



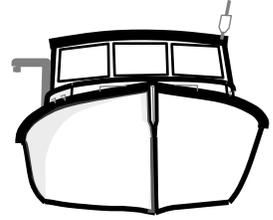
Waterfront Workgroup

11th Meeting Agenda

May 2, 2019

Room 24, City Hall

3:00pm to 5:00pm



1. Welcome and Introductions:
2. Review Meeting Notes from Meeting 10, 4-25-19.
Meeting Notes attached, along with correspondence received and presentation from the previous meeting
3. Continued Working Group discussion on WCZ Performance Standards in preparation for Planning Board Public Hearing.
4. Working Group discussion on Schedule moving forward.

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Meeting 10 Notes
April 25, 2019

City of Portland
Waterfront Working Group

Meeting #10
Thursday, April 25, 2019 -- 3:00 - 5:00 p.m.

Attendance:

PWWG: Mike Alfiero, Togue Brawn, Bill Coopersmith, Steve DiMillo, Keith Lane, Charlie Poole, Willis Spear, Becky Rand, Dory Waxman, Togue Brawn (Cyrus Hagge absent)

Staff: Jon Jennings, Bill Needelman, Greg Mitchell, Matthew Grooms, Christine Grimando, John Peverada (Parking Division Director)

Welcome and review of minutes. From the minutes, the question of what constitutes a commercial kitchen was raised. Mr. Needelman clarified that, historically, a kitchen with seafood has been allowed, but that feedback and direction from the group would be welcome.

Meeting Summary:

Parking Discussion continued from last week:

Bill Needelman reported his use of aerial photography and a morning walk-about (he walked the corridor) to get a general idea of available parking and future alternative parking options for waterfront users. Mr. Needelman made clear that the aerial photograph displayed is not official inventory, but it does provide a good template for talking points and for estimating available present and future parking options.

The aerial photograph of parking in the 3 categories of identified parking (private off-street, public off-street and public on-street regulated) is available at the PWWG website with color coding as follows:

Blue is on-street time regulated parking

Solid red is metered (kiosk or regular meter)

Yellow is unrestricted on street parking

Pink slash is commercial parking (parking for sale -- mixed)

Red slash is shared use (berthing/marine but also sold at night for other use)

Green is no parking, but may be used in future for vessel crew parking

The area under the bridge is not available for parking -- it was mistakenly identified as available during the last meeting.

By Ocean Gateway the area with pink slashes is being made available for day parking (about 200 spaces).

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On Maine Wharf the area with red slashes is parking available for marine parking during working hours, with Scales restaurant using the space in off hours.

Custom House Wharf and Portland Pier are shared (with Togue Brawn letting it be known that they tell customers that people are never towed after 5 pm, although they technically could be towed). Luke's Lobster plans to also use lobster berthing parking spaces in off hours for restaurant. There is deep concern from residents of this area about parking issues (including valet parking) -- signage will be implemented and there is work being done to identify what it needs to be.

There should be pink slashes on the parking map for the area of Angelo's Acre.

Widgery and Union Wharves have expansions and work is in progress to figure out how to tightly regulate parking here. Union Wharf is primarily tenant parking or parking in support of marine use parking.

The green spaces on the photograph are almost the last areas available for new on-street parking. There are 2 empty lots at the Fish Pier, Lot 12, Brown Trading leased by Waterfront Maine next to Pierce Atwood. Lot 12 (see map at PWWG website) is available for development. Also Lot 1, near GMRI, is waiting for the moratorium to expire and will likely be made available for development.

There is unregulated all day parking (yellow) in front of Gulf of Maine Research Institute.

The front of Rufus Deering will change, according to plan, into metered spaces.

There are also a few unregulated spaces on High and Park streets.

No parking areas (green) are where new on-street parking may be created.

Green spaces are currently in bike lanes. Safety issues will need to be addressed, but there are options for bike routing onto sidewalk (as may become a trail)

On the Western Waterfront parking is not regulated and there are about 160 spaces. The area adjacent to the IMT rail loading platform should probably have only truck staging.

There is a small lot behind Nova Seafood that is an unrestricted public lot.

Zoning Discussion Continued from last week:

Matthew Grooms reported a productive meeting with Planning Board on the 23rd and stated that they are set to go straight to the Public Hearing. The main feedback from the Planning Board meeting was that:

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The Planning Board wants to see additional info on TIFs tax data and the nmouz. Charlie Poole pointed out that pier owners are going to have to feed some of that info to the group;

The Board would like to know the impact of the change from 150 to 125 for pier owners;

The Board questions whether the current moratorium be extended? (staff asked the WWG and group consensus was this is not necessary or good); and

Are the proposed amendments necessary - especially with performance standards? Is zoning the right mechanism to address keeping the working waterfront “working.”

Some members of the PWVG questioned whether the Planning Board take the work of the PWVG seriously, particularly the concerns of the fishermen regarding access and preservation of a working waterfront. Christine Grimando pointed out that the kind of questions the Board put forth are normal in this type of process and do not necessarily reflect resistance to PWVG input and work. See dialog section for comments.

A lively discussion ensued with strong opinions expressed about working waterfront preservation (and the specifics of how best to preserve the “working” portion of the waterfront) and about who benefits or does not with current and proposed compromises. See dialog section for comments.

Additional Items:

Fisherman’s Pier: Mr. Jennings relayed correspondence from the developer.

Commercial Street: The WSP consultant process has been delayed as the lead consultant has just left. Mr. Jennings stated that they will have to address pedestrian traffic in this area, maybe eliminate some crosswalks and install better crossing signals for pedestrian and vehicle safety.

Mr. Jennings shared his letter to Bruce Van Note, Commissioner of MDOT, and the response he received regarding funding/grant applications for dredging. These letters are posted at the PWVG website. Mr. Jennings is also talking to the Maine federal delegation (Collins, King, Pingree) regarding funding, reminding the group that any federal funding would require a large match.

Funding applications include requests for a CAD cell in order to “get the really bad stuff out” now, drop it into CAD cell, then next time (100 years from now) “we can dredge out to sea.”

It was agreed to continue meeting weekly (at least for now) as June is nigh upon us. Additionally, some group members would like to continue in some form after this process is completed, because the waterfront is unique and too important to preserve. Mr. Jennings agreed.

Mr. Needelman asked the group -- per the request of the Planning Board -- if it would be possible to extend the moratorium. Mr. Jennings replied that he didn't see any reason to commit to extension -- better to hold everyone's feet to the fire. The group agreed.

Abbreviated Dialog - (Parking):

SD: What about commercial lots on Union, Widgery, Chandlers, Long, Fishermans -- are these going to be considered pre-existing?

BN: We'll have to go pier-to-pier to do a survey of wharf owners.

BC: Can you break down the number of spots that exist? In different categories? I'd like to see if we're losing any later on.

BN: You mean have the number of parking spaces be a data point for regular inventory?

BC: Yes.

Peveada: We do supply numbers now. There are 191 parking meters on Commercial Street.

BC: How many non-metered?

Peveada: About 20 that are time regulated; not certain of how many unrestricted -- we'd have to count.

BN: Rufus Deering is going to make a certain number available for marine users. The City will help them determine who is a marine user.

BC: How many spaces at Fisherman's?

BN: I don't know off hand. **We'll try to get the numbers and put them in the minutes.**

MA: BC has a good point; this is good info to have.

JJ: We should be looking at the green spaces for marine use with the hang-tag permit.

DW: How many spaces do you fishermen think you need to take care of all of you?

BC: From 125 to 200.

JJ: We were estimating coming up with 50 to 80 spaces -- not everybody will be there at the same time.

