

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)



MARK N. DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY COUNCIL MEETING - SEPTEMBER 19, 2022 AT 5:00 PM

The Portland City Council will hold a City Council Meeting in Council Chambers. The Honorable Kate Snyder, Mayor, will preside.

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

REMOTE ACCESS INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person, however space in Council Chambers is limited. The public is therefore strongly encouraged to participate remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/89911473409?pwd=NllpZXRiWms3Nm9HQTNwaVZSWHlhZz09>

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US: +13092053325,,89911473409#,,,,*115765# or +13126266799,,89911473409#,,,,*115765#

Or Telephone:

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PLEDGE OF ALLEGIANCE:

ROLL CALL:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

ANNOUNCEMENTS:

RECOGNITIONS:

Recognizing Officer Matt Pavlis and K-9 Messi for their receipt of the United States Police Canine Association's National Detector Case of the Quarter Award - By Kate Snyder, Mayor

SPECIAL MEETING:

Special Meeting of the Corporator of the Portland Fish Pier Authority

Order 61-22/23 Amending the Portland Fish Pier Authority Articles of Incorporation - Sponsored by Danielle P. West, Interim City Manager

By unanimous vote of the Portland Fish Pier Authority Board of Directors - meeting held on May 31, 2022, Meredith Mendelson, President, Councilor Tae Chong, Vice President, the City Council is requested to approve two amendments to the Portland Fish Pier Authority Articles of Incorporation:

1. To amend the Fourth (4th) Article of the Portland Fish Pier Authority Articles in Incorporation to expand the Board of Directors by two seats from five (5) to seven (7) by adding one (1) additional Class B director representing the seafood industry; and, adding one (1) new Class C seat representing the Commissioner of the Maine Department of Marine Resources.
2. To amend the Fifth (5th) Article of the Portland Fish Pier Authority Articles of Incorporation to allow the Commissioner of the Maine Department of Marine Resources to appoint one Class C Director to the Portland Fish Pier Authority Board of Directors.

Five affirmative votes are required for passage after public comment.

Special Meeting of the Corporator of the Portland Fish Exchange

Order 62-22/23 Amending the Portland Fish Exchange Bylaws - Sponsored by Danielle P. West, Interim City Manager

At its May 19, 2022 meeting, the Portland Fish Exchange Board of Directors voted (5-0) to recommend that the City Council approve an amendment to the Portland Fish Exchange Bylaws. The amendment will expand eligibility for Class A Board members (sellers/harvesters) to include a person currently appointed or employed as a Sector Manager from a recognized Greater Atlantic Regional Fisheries Office (GARFO) sector. Sector Managers represent member-based groups of fishing vessels operating under a common management of harvesting "quota" (known as a "Sector") as allowed under current regional fisheries regulations.

Five affirmative votes are required for passage after public comment.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Special City Council Meeting, September 1, 2022

PROCLAMATIONS:

Proclamation 3-22/23 Recognizing September 24 - October 2, 2022 as Diaper Need Awareness Week - Sponsored by Kate Snyder, Mayor

Proclamation 4-22/23 Recognizing September 26-30, 2022 as Clean Energy Week - Sponsored by Kate Snyder, Mayor

Proclamation 5-22/23 Recognizing September 30, 2022 as a Day of Remembrance for U.S. Indian Boarding Schools - Sponsored by Councilor April Fournier

APPOINTMENTS:

Order 63-22/23 Appointing Gynt Grube as Assistant Assessor - Sponsored by Danielle West, Interim City Manager

This order would appoint Gynt Grube as Assistant Assessor in order to assist the Assessor's Office with timely certification of the tax rolls, issuing assessor decisions, representing the Assessor's Office in appeals, and other assessment duties. Gynt Grube is a highly competent, experienced certified Maine Assessor, serving with Tyler Technologies as a project director for the City's Revaluation project over the past three years.

Five affirmative votes are required for passage after public comment. Staff is requesting that this item be passed as an emergency in order to fill this essential position as soon as possible. Seven affirmative votes are required for passage as an emergency after public comment.

CONSENT ITEMS:

Order 64-22/23 Declaring October 2, 2022 the 31st Annual Maine Marathon, Half Marathon & Relay Festival - Sponsored by Danielle P. West, Interim City Manager

This is the 31st year that the Maine Marathon Committee has sponsored and organized the Maine Marathon. The expected number of registered runners this year is expected to reach 3,500, with approximately 800 anticipated spectators lining much of the sidewalks, parks and pathways along the race route. Since 1997, more than 5.2 million dollars has been raised to support local charities.

The race will take runners from Baxter Boulevard to Washington Avenue onto Veranda Street, continuing on Route 1 and crossing over Martin's Point Bridge into Falmouth and back. Runners will both start and finish at Baxter Boulevard Extension (the area between Forest Avenue and Preble Street).

Order 65-22/23 Approving Transfer of Funds under 15 M.R.S. §§5824(3) and 5826(6) Re: Amanda Benwell - Sponsored by Danielle P. West, Interim City Manager

This order authorizes the City Council to approve the transfer of \$1,332.00 and one 9 millimeter Taurus PTIII handgun in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Amanda Benwell.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money from this forfeiture order will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law

Enforcement Addiction Advocacy Program.

Five affirmative votes are required for passage of items on the consent calendar after public comment.

LICENSES:

Order 66-22/23 Granting Municipal Officers' Approval of Yam Tamblin LLC, dba Blue. Application for Class A Lounge with Indoor Entertainment at 638 Congress Street - Sponsored by Danielle P. West, Interim City Manager

Application was filed on 8/29/22. New City and State applications. Change of ownership of an existing establishment.

Five affirmative votes are required for passage after public comment.

Order 67-22/23 Granting Municipal Officers' Approval of Four Ball LLC, dba Rathskeller on Wharf. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 51 Wharf Street - Sponsored by Danielle P. West, Interim City Manager

Application was filed on 8/29/22. New City and State applications. Establishment currently holds Class I FSE with Outdoor Dining on Public Property.

Five affirmative votes are required for passage after public comment.

Order 68-22/23 Granting Municipal Officers' Approval of Fat Dragon LLC, dba Empire Venue. Application for Class A Lounge with Indoor Entertainment at 575 Congress Street - Sponsored by Danielle P. West, Interim City Manager

Application was filed on 8/17/22. New City and State applications. New ownership of a previous establishment at the same location.

Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

Communication 6-22/23 ReCode Update - By Christine Grimando, Director of Planning & Urban Development

As a communication this item requires no public comment or formal Council action.

Communication 7-22/23 Historic Preservation Impact Study Update - By Christine Grimando, Director of Planning & Economic Development

As a communication this item requires no public comment or formal Council action.

Communication 8-22/23 Green New Deal Exemptions/Exceptions Granted - By Christine Grimando, Director of Planning and Urban Development

As a communication this item requires no public comment or formal Council action.

Communication 9-22/23 Fossil Fuel Infrastructure Report - By Troy Moon, Sustainability Director

As a communication this item requires no public comment or formal Council action.

Communication 10-22/23 Estimated Fiscal Impact of Proposed Citizen Initiatives and Charter Commission Recommendations - by Danielle P. West, Interim City Manager

As a communication this item requires no public comment or formal Council action.

UNFINISHED BUSINESS:

Order 58-22/23 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades - Sponsored by Danielle P. West, Interim City Manager

This order approves the negotiated collective bargaining agreement between the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00, Labor and Trades, for the period of July 1, 2022 to June 30, 2025. This proposal is presented after receiving guidance from the City Council in executive session and having reached a tentative agreement with Labor and Trades, which was voted on and approved by the members.

The tentative agreement provides for a 3% general wage increase for FY23; a 3% general wage increase for FY24; and a 2.5% general wage increase for FY25. The proposal also increases night and weekend shift differentials, upgrades to several positions in the pay plan and the addition of a 20+ year step to ensure that employees in those positions are paid competitively and in line with their peers who are performing comparable work. Finally, the proposal adds Juneteenth as a paid holiday, implements earned paid leave, removes gender-specific language and makes other minor adjustments in the agreement between the parties. The total estimated cost of the negotiated changes to L&T's 3-year contract is \$1,954,728.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

Order 59-22/23 Traffic Schedule Amendment Re: Thames Street - Sponsored by Danielle P. West, Interim City Manager

This traffic schedule amendment will introduce new parking restrictions on a portion of Thames Street (from the Ocean Gateway driveway to Freedom Way) proposed for acceptance on September 19, 2022.

The parking regulations include metered, 2-hour parking on the north side of the street, and unmetered, time-restricted parking (one-hour) on the south side. The unmetered time-restricted parking is intended to facilitate an extension of Residential Parking Zone 11, which is used by island residents.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

Order 60-22/23 Amendment to Portland City Code Chapter 34 re: Landcare Ordinance - Sponsored by the Sustainability & Transportation Committee, Councilor Andrew Zarro, Chair

On July 13, 2022, the Sustainability & Transportation Committee voted (3-0) to recommend amending Chapter 34 to regulate the use of fertilizers. The amendment would largely prohibit the use of synthetic fertilizers and require property owners to follow best management practices when using organic fertilizers. These measures would improve water quality in local waters by reducing the amount of excess nutrients running off both public and private property. Excess nutrients fuel algal blooms in local water bodies, damaging marine life and increasing acidification of local waters.

