellings are prohibited.~~
- ~~4. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.~~
- ~~5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current~~

~~owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~

~~6. The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public.~~

~~7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).~~

~~8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d)(8).~~

~~9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.~~

(c) Performance standards: All uses in the waterfront central zone shall comply with the following standards. The Operations and Access Management Plan (standard 13) ~~Standards 8, 10, 13, 14, 15, 16, and 17~~ below shall be reviewed by the planning authority:

1. 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.

2. Noise: The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ1).
3. Vibration: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
4. ~~Federal and state environmental regulations: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.~~ Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this code and federal and state environmental statutes and regulations

regarding wastewater discharges.

5. ~~Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this code and federal and state environmental statutes and regulations regarding wastewater discharges.~~ Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
6. ~~Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.~~ Landfill of docking and berthing areas: Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. sections 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.
7. ~~Landfill of docking and berthing areas: Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. sections 480 A through 480 HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the~~

~~fill material and will not permit any fill material to leach into docking areas or navigable waters. Off-street parking and loading: Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.~~

8. ~~Off-street parking and loading: Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones~~

~~The planning authority shall review applications for non marine use parking against the following standards:~~

- ~~a. Applicants for non marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.~~
- ~~b. Outside of the NMUOZ, non marine use parking is subject to the limitations described in 14-311(a) ("55% rule").~~
- ~~c. Non marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.~~
- ~~d. Water dependent use parking spaces shall be located as close as reasonably possible to~~

~~associated vessels and/or ground floor lease areas.~~

9. ~~Shoreland and flood plain management regulations:~~ Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5 of this article. Storage of pollutants and oily wastes: On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
10. ~~Lighting:~~ All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones. Urban design: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
11. ~~Signs:~~ Signs shall be permitted as set forth in division 22 of this article. Pier and wharf expansions: In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.
12. ~~Storage of pollutants and oily wastes:~~ On premises storage of pollutants and oily wastes shall not be permitted for more than forty five (45) days. Public view protection: Any new development in the waterfront central zone shall perform a public view

impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

13. Urban design: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines. Operations and Access Management Plan: Any new development, including changes of use or expansion of uses in the Waterfront Central Zone shall submit a scaled plan and accompanying narrative that demonstrates adequate waterfront access and logistical functional accommodation for water-dependent users. In accordance with Portland's Plan 2030, the plan shall demonstrate consistency with the

hierarchy of waterfront uses pyramid, as further detailed in Sec. 14-305 (Purpose), with non-marine and marine-related uses being subordinate in placement and disposition to water-dependent uses, and designed so as not to impede access to the pier edge and vessel berthing nor interfere with marine operations.

a. Submission Requirements. The plan shall, at a minimum, illustrate the following information:

i. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Sec. 14-306, access-ways, sidewalks, pier edges, floats and docks, showing the entire lot in the context of its respective pier.

ii. Existing and proposed off-street parking, labeled with associated uses.

iii. Facilities for the loading and unloading of goods and materials.

iv. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.

v. Signage showing parking use, wayfinding, and posted operational restrictions.

vi. Plan narrative detailing how the standards listed below are achieved, tenant/landlord communication protocols, private enforcement actions to be employed to ensure plan compliance, and the responsible parties representing the property owner.

b. Review Standards. In addition to the information above, the plan shall demonstrate compliance with the following standards:

- i. Off-street parking is subject to the limitations described in Sec. 14-311(a) ("55% Rule"). Off-street parking spaces intended for use by water-dependent uses shall be sited as close as reasonably possible to associated vessels and/or ground-floor lease area.
- ii. Proposals for new non-marine parking, accessory to an otherwise permitted use in the WCZ, shall submit a parking analysis for all uses on the subject lot, justifying the number of non-marine spaces based upon the proposed use and demonstrating sufficient parking supply for marine uses. If sufficient parking is not available to marine uses, off-street parking for non-marine uses shall not be permitted.
- iii. Off-street parking, loading facilities and access ways designated for water-dependent uses shall be exclusive to such uses, except that, if not being occupied by water-dependent tenants, such parking may be made available to non-marine uses between the hours of 5:00 p.m. and 2:00 a.m. Any such shared parking arrangements shall be documented in the Operations and Access Management narrative described above, and clearly signed on-site.
- iv. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.
- v. Facilities for the loading and unloading of goods shall account for the frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.
- vi. Provisions for the storage and movement of goods and materials shall be designed into all pier edge development. Circulation routes must be maintained or otherwise

provided as an element of all development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

vii. Non-marine uses shall provide a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.

