

Order 103-10/11  
Given first reading on 12/6/10

Public hearing and passage as amended 7-2 (Marshall, Donoghue) 12-20-10

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**CITY OF PORTLAND**  
IN THE CITY COUNCIL

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**AMENDMENT TO PORTLAND CITY CODE**  
**CHAPTER 14. LAND USE**  
**ARTICLE III. ZONING**  
**DIVISION 18. WATERFRONT CENTRAL ZONE**

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

*That sections 14-305 to 14-315 of the Portland City Code  
are hereby amended to read as follows:*

**Sec. 14-305. Purpose.**

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses; in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) ~~Other specified~~Non-marine uses are encouraged ~~only if provided that~~ they do not interfere with and are not incompatible with first and second priority uses, ~~and if they economically enhance higher priority water dependent and marine uses.~~ Other specified. Non-marine uses 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. ~~However, water~~

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Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted ~~under certain circumstances~~ in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses ~~do not have a substantially adverse effect on~~ are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

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Commercial Street is recognized as an important economic center for the City and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

**Sec. 14-306. 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 nonwater-dependent use is to e located on a portion of the site that is physically suited for a water dependent use;~~
- (c) ~~The proposed use will reduce existing commercial vessel berthing space;~~
- (d) ~~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 or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or~~
- (e) ~~The siting of a proposed nonwater dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.~~

**Sec. 14-307.**

**Sec. 14-306. Definitions.**

For the purposes of the waterfront central zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways, and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot shall mean: any abutting property under common ownership.

Non-Marine Use Overlay Zone (NMUOZ): The Non-Marine Use Overlay Zone (NMUOZ) is a portion of the waterfront central zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the NMUOZ are defined by parcels of land and piers within the waterfront central zone located on the landward side of a line established one hundred fifty (150) feet southerly from the southerly sideline of Commercial Street and modified as follows: The seaward limit of the NMUOZ extends to a line 500 feet southerly from the southerly sideline of Commercial Street in the area between the easterly sideline of Long Wharf to the westerly sideline of Union Wharf. Additionally, all areas subject to this provision are set back landward at least twenty five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. All offset distances are measured horizontally.

All applicants for development within the NMUOZ are responsible for demonstrating their location within NMUOZ according to the findings of a site specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the NMUOZ shall be shown on all site plans and subdivision plats for proposed development within the NMUOZ. A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in determining whether a proposed development is located within the NMUOZ.

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Non-marine uses permitted by this section are subject to the standards listed in Section 14-311.

- 1. Professional, business, government, and general offices; and general offices;
- 2. ~~Business service establishments;~~
- 3. ~~Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;~~
- 4. ~~Intermodal transportation facilities;~~
- 5. ~~Cold storage facilities;~~
- 6. ~~Warehousing and wholesaling;~~
- 7. ~~Industrial uses which meet the performance standards of the I-M zone.~~

(c) ~~Public:~~ Subject to section 14-308(e) and 14-309, the following uses shall be permitted:

- 1. ~~Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;~~

(d) ~~Commercial uses in existing buildings located along Commercial Street;~~

- 1. ~~Buildings meeting the following criteria may house the uses listed in (d)(2) below:~~
  - a. ~~The subject building existed or had an unexpired site plan as of January 4, 1993; and~~
  - b. ~~The subject building is located in part or in whole within thirty five (35) feet of the southerly sideline of Commercial Street; and~~
  - c. ~~The ground floor non-marine uses allowed under this section shall not extend further than one hundred (100) feet from the southerly sideline of Commercial Street; and~~
  - d. ~~Expansions of uses permitted under this section are subject to conditional use review under 14-309, or conditional or contract rezoning under section 14-310.~~
- 2. ~~Provided the standards in (d)(1) above are met and subject to section 14-308(e)1. and 14-309(b){accessory parking for non water dependent uses}, the following uses shall be permitted:~~

- a. ~~Professional, business, government, and general offices;~~
- b2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;

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~~e~~3. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;

