

Order 80 – 04/05  
 Given 1<sup>st</sup> reading on 10/4/04  
 Postponed on 10/18/04, 11/1/04 and 11/29/04 (amended)  
 Public Hearing, Amended and Passed 12/8/04 9-0

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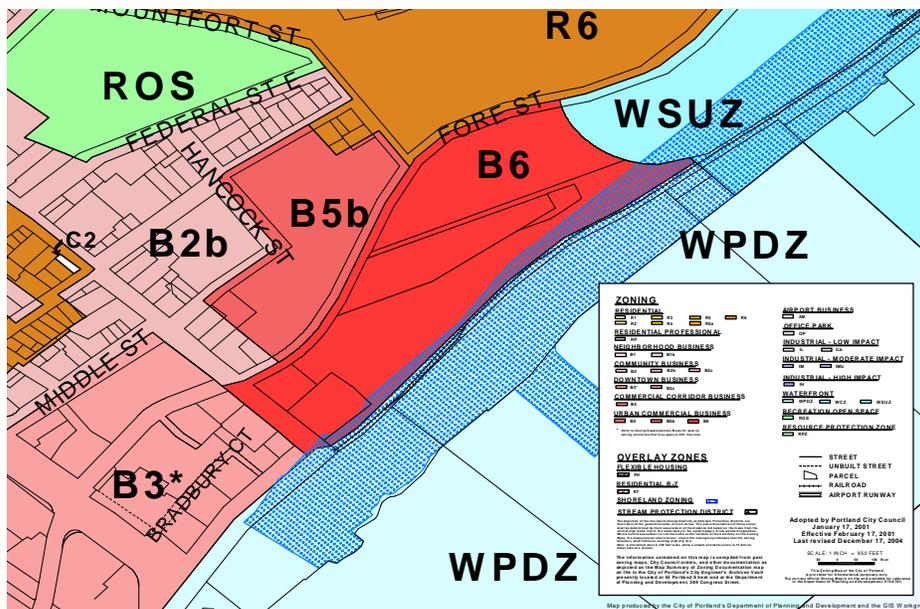
**CITY OF PORTLAND**  
 IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)  
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**AMENDMENT TO ZONING MAP**  
**RE: REZONING FROM WPD, WSU, B-5 and B-2b to B-6**  
**( Waterfront Port Development, Waterfront Special Use,**  
**Business – 5 and B-2b to Business – 6)**  
**And**  
**FROM WSUZ to ROS**  
**And**  
**ADOPTION OF ZONING TEXT CHANGE**  
**VICINITY: EASTERN WATERFRONT**

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change:



**BE IT FURTHER ORDERED**, that Chapter 14, Division 16 of the Land Use Code be enacted to read as follows:

**Sec. 14-268 Purpose.**

The purpose of the B-6, Eastern Waterfront Mixed Zone is to establish a zoning district for the upland portion of the Eastern Waterfront area. The B-6 zone encourages this district to acquire a distinctly urban form through development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure as recommended in the Eastern Waterfront Master Plan for Redevelopment.

The zone language established herein provides the regulatory framework to promote the mixed-use development pattern envisioned for urban land on Portland's peninsula. Specific development criteria, including building height overlays and design standards, may be established for this district to supplement the provisions of this section. District-specific Design Standards and Overlay Maps can be found at the City Planning and Development Office.

**Sec. 14-269 Permitted uses:**

The following uses are permitted in the B-6 Zone:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments;
3. Hotels and inns limited to no more than 150 rooms;
4. Craft and specialty shops, including the on-premises production of handcrafted goods;
5. Retail and retail service establishments, excluding those with gas pumps;
6. Theaters;
7. Banking services, excluding vehicular drive-up services;

*Editor's Note: Drive-up banking facilities located in the interior of parking structures are allowed as a conditional use subject to the*

*criteria outlined below in the Conditional Use provisions of this section.*

8. Cabinet and carpentry shops;
9. Personal services;
10. Business services;
11. Offices of business trades people;
12. Miscellaneous repair services, excluding all types of automotive repair except for automobile repair and service establishments.
13. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-xxx (prohibited uses);

In addition, building mounted telecommunications antennas, discs, transmitting and receiving equipment and the like shall adhere to the following criteria. Such roof-mounted equipment shall be:

- a. No taller than 15 feet above the highest structural steel of the building roof; and ,
  - b. Set back no less than 15 feet from the building perimeter; and,
  - c. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view
14. Brew pubs and microbreweries without associated bottling facilities; and brewpubs and microbreweries with associated bottling facilities limited to 5,000 bottles per year output.
  15. Electronic data storage;
  16. Marine products wholesaling and retailing;
  17. Harbor and marine supplies and services, chandlery and ship supply;
  18. Bakeries, coffee roasters, and commercial kitchens with building footprints limited to fifteen thousand (15,000) square feet of contiguous building space.
  19. Printing establishments

b) *Residential:*

1. Attached dwellings including row houses, two-family and multifamily dwellings;
2. Handicapped family units;
3. Combined living/working spaces, including but not limited to artist residences with studio space;
4. Mixed use residential and commercial structures.

(c) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;
3. Pedestrian and multi-use trails;

(d) *Other:*

1. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians;
2. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses, except that parking lots shall not be considered a permitted accessory use and such parking is subject to the conditional use section of the B-6 zone.
3. Health clubs, martial arts and meditation facilities.
4. Intermodal transportation facilities.

**Sec. 14-270 Conditional uses.**

The following uses shall be permitted as conditional uses in the B-6 Zone as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474(a) or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority:

(a) *Commercial:*

1. Meeting and exhibition facilities limited to a total of 20,000 gross square feet of interior floor area.
2. Wholesaling, providing that the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of the facility occupies a building footprint of less than 15,000 square feet.
3. Drive-up banking facilities located in the interior of parking structures, subject to the following criteria:
  - a. All drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street line;
  - b. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicular or pedestrian circulation on adjoining streets;
  - c. Drive-up vehicle circulation shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

(b). Parking

1. All surface parking lots shall meet the applicable conditions outlined below.

*Editor's Note: These conditions promote parking development in a manner that creates an urban street form with streetscapes dominated by buildings, not surface parking. This code recognizes that many parcels will develop incrementally over time and a phased approach may be needed to fully achieve the goals of this provision.*

- a. No surface parking lot shall be encumbered by lease or other use commitment exceeding a twenty-four month term.
- b. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking (to a parking structure) or convert surface parking to structured parking as long as the replacement parking is located a reasonable distance from the associated use.
- c. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.

2. All structured parking, including multi-level parking garages shall meet the applicable conditions outlined below.

- a. Parking garages shall incorporate first floor retail space or other mixed use (an active use other than parking) along all street frontages unless the applicant requests from the Planning Board a waiver of this provision subject to the following criteria:
- b. Waivers: The Planning Board may waive the requirement for first floor mixed use upon demonstration that the project meets one or more of the criteria listed under provisions i, ii, and iii below.

Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible.

*Editors Note: Use of traditional storefront design concepts and traditional building materials is encouraged, Developers should look to the Eastern Waterfront Design Guidelines for additional direction in meeting these standards:*

Standards for waiving first floor mixed use:

- i. That the applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
- ii. That the first floor of the garage is set back a minimum of *35 feet* from the street right of way and its design does not provide an impediment for development of such space for mixed use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
- iii. Where the applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, the Planning Board may grant a waiver of this condition, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future.

The Planning Board will need to find that on the street level deck of a proposed parking garage a minimum of

twenty (20) feet horizontal distance of depth from the street and nine (9) feet finished floor to finished ceiling clearance could in future house retail and or mixed use. The applicant will further need to demonstrate that the garage design anticipates the future development of utilities and circulation necessary for non-parking uses.

Where a parking garage fronts on more than one public street and where there is a existing change in grade elevation of over 5% across the footprint of the garage, the nine foot floor to ceiling requirement of this section only applies to the primary (higher traffic volume) street.

**Sec. 14-271. Prohibited uses.**

Uses, which are not enumerated as permitted or conditional uses in the B-6 zone are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Ground-mounted telecommunication towers, antennas, discs, transmitting and receiving equipment and the like;
- (b) Waste, scrap, and/or byproduct storage and processing facilities;
- (c) Major or minor auto service stations including all types of automotive repair;
- (d) Drive-up facilities, except banking drive-up services in the interior of parking structures, as allowed in the conditional use section 14-xxx.

**Sec. 14-272 Dimensional Requirements.**

In addition to the provisions of article III, division 25 of this Code, lots in the B-6 Eastern Waterfront Business Zone shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Yard dimensions:*
  - 1. Minimum yards in the B-6 zone:

Front setback: None required except as provided in 3. below:

Side setback: None required.

