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CITY OF PORTLAND

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 (LAND USE)
ARTICLE V (SITE PLAN)
ARTICLE IX (HISTORIC PRESERVATION)**

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

1. *That Chapter 14, Article V, Section 14-526 of the Portland City Code is hereby amended to read as follows:*

Sec. 14-526. Standards.

(a) *Requirements for approval.* The Planning Board or planning authority shall not approve a site plan unless it meets the following criteria:

- 18) a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a Certificate of Appropriateness under Article IX (Historic Preservation) of the Land Use Code shall be exempt from the following design standards included in this Article:

i. Section 14-526(16) (development in B-3 zone), except for (16)(b)(2) (increasing setback beyond street build-to line), 16(d) (shadow impact on open space), 16(e) (wind impacts), and 16(f) (setbacks from existing structures);

ii. Section 14-526(26) (development in B-5 and B-5b zones), except for 26(a) (shared infrastructure) and 26(d) (parking lot location);

iii. Section 14-526(28) (small residential lot development in R-6 zone);

iv. Section 14-526(29) (University of Southern

Maine);

v. Section 14-526(30) (development in B-7 zone),
except for 30(a) (transportation demand management);

vi. Section 14-526(31) (development in Eastern
Waterfront zone).

- b. ~~If any part of a proposed structure or object is within one Hundred (100) feet of any landmark, historic district, or historic landscape district designated or otherwise subject to the protect of article IX and not separated from such landmark or district by a public street, such structure or object shall be determined not be incongruous to the architectural style or character of those portions of such designated landmark or district as are concurrently visible to the development when viewed from a street or public open space.~~

Development adjacent to designated landmarks, historic districts or historic landscape districts: When any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district or historic landscape district, such development shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the Historic Resources Inventory and respective historic district designation reports. For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the Planning Board in its deliberations, Historic Preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

2. That Chapter 14, Article IX (Historic Preservation) of the Portland City Code is hereby amended to read as follows:

Sec. 14-601. Purpose.

The purpose of this article is to promote the educational, cultural, economic and general welfare of the City of Portland by:

- (b) Providing a resource of information and expertise to help those interested in rehabilitation or new construction in a district or restoring a landmark;
- (c) Applying design standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles;

Sec. 14-602. Definitions.

Certificate of appropriateness: A certificate issued by the department evidencing approval of specific plans for alteration of a structure or new construction on a site in accordance with this article.

Certificate of nonapplicability: A certificate issued by the department evidencing a determination that specific plans for alteration of a structure or new construction on a site do not require approval under this article.

~~*Committee:* The historic preservation committee.~~

~~*Construction:* The adding to a structure by an addition, or the erection or placement of any new structure on a lot or property.~~

Design guideline: Any design standard specified for alteration or new construction which is unique to a particular landmark, historic district or historic landscape district.

Landmark: A property, site, structure or object designated as a "landmark" by the council as having a high degree of historical, cultural and/pr architectural significance.

New construction: The adding to a structure by an addition; the erection or placement of any new structure on a lot or property; or the comprehensive redesign/renovation of an existing structure.

Noncontributing structure: Any structure which is neither a contributing structure within a district nor a landmark. A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that 1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the Historic Resources Inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be non-contributing if it meets one or more of the above conditions.

Sec. 14-609. Responsibilities.

The historic preservation board shall have the following responsibilities:

- (1) To provide comment, as appropriate, to the planning board and/or City Council on matters pertaining to historic preservation in Portland.

Sec. 14-615. Initiation of nomination.

(d) At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the historic preservation board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the historic preservation board that the structure is ~~noncontributing~~ eligible for a permit shall be conclusive.

Sec. 14-622. Action by city council.

(b) Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district which is determined to be a landmark or considered to be contributing or noncontributing, indicating their degree of cultural, historic, architectural or archeological significance. ~~All sites, structures and objects not specifically classified shall be considered noncontributing.~~ This list may be amended thereafter by the council upon recommendation from the planning board under the same procedures as set forth above. Where there are no express findings by the council in the designation ordinance, there shall be a presumption that the council found that all requirements of sections 14-610 and 14-611 were met.

Sec. 14-630. Nominated landmarks and districts.

(b) Alteration or new construction commenced pursuant to a building permit issued prior to nomination shall not require a certificate of appropriateness, unless such permit has expired, been canceled or revoked. No project for which any application is pending, and which has received substantive review by the planning board prior to nomination, shall be affected by nomination. Substantive review, as used in this paragraph, shall include workshop review of any completed application under articles IV or V of this chapter.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 4, 5-17-93)

Sec. 14-631. National Register of Historic Places.

(a) Every property, landmark or district listed in the National Register of Historic Places prior to adoption of this article, as shown in the design manual, is hereby designated as a landmark or district and shall be subject to all of the protection of this article, until such time as such designation is amended or rescinded as provided by section 14-623. Listed properties which would qualify for designation as historic landscape districts shall be subject to the applicable provisions of this article. If there is any inconsistency between the boundaries of any landmark or district as shown in the designation ordinance, if any, the design manual and/or the National Register, such inconsistency shall be resolved in favor of such ordinance and the design manual in that order. A certificate of appropriateness shall be obtained for every alteration or new construction affecting said listed properties and districts.

