

Order 90-14/15

Passage: 8-0 (Brennan absent) on 11/17/2014

Effective 12/17/2014

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE**

Re: Changes to Business B-1 and Community Business B-2 Zones

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

That Chapter 14, Article III, Divisions 9 and 10, Sections 14-161, 14-162, 14-163, 14-165, 14-182, 14-183 and 14-185 of the Portland City Code are hereby amended to read as follows:

DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES

Sec. 14-161. Purpose.

(a) B-1 Neighborhood Business Zone

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) *B-1b Neighborhood Business Zone*

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of small-scale ground floor commercial uses to serve in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c) (3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

1. *Residential*

a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.

b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

c. Combined living/working spaces including, but not limited to, artist residences with studio space.

2. *Business:* Business uses listed below are permitted, provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq.ft.

of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

- a. Professional, business, and general offices
~~Professional offices, as defined in section 14-47,~~ but excluding veterinarians.
- b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
- c. Personal services, as defined in section 14-47.
- d. Offices of building tradesmen, provided there is no exterior storage of building materials.
- e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.
- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:
 - i. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;
 - ii. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.
 - iii. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

g. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians.

h. Restaurants are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone provided they meet the following additional requirements in addition to the vehicle trips standards of in Sec. 14-162.a.2:

a. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will generate in excess of a total of 50 peak hour vehicle trips.

b. Maximum total floor area for use of the public shall be two thousand (2,000) square feet.

c. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day.

d. Food service and consumption are the primary function of the restaurant.

e. There shall be no drive-through service.

3. *Institutional:*

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Sec. 14-163. Conditional uses.

~~(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements provided that such use which generates in excess of a ratio of 100 peak hour vehicle trips per 2000 sq. ft. of space, and generates in excess of 100 peak hour vehicle trips is prohibited. As set forth in the City of Portland Technical Manual, section I, the city traffic engineer shall require a traffic study when it calculates the proposed use will~~

~~generate in excess of a total of 50 peak hour vehicle trips:~~

- ~~1. Restaurants, provided they meet the following requirements:~~
 - ~~a. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;~~
 - ~~b. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;~~
 - ~~c. Food service and consumption are the primary function of the restaurant; and~~
 - ~~d. There shall be no drive-through service.~~

~~(b)~~ The following use shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

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Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses in off-peninsula locations, permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except ~~as noted in Sec. 14-165(h)~~ (minimum lot area per dwelling unit). Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zones shall meet the following minimum requirements:

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|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Min. Lot Size</u> | <u>School: 20,000 SF</u> |
| | <u>Place of Assembly: 10,000 SF</u> |
| | <u>Other Non-Res Uses: None</u> |
| | <u>Residential: None</u> |
| <u>Min. Lot Area per D.U.</u> | <u>On-peninsula: 435 SF</u> |
| | <u>Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor</u> |
| <u>Min. Street Frontage</u> | <u>20 ft.</u> |
| <u>Min. Lot Width</u> | <u>None</u> |
| <u>Min. Front Yard</u> | <u>None</u> |
| <u>Max. Front yard</u> | <u>10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.</u> |
| <u>Min. Rear Yard</u> | <u>Principal: None, except 10 ft. if abutting a residential zone.</u> |
| | <u>Accessory: None, except 5 ft. if abutting a residential zone</u> |
| <u>Min. Side Yard</u> | <u>Principal: None, except 5 ft. if abutting residential zone.</u> |
| | <u>Accessory: None, except 5 ft. if abutting a residential zone</u> |
| <u>Max. Side Yard on Side Street</u> | <u>10 ft., except that this requirement applies to only one side street in cases where a lot has more than one side street</u> |
| <u>Structure Stepbacks</u> | <u>Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.</u> |
| <u>Max. Structure Height¹</u> | <u>Off- peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6.²</u> |
| | <u>On-peninsula: 45 ft. except 50 ft. along Congress Street if commercial first floor & residential upper floors.</u> |
| <u>Max. Floor Area</u> | <u>Total maximum first floor area for non-residential uses per structure: 10,000 SF³</u> |
| | <u>Total maximum floor area per retail establishment: 5,000 SF</u> |
| <u>Max. Lot Coverage</u> | - |
| <u>Open Space Ratio</u> | - |

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <u>Max. Impervious Surface</u> | <u>90%</u> |
| <u>1. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.</u> | |
| <u>2. Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.</u> | |
| <u>3. Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.</u> | |

~~_(a) Minimum lot size:~~

- ~~1. School: Twenty thousand (20,000) square feet.~~
- ~~2. Places of religious assembly: Ten thousand (10,000) square feet.~~
- ~~3. All other nonresidential uses: None.~~
- ~~4. Residential uses: None.~~

~~(b) Minimum street frontage: Fifty (50) feet, except that if the average street frontages of all lots within two hundred (200) feet of the boundaries of the lot in question on the same side of the street and within the B-1 or B-1b zone is less than fifty (50) feet, then the minimum street frontage for the lot in question may be reduced to the average frontage of such lots.~~