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~~d~~4. Banking services; ~~without drive-up services;~~

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e5. Laundry and dry cleaning services;

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~~f~~6. Cabinet and carpentry shops, studios for artists and crafts people ~~(excluding group classes and performances), and accessory retail sales of products produced on the premises;~~

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~~g~~7. Intermodal transportation facilities;

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~~h~~8. Cold storage facilities;

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~~i~~9. Museums and art galleries; ~~and~~

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~~\*Editor's Note: Subject to drive-thru services prohibition in Section 14-313.~~

~~e~~10. Outside accessory activities

(c) Public:

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

(d) Other:

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1. Accessory uses:

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~~a. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this code, parking for uses other than water dependent uses set forth in section 14-308(a) (permitted marine uses) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-309(a) (for marine related, but not water dependent uses) or 14-309(b) (for non-marine uses).~~

~~b. Accessory a. Interior accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and~~

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service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-~~308~~307(a)(1-), (a)(7-), or (a)(22-); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual use does not exceed one-thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and

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eb. Interior meeting or classroom space accessory to uses permitted in section 14-~~308~~307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph 2b, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

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2. Street vendors licensed pursuant to chapter 19.

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Sec. 14-~~309~~-308. Conditional uses.

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The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-~~471~~471 and 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 further provided that in addition to the provisions of section 14-474(c)(2), ~~section 14-306 (no adverse impact on marine uses), and any other conditions specified under the particular use below,~~ they shall also meet the following conditions applicable waterfront central zone development standards in section 14-311:

(a) ~~Conditional use standard:~~ Commercial marine conditional uses:

1. ~~Marine compatibility:~~ The proposed use shall be compatible with existing and potential ~~marine uses in the vicinity;~~
2. ~~Access for marine use:~~ The proposed use shall not impede access to the water by existing or potential marine uses; and
3. ~~Parking and traffic circulation:~~
  - a. ~~Parking and traffic circulation plan:~~ All applications for conditional use in the WCZ 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 WCZ. (Sec 14-306 {no adverse impact on marine uses} and 14-315 {performance standards}, (q) {functional utility of piers and access to the water's edge}).
  - b. ~~Pier access/congestion:~~ For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
4. ~~Public view protection:~~ Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the planning board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement. The planning board shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors

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~~or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.~~

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~~\*Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to the State of Maine NRPA regulation.~~

~~(b) Conditional uses:~~

- ~~1. *Parking for marine uses that are not water dependent:* Notwithstanding section 14-315(h), 14-331, 14-334 and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent 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 water dependent uses that are permitted by section 14-308(a) which are or may be located on the subject property. (See editor's note below). The remainder of parking required for such non water dependent uses shall be provided off site and in other zones where parking is a permitted use.~~
- ~~2. *Parking for (a) conditional uses; (b) non-marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above ground floor level, and/or (c) uses allowed under conditional or contract rezoning:* 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 14-308(a) 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 and in other zones where parking is a permitted use.~~

~~\*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.~~

- ~~3. *Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:*~~
  - ~~a. *Such use does not decrease the amount of, nor diminish the quality of, existing on site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.*~~
- ~~4. 1. *Fish by-products processing, provided that:*~~

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- ~~a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;~~
- ~~b. Any existing fish by-products facility shall~~

employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available 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 I-M 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.

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52. Boat rack storage facilities, provided that:

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- a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-315(d)), 311(d) 8, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.

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- b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.

