



## Waterfront Workgroup

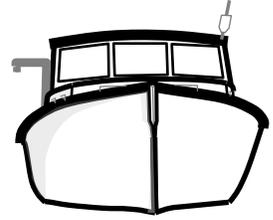
3rd Meeting

Draft Agenda

February 7, 2019

Room 24, City Hall

3:00pm to 5:00pm



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1. Welcome and Introductions: *Jon Jennings, City Manager, Chair*
2. Questions on Meeting Notes
3. Zoning Issues: *Bill Needelman, Waterfront Coordinator*  
*Matt Grooms, Planner*
4. Waterfront TIF Program Introduction:  
*Greg Mitchell, Economic Development Director*
5. Next steps

**Notes**  
**Waterfront Working Group**  
**January 17, 2019**

The second meeting of the Waterfront Working Group (WWG) was held on Thursday, January 17, 2019, at 3:00 p.m. in Room 24 of Portland City Hall. All members of the WWG as appointed by the City Manager were present, namely: Mike Alfiero, Holyoke Wharf, Harbor Fish Market; Togue Brawn, Downeast Dayboat Scallops; Bill Coppersmith, Lobsterman/MLU Vice President; Steve DiMillo, Long Wharf, DiMillo's Restaurant and Marina; Cyrus Hagge, Community Member; Keith Lane, Lobsterman, F/V Kestrel; Charlie Poole, Union Wharf, Custom Float; Becky Rand, Becky's Diner; Willis Spear, Lobsterman, F/V Providence; and Dory Waxman, Community Member.

Present from the City Council was Councilor Ray.

Present from the City Staff were City Manager Jon Jennings, who chaired the meeting; Acting Planning Director Christine Grimando; Administrative Officer James Dealaman, Planner Matt Grooms; Planning and Urban Development Director Jeff Levine; Economic Development Director Greg Mitchell; and, Waterfront Coordinator Bill Needleman.

**Item #1: Introductions**

Mr. Jennings opened the meeting by welcoming everyone and asked for introductions of the working group members. The working group members introduced themselves and Mr. Jennings asked if there were any topics the group wanted to bring up before proceeding with a staff presentation on land use. No suggestions were raised.

**Item #2: Staff Presentation**

Jeff Levine began presentation on the Waterfront Central Zone (WCZ) zoning by first giving an overview about the city's Comprehensive Plan. *[Presentation will be provided]* He described it as a vision for the city that is designed to establish concepts and strategies for where the city wants to be in 10 years, saying it provides a framework for making more detailed plans and policies. Mr. Levine described the Comprehensive Plan as it relates to the waterfront, saying the comprehensive plan included a use hierarchy when the 2010 waterfront plans were being formed. The use hierarchy provided that first provided water dependent uses as the most valuable uses, followed secondly by marine related uses where some uses may not necessarily need to be

located on the waterfront, and thirdly the non-marine uses that are compatible which also add economic value to the area for things such as maintaining piers.

Mr. Levine also described that under the previous Comprehensive Plan the marine related uses in the Waterfront Central Zone (WCZ) are highlighted by the 2010 Policy Statement, which has been so far provided guidance for the zoning.

Mr. Levine also provided an overview about language used in zoning. He covers Conditional Uses, Permitted Uses, and Standards for Development. He provided that if a use isn't listed as a permitted or prohibited use, that generally the use is considered to be prohibited unless a convincing case can be made for why it should be permitted. He also explained that the Planning Board is the body that will review the conditional uses as they have more experience with the policy documents.

He described performance standards further with how they apply in the Non-Marine Use Overlay Zone (NMUOZ) versus the WCZ outside of the NMUOZ. He highlights some that in the WCZ outside the NMUOZ that some standards include: 55 percent of the ground floor and open area each must be set aside for marine uses, and when there's a vacancy or change of tenancy the owners must first offer and market to marine uses and advertise for a 60-day period minimum to marine users using targeted media.

Bill Needleman continued the presentation by describing how the standards are applied, providing examples of various piers and wharfs and the breakdown of marines use versus non-marine use. One example that he described was the Scales building meeting the 55/45 percent marine/nonmarine use requirement saying that the first floor occupied 44 percent whereas the 56 percent of the remainder of the building ground floor is retained as marine use at the end of the pier.

Matt Grooms continued the presentation by explaining contract rezoning. He explained that the WCZ is unique in that it has an additional list of standards before a property owner can be eligible for a contract zoning proposal. He also explained that any contract zoning proposal would still need to cohere to the Comprehensive Plan and be approved by the Council as well as site plan review standards. He also explained that there is a range of performance standards that can be applied to zones, saying that some are more specific to a marine use while others can be more general.

Mr. Needleman provided an illustration to show an example of how performance standards are intended to achieve compatibility between marine and non-marine uses and to keep both uses functional. He highlights the importance of design in order to meet the requirements of berthing and access, explaining that shared use loading is sometimes needed in scenarios where there isn't sufficient space for loading at the pier edge at the berth.

Mr. Levine shares that at the January 22<sup>nd</sup> meeting, the Planning Board will hold a workshop to discuss changes to the rezoning standards of the WCZ, which would remove the option of allowing conditional or contract zones in the WCZ. Mr. Levine provided that staff do not feel the proposal isn't necessary due to the level of complexity already existing in the zoning, and that if removing the conditional/contract zoning, WCZ would be the only zone in the City to do so. He paused the presentation to ask if the committee had any questions.

Mr. Poole commented on the performance standard that requires advertising for marine space, saying that it a space essentially reverts back to marine use.

Mr. Needleman clarified that it applies to any change of use or tenancy, every time that happens a space has to be advertised at comparable rates within that zone, which was intended to give marine users the first chance at filling the space. He stated it's not exactly like a right of first refusal, but is intended to function similarly.

Mr. Alfiero asked staff if a portion of a marine use project had a non-marine use component, would it be considered an assessor use?

Mr. Needleman explained that it's not unusual to see smaller uses as parts of projects. It's determined on a case by case basis, and the Zoning Administrator will decide on what uses are permitted in each zone.

Mr. Levine concluded that the definition of assessor use is not precise as it could be, but is one of the focuses of the city's ReCode project.

Mr. Lane asked if staff can share information about how the NMUOZ was added since the 1987 referendum

Mr. Needleman described the 1987 referendum as a prohibition on new non-marine development, and was modified after 5-years when it was possible to modify. The Waterfront

Alliance report came into effect in 1992 and new zoning was passed in 1993 which essentially established the use pyramid. There were provisions that buildings within 35 feet of Commercial Street could have a non-marine use within the entirety of existing buildings. Beyond the 35 feet you could have non-marine uses in half of the second and third floors, not on the first floor, but only in existing buildings. In 2006, there was a rezoning process where the 35 foot rule was extended to the entirety of the zone, and there were some expansions to allow building new non-marine space. All space within upper floors of existing buildings could convert to non-marine. In 2006 in the Old Port Non-Marine Use Overlay was specific to the parking lots at DiMillo's and Union Wharf and was more limited. In 2009-10 there was a fundamental rewrite of the zone which created the NMUOZ.

Mr. DiMillo asked what the mechanism is for gauging investment from non-marine development.

Mr. Needleman described there are two ways. Within the NMUOZ, new non-marine use development would take 5 percent of project cost and put it into a qualifying marine infrastructure investment for the benefit of marine uses in that zone. For the area of the WCZ outside the NMUOZ which is more situated on the piers, it's assumed that under the 55 percent marine use requirement the investment is captured by any development and assured for marine use. Mr. Needleman also described the marine investment that is anticipated to be captured outside of the zone through TIF financing through projects that can fall outside the zone entirely.

Mr. Alfiero asked if it would have been possible for the Scales restaurant development to have been classified as an accessory use to the other marine uses?

Mr. Needleman responded the city has not looked at it in that way. A restaurant is listed as a permitted use, and in terms of scale it's a tough argument to make that the restaurant could be accessory to the marine uses.

Mr. Coppersmith asked how did the zoning become so different under Union Wharf area.

Mr. Needleman responds that during the 2009-10 process, the Planning Board review observed much more parking than marine use activity, and the hope was that better uses could be added to replace that property that weren't supporting marine activity. Thus, the overlay was

expanded to promote investment in those areas with the reinvestment attached to them, so new buildings would be required to invest.

Ms. Brawn asked if the 55/45 percentage is set, why aren't non-marine business emerging?

Mr. Needleman responds has the 55/45 requirement is measured by property, and not by wharf. He clarified that the inventory shows the aggregate, but the requirement is individually measured.

Mr. Levine resumed the presentation by providing examples of nearby projects. He highlighted examples of financial contributions, citing the Rufus Deering Contribution (outside the WCZ), which was subject to conditions to contribute to the area by studying and improving access. The request for the Planning Board was also to provide parking spaces off-street for marine uses.

Mr. Needleman provided that on street parking is also anticipated to return after construction, but will need to go through council approval.

Mr. Levine also provided an update on Fisherman's Wharf saying that the proposal intending to have a hotel has been withdrawn.

Mr. Alfiero asked what the expected number of parking spaces was for the garage at the Rufus Deering site?

Mr. Levine responded saying he can provide the estimate at the next meeting, but that it would accommodate all of the project's parking needs onsite.

