

# Memorandum

## Planning and Urban Development Department

### Planning Division



**To:** Sean Dundon, Chair, and Members of the Portland Planning Board  
**From:** Matthew Grooms, Planner  
**Date:** October 4, 2018  
**Re:** IR-1 and IR-2 Text Amendment – Accessory Dwelling Units  
**Meeting Date:** October 9, 2018

#### I. INTRODUCTION

The City of Portland is proposing a minor text amendment to two of the City's Island Residential zones, the IR-1 and IR-2 zones, to remove and/or edit conditional use requirements that properties with an accessory dwelling unit (ADU) be owner occupied and be limited to a minimum tenancy period of one (1) year. This proposal, as first suggested by the group Homestart, a 501 (c) 3 non-profit community-based committee of Peaks Island residents, is intended to facilitate the creation and maintenance of affordable housing opportunities within Portland's island communities.

Notice of this workshop appeared in the Portland Press Herald on September 28<sup>th</sup> and 29<sup>th</sup>, 2018, and notices were distributed electronically to the interested citizen list. At the time of the writing of this memo, no public comments were received.

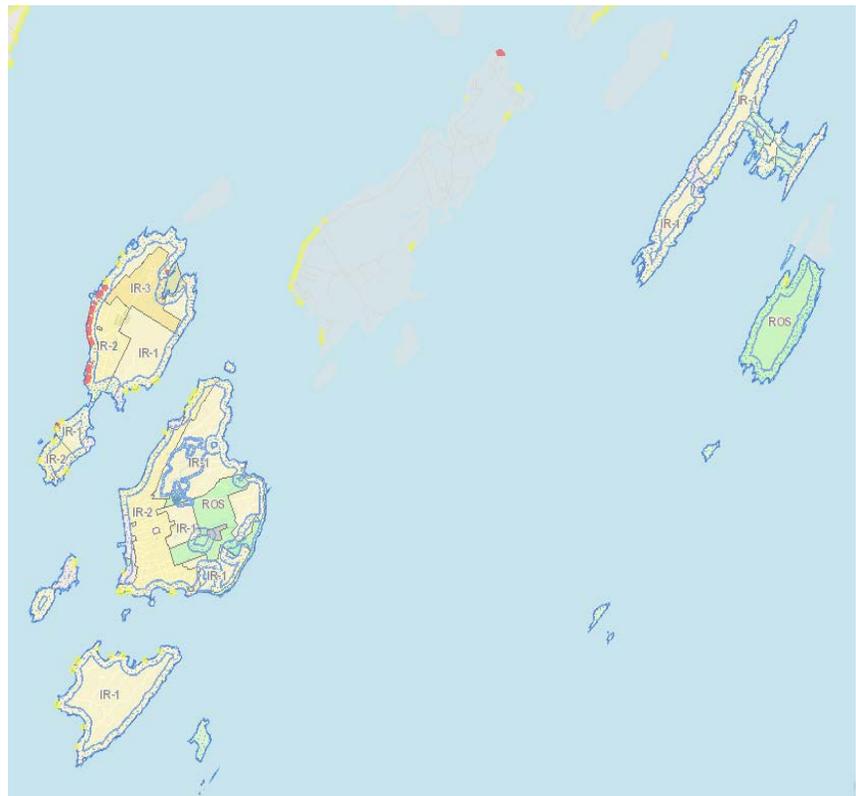


Figure 1: Locations of the IR-1 and IR-2 Zones, to be impacts by the proposed amendments

#### II. BACKGROUND

For the purposes of this discussion, an accessory dwelling unit (ADU) is a dwelling unit that exists as part of a single-family or two-family dwelling or on the same lot as the principal dwelling, that is subordinate in size and designed to maintain the appearance of either a single-family or two-family dwelling. The unit includes its own independent living facilities, including provision for sleeping, cooking and sanitation and is designed for residential occupancy by one or more people, independent of the primary dwelling unit(s).

The City had been contacted by HomeStart, a 501 (c) 3 nonprofit community-based committee of Peaks Island residents whose mission is “to work to create and maintain affordable housing opportunities for the residents of Peaks Island, Maine”, requesting changes to the ADU ordinance as related to Peaks Island. To support their goal, HomeStart has proposed four strategies for consideration:

- Improve the current provisions for Accessory Dwelling Units (ADU’s)
- Allow the space in older buildings that have been used residentially to be reconfigured to create additional dwelling units but only if at least half of the units are affordable to year-round residents.
- Reduce the side setback requirements and increase the coverage limits for building on smaller “lots of record” if the units will be affordable to year-round residents.
- Reduce the off-street parking required for affordable residential units

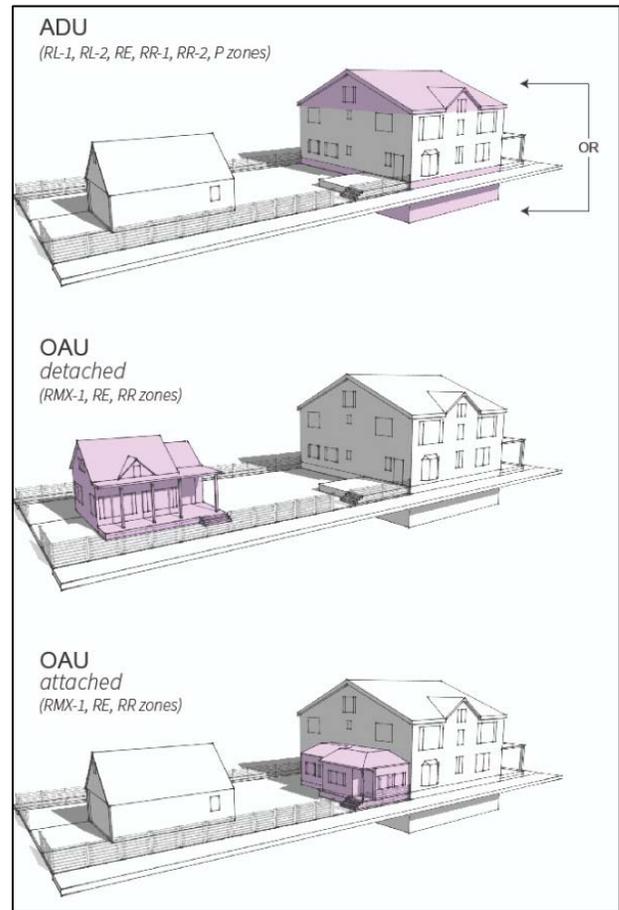


Figure 2: Example ADU Configurations. Note: The IR-1 and IR-2 zones only permit internal ADUs.

Source: City of Boulder, CO

In March of 2018, city staff with the Division of Housing and Community Development, on behalf of the group HomeStart, presented a proposed text amendment to the City’s Housing Committee that addressed each of the aforementioned concepts. The proposed amendment, which can be viewed in Attachment 1, included; reducing the square footage of accessory dwelling units from four hundred (400) to three hundred (300) square feet; removing the requirement that either the accessory or principal dwelling unit be owner-occupied; allowing the accessory unit to be located in an unattached accessory building; requiring the maximum rent to be affordable to households earning up to 115% area median income (AMI); and deed restricting the accessory unit for a term of twenty years through an Affordable Housing Agreement (AHA). These proposed changes are all worthy of further consideration, and have influenced the City’s Housing Committee to direct staff in developing a new, city-wide accessory dwelling unit (ADU) ordinance that would decrease the number of obstacles faced by property owners in developing ADUs and expand opportunities for their development. City-wide changes are currently under development and will be submitted as one of the limited policy changes proposed as part of Phase I of ReCode Portland. A web page with information about this subject is available at: <https://www.recodeportland.me/accessory-dwelling-units/>

In the meantime, in order to take advantage of short-term opportunities, HomeStart has requested that staff proceed with a smaller subset of amendments, which if approved, would go into effect prior to

consideration of the city-wide ADU ordinance. The City has agreed to sponsor these amendments as a means of increasing affordable housing supply within the City, with the understanding that these amendments would later be incorporated into the city-wide ADU ordinance if adopted.