~~14. Pier and wharf expansions: In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.~~

~~15. Compatibility of non marine uses with marine uses: Non marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.~~

~~16. Functional utility of piers and access to the water's edge: All new development, whether for marine or non marine uses, should anticipate current and future functional and operational needs of water dependent pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles, and shall demonstrate adherence to the following provisions:~~

~~a. Provisions for the storage and movement of goods and materials must be designed into~~

~~all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.~~

~~b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.~~

~~c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.~~

~~d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.~~

~~17. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.~~

~~The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland~~

~~peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.~~

...

BE IT FURTHER ORDAINED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, and shall become effective immediately. Moreover, notwithstanding 1 M.R.S. § 302, this amendment shall be applicable to all proceedings, applications, and petitions pending after June 14, 2019.

**AMENDMENT TO ORDER 249-18/19
FOR THE PLANNING BOARD
RE: WCZ LANGUAGE DISCREPANCY**

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

1. That Chapter 14, Division 18 is hereby amended to read as follows:

Sec. 14-305. Purpose.

The Waterfront Central Zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in the present and into the future in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure.

Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are

necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Commercial Street is recognized as an important economic center for the city and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

Sec. 14-306. Definitions.

For the purposes of the Waterfront Central Zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot: any abutting property under common ownership.

Commercial Street Overlay Zone (CSOZ): The Commercial Street Overlay Zone (CSOZ) is a portion of the Waterfront Central Zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the CSOZ are defined by parcels of land and piers within the Waterfront Central Zone located on the landward side of a line established one hundred fifty (150) feet

south of the southerly sideline of Commercial Street and modified as follows: the seaward limit of the CSOZ extends to a line 500 feet south of the southerly sideline of Commercial Street in the area between the easterly sideline of Long Wharf to the westerly sideline of Union Wharf. Additionally, all areas subject to this provision are set back landward at least twenty-five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. All offset distances are measured horizontally.

All applicants for development within the CSOZ are responsible for demonstrating their location within the CSOZ according to the findings of a site-specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the CSOZ shall be shown on all site plans and subdivision plats for proposed development within the CSOZ.

On-Site shall mean that portion of any lot included within or directly impacted by a proposed development.

Sec. 14-307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-311, as applicable, the following uses listed under 14-307 (a), (b), (c) and (d) are permitted anywhere in the Waterfront Central Zone. Uses listed under 14-307(e) are only permitted in the CSOZ.

(a) Marine:

1. Marine products wholesaling distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;

7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-308(b)(3) below);
11. Seafood processing and retailing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of a maximum of fifty (50) linear feet per pier. A non-commercial berth may not displace a commercial berth.

Parking for any non-commercial berthing is subject to the provisions of section 14-311(d)8.

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;

23. Marine research, education, and laboratory facilities;
24. Bait sales and processing;
25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol and Coast Guard.
26. Commercial parking for water-dependent use business owners and employees.

(b) Non-marine commercial and industrial uses: Non-marine uses permitted by this section are subject to the standards listed in section 14-311.

1. Professional, business, government, and general offices, except for offices for health care practitioners or health clinics which are only permitted in the CSOZ;
2. Cabinet and carpentry shops, studios for artists and crafts people;
3. Intermodal transportation facilities;
4. Cold storage facilities;
5. Commercial kitchens; and
6. Outside accessory activities.

(c) Public:

1. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

(d) Other:

1. Accessory uses:
 - a. Interior 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 14-307(a)(1), (a)(7), (a)(11), or (a)(22); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual accessory 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. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and

- b. Interior meeting or classroom space accessory to uses permitted in section 14-307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b, but shall only be permitted as accessory uses if the total of all support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

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

- (e) Uses permitted only within the Commercial Street Overlay Zone. Uses permitted by this section are subject to the standards listed in section 14-311(b).

- 1. Retail and service establishments, including craft and specialty shops;

2. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
3. Banking services without drive-up services;
4. Museums and art galleries;
5. Street vendors licensed pursuant to chapter 19.
6. Offices of health care practitioners or health care clinics.
7. Personal service establishments.

Sec. 14-308. Conditional use.

The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471 and 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 further provided that in addition to the provisions of section 14-474(c)(2), they shall also meet the applicable Waterfront Central Zone development standards in section 14-311:

(a) Commercial marine conditional uses:

1. Fish by-products processing, provided that:
 - a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;
 - b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available odor control technology) to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the I-M zone; and

- c. 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. Boat rack storage facilities, provided that:
 - a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-311(d)7, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.
 - b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.
- (b) Utility substations: Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:
 1. The facility is located more than one-hundred (100) feet from the water's edge;
 2. The facility occupies no more than fifty (50) square feet of structure above ground;
 3. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available for marine uses, including but not limited to parking, travel ways, and/or storage; and
 4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.
- (c) Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
 1. 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

2. 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
3. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
4. 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
5. 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
6. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
7. 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
8. 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.