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BN: We have a pretty good supply on West Commercial St; it might mean you have to pick people up, pick up your sternman/employees.

BC: Why aren't people parking there now (yellow spaces on West Commercial St.)?

BN: There is no good pedestrian conductivity.

MA: It's a good place to carpool.

Peverada: Don't park on railroad land/they have parking police.

BN: We'd like to expand the shoulder/land to 8 feet wide so pedestrians and bicycles have a safe corridor at least to High Street, where they can then join slower traffic. We need a minimum of 8 feet for bikes and pedestrians to safely co-exist.

Perevada: If you park west of the bridge, I don't think you need a permit, there's not much competition now.

JJ: Yet, but there will be --- JB Brown on West Commercial Street will be developing and need more parking and creating a busier corridor. Any new development project on West Commercial Street will have on-site parking, we hope.

JJ: We'll continue to report out some numbers -- John Peverada will you get the data? Then, we'll get it out to the group.

JJ: We're anticipating that on the Brown property, that at some point in the future we will capture it in the Waterfront TIF -- even though it's not in it now, we're going to put it in.

JJ: Not specifically relevant to the conversation but as for islander parking one of our TIFs has a transit component, so we're identifying "pushed out" parking for islanders that comes with a shuttle. Example: Marginal Way near UHaul.

Abbreviated Dialog: Planning Board Meeting/Zoning

BN: Board members wanted to know the impact of reducing the Overlay. We'll work with assessor to get that Delta (change). We will bring 55/45 and 4 stories to assessor concentrating on the area between Long Wharf and Union Wharf.

SD: We'll work on ours individually.

CP: Our new building is real and it exists, so it's a benchmark.

BN: I hope we can get a reasonable number to report back.

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KL: In overlay zone, is the change from 125 to 150?

BN: Yes, except Long Wharf, from 500 to 300.

MG: Some board members questioned whether zoning was the right mechanism to address these issues.

KL: Zoning is not your only tool.

MG: Absolutely not. Don't change if you don't need to.

MG: Board members inquired about Islander parking -- our approach would be to NOT permit islander parking in the nmouz.

MG: Performance standards concerns -- we're still working through those we plan to respond to those concerns this week and have that in time for the next discussion before it goes back to Planning Board. Will look to be informed by the material from S. Guay letter.

MA: If you have marine use that is 55% has a need for accessory use does that go toward 45% of non marine?

BN: It's looked at on a case by case basis; it depends on the details.

CG: My interpretation is that yes, I think that would count toward 45, but this is a unique question that is worth clarifying.

BN: It's hard to discuss as a hypothetical. All are reviewed on a case-by-case basis.

MA: I think that will be part of the growth area in the fishing industry.

TB: Agreed.

BN: A seafood processing facility would go in under 55

KL: Some Planning Board members seemed indifferent and saw no reason for changes to 2010. But 2010 still has 500 foot nmouz. The Planning Board seemed indifferent. Fishermen will have a problem with that.

CP: I think we have to be careful about painting the waterfront gray. I'll say it again: we need to have zoning that allows this revenue to be generated that does not interfere with marine use.

KL: You're shutting off the future when you're allowing a large area to be developed for non marine use.

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CP: I don't want to see the fisherman community bear the brunt; you can't afford it.

KL: Every boat tied to a dock provides profit. You have to maintain that structure whether I'm there or not.

DW: I was present for 2010. To your credit you've done incredibly well, but we have to compromise and I am not sure where that is.

CP: I think there are tools to prevent going where Keith thinks we're going.

DW: This has to be a give and take.

KL: First, I wasn't surprised by what happened at the workshop -- we went from recommendations of this group, then 3 members of the group went against recommendations of group. The 150 to 125 goes around buildings - it helps prevent a large parking garage.

KL: 125 is not real number -- it doesn't take 25 feet away that you can't do anything with, you just have to fill it with 55% marine use.

?: Lost revenue from tax? Not seeing it.

KL: You don't want a fisherman to go fisherman (postal analogy).

MA: I was the one that compromised on 125. I'm losing about 2000 feet. 90% of my building is marine only commercial. I depend on fishermen, I also depend on the nmouz. Some statements were made about how people in this room have driven ground fishing away -- that is simply not true.

Ground fish have left; but it's been stated that ground fish leaving has been the cause of development on the waterfront -- it's simply not true. I'm here to help bridge the gap. My compromise is to give up from 150 to 125.

BC: I go back to definition of nmouz. Before, the Waterfront Central Zone had been zero. The street frontage on Commercial Street -- hypothetically -- would there have been more marine use on ground floors? My loss had no gain.

MA: From 2019 to 2029? I don't know.

BC: The fishing industry is coming back, there is more ground fish out there now. People want sustainable seafood It's all sustainable now due to the regulations put into effect.

MA: I knew this was going to be difficult because I live in 2 worlds. I want to be Switzerland. I don't want to be on one side or the other.

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SD: This is compromise; I think we've done a good job. I didn't say anything different at Planning Board meeting than here.

KL: It seems to me it needs to be repeated from time to time.

MA: I didn't hear anything different at the Planning Board meeting.

KL: What went before the Planning Board came out of these meetings and I sensed they were indifferent to our work.

CP: We do not agree with nmouz , but much of what we do here I do agree with. I still don't agree with the nmouz line. If everyone walks out jumping for joy then we haven't done our job.

? So, will the Board keep 150?

JJ: We can't speculate.

BR: We should look for stuff that's allowed because if we ruin this waterfront with too many hotels, we can never fix it. This is *the moment* to put a halt to hotel development on wharves. I don't like Commercial Street any more. If I buy this dock, I'll be worried about maintenance, but I'd find a way to do it. How much money can you take to your grave? This is *the* moment to save.

WS: I'm worried about it staying at 150. I thought we had it down to 125. What we've gained is slowly, slowly going away.

CP: I don't want zoning changes just for the sake of changing, we need to make sure we're doing it for the right reasons.

(Regarding a letter WS presented regarding KL parking) -- **A copy of this letter will be put up at PWWG website and will become an agenda item.** Letter claims action will be taken if KL continues to park at specific property which WS says was taken by adverse possession.

TB: I have a process question -- what is the process? What will the Planning Board do now?

RE: 125 When does it happen?

BN: There will be a back and forth -- questions asked, we give information back. We will circulate a draft in time for you to make formative decisions for the public hearing. But please know that even if the Planning Board votes 7 to 0 against it; we'll still take it to City Council. There are 2 steps -- first, the Planning Board, then the City Council. It's the City Council that makes decisions, not the Planning Board.

JJ: My turn. I think this has been a phenomenal process. It's our right to point out what we think is the best course of action. I stand behind what we've done from the perspective of City

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Manager and for the City. I do think there is a section of the City that is SO unique (the waterfront zone) that it requires and deserves unique solutions.

We've had some tough discussions. The Planning Board does not have the hindsight. The City Council has the final say and I work for them.

We do have to grow as a City -- there will be growth. We have to have a tax base to provide services to our citizens.

125 is the compromise. This is *the moment in time*.

Letter received by Jennings from Mr. Bateman

Commercial St Plan has been delayed -- lead consultant has just left. We have to address pedestrian traffic. Maybe eliminate some crosswalks and signalize them to safely cross.
Nature of public process

Also letter from Jennings to B. Van Note, MDOT Commissioner and the response. Re; dredging grant application
Also talking to federal delegation Sen. Collins, Rep. Pingree, Sen. King
We'll have to have a fairly large match
CAD cell developed
We dredge this time, get the really bad stuff out, drop it into CAD cell, next time (100 years from now) we can dump it into the sea
Do believe we're getting good stuff done.