### III. PROPOSED TEXT AMENDMENTS

#### A. Existing Zoning – Purpose Statements

##### 1. Division 7.1 IR-1 Island Residential Zone

The purpose of the IR-1 Island Residential zone is to provide for low intensity residential, recreation, and rural uses in the less developed areas of the islands, in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low intensity development in areas lacking adequate public facilities and services.

##### 2. Division 7.2 IR-2 Island Residential Zone

The purpose of the IR-2 Island Residential zone is to protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services available. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the areas are adequate for subsurface water disposal or whether public sewers are available.

#### B. Proposed Amendments

##### 1. Section 14-145.2(a)1. – IR-1 Text Amendment

1. *Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:*
  - a. *The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;*
  - b. *Lot area shall be seventy thousand (70,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;*
  - c. *There shall be no open outside stairways or fire escapes above the ground floor;*
  - d. *Any additions or exterior alterations such as façade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including façade materials, building form, roof pitch and exterior doors shall have a single-family appearance;*
  - e. *A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;*
  - f. ~~*Either the accessory unit or the principal dwelling unit shall be occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;*~~

- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations;
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
  - i. Shall remain under common ownership with the primary unit of the lot;
  - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit of the site;
  - iii. Shall be rented to households earning up to 100% of AMI and be subject to income verification as further outlined in implementing regulations;
  - iv. Shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines
  - v. Shall be rented for periods of no less than six months on an annual basis and may not be used for short-term, seasonal or weekly rentals; and
  - vi. Shall be built within the principal building or as an attachment in accordance with subsection (d).

2. Section 14-145.9(a)1. – IR-2 Text Amendment

- 1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:
  - a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;
  - b. Lot area shall be thirty thousand (30,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
  - c. There shall be no open outside stairways or fire escapes above the ground floor;
  - d. Any additions or exterior alterations such as façade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including façade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
  - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
  - f. Both ~~Either~~ the accessory unit and ~~or~~ the principal dwelling unit shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines. ~~occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;~~
  - g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations;
  - h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
    - i. Shall remain under common ownership with the primary unit of the lot;
    - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit of the site;

- iii. Shall be rented to households earning up to 100% of AMI and be subject to income verification as further outlined in implementing regulations;*
- iv. Shall be rented for periods of no less than six months ~~on an annual basis~~ and may not be used for short-term, seasonal or weekly rentals; and*
- v. Shall be built within the principal building or as an attachment in accordance with subsection (d).*

### 3. Discussion of Proposed Text Amendments

As stated in the introduction, the goal of HomeStart with their initial proposal was to revamp the Island ADU requirements to facilitate the creation and maintenance of new affordable housing that would be suitable to year-round residents. To achieve this, they advocated for removal of the requirement that either the principal or accessory unit be ‘owner-occupied’, which would enable both units to be ‘rentable’, providing additional flexibility for both providers of affordable housing and for potential tenants.

In place of requiring that one of the units be owner-occupied, the staff are instead suggesting that both the principal and accessory units be the occupant’s primary residence. To further this aim, the existing seasonal and weekly rentals prohibition for the accessory unit are being expanded to include all short-term rentals with a tenancy period of less than six months.

The existing ordinances require that ADUs be rented on an annual basis for full-time residents. With this proposed amendment, that period of time would be reduced to six months, in order to provide both property owner and tenant options for flexibility. HomeStart has informally expressed concern about this change, indicating that such a reduction would benefit landlords though not tenants looking for stable, year-round housing. Staff does not feel strongly that this change should be adopted, but is proposing it based on the idea that many permanent residents seek lease terms of less than a year, and that terms as long as six months are unlikely to be attractive to seasonal renters. At the workshop on October 9<sup>th</sup>, the staff will be seeking Board feedback on this particular suggestion.

Aside from changes to the IR-1 and IR-2 zones, the staff may also pursue a change to Division 20, the City’s Off-Street Parking Requirements, which would specifically articulate that no off-street parking is required for an accessory dwelling unit. This change has been suggested by HomeStart, and has further been discussed in relation to a city-wide ADU ordinance.

### IV. COMPREHENSIVE PLAN

The City’s ordinance states that any rezoning must be consistent with the City’s Comprehensive Plan. In forming its recommendation to the City Council, the Board will need to make a finding on whether the proposal is consistent with the Comprehensive Plan. As seen below, the staff have identified below a number of the specific Comprehensive Plan goals and policies which are suggested as being relevant to the proposed text amendments to the IR-1 and IR-2 zones.

The central vision of Portland’s Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community’s core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. The vision conveys the message of the City’s need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City’s goals for job growth

and transforming Portland through orderly growth and development be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.



As currently written, the IR-1 and IR-2 zones are specifically concerned with maintaining and enhancing the uniquely rural and rustic appearance of housing in Portland’s island communities. At the same time, the state’s housing goal is “to encourage and promote affordable decent housing for all Maine citizens”, which would include full-time residents within Maine’s island communities. The proposed text amendment, intended to relax restrictions on ADUs, is an ideal solution to these disparate challenges and achieves multiple aims of the City’s Comprehensive Plan, as seen below.

1. Build on Existing Programs
  - a. Reinforce existing housing tools, policies, and programs while continuing to explore emerging best practices
  - b. Continue to implement best practices in workforce and affordable housing development such as the Housing Trust Fund, inclusionary zoning and other tools.
  
2. Remove Housing Barriers
  - a. Evaluate whether current zoning allows for new development consistent with historic patterns of form, density and/or use, as well as whether it allows for priority growth areas
  - b. Assess the impact of current parking requirements on housing development, and evaluate the suitability of fee-in-lieu programs for some neighborhoods
  - c. Allow for a range of housing models in City codes, whether small units, co-housing, or others that may suit changing needs and demographics
  
3. Promote Sustainability
  - a. Encourage rehabilitation of existing historic buildings and materials
  
4. Support Age-Friendly Housing Options
  - a. Support programs and tools that facilitate aging safely in place
  - b. Create, promote, and facilitate safe, affordable, and practical housing solutions that will meet the evolving needs of Portland residents as they age
  
5. Adapt Affordable Housing

- a. Pursue new opportunities for increased energy efficiency, increased densities, mixed incomes, and greater connectivity to surrounding neighborhoods
6. Support Island Communities
- a. Support land use tools that encourage year-round residences in existing and new housing on Portland's islands, while maintaining their unique character and environment.

Accessory dwelling units at present, are permitted as a conditional use within almost all of Portland's residential zones. Recognized as a means of increasing the affordable housing supply, residential density, and opportunities for multi-generational families to occupy one property, ADU ordinances have been adopted in cities nation-wide and are a prominent, non-subsidy based affordable housing tool. This text amendment builds upon that framework in a manner that is tailored to Portland's island communities. Whereas the existing language focuses heavily on preservation of the unique and historic housing stock and development patterns, the proposed amendments are for the benefit of year-round island residents who seek stable and affordable housing that is currently limited by standards of the existing ordinance, namely the requirement that either the principal or accessory unit be owner-occupied.

#### V. PUBLIC COMMENT

Staff has received no public comment on the proposed text amendments to date.