Sec. 14-634. Certificate of appropriateness required.

(a) Except as provided in sections 14-635 and 14-636, a certificate of appropriateness shall be required before the following actions affecting any landmark, ~~or~~ contributing or noncontributing structures, objects, sites or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:

- (1) Any exterior alteration or new construction requiring a building permit from the City of Portland, including, but not limited to the following:
 - a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings and cornices;
- (4) Any ~~demolition or~~ relocation of a landmark or contributing structure within a district.
 - a. There shall be a rebuttable presumption that no structure within a district ~~is~~ shall be noncontributing unless the design manual expressly identifies it as such. ~~Not being contributing~~. Where the department or the owner believes that the identification is erroneous, the historic preservation board shall determine whether the structure is noncontributing.

Sec. 14-635. Exceptions to requirement of certificate of appropriateness.

A certificate of appropriateness is not required:

- (e) In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a certificate of appropriateness shall not be required where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights, when viewed at any height between four (4) and six (6) feet from any open space or street. Where a certificate of appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

Sec. 14-636. Exterior work within historic landscape districts.

A certificate of appropriateness shall be obtained before any alteration or new construction within an historic landscape district may be undertaken, except where a certificate of nonapplicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior certificate of appropriateness within five (5) years of commencement.

Sec. 14-639. Review process involving major development.

The process for review of an application for alteration or new construction that is also major development as defined in Article V of this chapter shall be as follows:

- (a) ~~The planning board shall initiate its review upon receipt of an application for a certificate of appropriateness from the department. Site plan review by the planning board and historic preservation review by the historic preservation board shall, to the extent feasible, proceed concurrently. During its review, the historic preservation board shall take into consideration the relevant site plan standards that will apply to the application. Any proposed major development required to obtain a Certificate of Appropriateness under this Article shall be exempt from the design standards included in Article V as provided for in Sec. 14-526 (18)(a) of the site plan ordinance.~~

Sec. 14-643. Certificate of nonapplicability.

(a) The department shall issue a certificate of nonapplicability as to property subject to this article when requested to do so when:

- (3) In the case of the alteration of a structure other than a landmark or of new construction within a district, where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any open space or street when viewed from any height between four (4) and six (6) feet above such space or street. Where a certificate of appropriateness is required for such changes, a certificate of nonapplicability shall be issued upon request for those portions of the structure or structures not visible at such

heights; provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition; or

Sec. 14-645. Review process for demolition of landmarks or structures within a district.

- a. Any applicant seeking demolition of a landmark or contributing structure must apply for a certificate of economic hardship to the board of appeals in accordance with Division 8 of this Article. Said application must be approved by the board of appeals before a demolition permit can be issued.
- b. Any applicant seeking demolition of a noncontributing building as defined in this Article may apply directly for a demolition permit without receiving approval from the historic preservation board or a certificate of economic hardship from the board of appeals.
- c. Any applicant seeking demolition of a portion of a contributing or landmark structure may request that the historic preservation board make a determination as to whether such portion of the structure is non-contributing based on the definition of that classification contained in Sec. 14-602 of the ordinance. If the Board determines the portion to be noncontributing, the applicant may apply directly for a demolition permit.

Sec. 14-651. Standards for review of new construction.

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards, as further described in the design manual and any design guidelines in the ordinance designating the landmark or district; as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the Historic Resources Design Manual and shall guide the board in its review.

(a) *Scale and form:*

6. Applicability to Congress Street Historic District. In the Congress Street Historic District, for new construction within the B3 zone, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements (Sec 14-220) of the B3 zone.

Sec. 14-651.5 Standards for review of alterations to or redesign of noncontributing structures.

- (a) In considering an application for a certificate of appropriateness involving alteration(s) to a noncontributing structure the standards for review of alterations set forth in Section 14-650 shall apply as applicable. The intent of the review shall be to ensure no further erosion of any existing architectural character of the subject structure determined to be significant by the historic preservation board and, where practicable, to guide projects toward a more compatible relationship with the surrounding context.
- (b) In considering an application for a certificate of appropriateness involving comprehensive redesign of a noncontributing structure, the standards for review of construction set forth in Section 14-651 shall apply.

Sec. 14-652.5 Standards for review of signage.

In considering an application for a certificate of appropriateness involving the installation or modification of sign(s), including awning(s) which incorporate signage, the following standard shall apply:

Signs shall be compatible with the subject building and its surrounding context as detailed in the signage design guidelines included in the Historic Resources Design Manual. If there is a conflict between this standard and the requirements of Article III, Division 22. Signs, the stricter standard shall apply.

Sec. 14-666. Determination of no reasonable use.

