

Order 48-15/16

Motion to suspend rules to take up deliberations on item after 10:00 p.m.: 9-0 on 8/3/2015

Amended to add entire proposed ordinance to the ballot: 8-1 (Marshall) on 8/3/2015

Amended to add revised summary: 8-1 (Marshall) on 8/3/2015

Passage as amended: 9-0 on 8/3/2015

Effective 8/13/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER SETTING ELECTION DATE ON
CITIZEN INITIATIVE AMENDMENT
TO CHAPTER 14 OF THE PORTLAND CITY CODE
RE: SCENIC VIEWPOINT PROTECTION**

ORDERED, that pursuant to Section 9-39 of the Portland City Code, the citizen initiative amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection, shall be submitted to the voters of the City on November 3, 2015 at the regularly scheduled election; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to provide a summary and to include the entire proposed ordinance on the ballot in substantially the form attached hereto.

SUMMARY

This proposed ordinance amends the current Land Use Ordinance to address views in three different ways.

NEW SCENIC VIEWPOINT PROTECTION ZONE: **First**, this ordinance creates a new zoning tool, called a “Scenic Viewpoint Protection Overlay Zone.” **Second**, this ordinance uses this tool to create the “Fore Street/Working Waterfront Overlay.” **Third**, this ordinance establishes a Scenic Viewpoint Task Force.

NEW ZONE CHANGE REQUEST SUBMISSION REQUIREMENTS: This proposed ordinance creates a new requirement for applicants for a zoning map amendment or text amendment to submit a site plan.

DIVISION 19.9. SCENIC VIEWPOINT PROTECTION OVERLAY ZONE

14-330.18 Purpose

There are many treasured vistas of scenic beauty from public places which are assets of great value to the City, its people and its economy. This Division establishes the Scenic Viewpoint Protection Zone, an overlay zone, which is to be used for specific situations in which the underlying zoning is not adequate to protect the value and integrity of one or more mapped distinctive or highly distinctive scenic viewpoints within the City of Portland. The boundaries of the initial Scenic Viewpoint Protection Zone are defined in 14-330.19, below.

The Scenic Viewpoint Task Force shall analyze, inventory and make recommendations for City-wide implementation as specified in Chapter 2, Article III-B.

14-330.19 Location, Boundaries

The boundaries of the initial Scenic Viewpoint Protection Zone, called the Fore Street/Working Waterfront Overlay, are generally between Fore Street and Casco Bay, between the extensions of Waterville Street and Atlantic Street, more particularly described as follows: Commencing at the point on the southerly sideline of Fore Street where it intersects the line formed by an extension of the westerly sideline of Waterville Street, thence southerly perpendicular with Fore Street to the seawall along Casco Bay as shown on the Land Title Survey & Subdivision Plan in Portland Maine recorded in the Cumberland County Registry of Deeds in Plan Book 193, Page 188; thence easterly by said seawall along Casco Bay to a point on said seawall which intersects with a line which is S 31° 18' 30" E of the southwesterly corner of land now or formerly of Timothy Haley, Trustee, as described in the Deed recorded in said Registry of Deeds in Book 24759, Pages 67 and 69; thence N 31° 18' 30" W to the southwesterly corner of land now or formerly of Haley; thence N 31° 18' 30" W along land of said Haley 110.28 feet to land now or formerly of Macgowan as described in the Deed recorded in Cumberland County Registry of Deeds in Book 15773, Page 153; thence S 61° 01' 30" W along land of said Macgowan 112.00 feet; thence N 31° 18' 30" W along land of said Macgowan 150.00 feet to the southerly sideline of said Fore Street; thence southwesterly along the southerly sideline of Fore Street

to the point of beginning. The "designated scenic viewpoint" from which views are to be assessed and protected is the public sidewalk on the southerly side of Fore Street between Waterville and Atlantic Streets, at pedestrian heights, when viewed at any height between four (4) and six (6) feet above said sidewalk. The views of scenic resources to be protected by this overlay zone are: the views of the working waterfront, Portland Harbor (including its northern shoreline), historic maritime structures (including forts and aids to navigation), Casco Bay, the Casco Bay Islands, and the Atlantic Ocean.

Additional Scenic Viewpoints may receive protection by application of an overlay zone as set forth herein to additional sites through a rezoning process. Such rezoning requests may be initiated by the Scenic Viewpoint Task Force, by request of twenty members of the general public, or by the owner of an affected property.

14-330.20 Definitions

(a) **Scenic areas:** Scenic areas are natural landscapes with visual qualities that are significant to the residents of a community by setting it apart from other places, enhancing recreation and relaxation, contributing significantly to the quality of life, adding to the value of property, and enhancing the desirability and livability of the community. The City is required to maintain an inventory and analyze significant or critical natural resources, including but not limited to scenic areas, as part of its Comprehensive Plan.