(d) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

Section 14-309. Prohibited uses.

Uses which are not enumerated in either section 14-307 or 14-308 as permitted or conditional uses are prohibited. Uses enumerated in section 14-307(e) shall be considered prohibited uses outside of the CSOZ. Those uses that are prohibited shall include, without limitation:

- (a) Residential Uses
- (b) Hotels, motels, hostels, bed and breakfasts, inns, lodging houses, tourist homes, short-term rentals or boatels;
- (c) Auditoriums, civic centers, convention centers, or other meeting facilities not accessory to an otherwise permitted use;
- (d) Drinking establishments, private clubs, or non-profit social and recreational facilities;
- (e) Ground mounted telecommunication towers, antennas, and/or disks; and
- (f) Drive-up services for any use other than a permitted use listed under 14-307(a) or 14-308(a)(1).
- (g) Major and minor auto service stations.
- (h) Laundry and dry-cleaning services.
- (i) Convenience stores with gas pumps.
- (j) Commercial parking for non-marine uses.

Sec. 14-310. Dimensional requirements.

In addition to the provisions of division 25 of this article, lots in the Waterfront Central Zone shall be subject to the following requirements:

- (a) Minimum lot size: None.
- (b) Minimum frontage along Commercial Street: Seventy-five (75) feet.
- (c) Minimum lot width within the CSOZ: Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the CSOZ.
- (d) Minimum yard dimensions:
 - 1. Front setback: None.
 - 2. Side setback: None
 - 3. Rear setback: None.
 - 4. Setback from pier edge: Notwithstanding the above requirements, a minimum first-floor setback of ten (10) feet from the edge of any pier, wharf or bulkhead shall be required for any structure, (exclusive of structurally necessary posts supporting upper floors, and deck mounted equipment for loading and unloading vessels. The edge of any pier, wharf or bulkhead shall include any attached apron(s). Floats, rafts, and or barges not structurally integral to the pier, wharf or bulkhead may not be used to satisfy this requirement. Parking for non-marine uses shall not occupy the 10-foot setback.
- (e) Maximum lot coverage: One-hundred (100) percent.
- (f) Maximum building height: Fifty (50) feet. Except as provided in (h) below, a structure in the Waterfront Central Zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.
- (g) Minimum ground floor clearance: Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential.

New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.

- (h) New non-marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (f) and (g) above, for new non-marine use buildings permitted within the CSOZ, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-311. Development standards.

- (a) Standards for non-marine uses located outside of the CSOZ: Non-marine uses listed above in Sec. 14-307(b) and 14-308(b) that are located outside of the CSOZ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. 55% marine use required on ground floors: At least 55% of the leasable ground floor area of all ~~of the~~ buildings on a the lot (defined in 14-306 above), ~~when calculated using the aggregate of all the leaseable area of such ground floors~~, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(a) (1).
2. 55% marine use required for all open areas: After subtracting areas used for common circulation drives (defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308 (a)1.
3. Ground floor vacancies and change of occupancy offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the CSOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.
 - a. *Ground floor vacancy and change of occupant outside of the CSOZ advertised to marine users:* In any lot or portion of lot outside of the

CSOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space, along with any associated parking spaces to be vacated, must be made available to new marine occupants.

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a one hundred eighty(180) day period in targeted media and by other means reasonably calculated to reach marine users (e.g. local marine trade publications, marine trade websites, waterfront bulletins .) Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the CSOZ)The property owner may stop advertising sooner than the end of the 180 -day period if a lease is signed with a marine user. Should no marine user apply by the end of the 180-day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use occupancy maximum of 45% of the ground floor area or open area.

- b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.
- c. Prior to changes of occupancy and/or as part of applications for new development outside of

the CSOZ, the property owner or applicant shall provide of compliance with the requirements of this section as a condition of approval.

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding any provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least ten (10) feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(a). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.
- (b) CSOZ standards: Non-marine uses listed under 14-307(b), 14-307(e) and 14-308 located within the CSOZ, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:
1. Vessel access: Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).
 2. *Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage:* Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right-of-way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. *Investment in marine infrastructure:* All applicants for site plan review or a change of use permit for non-marine development in the CSOZ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed \$250,000. The value of the investment shall be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the CSOZ.