Rear setback: None required.

2. Maximum building setback from street line except for parking garages, public transportation facilities and provided in 3. below: 10 feet.
  - a. For lots fronting on more than one street, the setback can be increased more than ten (10) feet if all of the following conditions are met:
    - i. The increased setback occurs at the intersection of the streets;
    - ii. The increased setback area is the primary pedestrian entrance to the building;
    - iii. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet; and
    - iv. All building wall segments, which make up the increased setback shall be included in the calculation of the total building wall length noted in subsection iii above.

In addition, for any new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two most major streets. (For purposes of this section, major street shall mean that street with the highest traffic volume or the greatest street width in comparison with the remaining streets).

### 3. View Corridors and Key Street Wall Development

Notwithstanding sections 1. and 2. above, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension, shall build to the key building envelopes shown on the *Eastern Waterfront Building Height Overlay Map*. Parking structures and the buildings for public transportation facilities may, however, set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right of way.

- (d) *Minimum length of building wall required to be located along street frontage of lot.*
  - i. 70% of lot street frontage; or

- ii. 25% of building perimeter,
  - iii. For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 feet.
- (e) *Maximum lot coverage:* One hundred (100) percent.
- (f) *Maximum building height:* 65 feet, or as otherwise governed by a Building Height Overlay map (for example, in the Eastern Waterfront). Building Height Overlay maps are found in the Planning and Development Department Office.
- (g) *Minimum building height:* No new construction of any building shall have less than three (3) floors of habitable space above the average adjacent grade within twenty five (25) feet of any public street.

This provision shall not apply to:

- i. Parking attendant booths,
- ii. Information kiosks and ticketing booths,
- iii. Parking garages,
- iv. Public transportation facilities,
- v. Additions to buildings existing as of (enactment date) provided that the cumulative additions since (enactment date) does not exceed 25% of the building footprint on (enactment date) except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of (enactment date),
- vi. Buildings or building additions of less than 2,000 square feet footprint, on lots or available building sites of less than 2,000 square feet,
- vii. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, and

- viii. Additions to and/or relocations of designated historic structures.

**Sec. 14-273 Performance standards.**

All new development in the B-6 Eastern Waterfront Business Zone shall comply with the following standards:

- (a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least five (6) feet in height. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. All food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area.
- (b) *Noise:*
  - 1. *Definitions:*
    - a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.
    - b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with duration of less than one (1) second.
  - 2. *Measurement:* Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least four (4) feet above the ground surface. 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 (LEQ<sub>1</sub>).

3. *Maximum permissible sound levels:* The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as follows:
  - a. Sixty (60) dBA between the hours of 7:00 a.m. and 10:00 p.m.
  - b. Fifty (50) dBA between the hours of 10:00 p.m. and 7:00 a.m., as measured at or within the boundaries of any residential zone.

In addition to the sound level standards established above, all uses located within this zone shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones.

4. *Exemptions:*
  - a. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth in subsection (a)3 of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day shall not exceed fifty (50) dBA.
  - b. The following uses and activities shall also be exempt from the requirements of subsection (a)3 of this section:
    - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
    - ii. Traffic noise on public roads or noise created by airplanes and railroads.
    - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
    - iv. Emergency construction or repair work by public utilities, at any hour.
    - v. Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to parades, sporting events, and fireworks displays.

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.
- (d) *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.
- (e) *Storage of vehicles:* Outdoor storage of any unregistered automotive vehicle on the premises for more than ten (10) days, and outdoor storage of any used automotive tires on the premises shall not be permitted.
- (f) *Off-street parking and loading:* Off street parking and loading, for all projects regardless of size, shall be governed by 14-526a(2)b in the Site Plan Standards of this article and Division 20 and Division 21 of this article shall not apply.
- (g) *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.
- (h) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.
- (j) *Materials or wastes:* Any permitted outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. Any areas used for permitted outdoor storage of materials shall be screened from view of any adjoining properties and public rights-of-way. No outdoor storage shall be permitted between the front of any building on the site and the street.
- (k) *Odor:* Uses in the B-6 zone shall adhere to the odor regulations of the IL zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelman chart.

- (m) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or surface drain, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or the harbor, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the public works authority.
  
- (n) *Lighting:* All lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties and as otherwise governed by the Site Lighting Standards of the Technical Design Standards and Guidelines.