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~~6. Expansion of a non-water dependent, non-marine related use permitted under 14-308(e). Expansion of commercial uses in buildings existing or having an unexpired site plan on January 4, 1993 and located within thirty five (35) feet of the southerly edge of Commercial Street shall be allowed only as follows:~~

- ~~a. The expansion must be into contiguous and newly created building space of no more than three thousand (3,000) square feet, total for the life of the building; and~~

- ~~b. The use may occupy a ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non marine related use is located within thirty five (35) feet of the southerly sideline of Commercial Street; and/or~~

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- ~~c. The use may occupy a ground floor area of no more than fifteen hundred (1500) square feet beyond thirty five (35) feet from the southerly sideline of Commercial Street and be located no more than one hundred (100) feet from the southerly sideline of Commercial Street; and~~

~~\*Editor's Note: Expansions proposed under this section may occupy new upper floor areas that are located further than thirty five (35) feet from Commercial Street and larger than fifteen hundred (1500) square feet, subject to other limitations of this code.~~

- ~~d. As of September 7, 2000, an existing building that qualifies for a non water dependent, non marine related use under 14-308(d) shall be no less than five hundred (500) square feet; and~~
- ~~e. The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.~~

~~7.(b) Residential: The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy space within the upper story of a building in existence on January 4, 1993 upper floor space with a residential use, provided the following conditions are met:~~

- ~~a1. The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished;~~
- ~~b2. The residential living space shall not exceed seven hundred fifty (750) one thousand (1,000) square feet, inclusive of all exterior porches and decks;~~
- ~~e3. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;~~
- ~~d4. The residential use shall be limited to one unit per wharf;~~
- ~~e5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and~~
- ~~f6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.~~

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For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of ~~the~~ marine related business listed under section 14-307(a), permitted marine uses.

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~~8.(c)~~ 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:

~~a1.~~ The facility is located more than one-hundred (100) feet from the water's edge;

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~~b2.~~ The facility occupies no more than fifty (50) square feet of structure above ground;

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~~e3.~~ 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 usable and made available for marine ~~related~~ uses, including but not limited to parking, travel ways, and/or storage; and

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~~d4.~~ The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

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~~9.~~ Expansion of an upper floor non-water dependent, non-marine use permitted under 14-308(b), (commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than two thousand (2,000) square feet total for the life of the building, shall be allowed only as follows:

~~a.~~ The expanded use may occupy upper floor areas;

~~b.~~ Newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water dependent uses, except pedestrian circulation areas (i.e., unoccupied vestibules, elevators, and/or stair landings serving upper floors) may occupy no more than three hundred (300) square feet;

~~c.~~ As of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-308(b) shall be no less than five hundred (500) square feet; and

~~d.~~ The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.

~~Sec. 14-310. Contract or conditional rezoning.~~

~~General: Except as authorized in section 14-308 (permitted uses), or otherwise expressly authorized, an applicant may only locate a non-marine use in a structure, or in a structure constructed after January 4, 1993 if the reviewing body finds the applicant has met the standards of section 14-306 (no adverse impact) and the applicable standards of contract/conditional rezoning contained herein:~~

~~(a) New structures with marine uses on first floors or change of use of upper floors of structures constructed after January 4, 1993:~~

~~The following standards apply to contract/conditional rezoning on any site within the waterfront central zone (unless an applicant applies for a contract/conditional rezoning under the Commercial Street/old port overlay zone standards in (b) below):~~

- ~~1. The upper story non-marine use is a use listed 14-308(b);~~
- ~~2. The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-308(a) excepting circulation areas, such as unoccupied vestibules, elevators, and/or stair landings serving upper floors uses) may occupy no more than three hundred (300) square feet.~~
- ~~3. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.~~
- ~~4. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~
- ~~5. The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: 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.~~
- ~~6. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).~~
- ~~7. The non-marine portion of the proposed 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 increased winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to planning board review under section 14-309(a)3.a. and 14-309(b)2 (conditional use, parking).~~
- ~~8. The development is consistent with conditional use standard 14-309(a)4. (public view protection).~~
- ~~9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine~~

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~~use as listed in 14-308(a) and that said use is not abandoned after the project is developed.~~

~~(b) *Commercial Street/old port overlay zone:* The following standards are applicable to the Commercial Street/old port overlay zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf. For a site within the old port overlay zone, the applicant may request application of these standards rather than the standards of (a) above.~~