Last thing: meeting schedule

Need to get this done by June

BC: Still need to meet once a week

MA: I think some form of a group continues after this process is over

BN: the Planning Board asked of this group -- is it possible to extend the moratorium? I have been asked to ask the group? I am asking the group?

JJ: I don't see any reason to commit to extension -- we need to hold people's feet to the fire. If we get to June and need to, then we'll do it.

Nods from group.

CP: I saw a lack of understanding from Board

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MA: I sensed a lot of head scratching

BN: May need a City Council Workshop.

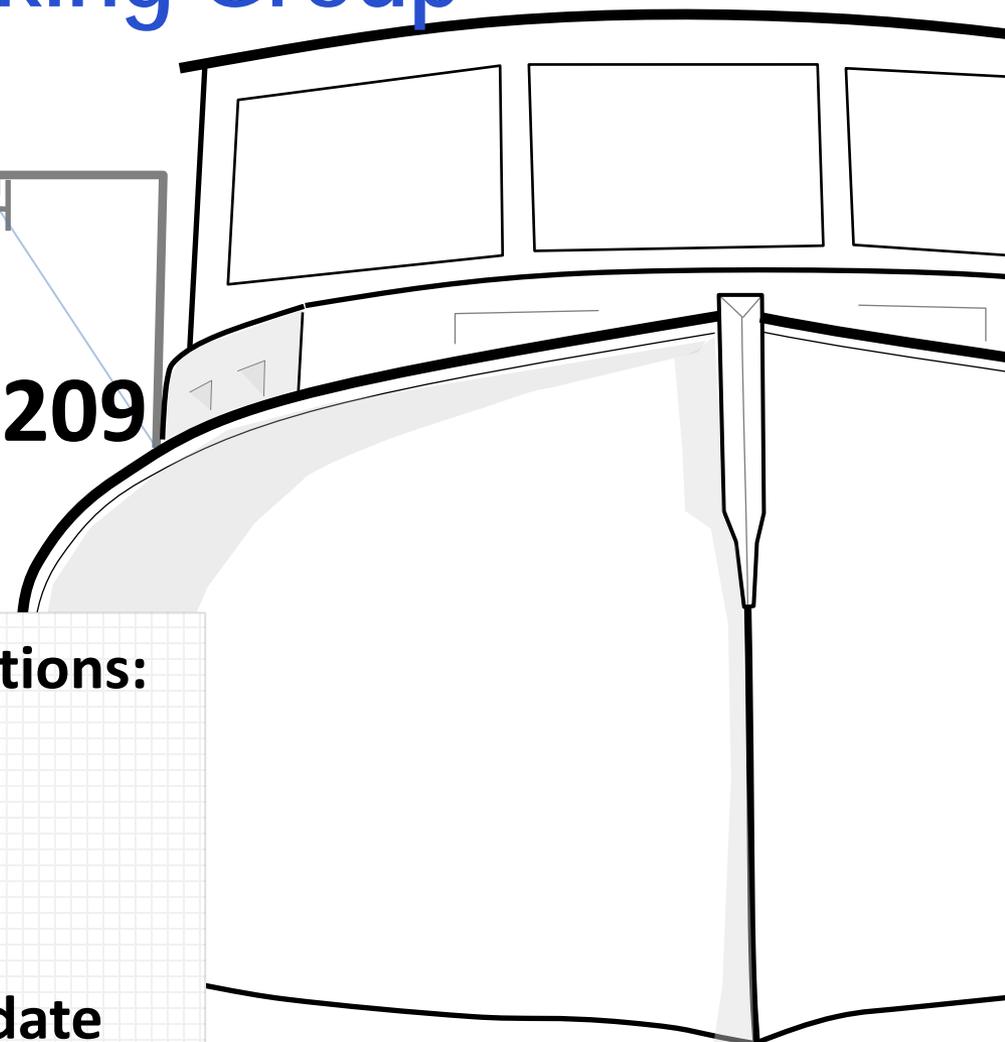
JJ: We don't have public comment at city workshops

DW: Workshops would be really good.

JJ: You've all lived this

CP: 2010 was a whole different economic world -- I support change as long as it's....

Waterfront Working Group



Meeting # 10

April 25, 2019

City Hall Room 209

3:00- 5:00pm

- 1. Welcome and Introductions:**
- 2. Parking Discussion**
- 3. Zoning Summary**
- 4. Dredge Update**
- 5. Fisherman's Wharf Update**
- 6. Schedule and Next steps**

Waterfront Working Group – Summary of Parking Options for Consideration

Private, Off-Street	Public, Off-Street	Public On-Street
<p>Creation of "water dependent parking" use in Zoning</p>	<p>Prioritize use of existing City parking lots:</p> <ul style="list-style-type: none"> • Angelo's Acre • Portland Fish Pier (needs to be presented and vetted by Fish Pier Authority Board) Fish Pier currently prioritizes marine tenants in "Front Lot" • Off waterfront options (?) 	<p>Retention of existing unregulated spaces on Commercial Street</p>
<p>Clarifying "Exclusivity" for water dependent use of pier edge in WCZ performance standards</p>		<p>Creation of a Marine Parking Hang Tag system</p>
<p>Improved enforcement of existing or amended WCZ parking restrictions</p> <ul style="list-style-type: none"> • Document Legal Non-conforming parking on all piers • Terminate use of Illegal Non-conforming spaces by: Voluntary pier owner action zoning enforcement action • Create mechanism for reporting illegal use. 	<p>Other Option?</p>	<p><u>Questions:</u></p> <ul style="list-style-type: none"> • Who is the target market? Harvesters only? • For use at which street spaces? Hourly regulated? Metered? • Geographic extent? Commercial Street only? Elsewhere?
		<p>Identify off-waterfront parking options for marine use.</p> <ul style="list-style-type: none"> • Lessons learned from ongoing "TMA" discussions and potential application to waterfront businesses and harvesters.
<p>Other Option?</p>		

Creation of “**water dependent parking**” use in Zoning

Clarifying “**Exclusivity**” for water dependent use of pier edge in WCZ performance standards

Improved enforcement of existing or amended WCZ parking restrictions

- Document Legal Non-conforming parking on all piers
 Terminate use of Illegal Non-conforming spaces by:
 Voluntary pier owner action
 zoning enforcement action
- Create mechanism for reporting illegal use.

Identify **off-waterfront parking options** for marine use.

- Lessons learned from ongoing “TMA” discussions and potential application to waterfront businesses and harvesters.

Other Option?

Public, Off-Street

Prioritize use of **existing City parking lots:**

- Angelo's Acre
- Portland Fish Pier (needs to be presented and vetted by Fish Pier Authority Board)
Fish Pier currently prioritizes marine tenants in "Front Lot"
- Off waterfront options (?)

Other Option?

Public On-Street

Retention of existing **unregulated spaces** on Commercial Street

Creation of a **Marine Parking Hang Tag** system

Questions:

- **Who is the target market?**

Harvesters only?

- **For use at which street spaces?**

Hourly regulated?

Metered?

- **Geographic extent?**

Commercial Street only?

Elsewhere?

Other Option?