Mr. Coppersmith commented on improving traffic movement at the intersection of High and Commercial Streets

Mr. Levine responded that if the Commercial Street Operations Plan assessment provided there is not a need for a light at the planned intersection, funds can always be repurposed.

Mr. Jennings provided that he will be meeting with new DOT commissioner. One of the items he intends to discuss the light at Beach Street which has caused a lot of congestions on Commercial Street.

Mr. Lane commented that another light that should be discussed at is at Center and Commercial Street.

Mr. Needleman introduced the next item on the agenda, which was a discussion on fishing priority. He described that within the WCZ, water dependent use is the highest priority use. There's no distinction between water dependent uses in terms of the use hierarchy. Nor are there geographic locations, with the exception of the fish pier, there isn't a set aside or additional provisions as being distinct from other uses. He asked for the committee to foster conversation around what are the best ways to consider an approach for prioritizing fishing within the WCZ. For instance, he asks should everywhere except the NMUOZ should be a fishing priorities area (e.g. a north/south geographic divide)? Is it the western portion of the zone where fishing is dominant now, or through use restrictions, language, and performance standards generally? He asked what is the best approach to keep piers as a place for fishing activity, while at the same time not turning the whole pier into a fishing pier? Mr. Needleman explains the measurements for the NMUOZ, and clarified that the distance for measuring limits of the NMUOZ from Commercial Street starts at the side line of the street.

Mr. Jennings commented that after meeting with two committee members recently, the 500 foot set back on the Union and Fisherman's Wharf was an area of interest, and so it is offered for discussion if the committee would like to start there.

Ms. Brawn asked if the committee is supposed to be prioritizing fishing uses over other marine uses in the area?

Mr. Needleman responded saying based on the attention the committee had around the fishing industry specifically during the last meeting, staff are now looking for more guidance about what kind of approach is needed if fishing is going to be considered a unique priority within the zone.

Mr. Lane commented that because of the proximity to the Old Port and tourist trade, as long as the 500 foot area, there will always be a non-marine use development intended for that area (Union Wharf).

Ms. Brawn commented that fishing doesn't appear to be competing with other marine uses

Mr. Lane commented he would like to preserve the 500 foot depth for marine related uses

Mr. Poole commented that in the ordinance now, you're only allowed 50 feet of non-commercial berthing. Also, it's difficult to implement a specific requirement to have a percentage of fishing

uses versus some other marine use. He described that as long as there is berthing required for commercial uses, the majority of vessels will be marine related.

Mr. Alfiero asked is there a shortage of seafood/fishing related space?

Mr. Lane described concerns that the space will potentially be used for non-marine use and not available for marine use.

Mr. Alfiero expressed concerns with the committee recommending a fishing use hierarchy because it's difficult to prioritize one industry over another, and complicated by the different parts of projects

Mr. Coppersmith commented that the fishing industry is squeezed, currently at 37 percent of fishing related businesses on the wharfs. Also, that there is no room for expansion for the fishing industry on the wharfs. The fisherman also support businesses on the bottom floor of the wharfs, and as you start eliminating those businesses, fisherman need to find other places to sell goods. It's possible for other marine related businesses to move into those spaces which don't relate to the fishing industry.

Mr. Lane is concerned that once that space becomes a use unrelated to fishing, the fishing industry won't have the opportunity to use.

Mr. Poole commented that there are examples of new buildings being created that are available to be leveraged by marine use industry. As a property owner, if an opportunity presents itself, he's open to discussing marine use ideas. He suggests a marine use compatible overlay might be more suitable than NMUOZ. He described pier maintenance as being extremely costly, and would prefer not to put the burden on the commercial fishing industry, but to allow water dependent and marine compatible uses to remain. After some discussion, he identified parking lots as another area to be looked at.

Mr. Jennings commented that based on feedback from some of the committee members, he's hoping to take a balanced approach and take an in-depth look at distances to see if an overlay is needed, or other acceptable changes to address concerns.

Ms. Brawn asked why a hotel is worse than an office building?

Mr. Lane commented that there is a much higher amount of traffic, and takes up a huge amount of space that can't be used.

Mr. Jennings voiced the city's concerns regarding development of large buildings obstructing the view of the waterfront.

Mr. Coppersmith suggested that TIF funds might be used to incentivize commercial fishery businesses to subsidize rents, or for working capital to help those businesses move to high rent districts.

Mr. Needleman responded that the committee will have input on recommending how the first round of increased TIF funding will be available, but unless there is a new credit enhancement system in place, it's expected that the TIF money would go towards public uses. (E.g. dredging, working in the streets, etc.)

Mr. Lane asked if there was a rebate program for wharf owners through property taxes for maintenance?

Mr. Jennings explained that Greg Mitchell will be presenting on area-wide TIFs and credit enhancement agreements which are specifically a rebate on increased value that's generated on new development. He commented that TIF revenue on the waterfront is estimated to be around \$2-3 million next year. He hoped that at the end of the working group that a standing group made up of committee members to meet to help him determine the funding allocation recommendations. He feels the pier owners should be eligible for TIF funds or credit enhancement agreements like anyone else would be, but realizes the 500 feet is a sticking point.

Mr. Lane would like to see TIF funds as less attractive option for pier owners through some kind of disincentive.

Mr. Poole suggested the idea of a program that incentivizes fisheries or marines uses by offsetting rent.

Mr. Spear commented that the tax incentive issue feels important to get things moving. He recalled findings of a 1985 Waterfront Central Thinktank that did a survey of the City of Portland which said Portland was unique being small and compact, and that anything done on

one wharf would impact the others. The results concluded that mixed-use doesn't work in Portland. He commented that in 2010 when the zoning was relaxed, there was negative side effects (rise in parking, traffic, etc.)

Mr. Jennings commented he hopes that this meeting can focus on zoning in order to get guidance. His understanding is that fishing industry would prefer the NMUOZ be removed, but looking for a middle ground to also accommodate the interests of the pier owners as well.

Mr. Alfiero asked if a restaurant outside the NMUOZ were to sell their property, if another restaurant is able to take its place.

Mr. Needleman clarified that any vacancy or change of tenancy, there's a requirement that the pier owner advertise for a marine use, and in the example of the restaurant, Scales, the building is designed to be able to convert to accommodate marine use.

Mr. Dimillo commented that the hierarchy of marine uses needs to be debated. He described the working waterfront historically was a very close-knit community. He commented on that most of the northern sections of the WCZ aren't and probably won't be developed for marine use even at the 150 feet mark because of the significant amount marine space already existing in the southerly section of the WCZ waterfront that's dedicated to marine use. He suggests that for direct water access, the piers on the southerly section, such as Sturdevant's Wharf, could be developed, dredged, and utilized better.

Mr. Lane described the undeveloped wharfs being discussed as being secondary, due to slipways being narrow and shoal and, and are nothing like Union, Custom House, Portland Pier and Widgery which are laid out better and established for boats to come and go.

In response to some discussion Mr. Needleman commented about the Fish Pier Authority had looked at increased utilization of the Fish Pier by lobstering, describing that there was reluctance to have a public facility that would unfairly compete with private piers.

Mr. Lane commented that if a new wharf space is opened up, that it would not take away tenants from the other piers, and would provide a new affordable facility.

Mr. Coppersmith described that in the event of a wharf or pier changing handles unexpectedly that exists within the 500 ft NMUOZ area, the space could face incompatible future development.

Mr Alfiero commented that 150 feet works and would bring in tourists and money that the city needs. He commented that any change of future development such as a restaurant should be able to sell the rights to a buyer for the same existing use without any hurdles. He provides that the 150 feet rule should go as is, west to east. As long as there's protection for the growth of the future, however that works out.

After some dialogue about grandfathering some properties but not others, Mr. Needleman provides that considerations should be made for expansions; that is, nonconforming would be prevented from expanding. He described that the only grandfathered uses likely occur within the 150 area zone west of the Fish Pier.

Mr. Poole asked that if the NMUOZ were updated, what are the types of uses that might be considered compatible? He expressed concerns that the closer to the street, marine uses are less inclined to develop farther to the street and away from the water, and without allowing for other compatible uses along Commercial, there is a risk of missing out on the benefits of investment.

Mr. Lane comments that he would be flexible to consider marine compatible language. He described that a non-marine warehouse could be acceptable, but anything that creates additional traffic like a hotel would not be alright.

Mr. Alfiero would like to look at the results from the traffic survey before realizing what the actual volume is that is caused by the non-marine businesses. He described that the 150 feet might not be a good solution.

Mr. Spear commented that he and the DiMillo's Long wharf were to open up space for a park or open space, this might help address the concerns of crowding and traffic, and good middle ground.

Mr. Jennings asked if the consensus among the fisherman is to negotiate on keeping the NMUOZ at a certain level along Commercial Street, but as a lesser set back from 500 feet.

Mr. Copperfield responded saying that the fisherman would want to run any proposal through working water front group first.

Mr. Poole described that best zoning change so far allowed for upper floors to be used for non-marine in order to generate revenue. He doesn't want any changes to lose sight of the importance of investment that non-marine uses provide.

Mr. Lane commented that some of the most traditional run wharfs are operated in the black. Widgery Wharf is example of a wharf that can be successful using rents from boats, fish houses, and parking income. Water dependent uses are just as much capable of having successful models for generating revenue.

Mr. Hagge commented that he pays the most for rent on Widgery Wharf parking in order to accommodate tenants across Commercial Street. There's a strong relationship across the street, and economies are interconnected.