- ~~1. All portions of the structure are set back at least seventy-five (75) feet from the maximum spring tide line of coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the state department of environmental protection that the location and development context of the subject site adhere to the State's definition of "general development district", the coastal wetland setback may be reduced to twenty-five (25) feet.~~
- ~~2. New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-308(d) (commercial uses in buildings existing on January 4, 1993 and located within thirty-five (35) feet of Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.~~
- ~~3. Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~
- ~~4. The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or ongoing maintenance of the marine infrastructure for commercial vessels (either on site or off site), and visual and physical access to the waterfront for the general public.~~
- ~~5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased 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. All parking for the non-marine portion of the proposed development shall be subject to sections 14-309(a)3.a. and 14-309(b)2 (conditional use, parking).~~
- ~~6. The proposed development is consistent with conditional use standard 14-309(a)4. (view corridor protection).~~
- ~~7. The development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution as detailed in (9) below.~~
- ~~8. Maximum building setback from the southerly sideline of Commercial Street shall be no more than ten (10) feet.~~

~~9. A developer is required to mitigate impacts of non-marine development. Mitigation may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. In determining the amount of required mitigation, the value of the contribution shall be not less than the greater of five percent (5%) of total project costs or ten dollars (\$10.00) per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. Required mitigation may occur by one or both of the following methods:~~

~~a. Direct investment in marine infrastructure: Mitigation shall be for the benefit of water dependent uses listed in 14-308(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses on site or within the same lot.~~

~~b. Financial contribution: As an alternative to direct investment, the developer may choose to make a financial contribution to the city's waterfront loan and investment fund.~~

~~Sec. 14-311. Reserved.~~

~~Sec. 14-312. Reserved.~~

~~Sec. 14-313. Sec. 14-309. Prohibited uses.~~

~~Uses which are not enumerated in either section 14-308307 or 14-309308 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:~~

- ~~(a) Except as provided in section 14-309308, residential uses (not in existence on May 5, 1987);~~
- ~~(b) Hotels, motels or boatels;~~
- ~~(c) Auditoriums, civic centers, convention centers or other meeting facilities;~~
- ~~(d) Drinking establishments;~~
- ~~(e) Ground mounted telecommunication towers, antennas, and/or disks; and~~
- ~~(f) Drive-up services for any use other than a permitted use listed under 14-308307(a) or 14-308(b)(1).~~

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**Sec. 14-~~314~~310. Dimensional requirements.**

In addition to the provisions of ~~article III, division 25, of this code~~ article, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* ~~None.~~ along Commercial Street: Seventy five (75) feet.

(c) *Minimum lot width within the NMUOZ:* Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the NMUOZ.

(d) *Minimum yard dimensions:*

1. Front setback: None.

2. Side setback: None.

3. Rear setback: None.

4. Setback from pier ~~line~~ edge: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(e) *Maximum lot coverage:* One-hundred (100) percent.

(f) *Maximum building height:* ~~Forty five (45) feet, except that within four hundred (400) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty~~ Fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Except as provided on

(g) below, a structure in the waterfront central zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or

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open mechanical installations shall be allowed over the third floor.

(fg) Minimum ground floor clearance: Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.

(gh) New non-marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (ef) and (fg) above, for new non-marine use buildings permitted for use by non-marine uses under 14-310(b) (contract/conditional rezoning in within the Commercial Street/old port overlay zone) NMUOZ, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-315.311. Development standards.

(a) Standards for non-marine uses located outside of the NMUOZ:

Non-marine uses listed above in Sec. 14-307(b) and 14-308(a) that are located outside of the NMUOZ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. 55% marine use required on ground floors: At least 55% of the ground floor of all of the buildings on the lot (defined in 14-306 above), when calculated using the aggregate of all such ground floors, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b)(1).
2. 55% marine use required for all open areas: After subtracting areas used for common

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circulation drives (defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b)1.