(b) **Scenic resources:** Scenic resources include, but are not limited to, (1) property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1996, as amended; (2) national, state or local parks; and (3) public natural resources or public lands visited by the general public or viewed by the general public from a public place, in part for the use, observation, enjoyment and appreciation of natural or cultural visual qualities, including but not limited to the Fore River, Casco Bay, the Atlantic Ocean, mountains, and great ponds.

(c) **Scenic viewpoint:** A scenic viewpoint is discrete place or area from which the public may see a significant number of the scenic resources within a scenic area of

regional, state or national significance. For purposes of this Division, the City shall identify "distinctive" and "highly distinctive" scenic viewpoints for evaluation for additional protection to mitigate impacts to existing scenic areas of regional, state or national significance from activities on, over or adjacent to a designated scenic resource. Viewpoints shall be identified and ranked using the general methodology outlined in Terry DeWan, Scenic Assessment Handbook, prepared for State Planning Office, Maine Coastal Program, October, 2008, specifically incorporating the Viewpoint Scoring Chart on page 49 thereof by reference. A viewpoint in Portland that is located within a scenic area of regional, statewide or national significance (score of 50 or more) and is deemed "distinctive" or "highly distinctive" shall be considered a scenic viewpoint which qualifies for the protections of this Division.

14-330.21 Dimensional and Performance Standards

(a) Notwithstanding any less restrictive requirements or provisions in any underlying zone to the contrary, to the extent they are more restrictive, the dimensional and performance standards of this overlay zone shall be controlling.

(b) For the Fore Street/Working Waterfront Overlay, as defined above, notwithstanding anything in the B-6 zone or any other underlying zone to the contrary:

(1) The maximum building heights and the limits on extension/tower heights and configurations within the overlay shall be as depicted on the 1 November 2004 Illustration 33 of the Eastern Waterfront Building Height Study, including the notes thereon except that the words "above the average grade" shall be omitted from Note 1, and all building heights shall be measured from 2 feet above flood plain, not from average grade, as is further detailed in Note 2 of said 1 November 2004 Illustration 33, and with 3 stories equal to 35', 4 equal to 45', 5 equal to 55', 6 equal to 65' of height.

(2) Any portion of any building not in existence as of the date of enactment shall be sited and massed so as to avoid intrusion into the 50 foot "view corridors" at the ends of Atlantic, St. Lawrence and

Waterville Streets, as said "view corridors" are depicted on the "B6 Building Height Overlay & Building Envelope" document dated Feb 20, 2015, and so as to enable pedestrians on the sidewalk on Fore Street within the "view corridor" to view the northerly shoreline of Portland Harbor.

(3) Without modifying or altering the specific height and other limitations set forth in (b)(1)-(3), all the provisions of (c)(2)-(6) shall also apply to the Fore Street/Working Waterfront Overlay.

(c) General Performance Standards: Except as expressly modified in performance standards pertaining to a specific Overlay area, the following performance standards apply to all Scenic Viewpoint Protection Zones:

(1) The height, mass and siting of all new buildings and structures shall be designed to avoid occupying, intruding into, or obstructing public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district.

(2) No part of a new sign, tower, roof top equipment, elevator, other roof top appurtenance, fence, or landscaping shall be permitted to occupy, intrude into or obstruct public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district; existing structures affecting the view of the scenic resource from the viewpoint that were legally erected are permitted to continue in existence, and may be modified, but only so long as they do not further encroach into the public view of the scenic resource.

(3) Any permitted signage shall be simple, concise and contextual, and shall be as small in size and low in height as reasonably possible to reduce visual impact while still providing effective communication to the public.

(4) Outdoor lighting shall be designed so as to minimize light pollution that interferes with the visibility of the night sky, to minimize light intrusion into adjacent residential neighborhoods, and

to not unnecessarily intrude into the public view of the scenic resource, while providing necessary lighting for safety of pedestrians and vehicular traffic.

(5) Any proposed grading of building sites shall preserve existing contours and ensure that future development is harmonious with existing topography. Except as provided in (b)(1) above, with regard to the Fore Street/Working Waterfront Overlay, or as otherwise provided for a specific Overlay area, building heights shall be measured from pre-development grade.

(6) Any proposed landscaping, including but not limited to walls, fences, hedges, grading and plantings, shall be designed so as to avoid occupying, intruding into, or obstructing public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district, shall include an enforceable maintenance plan to keep vegetation from growing to negatively impact public views, and shall include a maintenance easement, to the satisfaction of Corporation Counsel, giving the City a right, but not an obligation, to enter onto the site to trim vegetation, remove obstructions, and otherwise keep the public view unobstructed.

14-330.22 Applicability.

Because of the significance of this Division to development activities within the defined scenic viewpoint areas and the potential for long-run harm which development inconsistent with this Division will have for all of the citizens of the City of Portland, the provisions hereof shall be applicable not only to all future applications, but also to proceedings, applications and requests for rezoning which were pending but had not yet been approved by the City Council as of May 26, 2015.

14-330.23 Amendment or Repeal.