Ms. Brawn asked if the fishing industry would be willing to make concessions, if for instance other committee members agree to reduce the 500 foot NMUOZ line.

Mr. Spear described that when NMUOZ was implemented it was thought that fisherman couldn't pay for the maintenance. However, he says this isn't the case because the berthing pays for itself. The fisherman have already given assistance with helping to grow funding resources for pier owners, but have not received anything in return, while the pier owners benefit from funding strategies put in place.

Mr. Poole commented that that the actual property owners are not receiving subsidies either. He described that rates have not gone up on the fishing industry, so there's no pressure that they are getting forced out.

Mr. Lane asked if the property owners are interested in some kind of rebate program?

Mr. Poole responded saying he's in favor of economic tools.

Mr. Jennings suggested to the committee that city staff bring back a draft proposal taking the committee's feedback into account, and present it at a later meeting.

No committee members were opposed.

Mr. Dimillo asked if parking was a good thing for all parties, and whether fisherman are going to be against parking uses in general?

Mr. Needleman reported that while there are performance standards guide for parking, right now there are no parking requirement.

Mr. Dimillo commented he is in favor of more parking, but smaller structures to ensure view corridors

Mr. Lane asked if they're considering a parking garage, why couldn't it be located on the northern side of the area?

Mr. Needleman explained parking is allowable in that area.

Mr. Hagge commented he would prefer to first see a proposal that captures the ideas provided in this discussion

Mr. Jennings asked the committee for any other topics to bring forward. No additional comment was provided.

For the next meeting on February 7, City staff will provide a proposal for WCZ ordinance amendments to hear committee's feedback.

The meeting then adjourned at 5:08 p.m.

Respectfully, James Dealaman

Portland, Maine



Yes. Life's good here.

Economic Development Department

**Memorandum****Date:** February 4, 2019**To:** Waterfront Working Group**RE:** Meeting #3, February 7, 2019  
Zoning Issues**From:** Bill Needelman, Waterfront Coordinator**CC:** Jon Jennings, City Manager  
Greg Mitchell, Economic Development Director  
Jeff Levine, Planning and Urban Development Director  
Christine Grimando, Acting Planning Director  
Matt Grooms, Planner  
Jennifer Thompson, Associate Corporation Counsel  
John Peverada, Parking Manager**Introduction:**

At the January 17 meeting of the Waterfront Working Group (WWG,) City staff was directed to develop a suite of zoning issues and approaches for consideration at the February 7 meeting. Following the January 17 meeting, members of the fishing community, including WWG members, provided staff with a document titled, *Selected Issues Proposed for Review by the Working Waterfront Group* (attached to this memo.)

The *Selected Issues* list is introduced by 10 zoning related issues. This staff memo concentrates on *zoning* issues and will follow the order and structure of the *Selected Issues* document. Below, the zoning portion of the *Selected Issues* text is pasted in full in *red italics* followed by a staff response or suggested approach in standard type. Other, non-zoning issues will be addressed during following meetings on topics such as Waterfront TIF allocation, the Commercial Street Operations and Master Plan, and other processes.

As noted in previous meetings, it is the intent to use the current process to identify zoning issues and approaches that have the support of WWG members. Staff will then bring these issues and approaches to the Planning Board for review and assimilation into zoning code language.

## Zoning Issues:

- 1. Contract/Condition Rezoning must be eliminated for all prohibited uses in all waterfront zones.**

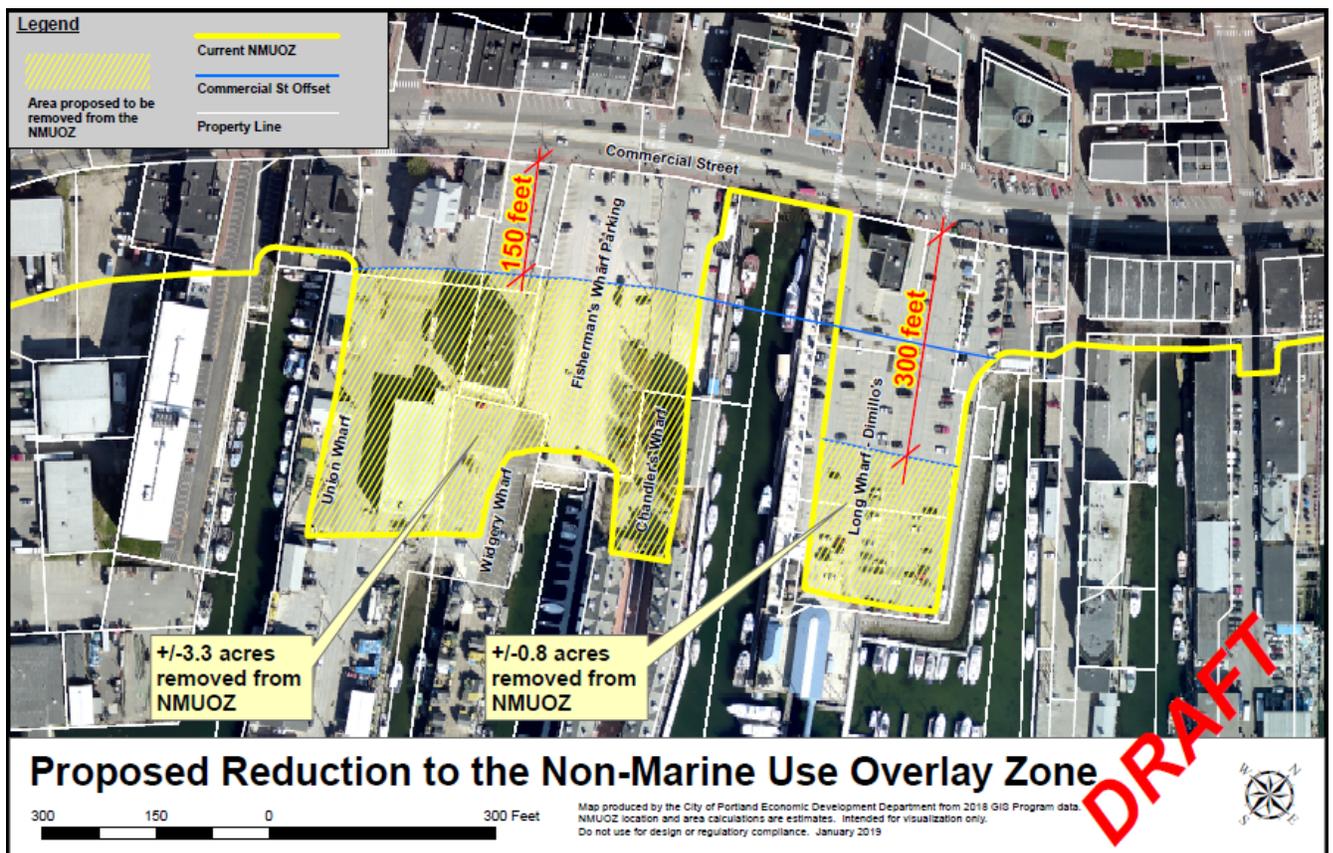
### City Staff Suggested Approach.

At the January 22, 2019 workshop of the Portland Planning Board, city staff from Planning and Economic Development presented a proposal to eliminate contract and conditional (C/C) rezoning from the Waterfront Central Zone (WCZ) consistent with the *Selected Issues* letter. At the workshop, members of the WWG and supporting legal representatives spoke against this approach, suggesting as an alternative that standards for C/C be tightened, but that the tool remains as an option within the zone. City staff continues to recommend eliminating the C/C option, but only within the WCZ, as consistent with the parameters of the WWG process.

- 2. Non-Marine Use Overlay Zone (NMUOZ) must be eliminated.**

### City Staff Suggested Approach.

Based on the discussion at the previous WWG meeting, staff is suggesting a 'north/south' reduction of the NMUOZ in the areas between Long Wharf and Union Wharf. The suggested approach is to retain the 150 foot strip of NMUOZ along the entire Commercial Street sideline, while allowing for a 300 foot portion only on Long Wharf. Long Wharf's development history, its current use, and limited potential to support marine industry warrant its unique treatment. As recommended by staff, the proposed amendments would remove +/-4 acres of land from the NMUOZ. A map illustrating the proposed approach is provided below. Other 'east/west' reductions in the extent of the NMUOZ did not appear to have support at the previous WWG meeting.



3. ***The 55% marine use/45% non-marine use designation for ground floors and open areas. (14-311). To enforce the 55%/45% split, the City is interpreting this so that vacant counts as marine use. This gives owners an incentive to keep areas vacant rather than leasing to marine uses. This presumption should be reversed so that vacant counts as non-marine in the calculation of allowable percentages. 14-311(a)(3). The ratio should be amended to 70%/30%.***

City Staff Suggested Approach.

Clarifying the assertion above, staff does not interpret vacant space to be marine. The inventory process accounts for vacant space as available to marine use. The marine use marketing requirement outside of the NMUOZ warrants such a designation. To count vacant space as having any use is self-contradictory.