#### VI. NEXT STPES

The Planning Board will hold a workshop on this proposal on Tuesday October 9, 2018, with a follow-up public hearing tentatively scheduled for Tuesday, October 23, 2018. The staff are seeking input from members of the Board and public on these proposed changes, and based upon those suggestions, will prepare a final draft of the ordinances and recommendation to the Planning Board.

#### VII. ATTACHMENTS

1. Housing Committee Report – March 2018
2. Proposed Text Amendments to Portland Land Use Code, Div. 7.1 IR-1 Island Residential Zone
3. Proposed Text Amendments to Portland Land Use Code, Div. 7.2 IR-2 Island Residential Zone



**TO:** Councilor Duson, Chair  
Members of the Housing Committee

**FROM:** Victoria Volent, Housing Program Manager

**DATED:** March 19, 2018

**SUBJECT:** HomeStart Proposed Text Amendments

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### Introduction

HomeStart is a 501(c) 3 nonprofit community-based committee of Peaks Island residents whose mission is “to work to create and maintain affordable housing opportunities for the residents of Peaks Island, Maine”. To support their goal, HomeStart has proposed four strategies for consideration:

- Improve the current provisions for Accessory Dwelling Units (ADU’s)
- Allow the space in older buildings that have been used residentially to be reconfigured to create additional dwelling units but only if at least half of the units are affordable to year round residents
- Reduce the side setback requirements and increase the coverage limits for building on smaller “lots of record” if the units will be affordable to year-round residents
- Reduce the off-street parking required for affordable residential units

Homestart has suggested these strategies to build on recommendations they made in 2015. Their 2015 suggestions informed the package of “encourage and ensure” zoning changes made at that time, which included the inclusionary zoning ordinance, but also some changes to relax regulations of affordable ADU’s on Peaks Island and the R-5 zone on the mainland.

### Division 7.1 IR-1 Island Residential Zone

The purpose of the IR-1 island residential zone is to provide for low intensity residential, recreational, and rural uses in the less developed areas of the islands, in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low intensity development in areas lacking adequate public facilities and services. Division 7.1 IR – 1 includes sections 14-145.1 through 14-145.6.

## Division 7.2 IR-2 Island Residential Zone

The purpose of the IR-2 island residential zone is to protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services available. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the area are adequate for subsurface water disposal or whether public sewers are available. Division 7.2 IR-2 includes sections 14-145.7 through 14-145.22

### Accessory Dwelling Units

The proposed changes to Division 7.1 IR-1 section 14-145.3 (a) 1 include; reducing the square footage of accessory dwelling units from four hundred (400) to three hundred (300) square feet; removing the requirement that either the accessory unit or the principal dwelling unit shall be occupied by the owner of the lot; allowing the accessory unit to be located in an unattached accessory building; requiring the maximum rent to be affordable to households earning up to 115% AMI; and deed restricting the accessory unit for a term of twenty years through an Affordable Housing Agreement.

### Reconfiguration of large, older residential buildings

The changes to Division 7.1 IR-1 section 14-145.5 (a), and Division 7.2 IR-2 section 14-145-8 are proposed amendments to allow the reconfiguration of large (1,200 square feet of gross floor area), older (pre 1985) residential buildings to include one or more additional dwelling units in the principal building and/or in an existing accessory building. The proposed amendments also provide for; minimum lot, and building standards; maximum rent and sale prices; twenty year deed restrictions; and a provision that at least fifty percent of the dwelling units in the reconfigured building(s) be occupied by a household meeting the income restrictions outlined in the City's Inclusionary Zoning Ordinance.

The amendment to section 14-145.5 (a) Minimum Lot Size would also allow the reconfiguration of large, older residential buildings on lots served by both on-site water and sewage disposal. Under these conditions, the minimum lot size requirement would be 20,000 square feet.

## Division 25. Space and Bulk Regulations and Exceptions

The requirements of this article are subject to the Space and Bulk Regulations and Exceptions of Division 25. Division 25 includes section 14-433 Lots of Record and Accessory Dwelling Structure Setbacks for Existing Buildings.

### Development of "lots of record"

The proposed change to section 14-433 is the inclusion of an amendment designed to enhance feasible development of small, vacant lots if they meet specific requirements. The amendments only pertain to lots of record as of July 15, 1985 located in the IR-1 or IR-2 Zone on Peaks Island intended for use as a single family residence. The dwelling units would be occupied by households earning up 120% of the Area Median Income (AMI) and deed restricted for twenty years through an Affordable Housing Agreement.

Zone	Min. lot size	Street Frontage	Set-backs	Max. lot coverage
IR-1	40,000 SF with public water; 60,000 SF without public water	n/a if meets applicable yard and min. lot dimensions	30' - front 30' - rear 20' - side	20%
IR-2	20,000 SF with both off-site water and sewage	n/a if meets applicable yard and min. lot dimensions	25' – front 25' – rear 20' - side	20%
Proposed IR-1 and IR-2 amendments	5,000 SF if served by both public sewer and water; 10,000 SF if served by on-site sewage system and public water	45'	10' – rear 10' - side	Less than 40%; unless subject to shoreland zoning then 20%

Section 14-433 is further proposed for amendment by adding a new subsection that allows two adjacent lots of records as of July 15, 1985 located in the IR-1 or IR-2 Zone of Peaks Island to be used as a two-family rental or homeownership dwelling unit. At least one unit would be occupied by a household earning up to 120% of the Area Median Income (AMI) and deed restricted for twenty years.

Zone	Min. lot size	Street Frontage	Set-backs	Max. lot coverage
Proposed IR-1 and IR-2 amendment	10,000 SF with both public sewer and water; 20,000 SF is served by on-site sewage and public water	95'	15' – rear 15' - side	Less than 40%; unless subject to shoreland zoning then 20%

#### Off Street Parking Requirements

The proposed amendment to section 14-332.1 would add a subsection to reduce the parking requirement for affordable, deed restricted housing units in the IR-1, and IR-2 zone from two spaces per unit to one space per unit. The proposed amendment to Section 14.332.1 (f) would allow one parking space for each dwelling unit that is deed restricted as affordable housing.

#### Conclusion

Portland’s Comprehensive Plan, *Portland’s Plan 2030*, acknowledges the City of Portland is actively engaged in efforts to encourage housing preservation and creation, for all income levels and household sizes, through policy initiatives and public/ nonprofit partnerships. The proposals presented by HomeStart in their report *Suggested Amendments to the Portland Zoning Ordinance to Facilitate the Development of More Affordable, Year-Round Housing on Peaks Island* is in keeping with the Comprehensive Plan’s directive to create housing for all income levels through policy initiatives. Further, within the Housing Chapter of the Comprehensive Plan is the recommendation to support island communities by “support(ing) land use tools that encourage year-round residences in existing and new housing on Portland’s islands, while maintaining their unique character and environment”.

Attachments:

HomeStart Suggested Amendments to the Portland Zoning Ordinance (revised Oct 15, 2017)

HomeStart Overview of Draft Amendments (June 28, 2017)

HomeStart Rationale for HomeStart's Suggested Zoning Ordinance Amendments (Aug 29, 2017)

## Suggested Amendments to the Portland Zoning Ordinance to Facilitate the Development of More Affordable, Year-Round Housing on Peaks Island

HomeStart has identified four concepts for possible amendments to the City of Portland’s Zoning Ordinance to facilitate the development of year-round housing that is more affordable. The objective in proposing these amendments is to create opportunities for the creation of affordable, year-round housing by removing obstacles in the current zoning requirements that regulate residential uses on Peaks Island. The four concepts are:

- Reduce the off-street parking required for affordable residential units
- Improve the existing Accessory Dwelling Unit ordinance based on community feedback since its enactment 3 years ago
- Based on community requests to make better use of existing housing , allow larger homes built before 1985 to be reconfigured to create additional dwelling units but only if at least half of the units are affordable to year-round residents
- Reduce the side setback requirements and increase the coverage limits for single family homes on smaller “lots of record” if the units will be affordable to year-round residents

In addition, per community request, wording has been added to all proposed amendments that specifies that no new affordable housing may be used for seasonal, weekly or daily rentals.