This Division may not be amended in such a way as to lessen its protections for scenic viewpoints, nor may it be repealed, in whole or in part, without approval of a majority of the citizens of the City of Portland voting to

do so in a duly held referendum. This Division may be freely amended to bring additional areas within the protection of the Scenic Viewpoints Overlay Zone, and to add dimensional and performance requirements specific to the additional scenic viewpoint(s).

...

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

...

(jj) Scenic Viewpoint Protection Overlay zone

...

Article III-B. SCENIC VIEWPOINT TASK FORCE

Sec. 2-45.1. Scenic Viewpoint Task Force

(a) Findings. The City Council and/or the people of the City of Portland hereby find that:

(1) Portland is a vibrant, small city located in a spectacular natural setting, with a large inventory of rehabilitated historic structures, a compelling maritime heritage, welcoming neighborhoods, strong independent local enterprises, a thriving creative economy, cultural diversity, easy access to recreational and open spaces, multiple scenic views of natural resources, and involved citizens;

(2) The residents of Portland embrace as a promising economic development strategy one that identifies the character-defining features that make Portland authentic, unique, and distinctive, and builds upon those strengths;

(3) A critical step in moving toward this smarter, greener, strengths-based economic development strategy is to identify and evaluate for protection

Portland's remaining distinctive and highly distinctive scenic viewpoints.

Therefore, in order to initiate the process to protect Portland's remaining unique scenic resources, the City hereby creates a task force composed of thirteen (13) members which shall be known as the "Scenic Viewpoint Task Force", hereinafter referred to as the "Task Force".

(b) **Composition.** The Task Force shall be appointed by the Mayor within sixty (60) days of the date of enactment, and shall consist of the following, all of whom shall be residents of the City of Portland: one (1) member of the city council; (1) member representing the Historic Preservation Board; one (1) member representing the Planning Board; one (1) member representing Portland Development Corporation; and one (1) member representing the Land Bank Task Force; and eight (8) members representing the public-at-large, with at least one (1) member being appointed from each Council District; these eight members should have a significant history of community involvement, and experience, training or expertise in one of the following disciplines is desirable: architecture, economics, landscape architecture, planning, community organization and/or advocacy, real estate or development, biology or natural sciences.

(c) **Duties.** The duties of the Task Force shall include:

(1) The Task Force may sponsor and/or encourage community programs, from time to time, to educate residents about the scenic viewpoint inventory methodology and to seek input on Portland's scenic resources.

(2) The Task Force shall inventory, or cause to be inventoried, significant scenic areas and viewpoints throughout the City of Portland, including the islands, within eighteen (18) months of the date of enactment. Once the inventory is complete, the Task Force shall present its findings to the Planning Board for recommendation, and to the City Council for action on its proposal to designate additional distinctive and/or highly distinctive viewpoints for protection through use of the Scenic Viewpoint

Protection Overlay Zone. The Task Force may make such additional recommendations as it deems appropriate.

(3) The Task Force shall make report to the city council at least annually on an interim basis, and shall issue its final report within three (3) years of the date of enactment.

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Sec. 14-58 Reserved. Zoning Map and/or Zoning Text Change Submission Requirements

When an applicant files an application for a zoning map change, a zoning text change, or a combined zoning map and text change, the applicant shall submit a complete application in a form and with content as specified by the Department of Planning and Urban Development. Such submissions shall contain, at a minimum, the following elements:

(a) An identification of the applicant and proof of the applicant's right, title or interest in the property proposed to be affected by the change (hereinafter "subject parcel");

(b) A vicinity map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use;

(c) A description of the existing use of the subject property;

(d) Identification of the current zoning designation(s);

(e) Statement of the proposed use of the subject property if the requested zone change is granted, including a description of any proposed physical changes to the subject property if construction or development is anticipated;

(f) A site plan of the subject property showing existing and proposed improvements should the zone change be granted, including such features as buildings, parking, driveways, walkways, landscape and property boundaries.

This original submission need not be refined to the level of a final site plan, but should be a general representation of the elements the applicant would like to see developed on the subject property, including proposed land uses and buildings, and of the scale and intensity of that development should the zone change request be granted. The site plan should be sufficiently detailed and complete so as to allow an assessment of the relationship of the proposed development to City land use objectives; the impact on surrounding street systems, site access and circulation; the impact on public infrastructure including public transportation, utilities, municipal facilities, and public safety; impact on significant natural features, scenic or natural beauty and historic resources; and impact on adjacent property and neighborhoods.

(g) At all times if the subject property is one acre or greater in size, or at the discretion of the Planning Authority if it is less than one acre, applicants may be required to submit more detailed site plans and written materials that address proposed physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and are compatible with the surrounding neighborhood.

II. These ordinances shall apply and have an effective date, notwithstanding the provisions of 1 M.R.S. § 302 and in accordance with section 9-42 hereof, as of May 26, 2015.

III. The provisions of these ordinances shall be deemed independent and severable. If any term, covenant, provision, phrase or other element contained herein of a new ordinance provision or of any amendment to an existing ordinance is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other ordinance provision or ordinance amendment contained herein.