(a) If the determination of the board of appeals is that the denial of the certificate of appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of new construction, then the certificate of economic hardship shall be issued by the department ninety (90) days following the determination unless during that time the council approves an incentive plan pursuant to section 14-667.

Sec. 14-669. Issuance of certificate of economic hardship.

(a) Upon receipt by the board of appeals of a copy of council action disapproving an incentive plan, or upon failure of the council to act to either approve or disapprove an incentive plan within the time specified, the board of appeals shall approve a certificate of economic hardship to the applicant within thirty (30) days. The certificate may be subject to conditions including design guidelines for subsequent new construction not inconsistent with the standards set forth in this article and the design manual. The certificate of economic hardship shall be valid for a period of one hundred twenty (120) days from approval by the board of appeals, except as provided in section 14-666 where an incentive plan has been proposed. Certificates of economic hardship shall not be transferable from the applicant to another subsequent owner of the same property.

Sec. 14-675. Historic resources design manual.

(a) ~~On recommendation of the historic preservation board, the planning~~ The historic preservation board may provide further guidance on how to meet the standards of this article in the historic resources design manual, which shall supplement this article, which may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the National Register or for local designation, a glossary of terms and architectural styles, descriptions, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports and design guidelines. All provisions of the design manual shall be consistent with the standards of this article and any designation ordinance adopted hereunder.

(b) Amendments to the design manual shall be forwarded to the council as a communication and shall become effective forty-five (45) days after being filed with the city clerk from the date on which said amendments are sent to the council, unless the council takes official action disapproving the amendments, in whole or in part, prior to the expiration of the 45-day period.

Sec. 14-677. Costs.

Any project may be subject to one or more of the following fees:

(a) Project Review.

~~(1) Certificate of Appropriateness, Administrative review: \$50.00.~~

(2) Historic preservation board review: \$100.00

~~(3) New construction, comprehensive rehabilitation, major additions: Historic preservation board review for projects involving new construction or building additions exceeding 1000 square feet or comprehensive rehabilitation or redesign of existing structures: \$500.00~~

(4) After-the-fact review \$750.00

~~For purposes of this section, the following definitions shall apply:~~

~~New construction — any new construction (including building additions) whose building footprint exceed 200 square feet. This shall not include replacement or reconstruction of existing or documented historical features.~~

~~Comprehensive rehabilitation — any exterior alterations affecting more than one architectural feature and exceeding an overall project cost of \$15,000.~~

(b) Administrative sign review: \$35.00

(c) Advertising expenses.

Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.

Sec. 14-696. Additional penalties for willful violation or gross negligence.

(a) In addition to the penalties authorized by section 14-695, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

(1) No permit shall be issued under chapter 6 of this Code for any alteration or new construction affecting such property for a period of five (5) years following the last date of

the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the planning board that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.

- (2) For a period of twenty-five (25) years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural or archeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.
- (3) As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore or replicate the structure or object on the property.

Sec. 14-701. Structures designated as landmarks.

In addition to those structures designated as landmarks pursuant to section 14-631, the ~~following~~ structures which are designated depicted as landmark buildings on the Map of Historic Districts with Landmarks and Historic Landscape Districts as adopted by the council and as amended from time to time shall be so designated. ~~under the terms of this article.~~

~~The Tracy-Causser Building, 507 Fore Street.
(Ord. No. 42-91, 9-4-91)~~

Sec. 14-702. Historic landscape districts.

In addition to those areas designated as historic landscape districts pursuant to section 14-631, the ~~following~~ areas which are designated depicted as historic landscape districts on the Map of Historic Districts with Landmarks and Historic Landscape Districts as adopted by the council and as amended from time to time shall be so designated ~~under the terms of this article.~~

~~Evergreen Cemetery, Stevens Avenue, as more particularly delineated on the attached map, which shall become a part of the City of Portland Historic Districts Map, a copy of which is on file in the department.
(Ord. No. 61-93, 8-2-93)~~

Sec. 14-703. Historic districts.

In addition to those areas designated as historic districts pursuant to section 14-631, the areas which are ~~designated depicted~~ as historic districts on the Map of Historic Districts with Landmarks and Historic Landscape Districts as adopted by the council and as amended from time to time shall be so designated ~~under the terms of this article.~~

~~Hamblen Development Historic District, as more particularly delineated on the attached map, which shall become a part of the City of Portland Historic Districts Map, a copy of which is on file in the department.~~

~~(Ord. No. 59-93, 8-2-93)~~

Sec. 14-704. Historic landmark sites.

In addition to those areas which are designated as historic landmark sites pursuant to section 14-631, the ~~following~~ areas which are designated depicted as historic landmark sites on the Map of Historic Districts with Landmarks and Historic Landscape Districts as adopted by the council and as amended from time to time shall be so designated ~~under the terms of this article.~~

~~Henry Wadsworth Longfellow Monument and site of the monument, as more particularly delineated on the attached map.~~

~~(Ord. No. 60-93, 8-2-9)~~