+/-160 spaces



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April 23, 2017

Via Email

Portland Planning Board
Sean Dundan, Chair
City of Portland
Planning Division
389 Congress Street
Portland, ME 04101

Re: Waterfront Central Zone
Draft Ordinance Amendments/Workshop April 23, 2019

Dear Mr. Dundan and Planning Board Members:

The purpose of the recent referendum efforts of the Portland Working Waterfront Group (“PWWG”) was to protect both the present and future of the Portland working waterfront. The PWWG agreed not to submit its referendum, even though far more than the required number of signatures had been gathered from Portland citizens, so as to work with the City and other stakeholders in an effort to achieve this goal. While the PWWG appreciates the participation by the City and other stakeholders in these efforts and believes that some positive amendments are being proposed as a result, the PWWG’s end goal (and I believe the efforts of the task force committee that has been formed to review the ordinance) was not to eliminate what the planning department apparently perceives as mere redundancies in the ordinance, but rather to strengthen the standards that already exist to protect the Waterfront Central Zone. While perhaps not intended, this is however precisely what the draft ordinance amendments do with respect to Sec. 14-311(d) “Performance Standards”, by removing key substantive protections.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

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The issues are broken down below by subsection. Also, a suggested revised draft of Sec. 14-311(d)(13), reincorporating the deleted performance standards is attached to this letter as reference and to assist in your review.

Existing Standard (d)(8) “Off-street parking and loading” (shown as (7) on the City’s redline draft (“Draft”)):

The Draft takes out existing Performance Standard 8 which says that "non-marine use parking shall only be located on a lot where . . . the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot." The substitute standard calls for a detailed plan, but doesn't carry over this requirement for no non-marine parking unless marine is adequate requirement. This draft keeps the idea that Water Dependent Uses (“WDU”) parking spaces shall be located close to associated vessels and ground floor lease areas, *but weakens it* by switching from as close as "reasonably possible" to as close as "practicable".

Existing Standard (d)(15) “Compatibility of non-marine uses with marine uses” (shown as (12) on the Draft):

The Draft strikes existing Performance Standard (d)(15) “Compatibility of non-marine uses with marine uses” and rolls part of it into the new plan requirement ((d)(13)). But, the Draft (d)(13) omits the substantive standard that non-marine uses "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" (emphasis added). This needs to be put back in as a meaningful standard.

Existing Standard (d)(16) “Functional utility of piers and access to the water’s edge” (shown as #13 on the Draft):

The Draft strikes existing Performance Standard (d)(16) and reduces it to a requirement that buildings located within 10 feet of the pier edge "shall account" for the transfer of goods. This is a shadow of the existing requirement that "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 . . ." (emphasis added). There are also subparagraphs in the existing standard for design for

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storage and movement of goods and materials, retention of internal circulation routes, need of non-marine uses to adjust to accommodate marine uses, alternative circulation if buildings are within 10 feet of pier edge, and a key provision that accessways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses. Shadows of some of these issues come through in the City draft, but without the full protections of the existing language.

In summary, the new Standard (d) (13) "Operations and Access Management Plan" ("Plan") emphasizes form over substance -- it focuses on what is to be shown on a plan but not what needs to be accomplished if the plan is to be deemed sufficient. Instead of flagging the importance of marine uses, it features the plan as an end in itself. It deletes very specific operational language from the existing ordinance and substitutes only vague references requiring that it "demonstrates adequate waterfront access and logistical accommodation for water-dependent users" and that it "demonstrates consistency with the hierarchy of waterfront uses pyramid" in the City's Plan 2030.

The Waterfront Central Zone needs the existing enforceable standards language returned to the draft so it is clear how the Plan is to be judged rather than substituting that existing clarity with only vague goals. In addition, applicants must know when they read the ordinance what specific standards must be met in order to meet the ordinance's goals without arbitrary application or undue delay.

Further, the new Performance Standard (d) (13) seems to suggest it would apply only to new development and changes of use. The Plan should also be required for expansion of an *existing* non-marine use. Standard (d) (13) also limits the submission to showing a plan for a small area, "within one hundred feet of the project's limit of work boundary." **This is not sufficient.** Except in the CSOZ, the entire pier needs to be shown on the Plan and reviewed to fully analyze and make sure that there will not be adverse impacts on marine uses.

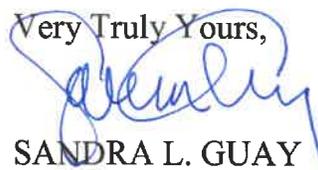
Once again, the PWWG appreciates and acknowledges the time and effort that has gone into working on draft amendments to date. The PWWG remains concerned however not only about the issues highlighted above, but also with regard to issues that have yet to be addressed by the task force and that are therefore not reflected in the Draft, including stronger enforcement standards.

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In summary - it is imperative that as a result of the task force and City's efforts, the ordinance be amended so as to maintain the existing forward-focused standards that look not only at existing WDUs but cast an eye on preserving the functional utility for potential future WDUs. The importance of this frame of reference is *essential* in order to maintain the value of the harbor as an economic engine for future generations. The Draft performance standards as presented fail to accomplish this and instead only serves to weaken the performance standards that are already in place.

Thank you for your timely consideration of these important comments.

Very Truly Yours,

SANDRA L. GUAY

SLG/lb

Copy to: Willis Spear, PWWG
Bill Coppersmith, PWWG
Jon Jennings, City Manager
Bill Needelman, Waterfront Coordinator

shared with non-marine uses, except that, if strictly and effectively enforced and if not being occupied by marine uses, parking spaces for marine uses may be made available to non-marine uses between the hours of 5:00 pm and 2:00 am.

To successfully demonstrates that it meets each of these criteria, the Plan shall, at a minimum, incorporate the following information and address any restrictions:

- a. Location of all existing and proposed structures, rights-of-way, common circulation drives as defined in Sec. 14-306, accessways, sidewalks, pier edges, floats and docks showing the entire pier if not located in the CSOZ, or within one hundred feet of the project's limit of work boundary if located within the CSOZ ;
- b. If a Building shown on the Plan is already or is proposed to be located within ten (10) feet of the pier edge the Plan shall account for demonstrate how the transfer of goods and materials between berthed vessels and land-bound vehicles will be accomplished, such as by providing openings and circulation routes through or around buildings as necessary to accommodate water-dependent uses.
- c. Proposed off-street parking, labeled with associated uses and illustrating compliance with subject to limitations as described in Sec. 14-311(a) ("55% Rule"), as applicable. Off-street parking spaces intended for use by water-dependent uses shall be sited as close as reasonably possible/practicable to associated vessels and/or ground-floor lease area. Proposals for new non-marine parking shall require submission of a parking analysis justifying the number of non-marine spaces based upon the proposed use and the sufficiency of the marine use parking supply on the lot.
- d. Facilities for the loading and unloading of goods and materials. Facility design shall account for frequency of use and vehicle type and, to the extent possible, minimize impacts to pedestrian and vehicle circulation patterns.
- e. Non-marine uses outside of the CSOZ shall identify a dedicated pedestrian route between the proposed use and Commercial Street, and shall seek to minimize conflict with vehicle traffic.
- f. Regularly occurring exterior activities including but not limited to the storage of material, equipment and vehicles, yard area, outdoor seating and on-site waste management.
- g. Location of Off-street parking, loading facilities and access ways intended for use by water-dependent users, with a designation of whether they are intended to -shall be exclusive to water dependent uses only. All properties providing commercial berthing shall demonstrate reasonable opportunities to load and unload vessels from the subject lot.

14-311(d) Performance standards: All uses in the waterfront central zone shall comply with the following standards. . . .

13. No adverse impact on marine uses: Operations and Access Management Plan: No use, including new development, a change of use, or expansion of a non-marine use, shall be permitted, approved, or established in this zone if it will have an impermissible adverse impact on existing or potential marine uses. Any applicant for a proposed new development, including changes of use, or expansion of a non-marine use, in the waterfront central zone shall submit a scaled Operations and Access Management Plan and accompanying narrative for review by the Planning Authority that demonstrates compliance with this performance standard. To be in compliance, the Plan shall clearly demonstrate that it meets each of the following criteria:

A. The proposal retains adequate waterfront access and makes necessary logistical accommodation for water-dependent users.

