

Order 297-05/06
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Public Hearing, Amended & Passed: 9/18/06 8-1 (Geraghty)

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CITY OF PORTLAND
IN THE CITY COUNCIL

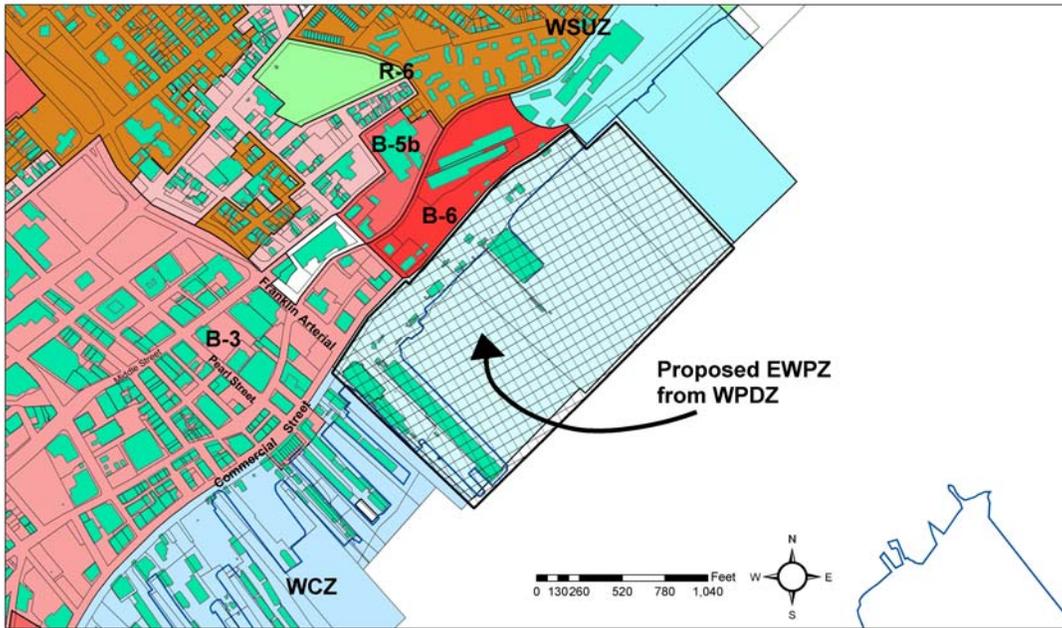
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**AMENDMENT TO PORTLAND ZONING MAP
FROM WPDZ to EWPZ
VICINITY OF MAINE STATE PIER
COMMERCIAL STREET
and
AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14, DIVISION 17.5, §§14-300-304**

Summary: These amendments to the Portland City Code implement a new Eastern Waterfront Port Zone for the Maine State Pier and Portland Ocean Terminal. The proposed zone changes for the Portland Ocean Terminal and the Maine State Pier would allow for a wider range of uses for the piers and properties of the Portland Ocean Terminal.

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

1. 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 map change below:



Eastern Waterfront Port Zone
Potential Map Change from WPDZ to EWPZ

Map Produced by The City of Portland Planning Division
from GIS Workgroup data. Draft for Discussion Purposes Only.
June 2008

2. That Chapter 14 of the Land Use Code (Eastern Waterfront Port Zone), §14-300 et seq is hereby created to read as follows:

14-300. Purpose.

The Eastern Waterfront Port Zone is created to nurture deepwater water-dependent activity within the context of the established waterfront. The transport of goods and passengers by water is an important component of both the local and regional economies and this transport and other forms of marine industry are dependent upon land and piers with direct access to Portland Harbor. Given the existing pier infrastructure, proximity to deep water, and urban context, Portland’s Eastern Waterfront is uniquely situated to support a wide range of water-dependent industry and commerce through a variety of marine activities.