3. ~~Ground floor vacancies and change of occupant offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.~~

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a. ~~Ground floor vacancy and change of occupant outside of the NMUOZ advertised to marine users: In any lot or portion of lot outside of the NMUOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space must be made available to new marine occupants.~~

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a (60) day period in targeted media and by other means reasonably calculated to reach marine users. Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the NMUOZ.) The property owner may stop advertising sooner than the end of the 60 day period if a lease is signed with a marine user. Should no marine user apply by the end of the 60 day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use

occupancy maximum of 45% of the ground floor area or open area.

b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. - The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

c. Applicants for site plan review or a change of use permit outside of the NMUOZ shall provide the planning authority with proof of compliance with the requirements of this section as a condition of approval.

**DRAFT TEXT**

d. The City Planning Authority shall compile and report inventories of ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding anything in contained

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in 14-311(c) (Contract or conditional rezoning) or any other provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least five feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(b). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) NMUOZ standards:

Non-marine uses listed under 14-307(b) and 14-308(a) located within the NMUOZ, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. Vessel access: Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).
2. Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage: Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street

and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right of way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. Investment in marine infrastructure: All applicants for site plan review or a change of use permit for non-marine development in the NMUOZ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed \$250,000. The value of the investment shall be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the NMUOZ.

Required investment may occur by one or both of the following methods:

- a. Direct investment in marine infrastructure located on the same lot: Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure

investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.

- b. Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.

(c) Contract or conditional rezoning standards:

Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under Sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:

1. Conditional or contract rezoning located outside of the NMUOZ: The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of Section 14-311(a) of this code.
2. Conditional or contract rezoning located within the NMUOZ: Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b)(3) (Investment in marine infrastructure).
3. Residential dwellings are prohibited.
4. The development is consistent with the comprehensive plan and without the development the site could not otherwise

support an economically viable water-dependent use.

5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
6. The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: 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.
7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d)(8).
9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.

(d). Performance standards:

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

(1). Outdoor storage of materials: Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

(2). Noise: The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ<sub>1</sub>).

(3). Vibration: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from

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activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.

(4) Federal and state environmental regulations: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.

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(5) Discharges into harbor areas: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of ~~parks and public works~~ services, 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.

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(6) Storage of vehicles: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.

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(7) 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~~ 480-A through 480-HH, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of ~~parks and public works~~ services, 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.

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(h)

~~8. Off-street parking: Except as provided in section 14-309 or as required pursuant to article V (site plan), and loading: Division 20 (off-street parking is required at fifty percent (50%) of the required number) and division 21 (off-street loading) of this article shall not apply.~~

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

a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.

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b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").

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

d. Water-dependent use parking spaces for specified uses as otherwise provided in division 20 of this article shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.

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~~(i) Off street loading: Off street loading is required as provided in division 21 of this article.~~

(j)  
9. Shoreland and flood plain management regulations: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood

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hazard zone shall be subject to the requirements of division 26 and/or division 26.5 of this article.

~~(10)~~ 10. *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.

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~~(11)~~ 11. *Signs:* Signs shall be permitted as set forth in division 22 of this article.

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~~(m)~~ 12. *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.

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~~(n)~~ *Compatibility of non-marine uses with marine uses: Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither 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 as set forth in section 14-306. Siting of a use not set forth in section 14-308(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.*

~~(13)~~ 13. *Urban design:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.

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~~(14)~~ 14. *Pier and wharf expansions:* In addition to meeting ~~harbor commissioner~~ Harbor Commission and ~~east coast guard~~ Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed

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route ferry service and emergency vessel operations.

(e)15. Compatibility of non-marine uses with marine uses: Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

16. Functional utility of piers and access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. —, and shall demonstrate adherence to the following provisions:

a. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. ~~For example,~~ any The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the

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building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

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c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.

d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.

17. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

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

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Editor's Note: The Council further ordered City staff to compile data and file a report on the current ground floor usages and the displacement of any ground floor marine related uses in the Waterfront Central Zone at the second Council meeting in April and thereafter file an annual report identifying the trend line, if any, that shows the displacement of marine related uses. The Council also required staff to include in its annual report an inventory of the building permits issued in prior year comparing the amount of investment in marine related infrastructure to the investment in non-marine related infrastructure.