B. In accordance with Portland's Plan 2030, as further detailed in 14-305 (Purpose), the proposal shall demonstrate consistency with the hierarchy of waterfront uses, giving highest priority to existing and potential water-dependent uses and second priority to marine-related support uses, pyramid, with non-marine and marine-related uses being allowed only if they do not interfere with and are not incompatible with water-dependent and marine-related subordinate in placement and disposition to water-dependent uses.

C. The parking and traffic circulation plan and analysis portion of the Operations and Access Management Plan demonstrates that any proposed non-marine use parking is only being located upon a lot where the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot and the parking spaces designated for water-dependent uses are located as close as reasonably possible to associated vessels and any water-dependent and/or marine use ground floor lease areas.

D. Any proposed non-marine use will be compatible with marine uses and will 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.

E. The proposal, whether for marine or non-marine use, will adequately protect the functional utility of piers and access to the water's edge by appropriately anticipating current and future functional and operational needs of water-dependent uses to access the water's edge for the transfer of people, goods, and materials between vessels and land.

F. 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.

G. 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

Fisherman's Wharf Portland, LLC

470 Fore Street, Suite 400
Portland, ME 04101

April 17, 2019

Mr. Jon Jennings
City Manager
City of Portland
389 Congress Street
Room 208
Portland, ME 04101

Dear Mr. City Manager,

This letter is commentary from Bateman Partners, LLC on deliberations to date by the Waterfront Working Group (WWG).

First, I urge the WWG --- and taxpayers --- to examine waterfront issues not in the stark terms of "fishermen vs. developers," as has been represented in a widely-circulated video. That does a disservice to everybody. The actual situation is far more nuanced than what appears in that carefully-edited film. In real life, Portland's working waterfront is an extremely complex and inter-connected eco-system of fishermen, lobstermen, restaurants, transportation, shipping, maritime support/supplies, retail stores, provisions, and many other traditional uses. Its challenges defy simplistic solutions.

Next, as you and several members of the WWG know firsthand, the current moratorium and the creation of the WWG were preceded in late 2018 by off-the-record meetings in your office and elsewhere. We were advised by other participants to stay away from some meetings. We were excluded from others. Ironically, the purpose of these meetings was to discuss our property, and a development proposal we had made. Many WWG members participated, so you and they are aware of this history.

Also, since the middle of November, just after lobbyists, lawyers and fishermen announced a referendum petition drive, Bateman Partners has been trying to arrange, through an independent intermediary, a face to face meeting with fishermen who serve on the WWG. Five months later, this meeting has yet to take place. I would like to assure you that we continue to await word from the fishermen about such a meeting. As I stated in a December 12 press release: "I want to make it clear that we are not rushing or pressuring anybody. We want to meet on their terms, and they'll let us know when they're ready."

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City Manager
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I understand that some prefer to discuss Fisherman's Wharf without the owners of the property in the room. We have respected their wishes. But this is important context, because it is relevant to how the WGG has deliberated. It is also relevant to a March 26 email sent to you, Bill Needleman, Willis Spear and Bill Coppersmith by an attorney the fishermen have hired. She wrote, "I do have concerns that there may be an effort to have other property owners show up at planning board and council meetings complaining that they did not have a voice in negotiated decisions that the task force may reach."

If she was referring to Bateman Partners, rest assured that I have the highest possible confidence in our neighboring property owners who are members of the WWG. I have known these gentlemen for decades and have nothing but the highest respect for their intelligence, their innate sense of fairness, and for their dedication to our community as a whole. They have done outstanding work articulating the complexities of Portland's working waterfront. We have voiced our concerns to them directly, and we are behind them 100% as they continue to advocate for three core principles:

1. Portland must protect and promote its working waterfront, and fishermen/lobstermen must retain or expand their integral role.
2. The proper solution must achieve a wise balance, and that includes honoring the invaluable legacy of the fishing industry, and its contribution to the City's economic success.
3. Without enough revenue, infrastructure for fishing operations deteriorates. Significant infrastructure revenue does not and will not come from the fishermen themselves, therefore it must come from other sources. It is vital to protect the ability of commercial properties to provide tax revenue to the City, as well as the revenue required to responsibly maintain wharves and critical marine infrastructure.

We have reviewed all information made available by the City on its web site. Bateman Partners has no intention of claiming it hasn't had a voice in these proceedings. We have been represented exceptionally well by individual members of the WWG.

Moving on, many people have heard the terms "spot zoning" and "contract zoning." Having read all public comments and meeting notes very carefully, it appears that some on the WWG have invented a new concept, which I'll call "personality zoning."

Personality zoning is drawing lines and making rules according to whom you like --- and whom you don't. The WWG's official record is replete with specific examples that make it clear some are making zoning suggestions not impartially, and not in the best interests of Portland's taxpayers, but based substantially upon the personal relationships they happen to have, good or bad, with individual property owners along the waterfront. The WWG's concoction of zoning

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recommendations based on parochial and personal interest is perfectly illustrated by this on-the-record statement in the WWG meeting notes: "Some animals are more equal than other animals."

Many similar statements are on the record. I give those who made them credit for not attempting to disguise their thinking, and for putting their cards on the table for all to see --- it's all there in black and white. However, since WWG's public record is now infused with comments like this, any reviewing authority can easily conclude that personality zoning has had a direct role in the WWG's zoning recommendations.

The more important aspect of the WWG's work is not process, but substance, and here I must be direct. Portland's waterfront is more vibrant than it has been in decades and features a healthy mix of commercial uses. After discussions with fellow wharf owners, it is apparent that berthing for fishermen is available, as is on-site parking. No fishermen are being "squeezed out" of the waterfront, as is often claimed. That may be why no member of the WWG has presented any factual information to show that the current zoning is not working. The City's own recent waterfront inventory, the only hard data actually supplied to the WWG, revealed little change since the NMUOZ was created about a decade ago.

Let's face it, everyone's major gripe, including the fishermen, is traffic. Commercial Street is a very successful and busy place, and therefore it has a traffic problem.

Bateman Partners voluntarily withdrew its proposal for a hotel at Fisherman's Wharf in January, a good faith gesture to give the community a chance to pause and take stock of what needs to be done. Prior to that, we had set aside \$70,000 as our contribution to a traffic study to help solve the problem. I am acutely disappointed that rather than exploring creative and concrete solutions to mitigate problems like vehicular traffic, poor signalization and an irrational system of pedestrian crosswalks on Commercial street, the WWG has been focused elsewhere. Its priority has been to diminish property rights and to limit the revenue that taxable property in the NMUOZ will produce in support of improved infrastructure to directly benefit the working waterfront.

Concepts that the WWG has been discussing recently, including moratoria, referenda, and re-drawing NMUOZ lines to reduce taxable value of waterfront properties, are all regressive proposals. Their inevitable effect is to produce less taxable value, thus making it far more difficult to achieve what we all want to see on Portland's working waterfront. The question that the WWG has left completely unanswered is how to pay for the infrastructure work necessary to keep future generations of fishermen and lobstermen working in downtown Portland. Frankly, the WWG has missed a golden opportunity, at least so far.

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I will continue to follow the WWG's deliberations closely and look forward to its final recommendations. Bateman Partners appreciates the diligent work that you and City staff have done to make detailed presentations, explain complex concepts, update the taxpayers in a timely manner, and most important of all, inject fairness back into the proceedings when discussions begin to go "off the rails." Thank you, Jon, for what you and your Staff continue to do on behalf of Portland's taxpayers. And finally, I emphasize once again that we are very pleased with the "voice" we have had in these proceedings, thanks to our fellow property owners and waterfront neighbors serving on the Waterfront Working Group. They continue to have our complete trust and backing.