Regarding the percentage split, staff looks to the WWG for guidance. The 55%/45% split was a negotiated number resulting from the 2010 process. There are 3 significant projects that we can look to for examples of application: Merrill's Wharf (Pierce Atwood,) Maine Wharf (Scales,) and 60 Portland Pier (Lukes.) *Note: Proprietors of Union Wharf constructed their project under the NMUOZ standards.*

Merrill's Wharf: Constructed after the 2006 WCZ amendments, the Pierce Atwood renovations originally required 100% of the first floor to house a marine use. With five floors of useable space, the property managers were able to reinvest in the pier with *no guarantee of non-marine use on the ground level*. Additionally, as demonstration of adherence to the Development Standards, the project improved berthing access at the pier edge. The project additionally improved storm water quality outletting into the harbor with site improvements. After 2010, the property managers were able to house non-marine uses on the first floor – such as the King's Head Pub. Currently, +/-10% of the first floor is vacant, 45% is in marine office use, and 45% is in non-marine use. Used for self-storage for many years, current marine use of the facility is an expansion over the pre-development condition.

Maine Wharf: The construction of the Scales building on Maine Wharf was the first, and remains the largest, application of the 55%/45% standards. The pier was in failed structural condition prior to the project with the subject building condemned and the southerly end of the pier abandoned due to structural failure. Coincident with construction of the Scales building, utilities were improved and berthing expanded by rebuilding the southerly end and bringing in new floats. Clearly the value of the non-marine ground floor use (Scales) was an important contributor to the property owner's decision to take on the rehabilitation of the pier. If the percentage of non-marine use were less, it is unclear whether investment in the marine components of the pier would have been undertaken.

60 Portland Pier: Similar to the Maine Wharf example above, but smaller in scale, the rehabilitation of the southerly end of Portland Pier was premised on the potential for a high value tenant (Luke's Lobster restaurant.) Previously, public portions of the pier

were in active failure and the New Meadow's Lobster Pound had been inactive for several seasons. The Luke's project is using almost all of the non-marine first floor allowance available for the building (43%), and nearly all allowed for open areas (39%.) Given the deferred maintenance needs of the pier, it is unclear that any investor would have taken on the project without the prospect of the restaurant use. With Luke's, the lobster pound is renewed, berthing improved, and public access secured.

The above examples do not suggest that 45% non-marine use is *needed* for all piers. The Maine Wharf and Portland Pier examples, however, demonstrate that 45% was *sufficient* to spur investment where investment was critically needed. The Pierce Atwood project had sufficient value in upper floors alone; but the historic 5-story, 100,000 sq ft structure is unique within the zone.

Given that fishing community members have spoken most often regarding pressures placed on open areas (parking and storage,) it may be prudent to *look at first floor building space differently from open space* and pier deck area. Staff asks that the WWG discuss the 70%/30% request in the *Selected Issues* separately for building space and open areas. Given that a *lack of marine use parking* continually surfaces as a problem (an *open space issue*) and *first floor vacancies* currently exist (a *building issue*) it is reasonable to consider using different percentage requirements for each.

***Planning staff recommends that further study and analysis be undertaken prior to a decision on the marine/non-marine percentage recommendation.***

4. ***Revise the provisions which were intended to give marine uses first option to rent vacant ground floor space. In non-NMUOZ areas 14-311(a)(3) requires ground floor vacancies and change of occupancy to be offered to water dependent/marine uses. Any time there is a change in occupant, it is to be "made available to new marine occupants." The 60 day marketing period and methods, the terms and rates for comparable marine use space, etc. need to be reexamined, as well as how to put a limit on how much the space can be "improved" or changed (e.g. carpet, removal of exterior doors and loading docks, cosmetic finishes, etc.) so that it is no longer realistically usable by water-dependent uses. The standards should require it to remain usable by active water-dependent uses, not marine office uses, and TIF funds should be allocated toward making these occupancies affordable for these non-office marine uses.***

City Staff Suggested Approach.

Staff agrees that the 60-day marketing provision within the WCZ warrants examination. To staff's knowledge, no marine use has taken advantage of the requirement, nor have any non-marine proposals failed to meet the test. It is unclear whether the provision should be abandoned or tightened. The requirement is unique in the City's land use code and unusual for zoning generally.

Regarding the suggestion that interior finishes be limited to those "realistically useable by water dependent uses," staff recommends caution. Marine offices are permitted as are non-marine uses. For the City to dictate that they may not be

carpeted, as an example, appears overly prescriptive. Finish treatments can be removed in the future as needed.

The dimensional requirements already dictate 15 feet of floor to ceiling clearance to promote industrial use and potential conversion to marine use for the future. Staff recommends tightening the performance standards to *ensure that buildings can be accessible for loading as an additional measure* – a measure not employed in the Pierce Atwood building on Maine Wharf with the lack of loading potential possibly contributing to long-standing vacancy.

***Planning Staff will research alternatives for possible presentation at the February 7 meeting or at a future meeting.***

**5. *The provision on the required City inventory should be examined and enforced. (14-311((a)(3)(d)).***

City Staff Suggested Approach.

Staff agrees that the marine economy needs to be regularly assessed as a measure of success for land use regulations. The current inventory requirement is two-fold.

Firstly, at time of site plan projects must demonstrate their adherence to the 55%/45% requirements. This is a necessary step and has been successful in understanding the application of zoning on individual piers and wharfs at the time of regulatory review.

Secondly, the City is responsible for creating an aggregate inventory for all areas outside of the NMUOZ on an annual basis. Given the effort of a building-by-building accounting for all properties (with no data to aggregate unless there is an active site plan,) staff asks the WWG *is there an alternative to the current process?* Data is needed; but, is the current process producing the data set that is most useful for future decision making?

The current inventory could be replaced with an alternative assessment of the marine economy with a broader use than the narrow version on the books. The current inventory is limited to only a portion of the WCZ, does not count the number of commercial vessels, is silent on marine employment, and provides no indication of the value of economic impact of marine industries. It does capture projects and change, excluding the NMUOZ; however, those are changes that are largely evident from more casual observation. All careful observers of the WCZ knew that the Scales building was the biggest project between 2012 and 2018 and that the vacancy of Berlin Mills Wharf was a major event worth paying attention to.

In 2010, the City Council was right to hold the community accountable to changes on the Waterfront. However, an annual report of “significant development” would be far more achievable than the current requirement and likely as informative. If coupled with a regularly funded “state of the waterfront” assessment of broad marine industry

indicators every 2-5 years, the community would likely be far better informed than provided for in the current WCZ language.

- 6. Reinforce exclusive marine use of the pier edge.** *The pier edge reserved for marine uses is only defined as a 5 foot setback from the edge of the pier, bulkhead, or engineered shoreline. It says that area may only be used by marine uses, but there is no requirement that it affirmatively be made available for that use. In theory, it could be kept vacant and as it is now written, this vacant space is allocated toward the 55% requirement for marine uses. This needs to be amended and enforced so that the 5-foot setback (or the current physically available setback) is not reduced or eliminated. The 5-foot setback area (or the current physically available setback) should be combined with dockage rental.*

City Staff Suggested Approach.

The current 5-foot pier edge set back is both a dimensional requirement for building placement, and a performance standard for development outside of the NMOUZ. It was originally established to ensure pedestrian access to berthed vessels. Staff is aware of no instances where such spaces have been kept vacant or cordoned off to exclude vessel access. Staff does not recommend requiring leased space on the pier deck to be dedicated to the adjacent berth. Such a relationship is best negotiated between land lord and tenant. To *require* that deck space be tied to the berth would cause berthing rates to increase on those piers where such a relationship has not been negotiated between the pier owner and berthing tenant. One should note, that many piers do offer space adjacent to the berth, while other provide or allow for floats. Access to berthed vessels, however, is important and best addressed through the performance standards. See below.

The primary pier edge use running contrary to the *5-foot rule* is non-marine parking – much of which has been in constant use for decades and is legally non-conforming (grandfathered.) Newer pier edge non-marine use parking, not covered by any grandfathering status, has expanded incrementally over the years and staff agrees that increased enforcement against such expansion is warranted. See the discussion on Parking (section 8) and Enforcement (section 9) below. *An outright ban on new non-marine pier edge parking is worth considering* to strengthen the language of the performance standards.

- 7. Reexamine and revise contract or conditional rezoning standards in all waterfront zones to make sure they further retention of the working waterfront.** *In addition to meeting the performance standards, the intent is that it a proposed non-marine development is only justifiable and will only be allowed if it produces a net benefit for one or more water dependent uses -- "without the development the site could not otherwise support an economically viable water-dependent use." There are several other standards. These standards should be reviewed and strengthened to make sure they further the retention of the working waterfront.*

City Staff Suggested Approach.

Staff continues to recommend eliminating Contract and Conditional rezoning in the WCZ. Consistent with the tasks for the WWG, other waterfront zones are not currently under evaluation.

- 8. Analyze parking provisions to clarify what parking should be allowed in the WCZ and amend as necessary.** *Parking is a major competitor for space that is otherwise needed by WDUs to function adequately. 14-311 (d)(8), the performance standard for off-street parking and loading, and the interpretation of permitted uses, should be strengthened to provide a priority for permissible parking for various uses (permitted, conditional, accessory, located inside or outside the zone, on or off the lot) and to determine under what conditions, if ever, a parking structure should be allowed in the WCZ. Parking for any uses not permitted in the zone should be made available only if the parking needs of permitted uses and island parking needs have been satisfied. Enforcement of two parking spots on the piers for captain and crew per commercial fishing boat.*

City Staff Suggested Approach.