The HomeStart Zoning Advisory Committee (ZAC) developed draft amendments to revise the Zoning Ordinance to address these four concepts. The Board of HomeStart reviewed the draft amendments and has voted to recommend them to the Peaks Island Council with some minor revisions.

### **Draft Zoning Ordinance Amendments**

Here are HomeStart’s proposed ordinance amendments to address the four concepts. Since these are changes to the existing ordinance, the proposed revisions are shown in underline and strike through format. When text is proposed to be added to the ordinance, it is underlined. And when existing text is proposed to be deleted, it is struck through.

**1. Accessory Dwelling Unit (ADUs)** – The following amendments are designed to make the ADU provisions that were adopted a few years ago more useable:

#### **I-R1 Zone Amendment:**

Amend Sec. 14-145.3(a)1. to read:

1. Accessory dwelling unit within, ~~except as provided in g.v. below~~, and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling., provided that:

- a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of ~~three~~ four hundred (3400) square feet;
- b. Lot area shall be seventy thousand (70,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
- c. There shall be no open outside stairways or fire escapes above the ground floor;
- d. Any additions or exterior alterations such as facade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

~~f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;~~

~~fg.~~ All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and

~~gh.~~ For Properties containing accessory units ~~created~~ on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015 shall comply with the following additional requirements:

- i. The primary unit and the accessory unit shall ~~Shall~~ remain under common ownership ~~with the primary unit on the lot;~~
- ii. Neither unit shall ~~Shall not~~ be sold as a condominium units or otherwise separated from the ownership of the entire property ~~pre-existing unit on the site;~~
- iii. One of the units shall be occupied by a household ~~Shall be rented households~~ earning up to 100% of AMI and be subject to income verification as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing as further outlined in implementing regulations;
- iv. The accessory unit shall be occupied ~~Shall be rented as the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households on an annual basis;~~
- v. The accessory unit shall ~~Shall~~ be built within the principal building, ~~or~~ as an attachment to the principal building, or in an accessory building in accordance with subsection (d);
- vi. The maximum rent for the accessory unit shall not exceed one hundred fifteen percent (115%) of the Affordable Monthly Rent determined in accordance with the City's Inclusionary Zoning Implementation

Guidelines for Developers of Rental Housing:

vii. The accessory unit shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than twenty (20) years, and

viii. The owner of the property shall provide the occupant of the affordable unit with a written description of the occupancy requirements for the unit.

**I-R2 Zone Amendment:**

Amend Sec. 14-145.9(a)1. to read:

1. Accessory dwelling unit within, ~~except as provided in g.v. below,~~ and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling., provided that:

a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of ~~three~~ four hundred (~~3400~~) square feet;

b. Lot area shall be thirty thousand (30,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

c. There shall be no open outside stairways or fire escapes above the ground floor;

d. Any additions or exterior alterations such as facade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

~~f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;~~

~~fg.~~ All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and

~~gh.~~ For Properties containing accessory units ~~created~~ on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015 shall comply with the following additional requirements:

i. ~~The primary unit and the accessory unit shall~~ Shall remain under common ownership ~~with the primary unit on the lot;~~

ii. ~~Neither unit shall~~ Shall not be sold as a condominium units or otherwise separated from the ownership of the entire property ~~pre-existing unit on the site;~~

iii. ~~One of the units shall be occupied by a household~~ Shall be rented ~~households~~ earning up to 100% of AMI and be subject to income verification as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing as further outlined in

implementing regulations;

iv. The accessory unit shall be occupied Shall be rented as the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households on an annual basis;

v. The accessory unit shall Shall be built within the principal building, or as an attachment to the principal building, or in an accessory building in accordance with subsection (d);

vi. The maximum rent for the accessory unit shall not exceed one hundred fifteen percent (115%) of the Affordable Monthly Rent determined in accordance with the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing;

vii. The accessory unit shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than twenty (20) years, and

viii. The owner of the property shall provide the occupant of the affordable unit with a written description of the occupancy requirements for the unit.

**2. Reconfiguration of large, older residential buildings** – The following amendments allow the existing floor area in large, older buildings in both the I-R1 and I-R2 Districts to be reconfigured to create more dwelling units as long as they meet certain requirements. The provisions for the two districts are slightly different recognizing the difference in the lot sizes in the two districts:

### **I-R1 Zone Amendment:**

Amend Sec. 14-145.5(a) by adding a new subsection 9. which shall read:

9. Notwithstanding the provisions Sec. 14.145-2 Permitted use and subsection 1 of Sec. 14-145.5(a)1, a property on Peaks Island existing as of April 1, 2017 that meets the following requirements may be reconfigured to create one or more additional dwelling units in the principal building and/or in an existing accessory building:

a. The lot was developed and used as a residential property prior to April 1, 1985;

b. The principal building has at least one thousand two hundred (1,200) square feet of gross floor area;

c. The lot has a minimum of six thousand five hundred (6,500) square feet of area if the lot is served by the public water system and/or the public sewer system and twenty thousand (20,000) square feet of area if the lot is served by both on-site water supply and sewage disposal;

d. The lot is or will be served by the public sewer systems or an on-site subsurface sewage disposal system meeting the requirements of the Maine Subsurface Wastewater Disposal Rules for the proposed use;

e. The property does not discharge any stormwater to the sanitary sewer system or any such discharge will be corrected as part of the reconfiguration of the building;

f. The reconfiguration of the property to create additional dwelling unit(s) shall not

expand the exterior building envelop of the existing structures except as follows:

1)Minor additions with not more than ten percent (10%) of the existing floor area of the building are permitted to accommodate additional access to the building and/or to comply with local, state and/or federal safety and accessibility requirements, and

2)The installation of windows and dormers is permitted provided that the alterations maintain the character of the building;

g. The reconfiguration shall maintain the character of the structure and except as provided for in f. shall not significantly alter the exterior appearance of the structure;

h. The dwelling units in the reconfigured building(s) may be rented or may be sold as condominium units or otherwise separated from the ownership of the entire property;

i. At least fifty percent (50%) of the dwelling units in the reconfigured building(s) shall be occupied by a household meeting the income requirements set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing if the unit(s) will be rented or the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing if the unit(s) will be sold;

j.The affordability requirement of i. shall apply for a minimum of twenty (20) years and shall be subject to verification as set forth in the City's guidelines;

k.All affordable units in the reconfigured building(s) shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households

l.The maximum rent for the units occupied by income qualified households shall not exceed one hundred fifteen percent (115%) of the Affordable Monthly Rent determined in accordance with the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing;

m.The maximum sales price for units occupied by income qualified households shall be based on the City's Inclusionary Zoning Implementation Guidelines for Developers of Ownership Housing; and

n.If the affordable unit(s) is rented, the owner of the property shall provide the occupant of the affordable unit with a written description of the occupancy requirements for the unit.