Sincerely,

A handwritten signature in black ink, appearing to read "David Bateman", with a long horizontal line extending to the right.

David Bateman
Member
Fisherman's Wharf Portland, LLC

MEMO

To: Portland Planning Board, Portland City Council
From: O. E. Delogu, Emeritus Professor of Law, Portland resident
Subject: Proposed Revisions to the Draft Amendments to City Code, Chapter 14, Land Use,
Division 18, Waterfront Central Zone (WCZ)
Date: April 29, 2019

Introduction:

I was one of the primary draftsmen of the Portland Waterfront Zoning Amendments Initiative presented to the City (by 10 residents, mostly fishermen) on October 30, 2018; the Initiative was withdrawn in early January, 2019 after over 2300 signatures had been gathered, more than enough to bring the Initiative to a city-wide vote. The withdrawal was agreed to by the signatories to the Initiative to allow a mid-December, 2018 six month Moratorium and Task Force (appointed by the City Manager) to seek a compromise between existing waterfront zoning which was seen as squeezing out traditional water-dependent uses, and the Initiative provisions which sought to more fully protect these water-dependent uses. The withdrawal was an act of good faith by Portland fisherman to arguments made by city officials that more could be accomplished by working together.

That said, it must be noted at the outset that the Moratorium and consequently the work of the Task Force (unlike the Initiative) did not encompass all of Portland's waterfront zones; the Eastern Waterfront Port Zone (EWPZ) and the Waterfront Port Development Zone (WPDZ) were omitted. **I view this failure to see the relatively small Portland waterfront (barely 2.6 miles in length) in a comprehensive manner as a mistake;** Portland's waterfront is in fact a single highly integrated whole, with Commercial Street (and its extensions) as the landward boundary of all three zones.

Given this limitation, the Task Force commenced its work in early January; it has been diligent; the meetings have been civil; the City Manager and city staff personnel by their presence at all meetings and by their pulling together of data have facilitated the Task Force's examination of a wide range of issues: problems with present zoning provisions, increased traffic along Commercial Street, parking problems in the WCZ and in all of the adjacent waterfront and non-waterfront zones, the use of the city's TIF funds, the role of non-water dependent uses within all waterfront zones, but particularly the WCZ. But reducing frank discussions to tangible Draft Amendments for zoning changes in the WCZ has taken time—the 26 page (unnumbered) document being examined was made available to the Initiators and the public on late Friday afternoon April 19, 2019 (the start of Easter weekend), four days before a scheduled April 23rd Planning Board Workshop at which proposed revisions and comments on these Draft Amendments was to be received. **This time frame is unfair on its face.**

Having now fully read the 26 page Draft Amendments and compared them to both the existing zoning and the 2018 Initiative provisions I would make two observations and then offer my Proposed Revisions. First, the Draft Amendments accept a number of the Initiative proposals—a good step forward. But in my view **the Draft could go further than it does to effect a more reasonable compromise.** Second, I have numbered the 26 pages; all of my revisions (except the last revision) reference the page number on which the change I would make is found.

Proposed Revisions:

Page 1—In §14-305 (c) I would drop the fourth word “ encouraged” and substitute the word “permitted”; I would also **delete the whole of the second sentence.** Non-marine uses to a limited degree are tolerated in the WCZ; whether they are essential to the economic survival of the piers and marine infrastructure has been asserted, but not proved by pier owners; what is clear is that Portland's

waterfront has existed for over 300 years without the wide range of non-marine uses put in place over the last 20-25 years.

Page 3—The §14-306 definition of the Non-Marine Use Overlay Zone (NMOUZ) is renamed the Commercial Street Overlay Zone (CSOZ)—fine. In the original 1987 Initiative the NMOUZ did not exist. What came to be called the NMOUZ crept in gradually (in a series of post 1987 zoning amendments) to the WCZ—first along Commercial street extending seaward for 25', then 50', then 150' and up to 500' along three of the central piers. The 2018 Initiative would have eliminated this zone altogether—it invited far too many non-water dependent uses (squeezing out water-dependent uses) into the heart of the WCZ. Elimination of NMOUZ, now CSOZ, was unacceptable to pier owners and a majority of Task Force members. Leaving the overly generous 500' inroad onto 3 piers aside, the struggle for a compromise did not begin with some number between 0 and 150. The fisherman on the Task Force proposed a 75' uniform seaward reach within the CSOZ, extended to 300' for Long Wharf alone. The Draft Amendments accept the latter (still generous) provision, but establish the uniform seaward reach of the CSOZ at 125'. **This less than balanced compromise does not go far enough.** The obvious compromise between 0 and 150 feet was proposed by the fisherman; the fact that it was rejected by the Task Force does not prevent it from being accepted by the Planning Board and City Council as a true, a more realistic compromise aimed at avoiding a revised 2019 waterfront Initiative.

Page 6—§14-307 (b) deals with non-marine commercial and industrial uses: 2. dealing with cabinet and carpentry shops, studios for artists and crafts people **should be deleted.** There are an infinite number of locations in non-waterfront zones where these non-marine activities can be located.

Page 6—§14-307 (c) I would **put a period after the word spaces.** It seems inappropriate and unsafe to channel pedestrian and bicycle trails along commercial street which is already congested, and will become more congested with Eimskip 18-wheelers, fishing (and other) trucks, tourist buses and cars. Danforth Street and Fore Street offer safer options for these trails.

Pages 7-8—§14-307 (e) deals with uses permitted only within the CSOZ. **I would delete 4. Museums and art galleries, and 6. Offices for health care practitioners and clinics.** Both of these activities require user parking (already very scarce), are likely to attract higher volumes of people, and seem more suited to other Old Port, peninsula, and off-peninsula areas.

Page 8—§14-307 (e) 7. Personal service establishments **should be deleted;** it is too vague; or it should be defined more precisely—there are literally hundreds of possibilities.

Page 9—§14-308 dealing with Conditional uses: whether you add a sub-(b) or a part 3. Under sub (a) is a matter of indifference, but **I would add as a conditional use** "Structured parking facilities"; there are at least two areas in the CSOZ where this is possible, Long Wharf and the Fish Pier. This facilities are remunerative, and would help alleviate waterfront and island parking shortages.

Page 12—§14-309 dealing with Prohibited uses: retaining all of the Draft Amendment prohibited uses, **I would add the following** three contained in the withdrawn 2018 Initiative: (j) bulk freight or truck terminal facilities, (k) amusement theme parks or game rooms, and (l) gambling establishments/facilities, except those permitted by law on inter-port vessels.

Page 12—§14-310 (c) two references to NMOUZ should be changed to CSOZ.

Page 13—§14-310 (h) reference to NMOUZ should be changed to CSOZ.

Page 15—§14-311 (a) 3. c reference to NMUOZ should be changed to CSOZ.

Pages 18-20—the Draft Amendments total elimination of contract or conditional rezoning is an important step in the right direction (closing an abused loophole); however, **the Planning Board/City Council may want to consider retaining** (as did the withdrawn 2018 initiative) some limited capacity (other than a variance, not usually available when proposed projects seek PB approval) to permit **minor** deviations from otherwise applicable dimensional requirements in the zoning ordinance; for example, an otherwise permitted or conditional use should not be denied when it only has 9.5 feet of dock setback when 10 feet is required.