The amendment would also change the name of Chapter 34 from Pesticide Ordinance to Landcare Ordinance to reflect the chapter's emphasis on sound land management practices. The name of the Pesticide Management Advisory Committee would similarly be renamed the Landcare Management Advisory Committee.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 69-22/23 Laying Out a Town Way/City Street Pursuant to 23 M.R.S.A. § 3022 Re: Thames Street Extension - Sponsored by Danielle P. West, Interim City Manager

This item would lay out an additional section of Thames Street (currently known as Thames Street Extension, from the end of Thames Street as it was accepted in 2008 to the boundary line of 58 Fore Street) as a city street requiring regular public maintenance and allowing the City to regulate parking on it.

Order 59-22/23, on this agenda for a second read under Unfinished Business, would establish certain parking regulations on this street and includes a portion of this street in Residential Parking Zone 11.

Five affirmative votes are required for passage after public comment.

Order 70-22/23 Approving Residential Parking Permit Re: Islander Parking - Sponsored by Danielle P. West, Interim City Manager

This order will expand the Residential Parking Zone 11 to a portion of Thames Street, providing eight (8) additional mainland parking spaces for Portland residents who live on Peaks, Cliff, Cushing, Great Diamond, and Little Diamond islands.

This number does not include all unrestricted parking spaces on Thames Street, as staff recommend maintaining the remainder to allow for more frequent turnover in support of existing and anticipated economic activity.

Five affirmative votes are required for passage after public comment.

Order 71-22/23 Accepting a Riverside Street Sidewalk Easement from Waste Management of Maine, Inc. - Sponsored by Danielle P. West, Interim City Manager

By this order, the City Council would accept the fourth permanent sidewalk easement on Riverside Street to accommodate a new sidewalk proposed from the Forest Avenue intersection to the new Homeless Services Center at 654 Riverside Street. Three other

easements were accepted for this project on September 1, 2022. The Department of Public Works has designed a sidewalk that is both compliant with the Americans with Disabilities Act standards as well as conscientious of existing conditions on Riverside Street. The proposed designed sidewalk avoids going over the Public Right of Way line wherever possible, although some permanent easements are needed.

Five affirmative votes are required for passage after public comment. Due to the proposed construction schedule for this project, staff is recommending that this item be passed as an emergency so that it can take effect immediately. Seven affirmative votes are required for passage as an emergency after public comment.

Order 72-22/23 Accepting and Appropriating a \$200,409.09 Federal Emergency Management Agency Assistance to Firefighters Grant and Appropriating \$21,040.91 as the Local Match - Sponsored by Danielle P. West, Interim City Manager

This item would accept and appropriate a \$200,409.09 Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) program, and appropriate local match funding in the amount of \$20,040.91. This award will be used to install sprinkler systems at the Riverton and Munjoy Hill Fire Stations, a much needed investment in these buildings that would not otherwise would be funded in the current fiscal year. These funds would also be used towards a peer support training program which would enhance the newly created Mental Health Program for the Fire Department.

This item must be read on two separate days. Staff is requesting that the second reading be waived in order to meet the September 25, 2022 acceptance cutoff date, which requires seven affirmative votes. Staff also requests that this item be passed as an emergency. Seven votes are required for passage as an emergency following public comment.

Order 73-22/23 Accepting and Appropriating a \$3,000,000 Grant from the United States Environmental Protection Agency for the City's Brownfield Revolving Loan Program - Danielle P. West, Interim City Manager

This would accept and appropriate \$3,000,000 in U.S. Environmental Protection Agency (EPA) Brownfields Revolving Loan Fund (RLF) grant funds. These grant funds will be used to recapitalize the City's Brownfields RLF, allowing the provision of greater assistance for remediation of both public and privately-owned Brownfields sites in Portland. According to the EPA, "A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

This item must be read on two separate days. This is its first reading.

EXECUTIVE SESSION:

The Portland City Council will hold an Executive Session pursuant to 1 M.R.S. Section 405(6)(A) to discuss the duties of the City Council, City Manager, and Corporation Counsel.

ADJOURNMENT:

MEMORANDUM
City Council Agenda Item

FROM: William Needelman

DATE: August 12, 2022

SUBJECT: Order 61-22/23 Amending the Portland Fish Pier Authority Articles of Incorporation
- Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Councilor Tae Chong, Vice President of the Portland Fish Pier Authority Board
Directors, meeting held on May 31, 2022, and the vote was 5-0 to recommend
approval by the City Council.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 9/19/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: Corporation Counsel has reviewed and approved of the proposed amendments to the Portland Fish Pier Authority's Article of Incorporation.

PRESENTATION: William Needelman/3 Minutes

I. SUMMARY

In order to expand representation by the seafood industry on the Board of Directors of the Portland Fish Pier Authority, the Board voted unanimously (5 to 0) to amend their Bylaws to add two seats to the five member Board. In order for those amendments to be effective, the City Council, as the Corporator would need to amend the Articles of Incorporation to add two additional seats to the Board.

II. AGENDA DESCRIPTION

By unanimous vote of the Portland Fish Pier Authority Board of Directors - meeting held on May 31, 2022, Meredith Mendelson, President, Councilor Tae Chong, Vice President, the City Council is requested to approve two amendments to the Portland Fish Pier Authority Articles of Incorporation:

1. To amend the Fourth (4th) Article of the Portland Fish Pier Authority Articles in Incorporation to expand the Board of Directors by two seats from five (5) to seven (7) by adding one (1) additional Class B director representing the seafood industry; and, adding one (1) new Class C seat representing the Commissioner of the Maine Department of Marine Resources.
2. To amend the Fifth (5th) Article of the Portland Fish Pier Authority Articles of Incorporation to allow the Commissioner of the Maine Department of Marine Resources to appoint one Class C Director to the Portland Fish Pier Authority Board of Directors.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Portland Fish Pier Authority was created by incorporation by the City of Portland in 1989 to administer and manage the affairs of the Portland Fish Pier (PFP.) Through this action, the City established a 5-member Board of Directors to oversee management of the PFP. Representation on the Board was separated into classes representing: the City Council (1 Class A seat), the "fishing industry" (1 Class B seat), the Department of Transportation (1 Class C seat), the City Manager or designee (1 ex officio seat), and the Portland Fish

Exchange President(1 ex officio seat).

While the above described arrangement has held since its establishment, two issues have arisen over the years that resulted in Board action to expand representation on the Board of Directors.

1. The Class B (fishing industry) seat has been for many years occupied by a senior staff member of the Department of Marine Resources (DMR). This representation has greatly benefited the Board and the PFP by connecting the facility directly with the State agency overseeing State fisheries regulation, compilation and maintenance of fisheries data, and funding of fish industry activities. As a facility of state-wide significance, DMR representation is rational, valuable for the enterprise, and well supported by the Board and interested parties - including industry.
2. Having the Class B seat occupied by a staff member of DMR leaves the " fishing industry " without direct representation on the Board of Directors. For some time, fishing industry participants, fishing advocacy groups (including the Maine Coast Fishermen's Association and the Portland Working Waterfront Group), and DMR have advocated for expanded seafood representation on the Board. A letter to the PFP Board of Directors from DMR Commissioner Patrick Keliher outlined an opinion that without expanded industry representation on the Board, the Class B seat should be reallocated to a seafood industry representative - to the exclusion of DMR's participation.

The PFP Board of Directors is seeking to broaden the fishing industry representation on the Board by creating an additional Class B (commercial fishing industry seat - "commercial" to be added to the Bylaws description) for a total of two Class B seats. DMR representation would be retained through the creation of an additional Class C seat specifically for leadership at DMR.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result of the two recommended amendments will be to expand seafood industry representation on the Portland Fish Pier Board of Directors, while retaining the valuable insights and contributions of the Department of Marine Resources leadership. Given DMR's past and continuing presence on the Board, the immediate impact will be to have both new seats filled by commercial fishing industry participants, with one Class B member to be nominated by DMR (as is current practice) and the second to be nominated by the Mayor (the "new" seat.) Both Class B seats would be formally appointed by the City Council. As with the current Class C seat (filled by the Commissioner of Transportation or their designee), the new Class C seat would be filled by the Commissioner of DMR or their designee.

V. FINANCIAL IMPACT

None.

VI. STAFF ANALYSIS AND BACKGROUND

The Portland Fish Pier is a facility of state-wide importance, and robust industry and regional government representation is essential to its mission. Developed with state transportation funds in the 1980's, the Portland Fish Pier serves as an anchor for the seafood economy locally and regionally. After receiving the facility from the state in 1983, the Portland Fish Exchange opened in 1986. The City later incorporated the Portland Fish Pier Authority in 1989 to facilitate management and operations. Since incorporation, the Articles have been unchanged, despite significant evolution in the seafood economy.

Over the years since the incorporation of the Portland Fish Pier Authority, its Board has benefited significantly from State participation - from both the Maine Department of Transportation as the original funding agency, and from the Department of Marine Resources filling the " fishing industry seat." Unfortunately, the limited number of Board seats in the current configuration require a false choice of having either DMR or a direct

industry representative. The requested amendments eliminate the need to choose between legitimate stakeholder participation. The intent is to solidify the City's commitment to the seafood economy by broadening representation on the Board of Directors to those public and private interests with the greatest stake in the facility's success.

VII. RECOMMENDATION

Staff supports the actions of the Board and recommends passage of the amendments to the Portland Fish Pier Authority Articles of Incorporation.