**NOTE: Parking is a complex and extensive issue. Staff suggests taking an entire future meeting, or more, to adequately cover. The following discussion is provided as an introduction to the topics raised in the Selected Issues letter.**

Authors of the *Selected Issues* letter are right to identify parking as a critical issue to address. Parking is a problem in both its lack and its abundance – too few spaces for some, too many spaces occupying area otherwise useful for industry or access. Parking draws unwanted traffic to the waterfront at the same time it is needed for the waterfront to survive. The revenues generated by parking are predictable, low cost, and needed by many pier owners, dissuading improvements for marine industry. Parking rules are also wickedly difficult to enforce on private properties where the City has no authority to ticket or tow. How does one determine if a car is associated with a marine use? One can make *assumptions* based on vehicle appearance, but zoning enforcement needs a stronger basis prior to taking municipal action against a property owner or tenant.

Taking the *Issues*, one at a time:

- a. provide a priority for permissible parking for various uses (permitted, conditional, accessory, located inside or outside the zone, on or off the lot)**

Currently, the WCZ standards prioritize marine and water dependent use parking.

- Non-marine parking is subject to the 55%/45% rule – either inside or outside a structure.
- All new non-marine parking is subject to an evaluation of adequacy for marine use.
- Water dependent uses “shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.” wcz 14-311(d)8d

Staff is open to hearing suggestions for further prioritizing parking uses, but cautions that overly complex hierarchies will likely be difficult or impossible to enforce - a criticism that has reasonably been leveled at the *current* hierarchy by many.

As noted in the 55%/45% discussion above, parking is a major component of both marine and non-marine use for open areas. One approach to prioritizing marine use parking, is to prioritize marine use of open areas generally – leaving it to pier owner and tenant to allocate space as needed for tenant needs, but to *further limit non-marine use in open areas of the zone*. The *Selected Issues* letter suggests 70%/30% as noted above.

***b. determine under what conditions, if ever, a parking structure should be allowed in the WCZ.***

There are no parking structures in the WCZ. Currently, new parking developed in the zone is only allowed to serve on-site use (for either permitted or conditional uses.) *Commercial parking* – as a primary use serving off-site uses or daily transient parkers - is currently *not a permitted use*. All lots providing such services are either older legal non-conforming (grandfathered) lots or are in violation of zoning. For example, the Portland Fish Pier has a commercial parking lot providing significant revenue for the pier operations and maintenance – this lot was developed prior to the 1987 referendum and is therefore grandfathered to serve off-site uses. Newer lots, such as at the Gulf of Maine Research Institute, are only allowed to serve their own employees, tenants and visitors.

Staff seeks guidance from the WWG as to whether an on-site parking use should be prohibited from developing a garage for permitted uses.

***c. Parking for any uses not permitted in the zone should be made available only if the parking needs of permitted uses and island parking needs have been satisfied.***

The WCZ performance standards for parking currently provide the following:

*Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.* wcz 14-311(d)8c

The significant issues appear to occur on piers where grandfathered non-marine parking is extensive or on piers where little parking is available for any use. Illegal non-conforming parking exacerbates shortages but does not appear to be a primary source of conflict on most piers.

*Islander parking* is currently considered parking for an *off-site use* and therefore *not permitted* in the zone as a distinct use. Islanders can and do make use of the grandfathered non-conforming commercial lots within the WCZ, but they compete

within the general parking market for these spaces. Making the limited parking supply available in the WCZ beyond the grandfathered commercial lots available to islanders will further compete with on-site marine use, which appears contradictory to the priorities of the zone and the concerns expressed by fishing interests.

Extinguishing grandfathered rights for commercial parking is worth discussing, but is a significant issue and not taken lightly. Dozens of businesses and hundreds of individuals have relied on legal grandfathered parking in the WCZ for decades. Revenue from these lots has been a significant contribution to the financial stability of the Portland Fish Pier as well as other private piers. City Corporation Counsel will need to opine on the advisability, legality, liability (regulatory taking?) and mechanism for such an approach, if suggested. *If extinguishing legal non-conforming status of existing parking lots is to be considered, the WWG should provide City Corporation Counsel and other staff sufficient time to research the issue and take the topic up as a separate agenda item at a future meeting.*

#### *Adding new permitted parking uses*

If expanding islander parking is considered within the WWG process, the permitted use section of the zone (14-307) could be amended to add *Islander Parking* as a permitted use. Staff suggests caution on such an approach. The supply of Islanders hungry for waterfront parking could well place significant strains on an already strained parking supply. It would be an unfortunate outcome of the WWG process if marine uses were left with fewer parking options due to competition from Islanders.

Other off-site parking uses may be considered, included creation of a *Marine Use Parking* category. Technically, under current rules, one pier cannot rent parking space to a marine tenant on another pier (as an off-site use) except within the grandfathered commercial lots. A *marine use parking* category could allow lease of parking on piers by marine users located on different piers.

#### *d. Enforcement of two parking spots on the piers for captain and crew per commercial fishing boat.*

Currently the WCZ *does not require any specific number of parking spaces to be dedicated to each vessel*. See subsection c. above for how water dependent uses are prioritized. Mandating reservation of two parking spaces per berth will likely result in a significant cost increase for berthing for some, or many commercial vessels.

The City is considering several ways to *provide parking for marine uses outside of zoning*, such as hang tag systems and prioritized access to the municipal parking

supply. Such options lie outside of zoning and should be thoroughly explored by the WWG during an agenda item dedicated to that topic at a future meeting.

- 9. Reexamine/revise key performance standards to make certain they are adequate to protect Water Dependent Uses (WDUs).** *Performance standards 15 and 16 (14-311(d) (15 and (16)) are critical for protecting marine uses, particularly WDUs, and giving them priority in the zone. They need to be reexamined to determine how the City is applying them, and to make certain they are adequate and to determine whether it is possible to use these provisions to require that pier owners, where possible, provide the minimum needed by commercial fishing tenants (e.g., a dedicated parking space, access to utilities, storage, loading and offloading space, etc.) and whether they are being used to protect the ability to accommodate potential future WDUs even if WDUs are not currently occupying the space.*

City Staff Suggested Approach.

**Planning Staff will provide a memo under separate cover addressing Performance Standards**

- 10. Enforcement of zoning.**

City Staff Suggested Approach.

Enforcement of the code is important and staff looks to the WWG for a discussion on appropriate *mechanisms for reporting violations for City follow up*. City Corporation Counsel cautions that enforcement of ordinance is a municipal function subject to local and state statute with an assumption of discretion in application – *not all violations rise to the level of an enforcement action.*

It is hoped that better communication between pier owners and tenants and a *wider understanding of applicable rules can foster better land use compliance prior to municipal action.*

Attachments:

*Selected Issues Proposed for Review*, provided by Sandra Guay, by email to the Economic Development Department by email on January 24, 2019

**SELECTED ISSUES PROPOSED FOR REVIEW BY THE  
WORKING WATERFRONT GROUP**

**A. ZONING RELATED:**

1. **Contract/Condition Rezoning must be eliminated for all prohibited uses in all waterfront zones.**
2. **Non-Marine Use Overlay Zone (NMUOZ) must be eliminated.**
3. **The 55% marine use/45% non-marine use designation for ground floors and open areas. (14-311).** To enforce the 55%/45% split, the City is interpreting this so that vacant counts as marine use. This gives owners an incentive to keep areas vacant rather than leasing to marine uses. **This presumption should be reversed** so that vacant counts as non-marine in the calculation of allowable percentages. 14-311(a)(3). The ratio should be amended to 70%/30%.
4. **Revise the provisions which were intended to give marine uses first option to rent vacant ground floor space.** In non-NMUOZ areas 14-311(a)(3) requires ground floor vacancies and change of occupancy to be offered to water dependent/marine uses. Any time there is a change in occupant, it is to be "made available to new marine occupants." The 60 day marketing period and methods, the terms and rates for comparable marine use space, etc. need to be reexamined, as well as how to put a limit on how much the space can be "improved" or changed (e.g. carpet, removal of exterior doors and loading docks, cosmetic finishes, etc.) so that it is no longer realistically usable by water-dependent uses. The standards should require it to remain usable by active water-dependent uses, not marine office uses, and TIF funds should be allocated toward making these occupancies affordable for these non-office marine uses.
5. **The provision on the required City inventory should be examined and enforced. (14-311((a)(3)(d)).**
6. **Reinforce exclusive marine use of the pier edge.** The pier edge reserved for marine uses is only defined as a 5 foot setback from the edge of the pier, bulkhead, or engineered shoreline. It says that area may only be used by marine uses, but there is no requirement that it affirmatively be made available for that use. In theory, it could be kept vacant and as it is now written, this vacant space is allocated toward the 55% requirement for marine uses. This needs to be amended and enforced so that the 5-foot setback (or the current physically available setback) is not reduced or eliminated. The 5-foot setback area (or the current physically available setback) should be combined with dockage rental.

