PLANNING BOARD REPORT
PORTLAND, MAINE

Fort Sumner Park Overlay Ordinance Amendment (Within R-6 Zone)
Applicant: City of Portland

Submitted to: Portland Planning Board
Public Hearing Date: January 24, 2017
Prepared by: Matthew Grooms, Planner
Date: January 20, 2017

I. INTRODUCTION
In response to Order 73-16/17, which established a 90-day moratorium on developments within the R-6 Residential Zone in District 1 for properties directly abutting a City Park or Public Ground, the City of Portland is seeking a map and text amendment to establish a height overlay zone intended to protect the existing sightlines at Fort Sumner Park. The proposed Fort Sumner Park Overlay Zone encompasses several parcels located within the R-6 Residential zone. At the present time, one can view Portland’s changing skyline as well as a variety of natural resources from this location, including Casco Bay, Back Cove and portions of the White Mountains. Recent development proposals for a six-story condominium complex at 155 Sheridan Street, have demonstrated the vulnerability of this vista under the current zoning and citywide height overlay.

This zoning amendment request is being brought to the Planning Board as a workshop item. The legal ad was posted on the city’s web page and appeared in the Portland Press Herald on January 16 and 17, 2017. Notices were also sent to abutters within 500 linear feet of the proposed overlay zone.

II. BACKGROUND
Originally, the site of an earth and timber fortification built in 1794, and later designated as a city park in 1934, Fort Sumner Park today constitutes an integral component of the open space portfolio for the Munjoy Hill neighborhood (Attachment 1). From its viewing platform, visitors are afforded quintessential vista of the region that serve to connect them with the city’s ever changing landscape, its maritime resources and the distant mountains. At present, no clear and predictable mechanism is in place through zoning, adopted design standards or historic preservation that would preserve the existence of the panorama from this location.

According to the Comprehensive Plan’s Future Growth Area Map, the parcels surrounding Sumner Park within the proposed overlay zone have been designated as a target area for ongoing growth and development. Since the Comprehensive Plan’s update in 2005, four new condominium buildings have been constructed along Sheridan Street between Walnut Street and Cumberland Avenue. In 2016, preliminary renderings were circulated to the public for the development of a condominium building that would be built on CBL 012 Q012, or the parcel located immediately to the northwest of Sumner Park along Sheridan Street. This development as originally envisioned by a developer could have potentially obstructed part of the view over Back Cove, the western foothills and White Mountains. Although language existed in the City’s site plan and...
subdivision ordinances to address project context and visual impact, concern was raised that existing mechanisms did not go far enough to preserve the integrity of this vista.

The potential for redevelopment of 155 Sheridan Street and potential impact on Ft Sumner park raised significant concern among residents, the city council and staff. Neighborhood residents asked the city to designate the park as a historic landmark which would require the Planning Board to consider any negative externalities to the park from developments occurring within 100 feet of the park’s parcel boundary. Additionally, on September 19, 2016, two petitions constituting more than 300 signatures were submitted to the City Council requesting that any proposed developments along Sheridan Street be properly vetted to ensure that there be no adverse impacts to views from the park. On November 7, 2016, the Portland City Council unanimously approved a 90-day moratorium for development review and consideration on projects located within the R-6 Zone in District 1, in instances where projects directly abut City Parkland and/or Public Grounds. This moratorium went into effect on November 21, 2016 and will expire on February 6, 2017 (Attachment 2). This moratorium cites several elements of the Comprehensive Plan as justification, including the importance of maintaining “vistas from promenades and high points” and properly valuing and celebrating the city’s relationship with its water resources.

The vista from the site in the vicinity of the former Fort Sumner has been identified for its value as a panorama of the City of Portland, the Back Cove and western mountains for over 100 years (See Figure 2) In the Downtown Height Study completed in 1989, the Fort Sumner panorama was singled out for its “panoramic views of the city skyline and water” as a vista to receive “special attention” (Portland Maine Downtown Height Study, pg.6). In addition, under Section IV, Green Space, Blue Edges, an Open Space and Recreation Plan for the City of Portland, 1995, updated 2001, in the ‘Portland’s Goals and Policies for the Future’ document within the Comprehensive Plan, it states that a principle goal of the City is to “Develop a vision of the natural environment that enhances the full range of dynamic contrasts between the landscapes and built forms found in Portland, which will enrich the appearance and enliven the use of our city.” Despite the history and intent to preserve this vista, little has been done to address formalizing this space; however, recent market pressures for new multi-family housing in the R-6 necessitate the development of a targeted regulatory solution at this time.