[This is the last revision—there is no page number reference]

It revises and applies the last amendment in the withdrawn 2018 Initiative that applied to all three waterfront zones. Obviously, here it would apply only to the WCZ. It reads as follows:

“Notwithstanding automatic lease renewal provisions, and/or more permissive non-conforming use provisions in other portions of the City Land Use Code, upon passage of these WCZ Draft Zoning Amendments, the parking of vehicles on ground-level spaces or in any structured parking facilities in the WCZ to meet the parking needs of uses permitted in non-waterfront zones landward of Commercial Street is prohibited when current leases (whether held by Unified Parking Partners or any other property owner in the WCZ) expire, or three years from the date of passage of these Draft Amendments, whichever is shorter.”

In the WCZ (including CSOZ) parking needs for fisherman, other marine uses, existing (and new) permitted and conditional non-marine uses, and year-round island residents are currently not being met. The Task Force has wrangled for hours over these issues in an effort to bring some degree of order to these legitimate parking needs. Permitted uses in non-waterfront zones throughout the peninsula must be made to meet their parking needs within the footprint of their own property and/or the zone in which they are located (or an adjacent non-waterfront zone). They cannot be allowed to exacerbate WCZ parking problems. The above provision is an important step; it will reduce the current WCZ parking space shortage, and allocate the current supply to those with the most legitimate claim/need for these spaces.

[Attached to this submission are two recent op-ed pieces written by the author.]

Portland's Working Waterfront — Under Siege Again

by Professor Emeritus of Law Orlando E. Delogu

In the early to mid-1980s Portland's waterfront was healthy and showed signs of getting healthier; BIW's dry dock facility was moving into the east end of the waterfront; P.D. Merrill's facility (now Sprague) was expanding its activities on the west end of the waterfront; the Fish Exchange and a growing ship-to-container business occupied centrally-located wharf areas, and nearly 200 working (mostly fishing) boats as well as ship chandlery / supply businesses occupied space along the 18 wharves that line the 2 1/2 -mile waterfront.

But Portland's development community and governmental leaders, with an eye to Boston's waterfront development, were caught up in the belief that upscale condominium development, high-end office space, and smart shops on Portland's piers and along our waterfront was the real key to economic growth. A small condominium project found its way onto Portland Pier; the massive Chandler's Wharf condominiums were built; still more condominium, office, restaurant, and shopping spaces were under discussion or in the early stages of planning board consideration. These projects were headed for fast-track city approval. The green light was on.

At this point, a diverse group of waterfront workers, fisherman, neighbors, and people with planning law background came together to head off this yuppie movement onto Portland's waterfront, and the loss of traditional marine commerce activities that would almost certainly follow. It would only be a matter of time before upscale condo and shop owners, office workers, and shoppers would tire of the smells, noise, long hours, and truck traffic that are the hallmark of a working waterfront. Seeing little chance that the city's power elite would put zoning provisions in place that would protect the working waterfront, these dissenters turned to the city's initiative process.

The initiated waterfront zone drew the line down the middle of Commercial Street; the water side and piers were included; it was roughly 2 1/2 miles in length; it left existing buildings and uses alone — they were treated as nonconforming uses; any and all forms of water dependent uses were permitted in the newly-created working waterfront zone.

The zone was rooted in two unassailable facts. First, marine commerce activity in Portland traced back over 350 years; the city was founded, and grew up, on the back of marine commerce; in the mid-1980s Portland was (and remains today) the leading marine commerce port in the state. These longstanding job-creating benefits should not be lost. The rallying cry of proponents of the initiative was "Don't take the Port out of Portland." This would shortly become the rallying cry of the whole city.

Second, marine commerce (unlike condos, offices, and shops) by its very nature, is water dependent. It can only be located on the waterside of Commercial Street. But Portland's waterfront (unlike waterfronts in Boston, New York and other east and gulf coast ports) is small — barely 2 1/2 miles from Sprague's facilities on one end to where the BIW dry dock was (and now Ocean

Gateway is) located. These areas represent less than 3% of developable land in the city. Condos, office blocks, restaurants, shops, industrial facilities are not water dependent — they can be placed anywhere in the city. In the mid-1980s, a great deal of unbuilt upon land existed even on the peninsula — some of it exists today.

These two realities drove the initiative. The signatures needed were readily gathered; the vote was held on May 5, 1987. In spite of Chamber of Commerce, development community, and nearly unanimous governmental opposition, the initiative passed overwhelmingly — by a 2 to 1 margin; it carried every voting precinct in the city. A legal challenge to the ordinance brought by disappointed developers was also unsuccessful. In early 1988, a unanimous Law Court sustained the ordinance. One would think that Portland's working waterfront would be safe for a generation or more, but one would be wrong.

Barely five years after passage of the ordinance, a group of pier owners and disappointed developers calling themselves the Waterfront Alliance sought amendments that undercut the fundamental premise of the ordinance, i.e., that non-water dependent uses (non-marine uses) should be kept out of the defined waterfront zone.

The Alliance, pleading economic ruin, but not wishing to tangle with the Maine State pier and BIW on the East end, or P.D. Merrill on the West End, focused their proposed changes on the Waterfront Central Zone (WCZ). They wanted office and other non-marine uses to be allowed along the water side of Commercial street and on 2nd and 3rd floors of existing buildings. They downplayed the fact that this zone encompassed 14 of the city's 18 piers, almost all of the fishing boat tie-ups, the Fish Exchange, and most of the working waterfront's support facilities. These activities then, and now, are the most economically fragile elements of any working waterfront. Moreover, as noted above, the parking needs, noise, smell, and hours of operation of these activities would directly clash with the proclivities of upscale office workers and shoppers.

The battle lines were drawn — Alliance views were supported by the planning board; many councilors supported their views. The proponents of the 1987 initiative conceded that some fine-tuning amendments were needed, but they saw these as narrow in scope.

They argued that the will of the voters should be respected — that the two fundamental premises of the ordinance remained indisputable. They argued that the protections provided by the ordinance were working — the working waterfront was healthy and the full economic potential of the waterfront had not yet been reached. After months of debate, a compromise was passed by the city council in January 1993.

The Alliance was not happy with the outcome, but the erosion of the distinction between water dependent marine uses and non-marine uses that could be put elsewhere in the city had begun — it would not end with the

1993 amendments to the initiated ordinance. The Alliance saw it could not kill the initiated zoning ordinance outright. Instead, it embarked on a longer run strategy, one that would allow more non-marine uses into the CWZ gradually over time.

For example, language was added to CWZ provisions allowing individual, otherwise prohibited, non-marine uses to gain access to the waterfront pursuant to conditional or contract zoning amendments if the planning board / council found that it met a vaguely worded "no adverse impact" standard. The council failed to recognize the fact that the very presence of non-marine uses shrinks and clashes with (is "adverse" to) marine uses that can exist only in the 3% of city land / pier area suitable for marine commerce.

Further, CWZ language was added that bluntly stated: "Non-marine uses are encouraged ... [they] are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure." Rubbish — this is a make-weight economic argument aimed at circumventing the purpose and intent of the initiated ordinance.

What many pier owners wanted was upscale profits from upscale development located on the waterfront and where it will squeeze out marine uses that have nowhere else to go. This language ignores the fact that the marine infrastructure expanded and improved for 350 years without these non-marine uses / activities.

Finally, the most egregious non-marine intrusion into the Central Waterfront Zone was the Non-Marine Use Overlay Zone (NMUOZ). This overlay (limited to the CWZ) allows new non-marine uses to be built on open land on the water side of Commercial street well back (150 feet) from the southerly side of the Street, and 500 feet out on Long, Chandler's, Widgery's, and Union Wharfs. Large prime waterfront areas / piers are opened up to non-marine development.