7. **Reexamine and revise contract or conditional rezoning standards in all waterfront zones to make sure they further retention of the working waterfront.** In addition to meeting the performance standards, the intent is that it a proposed non-marine development is only justifiable and will only be allowed *if* it produces a net benefit for one or more water dependent uses -- "without the development the site could not otherwise support an economically viable water-dependent use." There are several other standards. These standards should be reviewed and strengthened to make sure they further the retention of the working waterfront.
8. **Analyze parking provisions to clarify what parking should be allowed in the WCZ and amend as necessary.** Parking is a major competitor for space that is otherwise needed by WDUs to function adequately. 14-311 (d)(8), the performance standard for off-street parking and loading, and the interpretation of permitted uses, should be strengthened to provide a priority for permissible parking for various uses (permitted, conditional, accessory, located inside or outside the zone, on or off the lot) and to determine under what conditions, if ever, a parking structure should be allowed in the WCZ. Parking for any uses not permitted in the zone should be made available only if the parking needs of permitted uses and island parking needs have been satisfied. Enforcement of two parking spots on the piers for captain and crew per commercial fishing boat.
9. **Reexamine/revise key performance standards to make certain they are adequate to protect Water Dependent Uses (WDUs).** Performance standards 15 and 16 (14-311(d) (15 and (16)) are critical for protecting marine uses, particularly WDUs, and giving them priority in the zone. They need to be reexamined to determine how the City is applying them, and to make certain they are adequate and to determine whether it is possible to use these provisions to require that pier owners, where possible, provide the minimum needed by commercial fishing tenants (e.g., a dedicated parking space, access to utilities, storage, loading and offloading space, etc.) and whether they are being used to protect the ability to accommodate potential future WDUs even if WDUs are not currently occupying the space.
10. **Enforcement of zoning.**

## **B. OTHER ISSUES:**

1. Ground fish are coming back – the City needs to plan for future growth, not just for current needs.
2. Portland Pier and Customhouse alleyway access.
3. Coast Guard GMRI point historical parking.

4. Fishermen should have priority for parking on the Fish Pier.
5. Parking sticker, sticker would have to supersede, get rid of Unified (and any other private parking enforcement company), review the parking annually.
6. Two fishermen on the Fish Pier Board of Directors.
7. Permanent committee of Portland Working Waterfront Group (WWG) that oversees zoning, parking, historical access, cruise ships, traffic, to be determined (the WWG submits names from the committee from the group) and for making recommendations to City Council on determining and prioritizing uses for TIF money with equal member of fisherman as wharf owners on the committee.
8. The island fishermen need access/parking to the mainland Portland to buy, sell, repair their boats.
9. Fisherman Memorial Park on the waterfront side **located in the WCZ**, to be used also as a staging area with a public bathroom. Bell Buoy Park is clogged up, people trying to get into RiRa's. Safety issue for fire boat/emergency access.
10. Fish Pier needs a commercial wharf between Coast Guard base and pier, modern facility for the next generation.
11. Keep the existing non-metered parking on Commercial Street at Becky's, Hobson's Landing, GMRI and reserved spaces for fishermen and island parking in all non-metered zones.
12. No traffic light High and Commercial and no additional traffic lights on Commercial.
13. Construction of Hobson Landing cannot impede traffic and/or parking on Commercial.
14. Elimination of cross walks (or at least a few) and come up with a way to keep traffic flowing, include use of traffic officers at busy times. Possible pedestrian lights. Need to do something about traffic so we can work.
15. Make sure the TIF money goes to a working waterfront. It has to be compatible to marine use at affordable price.
16. Stipend money for committee members.



Memorandum  
 Planning and Urban Development Department  
 Planning Division

To: Waterfront Working Group Members  
 From: Matthew Grooms, Planner  
 Date: February 4, 2019  
 Re: Waterfront Central Zone (WCZ) Performance Standards  
 Meeting Date: Meeting #3, February 7, 2019

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**I. Introduction:**

In response to feedback from the Waterfront Working Group at the January 17, 2019 meeting, Planning staff in coordination with the Economic Development Department have drafted responses to ten concerns raised regarding Waterfront Central Zone standards. Broadly speaking, these concerns focus on finding a sustainable balance, fostered through zoning standards, between marine and non-marine uses, wherein non-marine uses are leveraged to support marine uses through revenue and infrastructure investment. Marine uses meanwhile are subject to fewer restrictions and permitted across the entire zone. The memo as drafted by Mr. Needelman, Waterfront Coordinator, identifies conceptual first approaches in addressing these issues, and is intended as the basis for a follow-up discussion with the WWG.

As part of this response package, Planning staff are providing a memo under separate cover that discusses performance standards in greater detail. Performance standards were specifically identified by members of the fishing community and their legal representatives as an area of concern and should be looked at as a critically important tool for ensuring compatibility between marine and non-marine uses. The discussion found herein is not intended as a prescriptive or fully flushed out recommendation, but as an overview of staff's initial response to these concerns. Staff will be seeking feedback from members of the group before preparing draft amendments to the zone for presentation and review by the Planning Board.

**II. Approach**

From a zoning perspective, the goal of this process is to rectify substantive issues with the Waterfront Central Zone (WCZ), shore up language that is unclear or easily misinterpreted and remove redundancy and out of date language where it exists. The existing WCZ framework will remain; however staff have identified several possible improvements worth further consideration that fall outside the scope of the WWG process. This includes general formatting, standards that function as intended (though may be more appropriately located in another section of the City's code), and other standards subject to future change in accordance with studies or planning processes currently being completed.

Simultaneous with the WWG process, the City is undertaking a rewrite of the City's Land Use Code which aims to significantly streamline the document and create a more flexible regulatory framework that is in harmony with the Comprehensive Plan. The 'ReCode Portland' process, (<https://www.recodeportland.me/>), is well underway and may be the appropriate vehicle for

addressing organizational or clarifying changes that are outside the scope of the WWG's top priorities. Any ReCode changes proposed would be consistent with the feedback received from this process, and would be available for input prior to implementation.

### III. Performance Standards

#### A. Overview of Performance Standards

The Waterfront Central Zone (WCZ) like many zones across the City takes a hybrid approach to regulating uses. This is accomplished through traditional "Euclidean" zoning (use and dimensional restrictions) and performance-based zoning, which regulates the impact of uses, ensuring that disparate uses are compatible with one another. Existing performance standards apply to all uses, regardless of whether or not they are permitted by-right or conditionally. For the reference of the WWG, the list of performance standards are as follows (See Section 14-311(d) for complete description):

- Outdoor storage of materials
- Noise
- Vibration
- Federal and state regulations
- Discharges into harbor areas
- Storage of vehicles
- Landfill of docking and berthing areas
- Off-street parking and loading
- Public view protection
- Shoreland and Flood-Plain Management
- Lighting
- Signs
- Storage of Pollutants
- Urban Design
- Pier and Wharf Extension
- Compatibility of Non-Marine Uses
- Functional Utility of Piers

#### B. Discussion of WWG Concerns Related to Performance Standards

At prior WWG meetings, members of the group raised concerns regarding impacts related to parking and traffic and those generated by non-marine uses. As noted above, members of the fishing community and their legal representatives also provided staff with a document titled, "Selected Issues Proposed for Review by the Waterfront Working Group", which stated the following:

*Reexamine/revise key performance standards to make certain they are adequate to protect Water Dependent Uses (WDUs). Performance standards 15 and 16 (14-311(d)(15 and 16)) are critical for protecting marine uses, particularly WDUs, and giving them priority in the zone. They need to be reexamined to determine how the City is applying them, and to make certain they are adequate and to determine whether it is possible to use these provisions to require that pier owners, where possible, provide the minimum needed by commercial fishing tenants (e.g., a dedicated parking space, access to utilities, storage, loading and offloading space, etc.) and whether they are being used to protect the ability to accommodate potential future WDUs even if WDUs are not currently occupying the space.*

In reviewing performance standards, the staff have considered not only the two standards identified by the WWG, but how they work in combination with the other fifteen (15) standards as well. In beginning this discussion, it is worth mentioning that zoning is not applied retroactively to existing uses that pre-date the WCZ performance standards. New development, at time of site plan

review (and certain changes of use) are required to demonstrate compliance with the zoning as written. The review authority must determine that these seventeen (17) standards as written are being met before approval of a site plan application may be granted. Uses in existence prior to the adoption of this ordinance that do not comply with these standards are considered legally non-conforming (grandfathered), and so long as the level of non-conformity is not increased and the use continues to operate, that use is exempt from meeting these standards. Since adoption in 2010, the following projects were reviewed under the current standards; Pierce Atwood Building, Union Wharf Office Building, Scales Restaurant, and Lukes Lobster. There have also been several smaller 'changes of use' not identified here that were reviewed against the noticing standards as part of the building permit review.

Below is a summary of performance standards fifteen (15) and sixteen (16), and some potential improvements to make these two, and the performance standards overall, operate more effectively. As everyday users of the working waterfront, the zoning necessarily relies upon input from stakeholders and additional input is welcome about what aspects of the standards, if any, could be improved. The February 7<sup>th</sup> meeting is an opportunity to gather feedback and incorporate additional restrictions as necessary to a future draft amendment.

1. #15: Compatibility of Non-Marine Uses with Marine Uses

This standard requires that non-marine uses and activities associated with those uses shall carefully and thoughtfully take into consideration the ongoing needs of marine uses, whether that be maintaining necessary travel-ways, access to berthing areas or general operations, when designing a site to accommodate a non-marine use.

Staff Discussion: This standard is open-ended, and reinforced throughout the zoning (see other applicable standards listed under Section 14-311(a and b) regarding the NMUOZ and non-marine standards). The standard itself does not attempt to foresee every eventuality, and instead provides the developer with some flexibility in designing their site. A possible way to retain this flexibility while strengthening the standard is to explicitly outline the requirement for an **Operations and Access Management Plan** (a narrative and visual) from applicants to demonstrate how the non-marine use would not impede the operation of an existing marine use. This could be incorporated into a stand-alone requirement related to access management combining several items from 14-311, and that option is discussed below.