### **I-R2 Zone Amendment:**

Amend Sec. 14-145.11(a) by adding a new subsection 8. which shall read:

8.Notwithstanding the provisions Sec. 14.145-8 Permitted use and subsection 1 of Sec. 14-145.11(a)1, a property on Peaks Island existing as of April 1, 2017 that meets the following requirements may be reconfigured to create one or more additional dwelling units in the principal building and/or in an existing accessory building:

a.The lot was developed and used as a residential property prior to April 1, 1985;

b.The principal building has at least one thousand two hundred (1,200) square feet of gross floor area;

c.The lot has a minimum of six thousand five hundred (6,500) square feet of area;

d. The lot is or will be served by the public sewer systems or an on-site subsurface

sewage disposal system meeting the requirements of the Maine Subsurface Wastewater Disposal Rules for the proposed use;

e. The property does not discharge any stormwater to the sanitary sewer system or any such discharge will be corrected as part of the reconfiguration of the building;

f. The reconfiguration of the property to create additional dwelling units shall not expand the exterior building envelop of the existing structures except as follows:

1) Minor additions with not more than ten percent (10%) of the existing floor area of the building are permitted to accommodate additional access to the building and/or to comply with local, state and/or federal safety and accessibility requirements, and

2) The installation of windows and dormers is permitted provided that the alterations maintain the character of the building;

g. The reconfiguration shall maintain the character of the structure and except as provided for in f. shall not significantly alter the exterior appearance of the structure;

h. The dwelling units in the reconfigured building(s) may be rented or may be sold as condominium units or otherwise separated from the ownership of the entire property;

i. At least fifty percent (50%) of the dwelling units in the reconfigured building(s) shall be occupied by a household meeting the income requirements set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing if the unit(s) will be rented or the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing if the unit(s) will be sold;

j. The affordability requirement of i. shall apply for a minimum of twenty (20) years and shall be subject to verification as set forth in the City's guidelines;

k. All affordable units in the reconfigured building(s) shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households;

l. The maximum rent for the units occupied by income qualified households shall not exceed one hundred fifteen percent (115%) of the Affordable Monthly Rent determined in accordance with the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing;

m. The maximum sales price for units occupied by income qualified households shall be based on the City's Inclusionary Zoning Implementation Guidelines for Developers of Ownership Housing; and

n. If the affordable unit(s) is rented, the owner of the property shall provide the occupant of the affordable unit with a written description of the occupancy requirements for the unit.

**3. Development of "lots of record" – The following amendments are designed to make it more feasible to develop small vacant lots if they meet certain requirements:**

Amend Section 14-433 by adding a new subsection 4. to read:

4. In addition to the provisions of subsection 3, a lot of record as of July 15, 1985 that is located in the I-R1 or I-R2 Zone on Peaks Island may be used for a single-family home provided that the lot and the proposed home meets all of the following requirements:

- a. The lot contains a minimum of five thousand (5,000) square feet of area if served by the public sewer system or ten thousand (10,000) square feet if served by an on-site sewage disposal system meeting the requirements of the Maine Subsurface Wastewater Disposal Rules for the proposed use;
- b. The lot has a minimum of forty-five (45) feet of street frontage;
- c. The side and rear yards will be a minimum of ten (10) feet;
- d. The lot coverage will be less than forty percent (40%) unless the lot is subject to shoreland zoning in which case the maximum coverage shall be twenty percent (20%);
- e. The home will be served by the public water system;
- f. The home shall be occupied by a household earning up to 120% of AMI and be subject to income verification as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing;
- g. The home shall be occupied as the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households;
- h. The home shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing for a term of not less than twenty (20) years.

Amend Section 14-433 by adding a new subsection 5. to read:

5. In addition to the provisions of subsection 3. two adjacent lots of record as of July 15, 1985 that are located in the I-R1 or I-R2 Zone on Peaks Island may be used for a two-family home in which the units are side-by-side provided that the combined lots and the proposed building meets all of the following requirements:

- a. The combined lots contain a minimum of ten thousand (10,000) square feet of area if served by the public sewer system or twenty thousand (20,000) square feet if served by an on-site sewage disposal system meeting the requirements of the Maine Subsurface Wastewater Disposal Rules for the proposed use;
- b. The combined lots have a minimum of ninety-five (95) feet of street frontage;
- c. The side and rear yards will be a minimum of fifteen (15) feet;
- d. The lot coverage will be less than forty percent (40%) unless the lot is subject to shoreland zoning in which case the maximum coverage shall be twenty percent (20%);
- e. The home will be served by the public water system;
- f. At least one of the units shall be occupied by a household earning up to 120% of AMI and be subject to income verification as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing;
- g. Both units shall be occupied as the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines and may not be rented out for short or long term periods, including seasonal, weekly or daily rentals, to other households;
- h. If the units will be sold, the affordable unit shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing for a term of not less than twenty (20) years;
- i. If the unit(s) will be rented, the affordable unit(s) shall be subject to an Affordable

Housing Agreement as set forth in the City’s Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than twenty (20) years; and

j.If the affordable unit(s) is rented, the owner of the property shall provide the occupant of the affordable unit with a written description of the occupancy requirements for the unit.

4. **Off-Street Parking Requirements** – The following amendments propose reducing the parking requirement for affordable housing units in the I-R1, I-R2, and I-B Districts from two spaces per unit to one space per unit:

Amend Sec. 14.332.1 by adding a new subsection (l) to read:

(l) *I-R1 and I-R2 Zones: Residential uses shall provide a minimum of one (1) parking space for each dwelling unit that meets the housing affordability provisions of the I-R1 or I-R2 Zones.*

Amend Sec. 14.332.1 by revising subsection (f) to read:

(f) *~~I-BR1~~, Island Business Zone: Off-street parking shall be required at twenty-five (25%) percent of the required number of number of parking spaces for specified uses as provided in division 20 (off-street parking) of this article, except ~~that~~ residential uses shall meet the full parking requirement shall provide a minimum of one (1) parking space for each dwelling unit that meets the housing affordability provisions of the I-B Zone.*

## Overview of Draft Amendments to Facilitate the Development of More Affordable, Year-Round Housing on Peaks Island

Following HomeStart's February workshop on possible concepts for revising the Zoning Ordinance, HomeStart formed a Zoning Advisory Committee (ZAC). The concepts discussed at the February workshop were:

- Improve the current provisions for Accessory Dwelling Units
- Allow two-family homes but only if at least one of the units is affordable to year-round residents
- Allow larger single-family homes to be reconfigured to create additional units but only if at least half of the units are affordable to year-round residents
- Reduce the side setbacks for building a home on a smaller "lot of record" if the home will be affordable to year-round residents
- Reduce the off-street parking required for residential uses

The task of the ZAC was to develop draft amendments to revise the Zoning Ordinance to address these concepts based on the feedback from the workshop. This group met a number of times and has developed a set of possible ordinance amendments for further community review and input. The following sections provide an overview of the draft ordinance amendments – the full text of the draft amendments is available on HomeStart's website and will be discussed at the second community workshop on Thursday July 20<sup>th</sup>.