VIII. LIST ATTACHMENTS

1. Portland Fish Pier Authority Amnd 9.19.2022
2. 3-11-2021 DMR Letter Re Poss Addl Seat
3. PFPA Bylaw Amdmts-Inactive Pending Adoption of Amended AoI
4. PFPA AoI of 1989

Prepared by:

William Needelman

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER (A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER AMENDING THE PORTLAND FISH PIER AUTHORITY
ARTICLES OF INCORPORATION**

ORDERED, that the Portland City Council, acting in its capacity as sole Corporator of the Portland Fish Pier Authority, hereby approves amendments to the Portland Fish Pier Authority Articles of Incorporation (a) to expand the Board of Directors by two seats, from five to seven, to accommodate recent changes to the Portland Fish Pier Authority's Bylaws that add one additional Class B director representing the seafood industry, and one additional Class C director representing the Commissioner of the Maine Department of Marine Resources; and (b) to allow the Commissioner of the Maine Department of Marine Resources to appoint the additional Class C Director; and

BE IT FURTHER ORDERED, that the Portland City Council, acting in its capacity as sole Corporator of the Portland Fish Pier Authority, hereby authorizes the Office of the Corporation Counsel to file with the Maine Department of the Secretary of State amendments to the Portland Fish Pier Authority Articles of Incorporation that are consistent with this Order and to take any additional actions necessary or convenient to carry out the intent of this Order and the amended Bylaws of the Portland Fish Pier Authority that are attached hereto.

BYLAWS OF PORTLAND FISH PIER AUTHORITY

ARTICLE I

Name, Principal Office, Corporate Seal

Sec. 1. Name.

The name of this corporation shall be Portland Fish Pier Authority.

Sec.2. Principal office.

The principal office for the conduct of the activities of the corporation shall be located at the premises leased by the corporation on the Portland Fish Pier, Portland, Maine.

Sec. 3. Corporate seal.

The corporate seal of the corporation shall be circular in form and shall bear the words and figures “Portland Fish Pier Authority,” the word “Maine” and the year of the corporation’s incorporation. The form of such seal may be altered from time to time by the Board of Directors.

ARTICLE II

Meetings of Corporator

Sec. 1. Annual meeting.

The annual meeting of the Corporator shall be held upon such date during the month of July in each year as shall be fixed by the Board of Directors at the principal office of the corporation, provided that the Corporator may in any year itself fix the date of the Annual Meeting of the Corporator and may fix the place thereof as the City Council Chambers, City Hall, Portland, Maine. If the Board of Directors or Corporator for any reason fails to fix such date, the Annual Meeting of the Corporator shall be held at the principal office of the corporation on the third Monday of September in each year. The Secretary shall cause a notice of the Annual Meeting: (i) to be posted at some conspicuous place at the principal office of the corporation; and (ii) to be mailed to the Clerk of the City of Portland, in both cases not less than 30 days before the date fixed for the meeting. The Board of Directors and members of the public shall be entitled and encouraged to attend the Annual Meeting and shall be entitled, subject to the direction of the chairman of the meeting, to ask questions and state their views.

Sec. 2. Special meetings.

Special meetings of the Corporator may be called by the President or by the Board of Directors or by the Corporator to be held at such time and place as shall be fixed in the call of the meeting. If no such place is fixed, the special meeting shall be held at the principal office of the corporation. Notice of special meetings shall be given in the same manner as the notice of the annual meeting, and the Board of Directors and members of the public shall have the same right to attend and to ask questions and state their views as in the case of the annual meeting.

Sec. 3. Proxies.

The Corporator may vote at any annual or special meeting of the Corporator by proxy or proxies executed in writing by the Corporator as authorized by its City Council. The Corporator may, but is not required to, appoint any one or more, or all, of its City Councilors as its proxy agents to represent it at any annual or special meeting of the Corporator.

Sec. 4. Action in writing.

Notwithstanding any other provision of these bylaws, any action required or permitted by law or otherwise to be taken at a meeting of the Corporator may be taken without a meeting if a written consent, setting forth the action so taken, is signed by the Corporator by authority of its City Council and is filed with the Secretary of the corporation as part of the corporate records. Such written consent shall have the same effect as a unanimous vote by the Corporator and may be stated as such in any certificate or document required or permitted to be filed with the Secretary of State, and in any certificate or document prepared or certified by any officer of the corporation for any purpose.

ARTICLE III

Board of Directors

Sec. 1. Powers; Eligibility.

The business and affairs of the corporation shall be managed by a Board of Directors, who shall have the powers and duties set forth in the Articles of Incorporation, these Bylaws and the Rules and Regulations. Directors need not be residents of the City of Portland; provided, however, that Directors shall be residents of the State of Maine.

Sec. 2. Qualifications of Directors.

The Board of Directors shall be divided into three classes as follows:

Class A Director – there shall be one (1) Class A Director who shall be an individual who is a duly elected member of the Portland City Council.

Class B Director – there shall be ~~one (1)~~ two (2) Class B Directors who shall be ~~an~~ individuals who ~~shall~~ represent the commercial fishing industry in the State of Maine.

Class C Director – there shall be ~~one (1)~~ two (2) Class C Directors. Notwithstanding any provision contained in these Bylaws ~~apparently~~ to the contrary, such persons shall be: (i) ~~shall be~~ the Commissioner of the Maine Department of Transportation (DOT) or ~~an assigned~~ representative from the senior leadership of ~~the Department~~ DOT designated by the Commissioner of DOT; and (ii) ~~the Commissioner of the Maine Department of Marine Resources (DMR) or an assigned representative from the senior leadership of DMR designated by the Commissioner of DMR~~ the Department. The provisions of Section 4 regarding nomination of directors and Section 5 regarding vacancies shall not apply to the Class C Directors. ~~The Commissioner of the Maine Department of Transportation and the Commissioner of the Maine Department of Marine Resources shall have the power to appoint and remove the Class C Director in his or her at their sole discretion.~~ In order to effect nomination or removal, written notification must be received by the Secretary of the Board of Directors at least forty-eight (48) hours before the annual meeting of the Board of Directors, or any other meeting of the Board of Directors including, without limitation, any regular meeting, any special meeting and any executive session.

Sec. 3. Ex-Officio members of the Board of Directors.

There shall be two (2) individuals who shall be deemed ex-officio members of the Board of Directors by virtue of ~~his or her~~ their holding the position of:

- (i) City Manager of the City of Portland.

In the event that the City Manager shall decline or is precluded from serving, the first of the following city officials who is able and eligible shall serve as ex officio member: (i) Assistant City Manager; (ii) Finance Director; and

- (ii) President of the Board of Directors of the Portland Fish Exchange.

In the event that the person holding the office of President shall decline or be precluded from serving, the first of the following officers who is able and eligible shall serve as ex-officio member: (i) Secretary; (ii) Treasurer; (iii) Assistant Secretary; (iv) Assistant Treasurer.

The provisions of these bylaws contained in Section 5 regarding term of office, Section 4 regarding nomination of directors and Section 7 regarding vacancies shall not apply to said ex-officio members. Each ex-officio member may be a member of the Board of Directors so long as ~~he or she~~they continues to serve in the office by virtue of which ~~he or she was~~they were appointed; and shall enjoy all the rights, privileges and responsibilities of all other members of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex-officio members. Ex-officio members shall be entitled to the same indemnification rights available to all Directors under the law, these bylaws or otherwise.

Sec. 4. Nomination of Directors.

In determining who shall be appointed Directors at the first annual meeting of the Corporator following the incorporation of this corporation, and at each annual meeting thereafter, the Corporator, acting through its City Manager or an appropriate committee, shall receive nominations as follows:

Class A Director - nomination of the Class A Director shall be received from the Mayor of the City of Portland.

Class B Director – nomination of one of the Class B Directors shall be received from the Commissioner of the Maine Department of Marine Resources, and the nomination of the other Class B Director shall be received from the Mayor of the City of Portland.

Sec. 5. Term of office.

Each director shall serve for a term of one year or until ~~his or her~~their successor is appointed and qualified. Directors shall be appointed prior to the annual meeting of the Board.

Sec. 6. Voting.

Each director shall be entitled to one vote.

Sec. 7. Vacancies.

Vacancies occurring in the Board of Directors for any reason shall be filled for the unexpired term by the Corporator by appointment of an individual qualifying and eligible for such position.

Sec. 8. Resignations.

Any director may resign ~~his or her~~their office by delivering a written resignation to the President, such resignation to be effective upon the date or condition stated therein.

ARTICLE IV

Meetings of Board of Directors

Sec. 1. Annual meeting.

The annual meeting of the Board of Directors shall be held without call immediately following the annual meeting of the Corporation at the principal office of the corporation, or at some other place fixed by the President.

Sec. 2. Regular meetings.

Other regular meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Sec. 3. Special meetings.

Special meetings of the Board of Directors may be called by such persons as are authorized by law to call special meetings. The place, date and time of the special meeting shall be fixed in the call therefor.

Sec. 4. Notice of meetings.

Notice of each annual, regular or special meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least five (5) days in advance thereof. Notice may be given in writing, by telegraph, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to ~~his or her~~their residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. Mail as first class mail, postage prepaid. Neither the business to be transacted thereat, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except when otherwise provided by law.

Sec. 5. Executive Session.

The Board of Directors may go into Executive Session and determine matters therein when they deem appropriate and whenever, in their judgment, the best interests of the corporation would be served thereby.

Sec. 6. Quorum.

~~Three~~Four directors shall constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of a majority of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Sec. 7. Indemnification.

This corporation shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that ~~he or she~~they ~~are-is~~ or ~~were~~was a director, officer, employee or agent of this corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by ~~them~~him in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. § 714 and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE V

Officers

Sec. 1. Officers.

The officers of the corporation shall be chosen annually at the annual meeting of the Board of Directors, and shall be a President, a Vice President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Sec. 2. Term.

Officers shall be elected for a term of one (1) year to serve until the next annual meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first annual meeting of the Board of Directors.

Sec. 3. Removal.

Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Sec. 4. Vacancies.

Any vacancy in any office (except the Office of Director) may be filled by the Board of Directors.