~~(c) Yard dimensions: (Yard dimensions are required setbacks for structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)~~

~~1. Maximum front yard:~~

~~Principal or accessory structure: The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yards of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.~~

~~Building additions are not required to meet this maximum setback.~~

~~2. Rear yard:~~

~~a. Principal structures: None, except where a rear yard abuts a residential zone or first floor residential use, a minimum of twenty (20) feet is required.~~

~~b. Accessory structures (detached): None, except where the rear yard abuts a residential zone or first floor residential use, a minimum of five (5) feet is required.~~

~~3. Side yard:~~

~~a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, a minimum of ten (10) feet is required.~~

~~b. Accessory structures (detached): None, except that where the side yard abuts a residential zone or a first floor residential use, a minimum of five (5) feet is required.~~

~~c. Side yards on side streets (corner lot): Principal or accessory structures: Ten (10) feet maximum setback, except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

~~(d) Minimum lot width: None.~~

~~(e) Maximum structure height:~~

~~1. Off-peninsula locations, as defined in Section 14-47: Thirty-five (35) feet. Where the lot abuts an R-6 residential zone, the maximum height shall be the maximum permitted height in the R-6 residential zone.~~

~~2. On peninsula B-1 and B-1b locations, as defined in Section 14-47: Forty five (45) feet except in the case of a building in a B-1 zone along Congress Street with commercial first floor and residential upper floors where fifty (50) feet is allowed. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.~~

~~(f) Maximum impervious surface ratio: Ninety (90) percent.~~

~~(g) Floor area:~~

~~1. The maximum first floor area of a single tenant building shall be no greater than five thousand (5,000) square feet.~~

~~2. The maximum first floor area of a multi-tenant building shall be no greater than ten thousand (10,000) square feet.~~

~~(h) Minimum lot area per dwelling unit:~~

~~1. On peninsula locations, as defined in Section 14-47: Four hundred and thirty-five (435) square feet of land area per dwelling unit.~~

~~2. Off peninsula locations, as defined in Section 14-47: Minimum lot area per dwelling unit requirements of the abutting or nearest residential zone shall apply. In the case of multi family dwellings above the first floor: 1,000 square feet of land area per dwelling unit.~~

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DIVISION 10. B-2 AND B-2b COMMUNITY BUSINESS ZONES*

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Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is

prohibited in these zones unless otherwise provided in section 14-183:

(a) *Residential:*

1. Attached single-family and two-family dwellings;
2. Multi-family dwellings;
3. Handicapped family units;
4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

(b) *Business:*

1. General, business and professional offices, as defined in section 14-47;
2. Personal services, as defined in section 14-47;
3. Offices of building tradesmen;
4. Retail establishments;
5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;
6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;
7. Billiard parlors;
8. Mortuaries or funeral homes;
9. Miscellaneous repair services, excluding motor vehicle repair services;
10. Communication studios or broadcast and receiving facilities;
11. Health clubs and gymnasiums;

12. Veterinary hospitals, but excluding outdoor kennels;
13. Theaters and performance halls;
14. Hotels or motels of less than one hundred fifty (150) rooms;
15. Dairies in existence as of November 15, 1999;
16. Bakeries in existence as of November 15, 1999;
17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;
18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;

~~19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.~~

~~1920.~~ Registered medical marijuana dispensaries.

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Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2, B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) *Business.* Any of the following conditional uses, provided that, notwithstanding section 14-474(a) of

this article or any other provision of this code, the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;
2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;
3. Car washes;
4. Drive-throughs in the B-2 ~~or B-2b~~ zones which are adjacent to any residential use or zone, ~~provided that, in the B-2b drive-throughs must be accessory to a principal use located on the same site;~~
5. Automobile dealerships.

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Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

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|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum Lot Size | None |
| Minimum Street Frontage | 25 ft. 20 ft. |
| Front Yard Setback Minimum | None |
| Rear Yard Setback Minimum | 10 feet, except as provided for below: a. 5 feet for accessory structures |
| Side Yard Setback Minimum | None required, except as provided for below: a. 5 feet for accessory structures |
| Side Yard on Side Street Setback Minimum | None |
| Front Yard Maximum¹ | No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ² |

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| <p><u>Structure Setbacks</u></p> | <p><u>-Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.</u></p> |
| <p>Height Maximum</p> | <p>45 feet except as provided for below:</p> <p>a. 50 feet if first floor is partially or wholly occupied by a commercial use.</p> <p>b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.</p> <p>c. 65 feet within 65 feet of Franklin St.</p> |
| <p>Maximum Impervious Surface Ratio</p> | <p>a. For residential uses: None</p> <p>b. For all other permitted uses: 80% in B-2 and B-2c</p> <p>c. For all other permitted uses: 90% in B-2b</p> |
| <p>Minimum Lot Area per Dwelling Unit</p> | <p>Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.</p> <p>On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.</p> |

1[1] Building additions do not have to meet this section.

1[2] If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.