**1. Accessory Dwelling Unit (ADUs)** – The proposed amendments are designed to make the ADU provisions that were adopted a few years ago more useable. Here is an overview of the proposed changes:

- The minimum size of an ADU is reduced from 400 SF to 300 SF
- The owner of the property no longer has to live there
- The income and rent are tied to the City's affordable housing provisions

**2. Reconfiguration of large, older residential buildings** – The proposed amendments allow the existing floor area in large, older residential buildings in both the I-R1 and I-R2 Districts to be reconfigured to create more dwelling units as long as they meet certain requirements. The following is an overview of the provisions:

- The lot must have been developed and used for residential activity prior to 1985 and the building must have a minimum of 1,200 SF of floor area
- The lot must have a minimum of 6,500 SF if connected to the sewer and 20,000 SF if served by a septic system
- The space in both the principal building and any accessory buildings such as a garage can be used to create one or more additional dwelling units
- No stormwater can be discharged to the sewer system

- The building must maintain its character and can only have minimal changes to the exterior
- At least 50% of the units must be occupied as their permanent residence by residents meeting the income requirements of the City's affordable housing provisions

**3. Development of "lots of record"** – The proposed amendments are designed to make it more feasible to develop small vacant lots if they meet certain requirements. Here is an overview of the proposed amendments:

- Lots of record with a minimum of 5,000 Sf if connected to the sewer or 10,000 if served by a septic system can be developed as an affordable single-family home
- The side setbacks are reduced to 10 feet
- The portion of the lot that can be covered by impervious surface is increased to 40% outside of Shoreland areas where it stays at 20%
- The unit must be occupied by residents with an income of up to 120% of the AMI reflecting the higher cost of living on the island and be used as their permanent residence
- If there are two adjacent lots of record that could be developed using this provision, the lots can be combined and a side-by-side two-family home built on the combined lots
- At least one of the units in the two-family home must be occupied by residents with an income of up to 120% of the AMI and the requirements of the City's affordable housing provisions and used as their permanent residence

**4. Off-Street Parking Requirements** – The proposed amendments reduce the parking requirement for affordable housing units in the I-R1, I-R2, and I-B Districts from two spaces per unit to one space per unit

## Rationale for HomeStart's Suggested Zoning Ordinance Amendments

### Accessory Dwelling Units

**Rationale for an ordinance amendment:** The Land Use Code contains special provisions for accessory dwelling units (ADUs) in the I-R1 and I-R2 Zones on Peaks Island. However there are internal inconsistencies in the provisions and the existing provisions present obstacles for their use. As a result, no one has taken advantage of the provision to create an ADU. The suggested amendments are intended to correct the internal inconsistencies and make the provisions more usable.

### Utilization of Existing Residential Properties

**Rationale for an ordinance amendment:** The I-R1 and I-R2 Districts contain some older larger residential properties. These homes may be oversized for the current owners or are buildings that are no longer needed for their prior use. These properties offer the potential to expand the year-round housing supply through their creative reuse by utilizing the existing floor area for the creation of additional but smaller dwelling units. The Portland ordinance treats all dwelling units the same – a large five bedroom single-family home is treated the same as a small studio or one-bedroom apartment even though the impacts are quite different. This is especially important in terms of water use and sewage loading which are highly correlated to the number of occupants in the unit. One bedroom units have fewer occupants on average than do four or five bedroom homes. Therefore it makes sense to allow the reconfiguration of the floor space in existing larger residential properties to create more but smaller units. For example a single-family home with 4 bedrooms could be converted into two units each with two bedrooms. This would not significantly change the sewage discharge but would give a property owner more options for what to do with the property.

### Development of Lots of Record

**Rationale for an ordinance amendment:** The minimum lot size provisions in the I-R1 and I-R2 do not to apply to “lots of record” existing as of 1985 that meet the requirements of Section 14-433. However the allowed development of smaller lots of record is constrained by the requirement that development on those lots still conform to the 1985 lot frontage requirement, the current setback requirements and the current maximum lot coverage requirements. The requirement for 20 foot side setbacks makes the typical small lot with 50 feet of frontage unable to utilize this provision. Similarly the 20% limit on lot coverage makes it difficult for many of the small “lots of record” to utilize this provision. These requirements are especially problematic for lots in the I-R2 Zone since these are the very lots that offer the greatest potential for expanding the supply of lower cost, year-round housing on Peaks Island.

### Off-Street Parking Requirements

**Rationale for an ordinance amendment:** Division 20 of Chapter 14 Land Use of the Code of Ordinances establishes off-street parking requirements for uses within the City. Section 14-332 establishes a basic standard for parking for residential uses citywide of 2 spaces per dwelling unit for new construction and 1 additional space per unit when an additional dwelling unit or an accessory unit is created. The ordinance provides for some exceptions to this requirement and some reductions. The code currently recognizes that the use of cars on the islands differs from the mainland and exempts planned developments in the I-R3 District from providing off-street parking and allows reduced parking for nonresidential uses in the I-R1 (sic) Island Business District. Since the ownership and use of motor vehicles on the islands is significantly different than uptown, the off-street parking requirement for new affordable residential units in the IR-1 and IR-2 Districts should be reduced to 1 parking space per dwelling unit.

## IR-1 Draft Text Amendments – ATT. 2

### DIVISION 7.1. IR-1 ISLAND RESIDENTIAL ZONE

#### **Sec. 14-145.1. Purpose.**

The purpose of the IR-1 island residential zone is to provide for low intensity residential, recreational, and rural uses in the less developed areas of the islands in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low intensity development in areas lacking adequate public facilities and services.

(Ord. No. 27-85, § 1, 7-15-85)

#### **Sec. 14-145.2. Permitted uses.**

The following uses are permitted in the IR-1 island residential zone:

- (a) Single-family detached dwellings.
- (b) Planned residential unit development with a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least five, (5) acres of contiguous land, consisting of detached dwellings. Minimum yard dimensions (section 14-145.5(c)), street frontage (section 14-145.5(b)), and lot width (section 14-145.5(e)) shall be reduced up to fifty (50) percent of what would otherwise be required. Minimum lot area (section 14-145.5(a)) shall be reduced up to fifty (50) percent provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.

All area in such a development which is to be owned or used in common shall be governed and maintained as set forth in section 14-498(i)(3), article IV (subdivisions) of this chapter.

The density for a planned residential unit development shall not exceed one (1) dwelling unit per forty thousand (40,000) square feet of net area. Net area shall be determined by subtracting from the gross area of the

site the area of street rights-of-way, slopes of fifteen (15) percent or greater, wetland.

Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended.

- (c) Agriculture.
- (d) Boat houses and store houses for fishing equipment.
- (e) Parking and storage of equipment related to agriculture or commercial fishing.
- (f) Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article, including but not limited to (a) home occupations, (b) temporary private tenting with one (1) tent accessory to a principal residential use provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use, and (c) road side stands less than two hundred (200) square feet in floor area for the sale of agricultural products produced on the premises and the sale of fish and shellfish caught by the occupant of the dwelling or principal structure.
- (g) Handicapped family unit, as defined in section 14-47, for handicapped persons, plus staff.
- (h) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 1, 12-11-89; Ord. No. 33-91, § 10, 1-23-91; Ord. No. 33-11/12, 1-18-12)

### **Sec. 14-145.3. Conditional uses.**

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

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:
  - a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;
  - b. Lot area shall be seventy thousand (70,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
  - c. There shall be no open outside stairways or fire escapes above the ground floor;
  - d. Any additions or exterior alterations such as facade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
  - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
  - f. ~~Both~~Either the accessory unit ~~and~~or the principal dwelling shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines~~occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences;~~
  - g. All sanitary waste shall be disposed of by a

public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and

- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
  - i. Shall remain under common ownership with the primary unit on the lot;
  - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
  - iii. Shall be rented households earning up to 100% of AMI and be subject to income verification as further outlined in implementing regulations;
  - iv. Shall be rented for periods of no less than six months on an annual basis and may not be used for short-term, seasonal or weekly rentals; and
  - v. Shall be built within the principal building or as an attachment in accordance with subsection (d).
  
