

Order 119-18/19

Motion to waive the second reading: 8-0 (Batson absent) on 12/17/2018

Passage as an Emergency: 8-0 (Batson absent) on 12/17/2018

Effective 12/17/2018

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CITY OF PORTLAND
IN THE CITY COUNCIL

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**ORDER APPROVING 180-DAY MORATORIUM ON NON-MARINE USE EXPANSION
IN THE WATERFRONT CENTRAL ZONE**

WHEREAS, zoning amendments to the City's Waterfront Commercial Zone (WCZ) adopted in 2010 provided for increased non-marine use and development potential in the Central Waterfront intended to provide revenues in support of marine infrastructure; and

WHEREAS, over the last several years, the City of Portland has experienced an unprecedented period of non-marine growth on the Downtown Peninsula, including in the WCZ; and

WHEREAS, land development, tourism, and non-marine industry on the Downtown Peninsula, including the WCZ, has resulted in congestion on Commercial Street that has materially interfered with the everyday operations and efficiency of marine and non-marine commerce on the Portland Waterfront; and

WHEREAS, land development, tourism, and commerce on the Downtown Peninsula and in the WCZ, particularly of non-marine uses, has resulted in significant and demonstrable parking pressure which has in turn created hardships for commercial enterprises, marine and non-marine, in the WCZ, as well as for members of the public; and

WHEREAS, current Commercial Street capacity issues involving existing traffic and ongoing construction on the Eastern and Western ends of Commercial Street will overburden the capacity of the street to manage waterfront, tourism and other commercial activity in the absence of remedial action; and

WHEREAS, the Portland Fishing Community has articulated clear threats to the continued viability of the fishing industry on the Portland Waterfront if they experience further loss of access, space, parking, or berthing to support traditional marine uses; and

WHEREAS, several large-scale non-marine developments have been proposed within the WCZ that have a strong likelihood of exacerbating the congestion, parking pressure, threat to marine uses, and an overburdening of the City's public facilities; and

WHEREAS, development pressure in the WCZ has resulted in a recent citizen initiative petition aimed at preserving marine uses in the WCZ; and

WHEREAS, the City of Portland Comprehensive Plan promotes support for traditional and emerging marine industries and prioritizes use of scarce waterfront resources for marine use; and

WHEREAS, the West Commercial Street Operations Study and Eastern Waterfront District Traffic Movement Permit will be completed in the next three months and allow significant remedial action to be taken to reduce the potential for Commercial Street to reach an operational point that will severely inhibit the operation of the commercial port. This risk is especially acute if non-marine projects currently planned for the WCZ proceed before the completion of these studies; and

WHEREAS, the City of Portland, the fishing community, and the property owners of the WCZ have an opportunity to evaluate current land use regulations, including, but not limited to, the extent to which hotels and other non-marine uses remain consistent with the City's comprehensive plan, and to recommend amendments that reflect the current reality of the marine and Downtown economies and that will seek to alleviate the pressures on City facilities outlined above; and

WHEREAS, pursuant to 30-A M.R.S. § 4356(1)(A), the continued development of projects in the WCZ pursuant to the existing City Code requirements could pose serious threats to the public health, safety and welfare of the residents of the City of Portland through the over-development of and overburdening of the City's public facility (i.e. roads, parking facilities, waterfront resources) which is reasonably foreseeable as a result of the development pressure; and

WHEREAS, pursuant to 30-A M.R.S. § 4356(1)(B), since the application of existing City Code provisions or regulations or other applicable laws are inadequate to address the development pressure and prevent the public harm from the potential non-marine development in the WCZ of; and

WHEREAS, after sufficient notice and a public hearing, there is strong support for this Moratorium on the City Council; and

WHEREAS, in the judgment of the City Council for the City of Portland, these facts create an emergency within the meaning of 30-A M.R.S. § 4356(1) and the City Charter, and require the following Moratorium as immediately necessary for the preservation of the public health, safety and welfare.:

NOW THEREFORE, pursuant to its authority under 30-A M.R.S. §§ 3001 and 4356, the Portland City Council hereby ordains that a Moratorium is hereby imposed on any and all proceedings, applications, and petitions for the development of new non-marine structures and expansion of non-marine uses requiring approval under the City's zoning and land use ordinances and regulations; and

BE IT FURTHER ORDERED that no building permit, site plan, subdivision application conditional use application, application for contract zone and/or conditional rezoning, zoning text amendment or development application shall be accepted or processed and no building permit, site plan, or subdivision approval, conditional use approval, contract zone or conditional rezoning, zoning text amendment and/or development application shall be issued or granted by the City for any and all property in the WCZ for any new non-marine structure or the establishment of any new non-marine use, or for the change of use or expansion of a non-marine use from and after December 17, 2018 until June 15, 2019. Notwithstanding anything to the contrary herein, this shall not preclude the adoption of zoning text amendments that are proposed by the City; and

BE IT FURTHER ORDERED, that, notwithstanding the above, this Moratorium shall not apply to building permit applications limited to interior modification or fit ups or minor exterior modifications such as enclosing existing decks or façade improvements of existing structures comprising existing or previously approved non-marine uses; and

BE IT FURTHER ORDERED, that this Moratorium shall go into effect on December 17, 2018 and shall remain in effect until June 15, 2019 unless extended, repealed, or modified by the Portland City Council; and

BE IT FURTHER ORDERED, that notwithstanding the provisions of 1 M.R.S. § 302 this Moratorium shall apply to all building permit, site plan, and subdivision applications, conditional use applications, contract zone or conditional rezoning requests, zoning text amendment and/or development applications for any new non-marine structure or expansion of a non-marine use in the WCZ whether or not any application or proceeding to establish said development proposal would be deemed a pending proceeding under 1 M.R.S. § 302; and

BE IT FURTHER ORDERED, that to the extent any provision of this Moratorium is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium that shall remain shall be considered valid; and

BE IT FURTHER ORDERED, that in view of the emergency cited in the preamble above, that it is hereby found and determined by the Portland City Council that it is necessary that this Moratorium take effect immediately as an emergency pursuant to Article II, Section 8 of the City Charter.