Sec. 5. President.

The President shall be a Director and shall preside at all meetings of the Board of Directors.

Sec. 6. Secretary.

The Secretary shall attend all meetings of the Corporator and the Board of Directors and keep minutes of all meetings of the Corporator and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Sec. 7. Treasurer.

The Treasurer shall be the chief financial officer of the corporation and shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be. The Treasurer may delegate any of ~~his or her~~their duties to the Fish Pier Authority Manager.

Sec. 8. Assistant Treasurers and Assistant Secretaries.

If appointed by the Board of Directors, Assistant Secretaries and Assistant Treasurers shall have such powers and duties as may be prescribed from time to time by the Board of Directors.

Sec. 9. Fish Pier Authority Manager.

The Fish Pier Authority Manager shall have superintendence of the business activities of the corporation, and shall have such other powers and duties as may be set forth in the Rules and Regulations of the Fish Pier Authority. The Fish Pier Authority Manager may be an individual, corporation or partnership, and shall be selected by the Board of Directors, which shall fix the compensation of the Fish Pier Authority Manager. The Fish Pier Authority Manager as such

shall not be an officer of the corporation or a member of the Board of Directors, but the Fish Pier Authority Manager, if an individual, may be a member of the Board of Directors of the corporation.

Sec. 10. Other employees.

Other employees of the corporation shall be appointed and supervised by, and shall serve at the pleasure of, the Fish Pier Authority Manager.

ARTICLE VI

Adoption, Amendment

Sec. 1. Adoption.

The initial bylaws of this corporation shall be adopted by the Board of Directors.

Sec. 2. Amendments.

These bylaws may be amended at any meeting of the Board of Directors, provided that a written notice stating the proposed amendments shall be sent to each director and member of the Advisory Committee no less than five (5) days before the date of such meeting. A two-thirds (2/3) vote of those directors present is necessary for the passage of any amendment.

ARTICLE VII

Conflict of Interest

No director may vote on any matter in which the director has a direct or indirect pecuniary interest as defined in 30-A MRS 2605(4). Directors shall also attempt to avoid the appearance of a conflict of interest in any matter by disclosure or by abstention pursuant to 30-A MRS 2605(6).



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

March 11, 2021

Dear Mr. Needleman,

As you are aware, there has been significant discussion during recent meetings of the Portland Fish Pier Authority Board regarding the Class B Director's seat, whose nomination I provide in my role as the Commissioner of Marine Resources. My Deputy Commissioner, Meredith Mendelson, currently holds the Class B Director seat.

As expressed in my letter to you dated October 9, 2019, both Meredith and I continue to support the request from members of the fishing industry who have asked that they be represented on this board, either in this seat or through the creation of additional seats on this board. My hope is that the strategic planning process that is underway will result in the continued engagement of the State, if the city and stakeholders feel there is value to that engagement, in addition to representation from the fishing industry. So, while I am going to recommend that Meredith remains on the Board for the time being for continuity during the planning process, the bylaws clearly intended for this seat to be held by "*an individual who shall represent the fishing industry in the State of Maine.*" If the strategic planning process does not result in a seat for an industry member, DMR staff will not remain in this seat. As I said in my previous letter, it seems clear that this seat was intended to be a member of the marine resource industries, rather than a state agency employee.

As I also stated previously, I continue to feel that my position is not the appropriate source of nomination for this Director. In my view, City Council would more appropriately solicit input from the Board itself and/or accept any nomination for a fishing industry representative, as municipal officials and local stakeholders are more able to assess which candidates would best serve the Board's needs in a given year. I again respectfully request that the City Council modify the bylaws of the Authority Board and Class B Director, or alternatively, that nominees to any future Board seats for fishing representatives be generated through a city-led nomination process.

Thank you for your consideration, and please do not hesitate to contact Meredith if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick C. Keliher'.

Patrick C. Keliher
Commissioner

BYLAWS OF PORTLAND FISH PIER AUTHORITY

ARTICLE I

Name, Principal Office, Corporate Seal

Sec. 1. Name.

The name of this corporation shall be Portland Fish Pier Authority.

Sec.2. Principal office.

The principal office for the conduct of the activities of the corporation shall be located at the premises leased by the corporation on the Portland Fish Pier, Portland, Maine.

Sec. 3. Corporate seal.

The corporate seal of the corporation shall be circular in form and shall bear the words and figures “Portland Fish Pier Authority,” the word “Maine” and the year of the corporation’s incorporation. The form of such seal may be altered from time to time by the Board of Directors.

ARTICLE II

Meetings of Corporator

Sec. 1. Annual meeting.

The annual meeting of the Corporator shall be held upon such date during the month of July in each year as shall be fixed by the Board of Directors at the principal office of the corporation, provided that the Corporator may in any year itself fix the date of the Annual Meeting of the Corporator and may fix the place thereof as the City Council Chambers, City Hall, Portland, Maine. If the Board of Directors or Corporator for any reason fails to fix such date, the Annual Meeting of the Corporator shall be held at the principal office of the corporation on the third Monday of September in each year. The Secretary shall cause a notice of the Annual Meeting: (i) to be posted at some conspicuous place at the principal office of the corporation; and (ii) to be mailed to the Clerk of the City of Portland, in both cases not less than 30 days before the date fixed for the meeting. The Board of Directors and members of the public shall be entitled and encouraged to attend the Annual Meeting and shall be entitled, subject to the direction of the chairman of the meeting, to ask questions and state their views.

Sec. 2. Special meetings.

Special meetings of the Corporator may be called by the President or by the Board of Directors or by the Corporator to be held at such time and place as shall be fixed in the call of the meeting. If no such place is fixed, the special meeting shall be held at the principal office of the corporation. Notice of special meetings shall be given in the same manner as the notice of the annual meeting, and the Board of Directors and members of the public shall have the same right to attend and to ask questions and state their views as in the case of the annual meeting.

Sec. 3. Proxies.

The Corporator may vote at any annual or special meeting of the Corporator by proxy or proxies executed in writing by the Corporator as authorized by its City Council. The Corporator may, but is not required to, appoint any one or more, or all, of its City Councilors as its proxy agents to represent it at any annual or special meeting of the Corporator.

Sec. 4. Action in writing.

Notwithstanding any other provision of these bylaws, any action required or permitted by law or otherwise to be taken at a meeting of the Corporator may be taken without a meeting if a written consent, setting forth the action so taken, is signed by the Corporator by authority of its City Council and is filed with the Secretary of the corporation as part of the corporate records. Such written consent shall have the same effect as a unanimous vote by the Corporator and may be stated as such in any certificate or document required or permitted to be filed with the Secretary of State, and in any certificate or document prepared or certified by any officer of the corporation for any purpose.

ARTICLE III

Board of Directors

Sec. 1. Powers; Eligibility.

The business and affairs of the corporation shall be managed by a Board of Directors, who shall have the powers and duties set forth in the Articles of Incorporation, these Bylaws and the Rules and Regulations. Directors need not be residents of the City of Portland; provided, however, that Directors shall be residents of the State of Maine.

Sec. 2. Qualifications of Directors.

The Board of Directors shall be divided into three classes as follows:

Class A Director – there shall be one (1) Class A Director who shall be an individual who is a duly elected member of the Portland City Council.

Class B Director – there shall be ~~one (1)~~ two (2) Class B Directors who shall be ~~an~~ individuals who ~~shall~~ represent the commercial fishing industry in the State of Maine.

Class C Director – there shall be ~~one (1)~~ two (2) Class C Directors. Notwithstanding any provision contained in these Bylaws ~~apparently~~ to the contrary, such persons shall be: (i) ~~shall be~~ the Commissioner of the Maine Department of Transportation (DOT) or ~~an assigned~~ representative from the senior leadership of the Department DOT designated by the Commissioner of DOT; and (ii) the Commissioner of the Maine Department of Marine Resources (DMR) or an assigned representative from the senior leadership of DMR designated by the Commissioner of DMR the Department. The provisions of Section 4 regarding nomination of directors and Section 5 regarding vacancies shall not apply to the Class C Directors. ~~The Commissioner of the Maine Department of Transportation and the Commissioner of the Maine Department of Marine Resources shall have the power to appoint and remove the Class C Director in his or her at their sole discretion.~~ In order to effect nomination or removal, written notification must be received by the Secretary of the Board of Directors at least forty-eight (48) hours before the annual meeting of the Board of Directors, or any other meeting of the Board of Directors including, without limitation, any regular meeting, any special meeting and any executive session.

Sec. 3. Ex-Officio members of the Board of Directors.

There shall be two (2) individuals who shall be deemed ex-officio members of the Board of Directors by virtue of his or her holding the position of:

- (i) City Manager of the City of Portland.

In the event that the City Manager shall decline or is precluded from serving, the first of the following city officials who is able and eligible shall serve as ex officio member: (i) Assistant City Manager; (ii) Finance Director; and

- (ii) President of the Board of Directors of the Portland Fish Exchange.

In the event that the person holding the office of President shall decline or be precluded from serving, the first of the following officers who is able and eligible shall serve as ex-officio member: (i) Secretary; (ii) Treasurer; (iii) Assistant Secretary; (iv) Assistant Treasurer.

The provisions of these bylaws contained in Section 5 regarding term of office, Section 4 regarding nomination of directors and Section 7 regarding vacancies shall not apply to said ex-officio members. Each ex-officio member may be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of which he or she was appointed; and shall enjoy all the rights, privileges and responsibilities of all other members of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex-officio members. Ex-officio members shall be entitled to the same indemnification rights available to all Directors under the law, these bylaws or otherwise.