This overlay zone is contrary to the letter and spirit of the initiated waterfront zoning ordinance. It ignores the indisputable facts that led to passage of the initiated ordinance. It invites a massive expansion of non-marine uses onto the waterfront.

In all, smaller or larger loophole amendments weakening the water dependent focus of the initiated ordinance were enacted in 2002, 2006, 2009, 2010, 2011, 2012, 2014, 2015, 2016, and 2017 — "death by a thousand cuts." It would only be a matter of time before a developer puts a proposal on the table that fully exploits the largest loophole, the NMUOZ.

As I write, that time is at hand. The Bateman Corporation has put a massive hotel, parking garage and retail shops project, straddling Chandler's and

Widgery's wharfs, on the planning board's / city council table. This complex would extend non-marine Old Port-types of development directly onto Portland's waterfront / piers. Phase 2 office developments (also in the overlay zone) are briefly noted in the applicant's Phase 1 proposal.

If any version of the Bateman project is approved, the working waterfront in the CWZ will be hard put to survive. The Fish Exchange and the 90 or more fishing boats operating in the zone will be pariahs in the neighborhood they've been located in for decades; some water taxi and marina activities serving the very rich will be the last to go.

In sum, though aspects of the working waterfront have never been healthier, e.g., the cruise boat business, Eimskip, Sprague Inc.; we keep squeezing it, making its survival ever more difficult, narrowing its full potential by narrowing the space available for water dependent uses. Portland seems trapped in a penchant for short sightedness; it is more enamored with the immediate returns from non-marine uses on its waterfront — a hotel, parking garage, upscale shops, and offices than it is with the long run returns that a working waterfront committed to water dependent marine uses would provide. The city fails to grasp that with proper zoning it can have both.

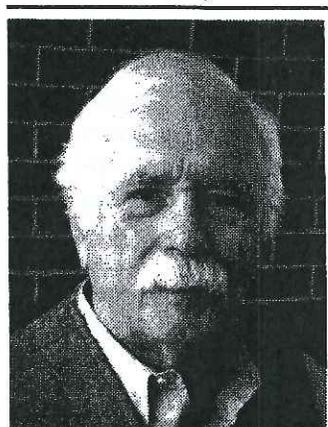
The city also fails to value the fact that Portland has one of the finest deep water harbors on the east coast. This won't change — we should build on it. This reality gave rise to the ship building, job creating, defense role the city played in World War II. It's a big factor in the cruise boat boom we're now enjoying.

Portland's prime location as the most northern and eastern major U.S. harbor also won't change. Again, we should build on it. Given the reality of global warming and the likely opening of a northern passage between the Atlantic and Pacific oceans, we should see what Eimskip saw, with its European roots, more vision, more experience; i.e., the economic advantage (boom) these locational factors portend. That's why they have expanded their waterfront land holdings in Portland and pressed for new rail and cold storage facility.

The long-term potential for Portland that a northern passage between oceans gives rise to boggles the mind. The last thing we need is waterfront zoning that kills this potential by putting massive non-marine uses where they do not belong. But that's exactly what we seem bent on doing. That's what the NMUOZ does. That's what the Bateman project is all about.

This zoning misallocation of scarce waterfront land / pier resources must surely give water-dependent developers pause: Will Portland be a reliable partner justifying future marine related capital investments? The degree to which the initiated 1987 waterfront zoning has been undercut over the years (especially by NMUOZ) suggests the answer to this question is "No."

This must change if Portland's working waterfront is to realize its full potential. The planning board and city council have the power to effectuate this change — to reaffirm the premises of the initiated 1987 waterfront zoning ordinance. If they cannot or will not act, a new citizen's initiative may well be in order.



Orlando Delogu

This overlay zone is contrary to the letter and spirit of the initiated waterfront zoning ordinance. It ignores the indisputable facts that led to passage of the initiated ordinance. It invites a massive expansion of non-marine uses onto the waterfront.

Orlando Delogu, one of the founders of the Maine Civil Liberties Union is professor emeritus at Maine Law, where he has taught for more than 50 years. He has been involved in policy issues, from local to the international level. In 2013, he was awarded the Justice Louis Scolnik Award by the ACLU of Maine.

MAINE VOICES

City waterfront task force lacking public input, sense of urgency

Last November, 10 Portland residents, mostly fishermen, filed a petition seeking a referendum to restore the concept of water dependency to the zoning provisions that control development along the seaward side of Commercial Street, including the 18 existing piers.

A similar initiative was adopted by city voters in 1987 but has been eroded to the point of non-existence by City Council-approved amendments. Offices, shops, restaurants, parking (all non-water dependent uses) are widely permitted. Hotel development was proposed. These uses have squeezed, and now threaten the continued existence of, Portland's fishing fleet as well as other water-dependent activities (Eimskip, Sprague, Vessel Services, ship supply and repair services, cruise, tugboat and ferry services) that all need water access.

The city bureaucracy – the Planning Board, the Economic Development Department, the

ABOUT THE AUTHOR

Orlando E. Delogu of Portland – an emeritus professor at the University of Maine School of Law – helped draft the recent working waterfront initiative.

city manager's office, the mayor and the City Council – that for years has championed unbridled growth on the waterfront and in nearby areas sat up and took notice of the new initiative. Long-ignored calls to discuss growing development pressures in surrounding neighborhoods and on water-dependent users of the waterfront were heeded, and meetings hastily organized.

City Manager Jon Jennings took the lead. Planning Board data on non-water dependent uses within waterfront zones were brought up to date. Several councilors proclaimed that a hotel would never be approved – that other loopholes in the present zoning

could and should be closed. The idea of a six-month moratorium surfaced. Would the initiators hold off on their signature-gathering effort in order to allow Portland to make zoning changes that would preclude the need for a new initiative?

By mid-December, the moratorium was passed as an emergency measure. Unfortunately it was limited to only the Waterfront Central Zone; it did, however, call for a task force (which the city manager quickly assembled) to begin putting some of the more obvious zoning changes in place.

A series of meetings beginning in January was scheduled. There was an abundance of hope. With over 2,300 signatures in hand – more than enough to put their proposed zoning changes to the voters – the initiators (mostly fishermen) accepted the city's olive branch. They withdrew their initiative days before the deadline for submitting the 1,500 required signatures.

They accepted the city's assertion that more could be accomplished by working cooperatively than by passing an initiative that many developers and pier owners saw as too blunt an instrument. Time will tell whether this cooperation will produce the zoning changes needed to preserve Portland's working waterfront. The early signs are not promising.

The Waterfront Working Group seems a fair-minded body, but it suffers from the absence of any critic of recent city zoning policies; from the absence of the initiators' lead counsel, Sandra Guay, who could clarify their position; from the absence of anyone with solid land use planning credentials. It suffers from the fact that all of its background information and the facilitation of the meetings are provided by the same city bureaucracy that gave rise to the present problems.

It suffers from the lack of opportunity for any public input into task force proceedings.

Each week a large and patient audience can only listen. Questionable bureaucratic statements go unchallenged. People can mail their comments in, but that's hardly an effective or timely mechanism. I suggest devoting the last half-hour of task force sessions to public input.

Finally, having sat through all of the task force meetings to date, I believe that what seems missing is any sense of urgency. The same zeal that created the moratorium as an emergency measure seems to have waned. I see the council extending the task force for an additional six months, but if we're still talking about continuing to allow parked cars, office blocks and restaurants that have fish on the menu as water-related uses in a non-marine use overlay zone in the heart of the Waterfront Central Zone, the woes of fishermen and the working waterfront will not have been fixed.