The support and expansion of Portland’s marine industry requires piers, uplands, and circulation consistent with the transportation purpose and use of marine facilities. The growth of Portland’s marine passenger industry also requires supporting services and activities to provide a safe, convenient, and enjoyable travel experience for users of marine passenger facilities. Non-marine uses that complement the marine passenger industry are compatible with existing and future water-dependent uses, and provide

opportunities for residents and visitors alike to enjoy the Eastern Waterfront throughout the year are encouraged.

The primary use of the deep-water resources must be for the berthing and support of large vessels. Non-marine uses that complement and support the deepwater infrastructure and do not conflict or compete for limited space with existing or anticipated deepwater-dependent uses are encouraged. Existing and future pier infrastructure and upland support areas should be designed and maintained to support a variety of marine uses and be responsive to future technologies and trends in the marine industry.

Given the need to nurture and support deepwater-dependent uses and the need for non-deepwater uses to complement the marine passenger industry and to support the maintenance and repair of pier infrastructure, the Eastern Waterfront Port Zone recognizes the following hierarchy of uses:

- (a) The first priority of this zone is to protect and nurture existing and potential deepwater water-dependent uses (those uses requiring a minimum of 15 feet of water depth);
- (b) The second priority is to allow shallow water water-dependent and other permitted marine uses so long as they do not interfere with deepwater water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure; and
- (c) Other uses specified herein are allowed only if they do not interfere with and are not incompatible with existing higher priority uses.

14-300.1. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or

significantly impede access to vessel berthing or other access to the water by water-dependent uses; or

- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

14-301. Permitted Uses

Subject to a determination that the proposed use meets the standards of section 14-300.1. (No adverse impact on marine uses), the following uses are permitted in the Eastern Waterfront Port Zone:

- (a) Marine Passenger
 - 1. Intermodal marine passenger facilities;
 - 2. Cruise ship home port and port of call berthing and support;
 - 3. International and domestic ferries.

- (b) Marine Commercial
 - 1. Transient and long-term commercial berthing;
 - 2. Marine-related warehousing;
 - 3. Marine related construction, manufacturing, fabrication, salvage and repair;
 - 4. Storage and repair of fishing equipment;
 - 5. Ship and other marine vessel construction, building, servicing, and repair;
 - 6. Boat and marine equipment storage;
 - 7. Marine fuel storage & dispensing provided that on-site fuel storage structures shall be used solely for the purpose of fueling vessels and shall be limited, cumulatively, to 20,000 gallons of storage capacity within the zone;
 - 8. Public, non-profit, or commercial marine transportation and excursion services, including captained charter services, sport fishing and water taxis;

9. Ship and offshore support services including but not limited to tug boats, pilot boats, and chandleries.
10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices.

(c) Commercial

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

Editor's Note: On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (Conditional Uses, parking) below.

2. Temporary events, except festivals as otherwise governed under section 14-301(c) 4 below.

Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:

- a. Temporary events occupying more than 10,000 square feet of building or outdoor space shall not exceed a combined total of sixty (60) days between May 1st to October 31st.
 - b. No temporary event may continue for more than 14 days of continuous operation.
 - c. Any temporary event that anticipates more than 5000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the Public Works Authority at least 60 days prior to the first day of the event.
3. Festivals subject to City license.

(d) Public

1. Fire, police & emergency services.
2. Governmental agency emergency operations/crisis centers.
3. Research, military and visiting attraction vessel berthing.

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

14-301.1. Conditional Uses

The following uses shall be permitted as conditional uses in the Eastern Waterfront port zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and provided further that in addition to the provisions of section 14-474(c)(2) such uses will not impede or preclude existing or potential deepwater or water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and meet any additional standards set forth below:

Conditional Use Standards:

(a) *Marine compatibility:*

The proposed use shall be compatible with existing and potential marine uses in the vicinity, as required by Section 14-304 (n), compatibility of non-marine uses with marine uses, and (q) functional utility of piers and access to the water's edge.

(b) *Parking and Traffic Circulation:*

Parking and Traffic Circulation Plan: All applications for conditional use in the EWPZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the EWPZ.