Sec. 4. Nomination of Directors.

In determining who shall be appointed Directors at the first annual meeting of the Corporator following the incorporation of this corporation, and at each annual meeting thereafter, the Corporator, acting through its City Manager or an appropriate committee, shall receive nominations as follows:

Class A Director - nomination of the Class A Director shall be received from the Mayor of the City of Portland.

Class B Director – nomination of one of the Class B Directors shall be received from the Commissioner of the Maine Department of Marine Resources, and the nomination of the other Class B Director shall be received from the Mayor of the City of Portland.

Sec. 5. Term of office.

Each director shall serve for a term of one year or until his or her successor is appointed and qualified. Directors shall be appointed prior to the annual meeting of the Board.

Sec. 6. Voting.

Each director shall be entitled to one vote.

Sec. 7. Vacancies.

Vacancies occurring in the Board of Directors for any reason shall be filled for the unexpired term by the Corporator by appointment of an individual qualifying and eligible for such position.

Sec. 8. Resignations.

Any director may resign his or her office by delivering a written resignation to the President, such resignation to be effective upon the date or condition stated therein.

ARTICLE IV

Meetings of Board of Directors

Sec. 1. Annual meeting.

The annual meeting of the Board of Directors shall be held without call immediately following the annual meeting of the Corporation at the principal office of the corporation, or at some other place fixed by the President.

Sec. 2. Regular meetings.

Other regular meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Sec. 3. Special meetings.

Special meetings of the Board of Directors may be called by such persons as are authorized by law to call special meetings. The place, date and time of the special meeting shall be fixed in the call therefor.

Sec. 4. Notice of meetings.

Notice of each annual, regular or special meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least five (5) days in advance thereof. Notice may be given in writing, by telegraph, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to his or her residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. Mail as first class mail, postage prepaid. Neither the business to be transacted thereat, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except when otherwise provided by law.

Sec. 5. Executive Session.

The Board of Directors may go into Executive Session and determine matters therein when they deem appropriate and whenever, in their judgment, the best interests of the corporation would be served thereby.

Sec. 6. Quorum.

~~Three~~Four directors shall constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of a majority of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Sec. 7. Indemnification.

This corporation shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of this corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. § 714 and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE V

Officers

Sec. 1. Officers.

The officers of the corporation shall be chosen annually at the annual meeting of the Board of Directors, and shall be a President, a Vice President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Sec. 2. Term.

Officers shall be elected for a term of one (1) year to serve until the next annual meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first annual meeting of the Board of Directors.

Sec. 3. Removal.

Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Sec. 4. Vacancies.

Any vacancy in any office (except the Office of Director) may be filled by the Board of Directors.

Sec. 5. President.

The President shall be a Director and shall preside at all meetings of the Board of Directors.

Sec. 6. Secretary.

The Secretary shall attend all meetings of the Corporator and the Board of Directors and keep minutes of all meetings of the Corporator and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Sec. 7. Treasurer.

The Treasurer shall be the chief financial officer of the corporation and shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be. The Treasurer may delegate any of his or her duties to the Fish Pier Authority Manager.

Sec. 8. Assistant Treasurers and Assistant Secretaries.

If appointed by the Board of Directors, Assistant Secretaries and Assistant Treasurers shall have such powers and duties as may be prescribed from time to time by the Board of Directors.

Sec. 9. Fish Pier Authority Manager.

The Fish Pier Authority Manager shall have superintendence of the business activities of the corporation, and shall have such other powers and duties as may be set forth in the Rules and Regulations of the Fish Pier Authority. The Fish Pier Authority Manager may be an individual, corporation or partnership, and shall be selected by the Board of Directors, which shall fix the compensation of the Fish Pier Authority Manager. The Fish Pier Authority Manager as such

shall not be an officer of the corporation or a member of the Board of Directors, but the Fish Pier Authority Manager, if an individual, may be a member of the Board of Directors of the corporation.

Sec. 10. Other employees.

Other employees of the corporation shall be appointed and supervised by, and shall serve at the pleasure of, the Fish Pier Authority Manager.

ARTICLE VI

Adoption, Amendment

Sec. 1. Adoption.

The initial bylaws of this corporation shall be adopted by the Board of Directors.

Sec. 2. Amendments.

These bylaws may be amended at any meeting of the Board of Directors, provided that a written notice stating the proposed amendments shall be sent to each director and member of the Advisory Committee no less than five (5) days before the date of such meeting. A two-thirds (2/3) vote of those directors present is necessary for the passage of any amendment.

ARTICLE VII

Conflict of Interest

No director may vote on any matter in which the director has a direct or indirect pecuniary interest as defined in 30-A MRS 2605(4). Directors shall also attempt to avoid the appearance of a conflict of interest in any matter by disclosure or by abstention pursuant to 30-A MRS 2605(6).

19900005ND 1910000133127

FILED 08 14 1989

ARTI

NONPROFIT CORPORATION

STATE OF MAINE

ARTICLES OF INCORPORATION

Fee Paid \$20.00
C. B. _____
Date AUG 25 1989
7

Pursuant to 13-B MRSA §403, the undersigned, acting as incorporator(s) of a corporation, adopt(s) the following Articles of Incorporation:

For Use By The Secretary of State
FILED
August 14, 1989
<i>Mary Cooper</i>
Deputy Secretary of State
A True Copy When Attested By Signature
Deputy Secretary of State

- FIRST: The name of the corporation is Portland Fish Pier Authority
- SECOND: The corporation is organized for ~~the purpose of~~ the following purpose or purposes:

See Exhibit A attached.

- THIRD: The name of its Registered Agent and address of registered office: (The Registered Agent must be a Maine resident, whose business office is identical with the registered office of a corporation, domestic or foreign, profit or nonprofit, having an office identical with such registered office.)

Name David Lourie

Street & Number Portland City Hall, 389 Congress Street

City Portland, Maine 04101
(zip code)

- FOURTH: The number of directors ~~not less than~~ constituting the ~~board~~ of directors of the corporation, ~~if~~ ~~not less than~~ five (5), and a change in the number of directors shall be made only by amendment to these articles of incorporation. ~~The minimum number of directors (not less than 3) shall be _____ and the maximum number of directors shall be _____.~~

- FIFTH: Members: ☐ There shall be no members.
("X" one box only)

~~XX~~ There shall be one ~~XXXXXX~~ class of members, and the information required by §402 is as follows:

See Exhibit B attached.

- SIXTH: ~~XX~~ (Check if this article is to apply)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

FORM NO. MNPCA-6 REV. 60

SEVENTH: ~~Check~~ Check if this article is to apply. Then fill in reference number of Section 501(c)(3) in first paragraph below.)

the City of Portland or

Upon the dissolution of the Corporation or the termination of its activities, the assets of the Corporation remaining after the payment of all its liabilities shall be distributed exclusively to one or more organizations organized and operated exclusively for such purposes as shall then qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and as a charitable, religious, eleemosynary, benevolent or educational corporation within the meaning of Title 13B, of the Maine Revised Statutes as amended.

No part of the net earnings of the Corporation shall inure to the benefit of any member, director, or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation in carrying out one or more of its purposes), and no member, director, or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: Other provisions of these articles, if any, including provisions for the regulation of the internal affairs of the corporation, and distribution of assets on dissolution or final liquidation:

See Exhibit B attached.

Dated: June 19, 1989

INCORPORATORS (acting in their capacity as municipal officers of the City of Portland)	
<u>Peter E. O'Donnell</u> (signature)	Street <u>119 Morning Street</u>
<u>Peter E. O'Donnell</u> (type or print name)	<u>Portland, Maine 04101</u> (city, state and zip code)
<u>Pamela P. Plumb</u> (signature)	Street <u>104 Park Street</u>
<u>Pamela P. Plumb</u> (type or print name)	<u>Portland, Maine 04102</u> (city, state and zip code)
<u>Thomas H. Allen</u> (signature)	Street <u>17 Fairmount Street</u>
<u>Thomas H. Allen, Esq.</u> (type or print name)	<u>Portland, Maine 04103</u> (city, state and zip code)
<u>Cheryl A. Leeman</u> (signature)	Street <u>37 Savoy Street</u>
<u>Cheryl A. Leeman</u> (type or print name)	<u>Portland, Maine 04103</u> (city, state and zip code)
<u>Ronald J. Dorler</u> (signature)	Street <u>514 Summit Street</u>
<u>Ronald J. Dorler</u> (type or print name)	<u>Portland, Maine 04103</u> (city, state and zip code)

Continued on following page

INCORPORATORS (acting in their capacity as ADDRESSES
municipal officers of the City of Portland)

Edward I. Bernstein
(signature)

Street 58 Payson Street

Edward I. Bernstein
(type or print name)

Portland, Maine 04102
(city, state and zip code)

Linda E. Abromson
(signature)

Street 25 Fall Lane

Linda E. Abromson
(type or print name)

Portland, Maine 04103
(city, state and zip code)

Esther B. Clenott
(signature)

Street 107 Mackworth Street

Esther B. Clenott
(type or print name)

Portland, Maine 04103
(city, state and zip code)

Barbara A. Wood
(signature)

Street 137 Spring Street

Barbara A. Wood
(type or print name)

Portland, Maine 04101
(city, state and zip code)

EXHIBIT A

Article SECOND of Articles of
Incorporation of Portland Fish Pier Authority

PURPOSES: LOCAL DEVELOPMENT CORPORATION;
GOVERNANCE BY TITLE 13-B

Portland Fish Pier Authority is formed by the Municipal Officers of the City of Portland as a local development corporation for the purposes of managing and marketing the entire premises known as the Portland Fish Pier for the benefit of the fishing and fishery-related business enterprises and the citizens of the City of Portland, as a non-profit corporation without capital stock. This corporation is organized under and shall be governed by the provisions of Title 13-B of the Maine Revised Statutes as they may be supplemented and amended from time to time.