Figure 2: Illustration of Ft. Sumner Lookout circa 1911

Figure 3: Downtown Height Study, Structure of Views, page 5. Fort Sumner Park panorama is highlighted.
The purpose of this proposed overlay zoning district is to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Sumner Park. In developing this overlay concept, the Planning and Parks staff researched overlay approaches used in Denver and San Antonio that are designed to protect viewsheds of natural features. In Portland, height overlays currently regulate maximum building heights within the B-3, B-6 and B-7 zoning districts.

III. PUBLIC COMMENT
Sixteen emails have been received to this point, with all being compiled into a separate public comment document. All emails received have expressed concerns regarding the potential obstruction of views at Fort Sumner Park by future development, and one comment was specifically in support of the proposed overlay zone (See Attachment 6).

Staff received a revised ordinance proposal from an attorney representing the property owner at 155 Sheridan Street. This proposal as written, increases the proposed elevation of the key apex point by 3 feet, from 160.27’ above mean sea level to 163.27’ feet above mean sea level. The argument presented by the property owner is that the key apex point currently reflects the elevation at ground level, and by increasing this figure by 3 feet, it would reflect views as seen by a child or a person sitting, what the property owner claims to be the lowest reasonable vantage point. This proposal also requests that rooftop elevator enclosures erected above the baseline vertical elevation of the key apex point be permitted so long as they are demonstrated to not block quintessential views of the surrounding region (See Attachment 7).

A. Neighborhood Meeting: January 18, 2017
On January 18th, city staff held a neighborhood meeting at the East End School attended by 26 individuals. At this meeting, staff presented information regarding the context of the rezoning effort, the proposed text and map amendments and justification for the approaches taken by the City. Following the presentation, residents voiced a number of comments, questions and concerns. Attendees suggested that city staff create two new graphics, one in which the proposed ordinance visual would illustrate the location of Sheridan Street and Washington Avenue for context, and a separate graphic that would serve as a visual aid to demonstrate views under full buildout of the proposed overlay zone. Attendees also asked why the proposed overlay zone does not encompass the full 180° arc, including any portion of parcels located within 200 feet of the key apex point, regardless of the base zoning district. Aside from specific revisions to the proposed ordinance, attendees requested information on the financial viability of commercial developments within the proposed overlay.

IV. ZONING CONTEXT
The proposed text and map amendments would occur within a largely residential neighborhood composed of single-family, duplex and multi-family homes along with commercial activity along Washington Avenue. To the north, east and immediate south of Fort Sumner Park, properties are zoned R-6 Residential, while to the west, properties are zoned B-2b Community Business. In response to the request regarding the elevation of Sheridan Street, an excerpt of the city map with topography is shown below. The elevation as provided by William Clark, Surveyor with the Department of Public Works, shows Fort Sumner Park to be located at 160.27 feet, Sheridan Street to be located at 115 feet and Washington Avenue at 71.9 feet. Staff was not able to produce a rendering of buildings under full full-buildout allowable under the Fort Sumner Park Overlay Zone within the context of existing elevations.
The purpose of the R-6 zone, which can currently be found predominantly in the East and West Ends of the city, is to “set aside areas...for housing characterized primarily by multi-family dwellings at a high density” and to “conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses” (Section 14-135). Meanwhile, the B-2b zone is intended to provide neighborhood and community retail in a format cognizant of pedestrian character and scale (Section 14-216). According to the City of Portland, Maine Building Height Regulation Map, properties located within the R-6 zone are permitted building heights of 45’ for principal structures, while residential structures located in the B-2b zone are permitted a maximum height of 45’, with an option of going to 50’ if the first floor of the building is commercial. Within the R-6 and B-2b zones, building height is measured from the average grade of the site, allowing for instances where structure extrusion may surpass the aforementioned maximum heights.

V.  PROPOSED TEXT AND MAP AMENDMENT
The proposed text and map amendments presented below focuses on the height overlay provisions proposed to be included within the R-6 zone as well as the proposed rezoning of Fort Sumner Park from R-6 Residential to ROS Recreation Open Space.

Proposed Map Amendment: Recreation Open Space (ROS)
The city is seeking to rezone Fort Sumner Park (1.2027 acres) from R-6 Residential to ROS, which has the following purpose statement

(a) The purpose of this division is:
1. To preserve and protect open space as a limited and valuable resource;
2. To permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development;
3. To coordinate with and carry out federal, state, regional, and city recreation and open space plans;
4. To provide a suitable location for large-scale regional sports and athletic facilities; and
5. To develop an open space system throughout the downtown, which provides the highest quality parks, plazas, and pedestrian environment.
(b) The recreation open space zone may include parcels of public property, and private property legally restricted from intensive use or development through deed, covenant, or otherwise.