2. #16: Functional Utility of Piers

Standard #16 (a-d) applies to new development's impact on the functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods, including provisions for storage and movement of goods; retention of adequate circulation areas abutting and near pier edges; limitations on new non-commercial berthing; and retention of access, parking, and loading areas for marine uses. Portland's working waterfront depends on the efficient transfer of goods between vessels and the shore, and then from the shore to our street system. The functional utility of piers standard applies to both marine and non-marine uses, and requires that those uses not interfere with a water dependent use's ability to complete this transfer of goods.

Staff Discussion: Standard #16 is an extensive, multi-part requirement. Staff will run through the individual criteria at the February 7<sup>th</sup> meeting and will be seeking feedback from the WWG based on practical experience to see if #16 needs changes. Given the prescriptive nature of this standard, and the existing overlap between several of the performance standards, staff are contemplating combining a few of the standards into a new required **Operations and Access Management Plan**, that would be required of all projects located in the WCZ. This is discussed in greater detail below. If a project is otherwise subject to a site plan review, performance standard requirements of the zone are to be incorporated into the submitted material.

#### C. Operations and Access Management Plan

One concept that is being considered is a new standard that may be incorporated as a performance standard, being called an **Operations and Access Management Plan**. This standard would seek to condense several existing standards, namely standards eight (8), fifteen (15) and sixteen (16) into a new requirement that any proposed development in the zone provide a detailed plan and accompanying narrative that describes how a proposed use accommodates reasonable access for pedestrians, vehicles and freight transfer to and from berthed vessels. The intent is that a proposed use would need to clearly identify travel ways (existing and proposed), areas for material storage, parking, and public access points to the water's edge. The standard requiring this plan would likely be less prescriptive than the existing set of standards, providing greater flexibility to the developer in designing their site and accommodating the needs of water dependent uses. It also would combine several related standards by bringing them together under one submission requirement.

#### D. Other Recommendations

As mentioned in the introduction, the staff envisions removing several redundant and or unnecessary standards, namely the 'federal and state environmental regulations', 'shoreland and floodplain management' and 'signs' standards, as they are applicable city-wide, in all zones, and are not performance standards and are not unique to the WCZ. Similarly, language may be cleaned up to read more clearly, while maintaining the substance of the standard. Some initial observations were that the lighting standard may make more sense in the City's Technical Manual for site lighting and that the parking standards, in line with other zones, may be relocated to the City's Off-Street Parking and Loading section of the zoning code. These are preliminary observations and may warrant further discussion as we continue on in this process.

### IV. **Next Steps**

The purpose of the February 7<sup>th</sup> meeting is first to respond to concerns raised by the Waterfront Working Group, and to discuss potential zoning tools to further the goals of the group. Based on feedback of staff approaches to zoning, as well as further discussion at the February 7<sup>th</sup> meeting, we will begin to incorporate the feedback received from the group into a comprehensive amendment to the WCZ, which would then be taken to the Planning Board for review. At the January 22<sup>nd</sup> meeting of the Planning Board, the Board indicated that they would prefer to see this process with the WWG as it relates to zoning conclude, and then review all proposed changes at one time to the extent possible. Staff will continue to provide updates on zoning at future meetings of the WWG, and encourage active participation of group members at future Planning Board meetings. All meetings of the Planning Board would include opportunities for public input. The goal is to complete the Planning Board process before the moratorium on new non-marine uses in the WCZ end in May of 2019.

V. **Attachments**

- a. WCZ Performance Standards

preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public.

7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d) (8).
9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.

(d) *Performance standards:* All uses in the waterfront central zone shall comply with the following standards. Standards 8, 10, 13, 14, 15, 16, and 17 below shall be reviewed by the planning authority:

1. **Outdoor storage of materials:** Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
2. **Noise:** The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic

on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ1).

3. Vibration: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
4. Federal and state environmental regulations: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
5. Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this code and federal and state environmental statutes and regulations regarding wastewater discharges.
6. Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
7. Landfill of docking and berthing areas: Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. sections 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity.

If approved, construction shall be undertaken using methods approved by the department of public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

8. Off-street parking and loading: Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.

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

- a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.
  - b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").
  - c. Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.
  - d. Water-dependent use parking spaces shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.
9. Shoreland and flood plain management regulations: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5 of this article.

10. Lighting: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
11. Signs: Signs shall be permitted as set forth in division 22 of this article.
12. Storage of pollutants and oily wastes: On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
13. Urban design: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
14. Pier and wharf expansions: In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.
15. Compatibility of non-marine uses with marine uses: Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
16. Functional utility of piers and access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent

pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles, and shall demonstrate adherence to the following provisions:

- a. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.
  - b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.
  - c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.
  - d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.
17. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains

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

(Ord. No. 103-10/11, 12-20-10; Ord. 108-15/16, 11-16-2015)

**Sec. 14-312 thru Sec. 14-317. Reserved.**

DIVISION 18.5. WATERFRONT PORT DEVELOPMENT ZONE\*

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**\*Editor's Note**—See the editor's note to division 18 of this article.

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**Sec. 14-318. Purpose.**

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

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

Nonmarine activity may be allowed to the extent it will not have any adverse impact on marine uses.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 33-17/18, 9-6-2017)

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

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development. A proposed development will have an



# Municipal Tax Increment Financing Overview

## **Waterfront Working Group**

February 7, 2019

Presented by:

Gregory A. Mitchell, Director  
Economic Development/City of Portland

# What is Tax Increment Financing?

- A public economic development municipal financing program, funded by property taxes on the incremental or increased new municipal assessed value generated by a development project.

# Why is TIF Used?

- To stimulate private sector investment and job creation
  - Targeted industries
  - Targeted locations
- To Invest in Public Infrastructure and City costs (staff, studies, etc.) and additional specified uses.
- Workforce Training.
- Expand existing or fund new transit service capital costs (bus shelters, benches, signage, crosswalks, etc.) and limited operational costs (transit operator salaries, fuel, and maintenance).
- To 'shelter' against adverse adjustments to State subsidies and County taxes based on total municipal valuation.

# How Does TIF Work?

- A municipality designates a specific geographic area as a municipal development tax increment financing district.
- This “freezes” the base value of taxable property within the district (the original assessed value or “OAV”); TIF revenues derive from taxes on **increased new property value** above OAV.
- Municipality adopts a **development program** describing authorized uses of revenue.

# Establishing The TIF District

TIF districts may be designated for a maximum of **30** years, and at least **25%** of the district area must be:

- Blighted
- In need or rehabilitation, redevelopment or conservation;
- Suitable for commercial uses or arts; or
- Affordable Housing with 25% suitable for residential use.

# Funding Mechanisms

## ■ Municipal Bonds

- Municipality established a Development Sinking Fund for debt service requirements

## ■ Credit Enhancement Agreement

- TIF revenues placed in a Project Cost Account for direct payment to company for authorized project costs

## ■ Municipal Economic Development

- TIF revenues placed in a Project Cost Account for direct payment by municipality for authorized project costs

# How Does 'Sheltering' Work?

- With new investment, real estate valuation goes 
- As a result, state subsidies go  and county taxes go 
- TIF 'shelters' captured new value by excluding it from total municipal value reported to the state for the length of the TIF.
- Portland 'shelter' value is estimated at 30 cents of every new property tax dollar.

# TIF Approval Process (2 Steps)

## TIF Program

- District Boundaries
- Development Program
- Financial Plan

1. Municipal or County Approval, followed by:

2. State DECD Approval for Commercial & Industrial Projects;

OR

Maine State Housing Authority for Affordable Housing TIFs.

Credit Enhancement Agreements w/Project Developer then executed after above two approvals.