Without limiting the generality of the foregoing statement, the corporate purposes of the Portland Fish Pier Authority shall include the establishment of rules and regulations for the safe, businesslike operation of the entire Portland Fish Pier and shall include all those purposes which may be incidental to the management of said Portland Fish Pier.

FIS.ART OF INC.KOS.3
05.25.89

EXHIBIT B

Articles FIFTH and EIGHTH of Articles of
Incorporation of Portland Fish Pier Authority

DESIGNATION, QUALIFICATIONS, AND RIGHTS OF SOLE
VOTING MEMBER AND CHANGE IN NUMBER OF DIRECTORS

1. Designation of Member. The City of Portland, Maine shall be the sole voting member of Portland Fish Pier Authority and is hereby designated the Corporator. The Corporator shall act by and through its City Council in all matters relating to the Portland Fish Pier Authority.
2. Voting Rights of the Corporator. The Corporator shall have the sole and exclusive right to vote on all matters which by law require action of voting members, including, but not limited to the following:
 - (a) To appoint the Board of Directors, including, but not limited to, the initial Board of Directors, with the sole exception being the Class C Director, who shall be appointed by the Commissioner of the Maine Department of Transportation.
 - (b) To amend these Articles of Incorporation or to authorize a merger, consolidation or dissolution of this corporation, or to authorize the sale of all or substantially all of the assets of the corporation.

FIS.ART OF INC.KOS.3
05.25.89

(20) 22 - 6/07/89

City of Portland, Maine
IN THE CITY COUNCIL

**ORDER AUTHORIZING THE INCORPORATION
OF THE PORTLAND FISH PIER AUTHORITY**

ORDERED, that the municipal officers are authorized to act as incorporators and to do all acts necessary to effect the incorporation of a local development corporation, to be known as the Portland Fish Pier Authority, under Title 13-B of the Maine Revised Statutes;

BE IT FURTHER ORDERED, that a copy of the Articles of Incorporation of said Portland Fish Pier Authority be attached hereto and incorporated by reference herein.

A TRUE COPY.

ATTEST:

Eunice A. Curran
EUNICE A. CURRAN
DEPUTY CITY CLERK, PORTLAND, MAINE

DATED *August 12, 1989*

FISHPIES.KOS.ORD.1
05.24.89

ORDER

AUTHORIZING THE INCORPORATION
OF THE PORTLAND FISH PIER
AUTHORITY

(Ad Hoc Fish Pier Committee,
Robert B. Ganley, Chair)

IN THE CITY COUNCIL

June 7, 1989

Attest:

Joan Dunne
City Clerk

Yes

No

Given First reading.

June 19, 1989 - Removed from the table. Given
second reading and passed, 9 Yeas.

MEMORANDUM
City Council Agenda Item

FROM: William Needelman
DATE: August 12, 2022
SUBJECT: Order 62-22/23 Amending the Portland Fish Exchange Bylaws - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Councilor Tae Chong, Portland Fish Exchange Board Director
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 9/19/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: Corporation Counsel has reviewed the proposed amendments to the Bylaws and is fine to move forward.

PRESENTATION: William Needelman/3 Minutes

I. SUMMARY

In order to provide better representation of the Maine fish harvesting fleet, the Portland Fish Exchange Board of Directors voted unanimously (5 to 0) on May 19, 2022, to recommend amendments to their Bylaws to expand eligibility for Class A Board members (sellers) to include Sector Managers, as recognized by regional fisheries regulators, and is requesting that the City Council approve those amendments.

II. AGENDA DESCRIPTION

At its May 19, 2022 meeting, the Portland Fish Exchange Board of Directors voted (5-0) to recommend that the City Council approve an amendment to the Portland Fish Exchange Bylaws. The amendment will expand eligibility for Class A Board members (sellers/harvesters) to include a person currently appointed or employed as a Sector Manager from a recognized Greater Atlantic Regional Fisheries Office (GARFO) sector. Sector Managers represent member-based groups of fishing vessels operating under a common management of harvesting "quota" (known as a "Sector") as allowed under current regional fisheries regulations.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Portland Fish Exchange (PFE) is the quasi-municipal fish auction located at the Portland Fish Pier. Owned by the City of Portland, the PFE is overseen by a City Council appointed eight-member Board of Directors. The Board includes various member seats, including sellers (fish harvesters), buyers (fish processors and dealers), a City Councilor, a representative of the City Manager, and at-large members.

Currently, the Class A (seller) seats are limited to vessel owners, their employees, and their registered representatives at the PFE. The PFE Board of Directors is requesting that the City Council expand eligibility requirements for the Class A seat to include so-called "Sector Managers".

Fish harvesting "Sectors" are organizations of member harvesters (vessels) that pool fish quotas attached to Federal commercial fishing permits. Sector management was established by the National Oceanic and Atmospheric Administration after the drafting of the current PFE Bylaws. The program is managed regionally by the Greater Atlantic Regional Fisheries Office (GARFO) located in Gloucester, MA.

Sector Managers are highly skilled and knowledgeable members of the seafood industry and play a key role in the modern Gulf of Maine commercial fishery.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result of the recommended amendment will align the Bylaws of the PFE with the current fisheries management framework and will expand participation on the Board to key stakeholders in the industry.

V. FINANCIAL IMPACT

None.

VI. STAFF ANALYSIS AND BACKGROUND

The Portland Fish Exchange is a facility of state-wide importance and requires robust participation by seafood industry representatives. The Class A seats are critical to provide the Board with access to harvester insights and needs. However, active vessel captains are often not able to serve as Board members due to the demands of their craft and the need to be on the water. By recognizing the role of Sector Managers as agents of harvester collectives, the Board broadens opportunities to seat qualified individuals who can legitimately represent harvester interests.

VII. RECOMMENDATION

Staff supports the actions of the Board and recommends passage of the amendments to the Portland Fish Exchange Bylaws.

VIII. LIST ATTACHMENTS

1. Portland Fish Exchange Bylaws Amnd 9.19.2022
2. PFEX Bylaws proposed change rev for Council 091422
3. 5-19-2022 PFE Bd Mtg Mins-Approved by Amend Bylaws

Prepared by:

William Needelman

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER AMENDING THE PORTLAND FISH EXCHANGE BYLAWS

ORDERED, that the Portland City Council, acting in its capacity as sole Corporator of the Portland Fish Exchange, hereby amends the Bylaws of the Portland Fish Exchange in the substantially the form attached hereto.

BYLAWS OF PORTLAND FISH EXCHANGE¹

ARTICLE I

Name

Section 1. Name. The name of this corporation is the Portland Fish Exchange.

ARTICLE II

Principal Office

Section 1. Principal Office. The principal office for the conduct of the activities of the corporation will be located at the premises leased by the corporation on the Portland Fish Pier, Portland, Maine.

ARTICLE III

Meetings of Corporator

Section 1. Annual Meeting. The Annual Meeting of the Corporator will be held at the principal office of the corporation on the third Monday of October in each year. The Secretary will cause a notice of the Annual Meeting (i) to be posted at some conspicuous place at the principal office of the corporation; and (ii) to be mailed to the Clerk of the City of Portland, in each case not less than 30 days before the date fixed for the meeting. The Board of Directors as well as members of the public will be entitled and encouraged to attend the

¹ This version reflects amendments passed in 2017.

Annual Meeting and will be entitled, subject to the direction of the chairperson of the meeting, to ask questions and state their views.

Section 2. Special Meetings. Special Meetings of the Corporator may be called by the President, by the Board of Directors or by the Corporator itself to be held at such time and place as may be fixed in the call for the meeting. If no such place is fixed, the Special Meeting will be held at the principal office of the corporation. Notice of Special Meetings will be given in the same manner as the notice of the Annual Meeting, and the Board of Directors and members of the public will have the same right to attend, to ask questions and to state their views as in the case of the Annual Meeting.

Section 3. Proxies. The Corporator may vote at any Annual or Special meeting of the Corporator by a proxy or proxies, executed in writing by the Corporator and authorized by its City Council. The Corporator may, but is not required to, appoint any one or more or all, of its City Councilors as its proxy agents to represent it at any Annual or Special Meeting of the Corporator.

Section 4. Action in Writing. Notwithstanding any other provision of these Bylaws to the contrary, any action required or permitted by law or otherwise to be taken at a meeting of the

Corporator may be taken without a meeting, if a written consent, setting forth the action so taken, is signed by the Corporator by authority of its City Council and filed with the Secretary of the corporation as part of the corporate records. Such written consent will have the same effect as a unanimous vote by the Corporator and may be described as such in any certificate or document required or permitted to be filed with the Secretary of State as well as in any certificate or document prepared or certified by any officer of the corporation for any purpose.

ARTICLE IV

Board of Directors

Section 1. Powers; Eligibility. The activities of the corporation will be managed by a Board of Directors which will have the powers and duties set forth in the Articles of Incorporation, these Bylaws and the Corporation's own Rules and Regulations. Directors may not be employees of the State of Maine, but they shall be residents of the State of Maine.

Section 2. Qualification of Directors. The Board of Directors will be divided into four classes, as follows:

Class A Directors. There will be two Class A Directors who will be either 1) an individual engaged primarily in the business of fishing or harvesting fish, either for their own account or as a partner or employee, and whose vessel

is home ported in the State of Maine, ~~or~~ 2) a registered Seller Representative in good standing with the Exchange, or 3) a sector manager from a recognized Greater Atlantic Regional Fisheries Office (GARFO) sector or its successor.