Required investment may occur by one or both the following methods:

- a. *Direct investment in marine infrastructure located on the same lot:* Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.

b. *Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.*

(c) No Contract or Conditional Rezoning Permitted

~~1.~~ ~~Purpose:~~ This section is intended to accomplish goals from Portland's Plan 2030. Specifically, these changes will:

~~a.~~ Prioritize and promote Portland's unique mix of water-dependent, marine-related uses and compatible non-marine uses;

~~b.~~ Recognize and reinforce the respective roles of the Eastern, Central and Western Waterfronts; and

~~e.~~ Celebrate, promote and protect Portland's lobster and fishing industry as a foundation of the region's economy and a feature of civic pride.

~~2.~~ 1. In light of this purpose and the significance of the central waterfront to the City's future, no contract or conditional rezoning applications may be approved in the Waterfront Central Zone.

(d) Performance standards: All uses in the waterfront central zone shall comply with the following standards. The Operations and Access Management Plan (standard 13) shall be reviewed by the planning authority:

1. 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.

2. Noise: The level of sound, measured by a sound

level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ1).

3. Vibration: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
4. Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this code and federal and state environmental statutes and regulations regarding wastewater discharges.
5. Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
6. Landfill of docking and berthing areas: Landfill of docking and berthing areas shall be governed by 38

M.R.S.A. sections 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

7. Off-street parking and loading: Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.
8. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones
9. Storage of pollutants and oily wastes: On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
10. Urban design: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
11. Pier and wharf expansions: In addition to

meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

12. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

13. Operations and Access Management Plan: Any new development, including changes of use or expansion of uses in the Waterfront Central Zone shall submit a scaled plan and accompanying narrative that demonstrates ~~adequate~~ waterfront access and ~~functional logistical~~ accommodation for water-dependent uses. In accordance with Portland's Plan 2030, the plan shall demonstrate consistency with the hierarchy of waterfront uses ~~pyramid~~, as further detailed in Sec. 14-305 (Purpose), with

non-marine and marine-related uses being subordinate in placement and disposition to water-dependent uses, and designed so as not to impede access to the pier edge and vessel berthing nor interfere with marine operations.

a. Submission Requirements. The plan shall, at a minimum, illustrate the following information:

- i. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Sec. 14-306, access-ways, sidewalks, pier edges, floats and docks, showing the entire lot in the context of its respective pier.
- ii. Existing and Proposed off-street parking, labeled with associated uses.
- iii. Facilities for the loading and unloading of goods and materials.
- iv. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.
- v. Signage showing parking use, wayfinding, and posted operational restrictions.
- vi. Plan narrative detailing how the standards listed below are achieved, tenant/landlord communication protocols, private enforcement actions to be employed to ensure plan compliance, and the responsible parties representing the property owner.

b. Review Standards. In addition to the information above, the plan shall demonstrate compliance with the following standards:

- i. Off-street parking is subject to the limitations described in Sec. 14-311(a) ("55% Rule"). Off-street parking

spaces intended for use by water-dependent uses shall be sited as close as reasonably possible to associated vessels and/or ground-floor lease area.

- ii. Proposals for new non-marine parking, accessory to an otherwise permitted use in the WCZ, shall submit a parking analysis for all uses on the subject lot, justifying the number of non-marine spaces based upon the proposed use and demonstrating sufficient parking supply for marine uses. If sufficient parking is not available to marine uses, off-street parking for non-marine uses shall not be permitted.
- iii. Off-street parking, loading facilities and access ways designated for water-dependent uses shall be exclusive to such uses, except that, if not being occupied by water-dependent tenants, such parking may be made available to non-marine uses between the hours of 5:00 p.m. and 2:00 a.m. Any such shared parking arrangements shall be documented in the Operations and Access Management narrative described above, and clearly signed on-site.
- iv. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.
- v. Facilities for the loading and unloading of goods shall account for the frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.
- vi. Provisions for the storage and movement of goods and materials shall be designed into all pier edge development. Circulation routes must be maintained or otherwise provided as an element of all development. The siting, design, and circulation of non-marine uses, particularly those

allowed on first floors, shall accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

- vii. Non-marine uses shall provide a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.

...

BE IT FURTHER ORDAINED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, ~~in order to make it and shall become effective immediately. Moreover, notwithstanding 1 M.R.S. § 302, this amendment shall be applicable to all proceedings, applications, and petitions pending after June 14, 2019. effective on June 15, 2019, upon the expiration of the Moratorium ON Non-Marine Use Expansion in the Waterfront Central Zone, approved as Order 119-18/19 on December 17, 2018.~~