Fort Sumner Park currently operates as publicly accessible open space and yet at present is zoned R-6 Residential, a zone that allows by right the development of single-family, multi-family and limited commercial uses. The rezoning of this property to ROS Recreation Open Space would prohibit future developments incongruent with the existing character of Fort Sumner Park and emphasize the city’s goal of preserving this site and the panorama available from the park as public space.

Figure 5: Proposed Rezoning from R-6 Residential to ROS Recreation Open Space

A. Proposed Ordinance Amendments
   1. Amend: Section 139 (a) Dimensional Requirements.

<table>
<thead>
<tr>
<th>Maximum Height</th>
<th>Principal and attached accessory structure: 45 ft, except as provided under the Fort Sumner Park Height Overlay (Sec. 14-139 (d))</th>
</tr>
</thead>
</table>

   2. Amend Section 139, by adding (d)
R-6 Height Overlay Ordinance Amendment (Fort Sumner Park)

Add a new section as follows:

“14-139 (d) Fort Sumner Park Overlay: This Overlay is established to protect the public interest by limiting the impact of development on the quintessential views of natural resources and the changing Portland skyline from Fort Sumner Park. There is established a key apex point in Fort Sumner Park at 43° 40’ 2.3359"N. 70° 15’ 4.3687"W. The Fort Sumner Park Overlay includes all land within 200 feet, or the R-6 zone boundary, whichever is closer, of this key apex point that is located closer to the middle line of Sheridan Street than said apex point.

Notwithstanding any other section of this Ordinance, development in the Overlay shall be subject to the following additional provisions:

- The top of structures, including rooftop appurtenances, within the Overlay shall not exceed the baseline vertical height of the apex point (160.27’ City of Portland Datum (Mean Tide)). For each 25’ radially away from the apex point, the vertical height permitted in the Overlay is reduced by 1 foot (see Figure 4 below).
- The minimum building setback from the park property shall be 15 feet.

Any project within this Overlay shall go to the Parks Commission for a recommendation to the Planning Board regarding potential impacts on Sumner Park.

B. Proposed Ordinance Discussion

The proposed overlay would directly impact 6 parcels, 013 J005, 013 J002, 013 K014, 012 Q012, 012 Q010 and 012 Q019.

The citywide height overlay for the R-6 zone is 45’ for principal structures. Please note, if the proposed Fort Sumner Park Overlay District conflicts with the citywide height overlay, the more restrictive of the two shall apply. The proposed overlay zone is based upon two overlay zone examples previously used in San Antonio, Texas and Denver, Colorado.

Figure 6: Figure 4: Ordinance graphic (to be included in ordinance). Note: Within the Overlay, permitted height is reduced by 1’ for each 25’ away from apex point (not to scale).
VI. POLICY ANALYSIS

The proposed text and map amendments will serve to preserve Fort Sumner Park and its quintessential vista while maintaining reasonable development potential for properties located within the proposed overlay zone. In addition to the historical documents cited in the background section of this report, the proposed amendments meet multiple goals of the city’s Comprehensive Plan:

State Goal E: To protect the quality and manage the quantity of the State’s water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas.

A key goal within Portland’s Open Space and Recreation Plan, Green Spaces, Blue Edges, is the development of an open space system that utilizes the natural forces of air, water, vegetation and landform to minimize negative impacts related to human development, including eyesores. This overlay zone supports the following policies from the plan:

- Using scientific models and studies, determine the optimal organization of open space and vegetation to minimize the identified environmental problems.

State Goal F: To protect the State’s other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas. Further, it is stated under the State’s Coastal Management Policies that critical habitat and natural areas of state and national significance should be maintained to preserve natural beauty, even in locations where development occurs. As with State Goal E, the City’s Open Space and Recreation Plan, Green Spaces, Blue Edges, incorporates several policies intended to further these state goals. Those policies adhered to by the proposed overlay zone include:

- Conservation of natural resources should include a complete array of natural features and habitats, so that the public may learn about and experience the full realm of Portland’s natural environment.
- Develop High Point Parks, open spaces located on the higher elevations of the city, in

Figure 7: Zoning map amendment (to be included in ordinance)
neighborhoods throughout the city such as the Ocean Avenue Landfill, hilltop on Ocean Avenue by rock shop, Rocky Hill, and hills in Stroudwater.