No person will be eligible to be appointed as a Class A Director unless ~~he or she has~~ they, or the entity they represent, have transacted business with the corporation during the 12 months immediately preceding ~~his or her~~ their appointment. At least one Class A Director shall either be a resident of the City of Portland or be employed or contracted and, during ~~his or her~~ their term remain employed or contracted, by a vessel whose home port is the City of Portland.

Class B Directors. There shall be two Class B Directors who will be individuals engaged primarily in the business of processing or purchasing fish or fish products either for their own account or as partners or employees of others. No person will be eligible to be appointed as a Class B Director unless he or she has transacted business with the Corporation during the 12 months immediately preceding ~~his or her~~ their appointment. At least one Class B Director shall be either a resident of the City of Portland or be employed and, during ~~his or her~~ their term remain employed,

by a business engaged in the processing or purchasing of fish or fish products, the principal location of which is in the City of Portland.

Class C Directors. There shall be two Class C Directors from the public at large, one of whom shall be a resident of the City of Portland, and the other of whom shall be a resident of the State of Maine.

In all cases, the decision of the Corporator as to whether or not individuals either qualify as, or are eligible to be appointed as, Class A, Class B or Class C Directors will be binding and conclusive, and not be open to question by anyone.

Class D Director. There shall be one Class D Director. Notwithstanding any provision contained in these Bylaws to the contrary, such person: (i) need not be a resident of the City of Portland; (ii) may, but need not be, a member of the City Council of the City of Portland; and (iii) may, but need not be, an employee of the City of Portland. The provisions of Article IV of these Bylaws, Section 3, regarding public advertisement; Section 4, regarding term of office; and Section 5, regarding opportunity to make recommendations, will not apply to the Class D Director. References to classes of Directors in Section 4 will not

apply to the Class D Director.

Class E Director. There will be one Class E Director who will be nominated by the City Manager. The provisions of Article IV of these Bylaws, Section 3, regarding public advertisement; Section 4, regarding term of office; and Section 5, regarding opportunity to make recommendations, will not apply to the Class E Director. References to classes of Directors in Section 5 will not apply to the Class E Director.

Section 3. Nomination of Directors. In determining those persons who will be appointed as Directors at the Annual Meeting of the Corporator, the Corporator, acting through its City Manager or an appropriate committee, will receive nominations for each class of Director. Nominations for Directors of the Corporation in classes A through C will be solicited by public advertisement.

Before electing any nominees as Class A, Class B or Class C Directors, the Corporator will advise the Board of Directors, then in office, of the names of all nominees and provide the Board with an opportunity to make its own recommendations in regard to them.

Section 4. Term of Office. Directors in each of the five Classes of Directors will be elected by the Corporator to serve

as such for terms of two years, beginning on November 1, and expiring on October 31. However, all Directors will continue to serve until their successors have been duly elected and qualified. In the event of an off-schedule election of a Director, such Director's term will expire on October 31 in the second year of service, regardless of election date.

Section 5. Vacancies. Vacancies which may occur in any Class of the Board of Directors for any reason will be filled for the unexpired term by the Corporator who will appoint an individual who is qualified and eligible for such Class. Before filling any such vacancy, the Corporator will receive nominations and provide the Board of Directors with an opportunity to make its own recommendations with respect to any nominee as provided in Section 3.

Section 6. Resignations. Any Director may resign ~~his or~~ hertheir office by delivering a written resignation to the President. A resignation will become effective upon the date or condition stated therein.

ARTICLE V

Meetings of Board of Directors

Section 1. Annual Meeting. The Annual Meeting of the Board of Directors will be held without call at the first Regular Meeting following the Annual Meeting of the Corporator either at

the principal office of the corporation or at some other place fixed by the President.

Section 2. Regular Meetings. Other Regular Meetings of the Board of Directors may be held without call at such place, date and time as may be fixed, from time to time, by resolution of the Board of Directors.

Section 3. Special Meetings. Special Meetings of the Board of Directors may be called by the President, any two (2) Directors or by other persons who are authorized by law to call Special Meetings. The place, date and time of Special Meetings will be fixed in the call therefore.

Section 4. Notice of Meetings. Notices of Annual, Regular, or Special Meetings of the Board of Directors will be given either by the person or persons calling the same or by the President or Secretary, and will be posted in a conspicuous place on the premises leased by the corporation at the Portland Fish Pier at least five (5) days before the meeting and also provided to the directors at least five (5) days in advance.

Neither the business to be transacted thereat nor the purpose of any Annual, Regular or Special Meeting of the Board of Directors is required to be specified in the notice except when required by law.

Section 5. Public Participation. Members of the public may

attend any meeting of the Board of Directors and will be entitled, subject to the direction of the chairperson of the meeting, to ask questions and state their views, provided that the Board of Directors may go into executive session and determine matters therein when, having a quorum, a majority of them deem it appropriate to do so.

Section 6. Quorum. Four Directors will constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of a majority of the Directors, present at a meeting of the Board at which a quorum is present, will be deemed to be the act of the Board of Directors. Directors may be present at the meeting of the Board and fully participate via teleconference.

Section 7. Indemnification. The corporation will in all cases indemnify any person who either was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by ~~him or her~~them in connection with such action, suit or proceeding to the maximum extent permitted by

law, including, without limitation, 13-B M.R.S.A. §714, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI

Officers

Section 1. Officers. The officers of the corporation will be chosen annually at the Annual Meeting of the Board of Directors, and will consist of a President, Vice President, Treasurer and Secretary. A single individual may serve in more than one office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 2. Term. Officers will be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors have been duly elected and qualified. Officers may succeed themselves for any period of years.

Section 3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby.

Section 4. Vacancies. A vacancy in any office may be filled by the Board of Directors with a current Board member.

Section 5. President. The President is required to be a Director. He or she will preside at all meetings of the Board of Directors.

Section 6. Vice President. The Vice President will preside at all Meetings of the Board of Directors in the absence of the President and will perform such other duties as may be assigned

by the President.

Section 7. Secretary. The Secretary will attend all meetings of the Corporator and the Board of Directors and keep minutes of all meetings of the Corporator and the Board of Directors in a book or books kept for that purpose. The Secretary will also perform such other duties as may be prescribed by either the Board of Directors or the President. The Secretary, will have authority to affix the corporate seal to any instrument which requires it; and, when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 8. Treasurer. The Treasurer will have the responsibility for monitoring all corporate funds and securities, and will have access to financial records at all times. He or she will work with the Exchange Manager to ensure appropriate and timely financial reports are made available to the Board; manage the Board's review of and action related to its financial responsibilities; and ensure an annual audit is performed. The Treasurer will also perform such other duties as may be prescribed either by the Board of Directors or the President.

Section 9. Exchange Manager. The Exchange Manager will have superintendence of the marketing activities of the corporation, including, without limitation, all auction sales held on the premises of the corporation and such other powers and duties as

may be set forth in the Rules and Regulations. The Exchange Manager may be an individual, corporation or partnership, and will be selected by the Board of Directors which will determine the compensation of the Exchange Manager. The Exchange Manager, as such, may not be an officer of the corporation or a member of the Board of Directors. Section 10. Other Employees. Other employees of the corporation will be appointed, supervised by, and serve at the pleasure of the Exchange Manager.

ARTICLE VII

Corporate Seal

The corporate seal will be circular in form and will bear the words and figures "Portland Fish Exchange," the word "Maine and the year of the corporation's incorporation. The form of such seal may be altered from time to time by the Board of Directors.

ARTICLE VIII

Rules and Regulations

Section 1. Rules and Regulations. The Rules and Regulations of this corporation will be developed and adopted by the Board of Directors for the administration and operation of the fish exchange and will not be considered Bylaws of the corporation. The Rules and Regulations may not conflict with the Articles of Incorporation or with these Bylaws.

Section 2. Amendment. The Secretary will report any

amendment of the Rules and Regulations, as adopted by the Board of Directors, to the President, Treasurer, Secretary or Clerk of the Portland Fish Pier Authority, a Maine corporation, within five (5) days after adoption, so that it may take action with respect thereto in accordance with Exhibit B of the Articles of Incorporation, as amended by order of the City Council of the City of Portland, acting as sole corporator, on June 1, 1989.

ARTICLE IX

Adoption and Amendment of Bylaws

Section 1. Adoption. The initial Bylaws of this corporation were adopted by the incorporators.

Section 2. Amendments. The power to amend, alter or repeal the Bylaws is vested in the Corporator.

**Portland Fish Exchange
Board of Directors Meeting Minutes
3 PM, May 19, 2022, via Zoom**

Board: Ellen Sanborn (President), Tom Valleau, Avis Leavitt, Nick Alfiero, Rob Odlin, John Arnold (Quorum of Members)

Staff: Steven Schultz

Public: Bill Needleman, Mary Hudson, Bens Martens, Alan Tracy

- 1. Meeting called to order** at 3:05 PM by President
- 2. April 21, 2022, and March 17, 2022, Meeting Minutes:** Motion for approval: Rob and seconded by Ellen Correction of March 17 minutes: Dropping Springs Vote: 6-0-0
- 3. Management Report:** Steven reviewed provided Management Report
- 4. Election of Board President and VP:** President: Rob nominated by Nick and seconded by Avis Election: 6-0-0 Vice President Effective May 26, 2022: Nick nominated by Rob and seconded by John Election: 6-0-0
- 5. New buyer application: Seatrade:** Motion for approval by John and seconded by Rob: Vote:5-0-0
- 6. Bylaw amendment to address board eligibility to add sector manager to represent Maine boats:** Motion for approval by John and seconded by Avis Vote:5-0-0
- 7. Update on 5/16/22 FPA meeting:** PFE request for funds was presented to the FPA. FPA members requested more data that is being prepared. A quorum of FPA members was not present. The next meeting is scheduled for 5 PM on May 31, 2022
- 8. Other Business:** None
- 9. Adjourn:** Motion to adjourn by John and seconded by Nick Vote: 6-0-0 Adjourn at 4:50 PM
- 10. Next Meeting: 3 PM, June 16, 2022**

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person, however space in Council Chambers is limited. The public is therefore strongly encouraged to participate remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/84536489671?pwd=R0NHMmlyRXdPWXVKYUNYdDBoVIU3UT09>

Passcode: 649486

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 719 359 4580 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053

Webinar ID: 845 3648 9671

Passcode: 649486

PLEDGE OF ALLEGIANCE:

Mayor Snyder led all present in the Pledge of Allegiance.