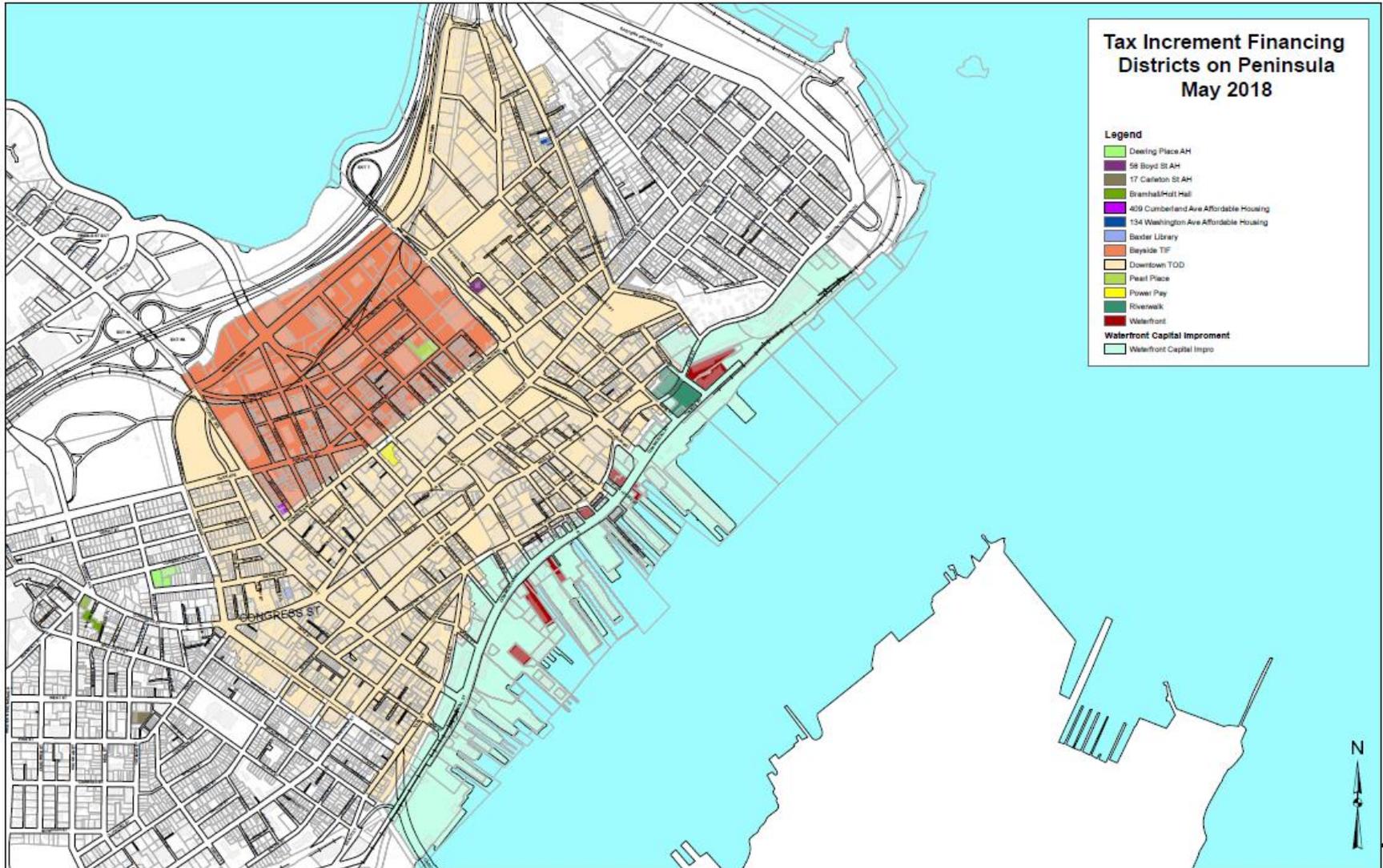
# City TIF Policy

- Adopted New Council TIF Policy as of 11/20/2017
- Credit Enhancement Agreements (CEA) – up to 20 Years With Average 65% Capture Rate
- CEA Development Compliance with City Green Building Code and State Prevailing Wages Related to New Construction

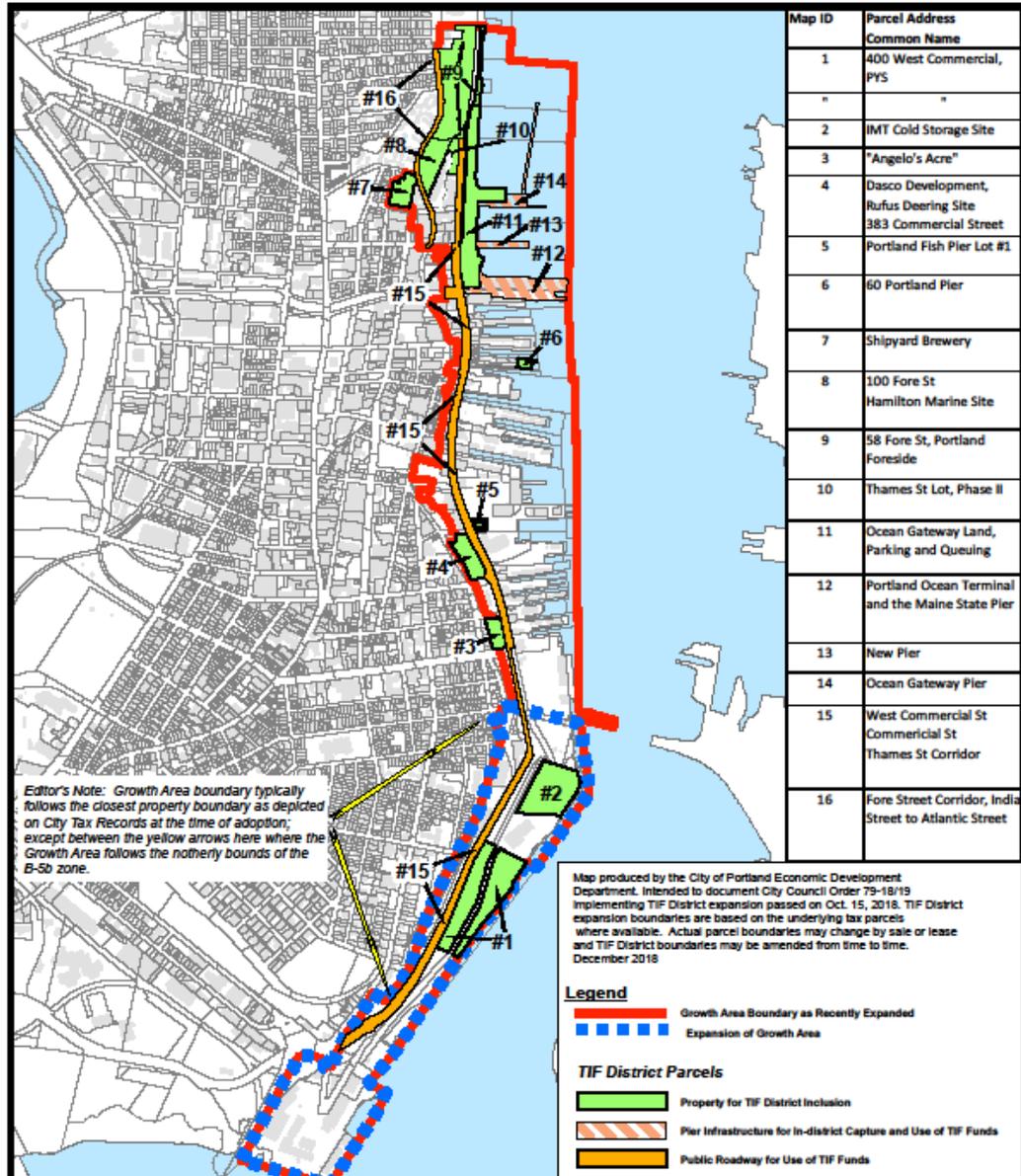
# Portland's Experience With TIFs

- Portland currently has 7 active Affordable Housing TIF Districts; 8 active Commercial TIF Districts with Credit Enhancement Agreements (CEA), including one CEA on Merrill's Wharf; and 3 area wide TIF Districts including:
  - - Bayside
  - - Downtown Transit
  - - Waterfront

# Portland Peninsula TIF Map



# Waterfront TIF District



## Portland Waterfront Development Growth Area Waterfront TIF District Expansion

Council Order 79-18/19  
Exhibit B, Passed October 15, 2018

2,000 1,000 0 2,000 Feet



# Waterfront TIF District Allowable Uses

- Pier and Wharf Structural Repair
- Street Studies and Improvements
- Pedestrian and Multi-Modal Circulation
- New Publicly-Owned pier
- Surface and Structured Parking
- Utilities Infrastructure
- City Staff Salaries
- Environmental Improvements, Including Sea Level Adaptation and Infrastructure Improvements
- Dredging of Commercial Vessel Berthing
- Dredge Sediment Disposal and CAD Cell Development
- Workforce Training Fund
- Professional Services Costs
- Credit Enhancement Agreements
- Local Match for Ocean Gateway Project

# Past (Tax Years 4-1-2002 to 4-1-2018) City Uses of Waterfront TIF District Revenue

- City Staff Salary and Fringe Benefits
- Local Match for Ocean Gateway Project
- Professional Services Costs
- Waterfront Credit Enhancement Agreement  
(Merrill's Wharf Redevelopment through 4-1-2027)
- Past Average Annual Financial Allocation: \$600,000

# Waterfront TIF District Property Tax Revenue Projections (4-1-2019 – 4-1-2031)

Tax Year	TIF Capture Rev Est. (Millions)
2019	\$1.4
2020	\$2.0
2021	\$2.5
2022	\$5.0
2023	\$5.1
2024	\$5.8
2025	\$5.9
2026	\$6.0
2027	\$6.3
2028	\$6.5
2029	\$7.4
2030	\$7.7
2031	\$7.9

## Notes:

1. Estimates include new development value from projects under construction and planned.
2. Annual mil rate increase of \$2%.
3. Annual property valuation increase of 1%.
4. City-wide revaluation will impact these revenue projections.

# Union Wharf – TIF Case Study

NOTE: No CEA Agreement in Place.

- Original Assessed Value (base value): \$616,430
- City Total Assessed Value at Build Out: \$3.58 Million
  - - Less OAV of \$616,430
  - - Equals Increased Assessed Value of \$2,963,570
- Annual Average Property Tax Revenue from Capture of Increased Assessed Value (IAV) over OAV: 100% - \$76,342; 65% - \$49,622
- Total Property Tax Revenue from Capture of IAV Over Remaining TIF Term (FY2019 through FY2032): 100% - \$1,068,784; 65% - \$694,710



# Questions?

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