State Goal I: To preserve the State's historic and archeological resources.
As both a military installation and later as a public park, the defining feature of this site is its location along the ridge of Munjoy Hill, which has historically afforded visitors expansive views of the city, local water resources and the surrounding countryside. Portland’s Historic Preservation Ordinance calls for the preservation of the city’s architectural and historical heritage and the promotion of the city’s educational, cultural, economic and general welfare, two goals supported by this proposed overlay zone, which would serve to protect one of the defining features of this park, its view. A few of the polices found within the HP ordinance taken into account by the proposed overlay zone include:

- Create a mechanism to identify, preserve and enhance distinctive areas, sites, structures and objects that have historic, cultural, architectural and archaeological significance.
- Apply design standards in a reasonable and flexible manner to prevent the unnecessary loss of the community’s historical features and to insure compatible construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.
- Protect and enhance neighborhood character.
- Protect and enhance the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers.
- Foster and encourage preservation, restoration and rehabilitation that respect the historic, cultural, architectural and archaeological significance of distinctive areas, sites, structures and objects.

Likewise, this overlay zone would meet the goals of the 1991 Downtown Vision, which state that the city should strive to “preserve and enhance the livability and walkability of Downtown Portland for residents, workers, shoppers, and visitors.”

State Goal J: To promote and protect the availability of outdoor recreation opportunities for all Maine Citizens, including access to surface water. Similarly, the State’s Coastal Management Policy calls for the expansion of opportunities for outdoor recreation and the encouragement of appropriate coastal tourist activities and development. Fort Sumner Park currently preserves a pivotal point of visual access for both visitors and residents to Maine’s scenic landscapes and water bodies. This overlay zone would serve to perpetuate the following policies of the City’s Open Space and Recreation Plan; Green Spaces, Blue Edges:

- Neighborhoods should have open space focal points.
- Provide a wide range of recreation and open space opportunities to address the athletic, recreation, leisure, ecological and scenic needs of Portland’s diverse population.
- Develop a vision of the natural and landscape environment that provides for the full range of dynamic contrasts found in our City that will enrich and enliven the use of our City and its built form.

VII. STAFF RECOMMENDATION
Staff recommends the zoning map amendment to Recreation Open Space for three parcels encompassing Fort Sumner Park and the adjoining City Owned Lank Bank property totaling 1.2027 acres. Staff also recommends the zoning map amendment establishing the Fort Sumner Park Overlay Zone and associated Text amendments to the Land Use Code as presented in this report.

VIII. MOTIONS FOR THE BOARD TO CONSIDER
On the basis of plans and materials submitted by the applicant, the policies of the R-6 Residential Zone, Portland’s Comprehensive Plan, public comment, the information provided in the public hearing on January 24, 2017 for the project #2016-### (Fort Sumner Park Overlay), and/or other
findings as follows:

**A. Map Amendments from R-6 Residential to ROS Recreation Open Space and R-6 Residential to R-6 Residential with Fort Sumner Park Overlay:**
The Planning Board finds that the proposed rezoning of Fort Sumner Park and adjoining City Owned Land Bank Property to ROS Recreation Open Space [is or is not] consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board [recommends or does not recommend] to the City Council approval of the zoning map amendment for Fort Sumner Park and adjoining City Owned Land Bank Property from R-6 Residential to ROS Recreation Open Space for 1.2027 acres as area shown below.

![Map Diagram](image)

**B. Text Amendment R-6 Residential Zone**
The Planning Board finds that the proposed text amendments including Figure 6 from this report to Division 7 R-6 Residential Zone, as presented in Attachment 1 of this report, [are or are not] consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board [recommends or does not recommend] to the City Council approval of the zoning text amendments to Division 7 R-6 Residential.

**C. Map Amendment from R-6 Residential to R-6 Residential with Fort Sumner Park Overlay:**
The Planning Board finds that the proposed zoning amendment to create the Fort Sumner Park Overlay Zone [is or is not] consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board [recommends or does not recommend] to the City Council approval of the zoning map amendment to establish the Fort Sumner Park Overlay Zone as shown below.
IX. REPORT ATTACHMENTS
1. Proposed Fort Sumner Park Overlay Zone Text Amendment
2. Order 73-16/17 (90 day Moratorium)
3. Public Comments
4. Neighborhood Meeting Packet