- (b) Institutional: Any of the following uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:
  - 1. Schools and other educational facilities including seasonal camps other than campgrounds;
  - 2. Places of assembly, excluding yacht clubs and marinas;
  - 3. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped to ensure compatibility with the surrounding neighborhood;

Such uses shall be subject to the following standards if the total land area is two (2) acres or more:

a. In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area;

b. The proposed use will not cause significant displacement or conversion of residential uses existing as of July 15, 1985, or thereafter; and

c. In the case of a use or use expansion which constitutes a combination of the above listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.

d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and

e. In the case of community halls:

i. The structure was in existence as of January 4, 2010.

ii. The structure was built for institutional or other non-residential uses;

iii. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and

iv. A parking management plan

is submitted for review and approval by the planning board; and

f. In the case of private club or fraternal organizations: any such establishment serving alcoholic beverages or in possession of a license for serving alcoholic beverages shall be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) Other:

1. Utility substations including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
2. Nursery schools and kindergarten;
3. Cemeteries;
4. Raising of domesticated animals, excluding pigs and reptiles, with no animals kept on any lot less than three (3) acres or closer than one hundred (100) feet to any street or lot line, except domesticated chickens as regulated in chapter 5, and provided that such use will not create any odor, noise, health or safety hazards, or other nuisance to neighboring properties;
5. Wharves, piers, docks, or landing ramps;
6. Campgrounds, excluding recreational vehicles, licensed by the State of Maine Department of Human Services provided that:
  - a. No tent shall be located within seventy-five (75) feet of the perimeter of site;
  - b. The land area of the park shall not be less than the equivalent of five thousand (5,000) square feet of land area per tent site

exclusive of the roadway network;

- c. Site plan review and approval by the Planning Board shall be required.
7. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:
- a. The facility shall be located in a structure in which there is one (1) or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
  - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
  - c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
  - d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.

- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
  - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
  - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
  - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
  - iv. A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
  - v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
  - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
  - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
  - viii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be

designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

8. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
  - a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
  - b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
  - c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
  - d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and
  - e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and

- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

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

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 2, 12-11-89; Ord. No. 133-96, § 8, 11-18-96; Ord. No. 153-08/09; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 33-11/12, 1-18-12; Ord. 82-15/16, 10-19-2015)

**Sec. 14-145.4. Prohibited uses.**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 27-85, § 1, 7-15-85)

**Sec. 14-145.5. Dimensional requirements.**

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the IR-1 zone shall meet the following minimum requirements:

(a) *Minimum lot size*

- 1. Residential: Forty thousand (40,000) square feet for lots with public water; sixty thousand (60,000) square feet for lots without public

water; except as provided in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and section 14-145.3(a)1 of this article.

2. Schools and other educational facilities: Forty thousand (40,000) square feet.
3. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

4. Seasonal camps and campgrounds: Ten (10) acres.
5. Animal raising: Three (3) acres.
6. In issuing any permit for new development, the building or planning authority shall require that any lot located in the IR-1 zone shall be at least forty thousand (40,000) square feet in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968, and excluding Peaks Island.
7. Excluding Peaks Island from this subsection h., any property owner whose lot does not meet the minimum lot size requirements outlined in subsection g. of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies

of the deeds for both lots shall be submitted to the Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

- a. No structure shall be permitted on this property.
- b. No parking or storage of vehicles or machinery shall be permitted on this property at any time.
- c. No area of this property shall be paved.
- d. No exterior storage for commercial use shall be permitted on this property.
- e. The easement deed shall reference the lot which is benefited by this conservation easement. No conservation easement shall be used to benefit more than one (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot sizes set forth in (a)1 of this section. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot. A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property.

Nothing in this section shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of

that lot to be used to fulfill the requirements of this section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of section 14-433.

8. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the applicable requirements of CMR 241 Section 2-E. The land area requirements in subsection g. of this section shall not apply to such a replacement system.

For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

(b) Minimum street frontage:

One hundred (100) feet, except that a lot of record as described in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of sixteen (16) feet and a minimum travel width of eight (8) feet except that an easement or right-of-way providing access for three (3) or more lots or providing the only means of access to a parcel or parcels of three (3) acres or more, shall conform to the requirements contained within the City of Portland Technical Manual and meet the construction requirements of article III of chapter 25 (street acceptances) of this Code. Such easement or right-of-way shall be sufficient to permit municipal service delivery.

(c) Minimum yard dimensions:

Yard dimensions shall include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.

1. Front yard: Principal or accessory structures:  
Thirty (30) feet.

2. Rear yard: Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Thirty (30) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Ten (10) feet.

3. Side yard: Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144) square feet or less: Fifteen (15) feet, except that the minimum distance from a principal structure may be five (5) feet.

4. Side yard on side streets: Principal or accessory structures: Twenty (20) feet.

(d) Maximum lot coverage: Twenty (20) percent of lot area.

(e) *Minimum lot width*: One hundred (100) feet.

(f) Maximum structure height:

1. Principal or accessory attached structure: Thirty-five (35) feet.
2. Accessory detached structure: Eighteen (18) feet.

(g) Maximum floor area for places of assembly on a collector or arterial road:

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

(h) Maximum floor area for places of assembly not on a collector or arterial road:

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

City of Portland  
Code of Ordinances  
Sec. 14-145.5

Land Use  
Chapter 14  
Rev. 3-7-2016

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 160-89, § 3, 12-11-89; Ord. No. 218-04/05, 5-2-05; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 165-15/16, 3-7-2016)

**Sec. 14-145.6. Other requirements**

Other requirements include the following:

- (a) Off-street parking shall be required as provided in division 20 (off-street parking) of this article.
- (b) 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.
- (c) Storage of vehicles: Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 27-85, § 1, 7-15-85; Ord. No. 15-92, § 12, 6-15-92)

## IR-2 Draft Text Amendments – ATT. 3

### DIVISION 7.2. IR-2 ISLAND RESIDENTIAL ZONE

#### **Sec. 14-145.7. Purpose.**

The purpose of the IR-2 island residential zone is to protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services available. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the area are adequate for subsurface water disposal or whether public sewers are available. IR-2 rezoning on substantially sized parcels should not be considered for those sites that should be more appropriately zoned I or IR-3.

(Ord. No. 28-85, § 1. 7.15-85)

#### **Sec. 14-145.8. Permitted use.**

The following uses are permitted in the IR-2 island residential zone:

- (a) Single-family detached dwellings.
- (b) Planned residential unit development with a minimum gross area, as defined in section 14-47 (definitions) of this article, of at least five (5) acres of contiguous land, consisting of detached dwellings. Minimum yard dimensions (section 14-145.11(c)), street frontage (section 14-145.11(b)), and lot width (section 14-145.11(e)) shall be reduced up to fifty (50) percent of what would otherwise be required. Minimum lot area (section 14-145.11(a)) shall be reduced up to fifty (50) percent, provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as buffer between the buildings or between the development and the surrounding neighborhood.

All area in such a development which is to be owned or used in common shall be governed and maintained as set forth in section 14-498(i)(3), article IV (subdivisions) of this chapter.

The density for a planned residential unit development shall not exceed one (1) dwelling unit per twenty thousand (20,000) square feet of net area. Net area shall be determined by subtracting from the gross area of the site the area of street rights-of-way, slopes of fifteen (15) percent or greater, wetlands.

Such development shall be subject to review and approval by the Planning Board with respect to requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter as now enacted or as hereafter amended.