Conditional Uses:

(a) *Marine:*

1. Marine products, wholesaling and retailing;
2. Ice-making services;

3. Marine freight facilities providing service for and/or intermodal transfer of container, and breakbulk freight;
4. Marine educational facilities
5. Seafood retailing, wholesaling, packaging and shipping.
6. Seafood processing for human consumption, subject to the performance standards of the IL zone set forth in Section 14-236 in addition to the performance standards established herein.
7. Commercial marinas serving commercial and recreation boats, provided that such facilities are located in areas that do not conflict with the navigation and handling of ocean-going, deep draft vessels accessing existing or potential deep water berthing.
8. Fish by-products processing, provided that:
 - a. Any fish by-products processing facility has a valid rendering facility license under chapter 12.
 - b. Any fish by-products facility shall employ current and appropriate odor control technology to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the IM zone; and
 - c. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

(b) *Commercial:*

1. Structured parking available to the general public;
2. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006.
3. Accessory Passenger Support Services supporting a marine passenger use listed under 14-301.(a) (marine passenger.) The total ground floor area occupied by any combination of the following uses shall not exceed 35% of the gross floor are of the principle associated marine passenger use and no more than 35,000 square feet cumulative within the EWPZ:
 - a. Retail;

- b. Restaurants/Food Service;
- c. Retail service;
- d. Passenger information services;

(c) *Industrial:*

The following industrial uses are permitted provided that such uses shall conform to the IL zone performance standards set forth in §14-236 in addition to the performance standards established herein. Where redundant or contradictory performance standards exist, the more restrictive standard applies.

- 1. Non-marine related warehousing in structures existing as of (date of zoning adoption);
- 2. Facilities for combined marine and general construction;
- 3. Low impact industrial uses as permitted in the IL zone in structures existing (as of the date of adoption), excluding all auto repair service facilities.

(d) *Public:*

- 1. Utility substations: Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps and telecommunication switching stations, are permitted under the following conditions:
 - a. The facility is located more than 100 feet from the water's edge;
 - b. The facility occupies no more than 50 square feet of structure above ground;
 - c. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise useable and made available for marine related uses, including but not limited to parking, travel ways, and/or storage; and
 - d. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

2. Maritime museums, limited to 5000 sq ft of ground floor footprint.

Editor's Note: On-site parking for non-marine commercial and industrial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (Conditional Uses, parking) below.

- (e) *Parking for non-marine uses:*

Notwithstanding sections 14-315(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted by section 14-301.(permitted marine uses) and 14-301.1. (conditional marine uses) which are or may be located on the subject property. (see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site.

Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

14-301.2. Prohibited uses.

Uses, whether floating or fixed to land, which are not enumerated in either section 14-(301) or 14-(301.1) as permitted or conditional uses are prohibited. Those uses that are specifically prohibited shall include, without limitation:

- a. Residential uses;
- b. Amusement/theme parks;
- c. Bulk freight facilities;
- d. On-site gambling casinos not accessory to and located aboard either a ferry or inter-port cruise ship.

14-302. Contract or conditional rezoning.

In addition to those marine and non-marine uses authorized in section 14-301 (permitted uses) and 14-301.1(conditional uses), and otherwise expressly authorized, an applicant may apply to locate a non-marine use not otherwise permitted in a proposed structure, if the reviewing body finds the applicant has met the standards of section 14-300.1 (no adverse impact), the performance standards of 14-304(a-q), and the applicable

standards of contract/conditional rezoning contained in Sections 14-60 to 14-63 and conforms to the following requirements:

Standards for Contract or Conditional Rezoning:

- a. All non-marine uses are either permitted or conditionally permitted in the B-5 zone, and are not specifically prohibited in section 14-301.2 (prohibited uses) above. Any hotel, inn, or other similar transient lodging establishment proposed must be located landward of the spring tide line and westerly of the extension of the India Street right-of-way.
- b. The aggregate ground floor of the subject structures located within 100 feet of the pier edge (or working edge of the hardened shoreline) within the land rezoned pursuant hereto shall be occupied by at least 50% of one or more marine uses as set forth in section 14-301(permitted, marine uses) and 14-301.1 (conditional marine uses.) *Note: The circulation areas and areas occupied for accessory parking serving marine uses shall not be used as the basis for calculating the 50% provision above.*
- c. The development is consistent with the comprehensive plan and without the non-marine use component authorized herein, the site could not otherwise support an economically viable water dependent use.
- d. The project's public benefits outweigh its potential negative impacts, provided that such public benefits be one or more of the following: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public.
- e. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as an undue increase of winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns.
- f. The rezoning contains adequate provisions and/or conditions to ensure that on-site water dependent infrastructure remains occupied by commercial marine use(s) listed in section 14-301 (permitted uses) and 14-301.1 (conditional uses) and that said use is not abandoned after the project is developed.
- g. Notwithstanding section 14-304(h), (performance standard *Parking*.) and section 14-526 a(2) all on-site parking constructed or used for non-marine uses allowed only by contract of conditional rezoning shall be subject to the conditional use provisions established herein in conditional use section 14-301.1 (e)(*parking for non-marine uses*).

Additionally, the total amount of parking shall be established in the conditional or contract re-zoning agreement and determined based upon a parking analysis submitted by the applicant, which shall be reviewed by the city traffic engineer, and upon the recommendation of the city traffic engineer and Planning Board.

14-303. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the EWPZ shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None.

Setback from pier line: Notwithstanding the above requirements, a minimum setback of thirty six (36) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for water-dependent uses and public uses and activities, subject to the provisions of sections 14-300.1 (no adverse impact) and 14-301.1 (conditional use provisions), and shall not be utilized for restaurant, drinking, or other non-water-dependent uses or for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum impervious surface:* One hundred (100) percent.
- (e) *Maximum building height:* Forty-five (45) feet, except as follows:
 - a. For purposes of this section only, moveable elements such as cranes and gantries, connection devices such as conveyors or bridges, and floating vessels shall not be subject to the space and bulk requirements, but shall be subject to a determination by the Federal Aviation Administration that the location of such equipment will not create a hazard to air traffic.
 - b. Rooftop appurtenances may exceed the maximum height limits of forty five (45) feet providing that their design and placement is

either fully screened or integrated into the architecture of the structure on which they sit.

- c. The applicant must provide a determination from the Federal Aviation Administration that structures and equipment in excess of forty five (45) feet will not exceed the applicable height guidelines for the runway approach and will not create a hazard to air traffic. Such a determination shall be accepted as conclusive evidence that the proposed development will not create a hazard.

14-304. Performance standards.

New development in the in the Eastern Waterfront Port Zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
- (b) *Noise:*
 - 1. The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the Eastern Waterfront Port Zone between the hours of 7:00 p.m. and 7:00 a.m. from facilities or operations commenced on or after July 1, 1988, shall not exceed fifty-five (55) decibels on the A scale at or within the boundaries of any residential zone, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices, and maritime navigation signals.
 - 2. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ1).
 - 3. In addition to the sound level standards otherwise established, facilities or operations established or built in the waterfront port

development zone on or after July 1, 1988, 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. Tonal sound is defined as a sound wave usually perceived as a hum or which because its instantaneous sound pressure varies essentially as a simple sinusoidal function of time. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with a duration of less than one (1) second.

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.
- (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) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than ten (10) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.
- (h) *Off-street parking:* Except as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number

of parking spaces for specified uses as otherwise provided in division 20 of this article.

- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *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.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor, nor have an unreasonable adverse impact on adjacent residential zones, and shall be compliant with the Site Lighting Standards of the Technical and Design Standards and Guidelines Supplement.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses.
- (q) *Functional Utility of piers and access to the water's edge:* All new development, whether for marine or non-marine uses, must anticipate current and future needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods, materials, and passengers between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods, materials, and passengers must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development.