- (c) Boathouses and storehouses for fishing equipment.
- (d) Parking and storage of equipment related to commercial fishing.
- (e) Accessory uses customarily incidental and subordinate to the location, function and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article including but not limited to (a) home occupations, (b) private temporary tenting with one (1) tent accessory to a principal residential use, provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use, and (c) roadside stands less than two hundred (200) square feet in floor area for the sale of agricultural products produced on the premises, and the sale of fish and shellfish caught by the occupant of the dwelling or principal structure.
- (f) Handicapped family unit, as defined in section 14-47, for handicapped persons plus staffs.
- (g) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 1, 12-11-89; Ord. No. 33-91, § 11, 1-23-91; Ord. No. 33-11/12, 1-18-12)

#### **Sec. 14-145.9. Conditional uses.**

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special

provisions, standards or requirements specified below:

(a) Residential:

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling provided that:
  - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet;
  - b. Lot area shall be thirty thousand (30,000) square feet, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
  - c. There shall be no open outside stairways or fire escapes above the ground floor;
  - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
  - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
  - f. ~~Both~~Either the accessory unit ~~under~~ the principal dwelling shall be the occupant's primary residence as defined in the City's Inclusionary Zoning Implementation Guidelines. occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and

- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
  - i. Shall remain under common ownership with the primary unit on the lot;
  - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
  - iii. Shall be rented to households earning up to 100% of AMI and are subject to income verification as further outlined in implementing regulations;
  - iv. Shall be rented for no less than six months~~on an annual basis~~ and may not be used for short-term, seasonal or weekly rentals; and
  - v. Shall be built within the principal building or as an attachment in accordance with subsection (d)..

(b) Institutional: Any of the following uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

1. Schools and other educational facilities;
2. Places of assembly, excluding yacht clubs and marinas;
3. Municipal uses, provided that outside storage and parking areas are suitably screened and landscaped to ensure compatibility with the surrounding neighborhood;

Such uses shall be subject to the following standards if the total land area of the use is two (2) acres or more:

- a. In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area;
- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of July 15, 1985, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. In the case of community halls:
  - i. The structure was in existence as of January 4, 2010.
  - ii. The structure was built for institutional or other non-residential uses;
  - iii. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and

iv. A parking management plan is submitted for review and approval by the planning board; and

f. In the case of private club or fraternal organizations: any such establishment serving alcoholic beverages or in possession of a license for serving alcoholic beverages shall be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) Other:

1. Utility substations including sewage and water pumping stations and standpipes, electric power substations, transformer stations, telephone electronic equipment enclosures, and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
2. Nursery schools and kindergartens;
3. Cemeteries;
4. Wharves, piers, docks, or landing ramps;
5. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms.
6. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, subject to the following conditions:
  - a. The facility shall be located in a structure in which there is one (1) or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.

- b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.
- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
  - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
  - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
  - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;

- iv. A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
  - v. The minimum lot size for a day care facility located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;
  - vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
  - vii. The maximum number of children in a day care facility located in a residential or existing accessory structure shall be twenty-four (24); and
  - viii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.
7. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
- a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
  - b. Towers shall be constructed according to plans and specifications stamped by a

licensed professional engineer, which shall be provided to the Board of Appeals with the application; and

- c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
- d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and
- e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and
- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or

its agents to remove the facility at the end of the use period.

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

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 2, 12-11-89; Ord. No. 235-91, § 15, 2-4-91; Ord. No. 133-96, § 9, 11-18-96; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 149-10/11 3-7-11; Ord. No. 33-11/12, 1-18-12; Ord. 82-15/16, 10-19-2015)

**Sec. 14-145.10. Prohibited uses.**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 28-85, § 1, 7-15-85)

**Sec. 14-145.11. Dimensional requirements.**

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in an IR-2 zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Twenty thousand (20,000) square feet, except as provided in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and section 14-145.9(a)1 of this article.
2. Schools and other educational facilities: Twenty thousand (20,000) square feet.
3. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

4. Lodging houses: Thirty thousand (30,000) square feet for three (3) lodging rooms, plus ten thousand (10,000) square feet for each additional lodging room in excess of three (3).
5. In issuing any permit for new development, the building or planning authority shall require that

any lot located in an IR-2 zone shall be at least twenty thousand (20,000) square feet in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968, [and excluding Peaks Island].

6. [Excluding Peaks Island from this subsection 7.,] any property owner whose lot does not meet the minimum lot size requirements outlined in subsection f. of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:
  - a. No structure shall be permitted on this property.
  - b. No parking or storage of vehicles or machinery shall be permitted on this property at any time.
  - c. No area of this property shall be paved.
  - d. No exterior storage for commercial use shall be permitted on this property.

- e. The easement deed shall reference the lot which is benefited by this conservation easement. No conservation easement shall be used to benefit more than one (1) lot.

Conservation easements shall only be granted over lots which conform either to the provisions of section 14-433 or to the minimum lot sizes set forth in (a)1 of this section. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot.

A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property.

Nothing in this section shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of that lot to be used to fulfill the requirements of this section if such conveyance would render the existing lot nonconforming under the terms of this chapter. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of section 14-433.

7. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the requirements of CMR 241 Section 2-E. The land area requirements in subsection f. of this section shall not apply to such a replacement system.

For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

(b) *Minimum street frontage:*

Seventy (70) feet, except that a lot of record as described in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of sixteen (16) feet and a minimum travel width of eight (8) feet except that an easement or right-of-way providing access for three (3) or more lots or providing the only means of access to a parcel or parcels of three (3) acres or more, shall be a minimum thirty-two (32) feet wide and meet the construction requirements of article III of chapter 25 (street acceptances) of this Code. Such easement or right-of-way shall permit municipal service delivery.

(c) *Minimum yard dimensions:*

(Yard dimensions shall include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. Front yard: Principal or accessory structures: Twenty-five (25) feet except that a front yard need not exceed the average depth of front yards on either side of the lot.
2. Rear yard: Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.

Accessory detached structures with ground coverage of one hundred and forty-four(144) square feet or less: Ten (10) feet.

3. Side yard: Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.

Accessory detached structures with ground coverage of one hundred and forty-four (144)

square feet or less: fifteen (15) feet, except that the minimum distance from a principal structure may be five (5) feet.

4. Side yard on side streets: Principal or accessory structures: Twenty (20) feet.
5. Notwithstanding the foregoing, the width of one side-yard may be reduced to not less than ten feet in the case of a lot of record, existing as of June 5, 1957, and which contained a structure in use at that time and at all times subsequent thereto as a year-round, single-family residence, and which is served by public sewer and water, at the time of any expansion permitted by this section, where the reduction is necessary either to bring the use into compliance with health and safety codes or to improve a condition which the Board of Appeals determines constitutes a health or safety problem. Any alteration or expansion authorized by this section may only be situated in the rear yard and shall not encroach into the required setback more than the existing building does prior to the construction of such alteration or expansion. Any such alteration or expansion will be subject to the maximum lot coverage requirements applicable to this zone; and, cumulatively, during the lifetime of the structure, may not exceed forty percent (40%) of the combined floor area of the habitable rooms existing at the time of the first expansion permitted by this section. For the purposes of this section "floor area" and "habitable room" shall have the same meaning ascribed to them in Portland Municipal Code, §6-106, et seq., Housing Code, as it may be amended from time to time.
  - (d) *Maximum lot coverage:* Twenty (20) percent of lot area.
  - (e) *Minimum lot width:* Eighty (80) feet.
  - (f) *Maximum structure height:*
    1. Principal or accessory attached structure: Thirty-five (35) feet. For Little Diamond Island only: Twenty (27) feet.

2. Accessory detached structure: Eighteen (18) feet.

(g) Maximum floor area for places of assembly on a collector or arterial road:

Large	Not limited
Medium	4,500 sq. ft.
Small	2,250 sq. ft.

(h) Maximum floor area for places of assembly not on a collector or arterial road:

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 161-89, § 3, 12-11-89; Ord. No. 215-02, 4-17-02; Ord. No. 76-03/04, 10-20-03; Ord. No. 131-08/09, 12-15-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 165-15/16, 3-7-2016)

**Sec. 14-145.12. Other requirements.**

Other requirements include the following:

(a) Off-street parking: Off-street parking shall be required as provided in division 20 (off-street parking) of this article.

(b) 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.

(c) Storage of vehicles: Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.  
(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 15-92, § 13, 6-15-92)