ROLL CALL:

Mayor Snyder called the meeting to order at 5:00pm.

City Councilors Present: Councilor Fournier, Councilor Rodriguez, Councilor Dion, Councilor Ali, Councilor Zarro, Councilor Trevorrow, Councilor Pelletier, Councilor Chong, Mayor Snyder.

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Mayor Snyder opened the floor for public comment. The following individuals spoke:

Ben Shaw (Peak Maine Cannabis), Aaron Parker (Decriminalize Maine), Dereck Shirley (Board member of the Maine Cannabis Coalition), George Rheault (Hanover Street)

ANNOUNCEMENTS:

Announcing Barron Center Nurse Manager Joshua Stevens' receipt of the Excellence in Long Term Care Award from the Maine Long Term Care Ombudsman Program and the Maine Health Care Association - by Kate Snyder, Mayor

Mayor Snyder recognized Barron Center Nurse Manager Joshua Stevens' as recipient of the Excellence in Long Term Care Award from the Maine Long Term Care Ombudsman Program and the Maine Health Care Association.

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Zarro and seconded by Councilor Chong for approval of the August 8, 2022 (Meeting 1 of 2 & Meeting 2 of 2) City Council Meeting Minutes. Passage 9-0.

**Approval of the August 8, 2022 draft Special City Council Meeting minutes
(Meeting 1 of 2, 4:00pm)**

**Approval of the August 8, 2022 draft Special City Council Meeting minutes
(Meeting 2 of 2, 6:15pm)**

PROCLAMATIONS:

**Proclamation 1-22/23 Recognizing September 2022 as African Heritage Month -
Sponsored by Kate Snyder, Mayor**

Councilor Ali read Proclamation 1-22/23 Recognizing September 2022 as African Heritage Month into the record.

**Proclamation 2-22/23 Recognizing Portland Little League All-Star Baseball Team's
State Championship Win - Sponsored by Kate Snyder, Mayor**

Mayor Snyder read Proclamation 2-22/23 Recognizing Portland Little League All-Star Baseball Team's State Championship Win into the record.

APPOINTMENTS:

**Order 51-22/23 Appointing Sarah Colton Constable for the Department of Public
Works - Sponsored by Danielle P. West, Interim City Manager**

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage.
Passage 9-0

Mayor Snyder opened the floor for public comment. No one spoke.

LICENSES:

**Order 52-22/23 Granting Municipal Officers' Approval of Cellardoor Winery Inc.,
dba Cellardoor Winery. Application for Outdoor Dining on Public Property at 127
Middle Street - Sponsored by Danielle P. West, Interim City Manager**

Motion was made by Councilor Chong and seconded by Councilor Zarro for passage.
Passage 9-0

Mayor Snyder opened the floor for public comment. No one spoke.

**Order 53-22/23 Granting Municipal Officers' Approval of Dock Fore Inc., dba Dock
Fore. Application for Class A Lounge with Outdoor Dining on Public Property at
336 Fore Street - Sponsored by Danielle P. West, Interim City Manager**

Motion was made by Councilor Chong and seconded by Councilor Fournier for passage.

Passage 9-0

Mayor Snyder opened the floor for public comment. No one spoke.

UNFINISHED BUSINESS:

Order 48-22/23 Approving Proposed Ballot Question and Summary of Council-Initiated Charter Amendment Re Gender-Neutral Language - Sponsored by Ashley Rand, City Clerk

Motion was made by Councilor Chong and seconded by Councilor Zarro to postpone until March of 2023 . Passage 9-0

Mayor Snyder opened the floor for public comment. The following individuals spoke: Councilor Zarro, Councilor Fournier, Councilor Trevorro, Mayor Snyder

Order 48-22/23 is postponed until City Council meeting that will be held on March 6, 2023.

Order 43-22/23 Approving Proposed Ballot Questions and Summaries Re: Charter Commission Modifications to Portland City Charter and Placing them on the November 8, 2022 Ballot - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened public hearing.

The following individuals spoke:

Pam Plum (104 Park Street), Zach Barowitz (Pleasant Street), Tom Allen (17 Fairmont Street), Pat Washburn (Cumberland Ave), Michael Kebede (Charter Commission Chair), Catherine Buxton (141 Reed Street), Nini McManamy (Munjoy Hill), Councilor Fournier, Councilor Ali

Mayor Snyder closed the public hearing.

Motion to Amend Council Order to "further order that the City Clerk place municipal referendums on the November 8, 2022 ballot by lettering Citizen Initiatives A-E and numbering the Charter Commission Initiatives #1-8".

Moved by Councilor Ali, Seconded by Councilor Fournier

The following commented on the amendment: Councilor Zarro, Corporation Counsel

Motion passed 9-0

Motion to approve council order as amended was made by Councilor Chong and seconded by Councilor Zarro for passage. Passage 9-0

Mayor Snyder opened the floor for council discussion. The following individuals spoke:

Mayor Snyder, Councilor Dion, Councilor Chong, Danielle West, Councilor Rodriguez

Order 44-22/23 Appropriating an Additional \$255,800 in HOME Investment Partnership Program Funds to Community Housing of Maine: RE 83 Middle Street - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage.

Passage 9-0

Mary Davis (Acting Housing and Community Development Division Director) gave an

overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street), Councilor Ali, Councilor Chong

Written Public Comment on Order 44-22/23

Order 45-22/23 Accepting and Appropriating a Federal Aviation Administration Airport Infrastructure Grants for Federal Fiscal Year 2022 as provided under the Bipartisan Infrastructure Law - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage.
Passage 9-0

Paul Bradbury (Director of Portland Jetport) gave an overview of this item.

Mayor Snyder opened the floor for public comment. No one Spoke.

Order 46-22/23 Accepting and Appropriating a \$279,000 Grant from Land For Maine's Future Program for North Deering Conservation and Recreation Land Project - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Fournier and seconded by Councilor Chong for passage.
Passage 9-0

Ethan Hipple (Director of Parks) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street), Councilor Fournier, Councilor Rodriguez, Danielle West, Mayor Snyder

Order 47-22/23 Accepting and Appropriating a \$161,000 Donation from the Portland Parks Conservancy for the Riverton Trolley Park Project - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage.
Passage 9-0

Ethan Hipple (Director of Parks) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street), Councilor Fournier

Order 54-22/23 Accepting and Appropriating an \$11,472.50 Donation for the Western Promenade Gazebo - Sponsored by Danielle P. West, Interim City Manager

****Item taken out of Order, read directly after Order 47-22/23**

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage.
Passage 9-0

Ethan Hipple (Director of Parks) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: Councilor Pellitier

Order 49-22/23 Adopting Amendment to Portland City Code Chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

Motion to postpone item indefinitely. Moved by Councilor Ali, Seconded by Councilor Fournier. Passage 8-0-1 (Councilor Dion Absent)
Item postponed indefinitely.

Order 50-22/23 Amending Portland City Code Chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

Motion to postpone item indefinitely. Moved by Councilor Fournier, Seconded by Councilor Ali Passage 8-0-1 (Councilor Dion Absent)
Item postponed indefinitely.

ORDERS:

Order 55-22/23 Approving a Memorandum of Understanding between Portland and the Friends of Fort Gorges - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Trevorrow and seconded by Councilor Rodriguez for passage. Passage 9-0

Ethan Hipple (Director of Parks) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke:

Paul Drinin (Friends of Fort Gorges), Councilor Ali, Councilor Trevorrow, Mayor Snyder

Written Public Comment on Order 55-22/23

Order 56-22/23 Accepting Three Sidewalk Easements along Riverside Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Fournier and seconded by Councilor Chong to pass item as an emergency. Passage 9-0

Danielle West (Interim City Manager) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: Mayor Snyder, Councilor Dion

Item passed as emergency and takes effect immediately.

Order 57-22/23 Granting an Easement to Portland Water District at the Barron Center Re: Replacement of 12-Inch Water Main - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Ali and seconded by Councilor Chong to pass item as an emergency. Passage 9-0

Danielle West (Interim City Manager) gave an overview of this item.

Mayor Snyder opened the floor for public comment. No one spoke.

Item passed as emergency and takes effect immediately.

Order 58-22/23 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades - Sponsored by Danielle P. West, Interim City Manager

This is first reading. No action needed.

AMENDMENTS:

Order 59-22/23 Traffic Schedule Amendment Re: Thames Street - Sponsored by Danielle P. West, Interim City Manager

This is first reading. No action needed.

Order 60-22/23 Amendment to Portland City Code Chapter 34 re: Landcare Ordinance - Sponsored by the Sustainability & Transportation Committee, Councilor Andrew Zarro, Chair

This is first reading. No action needed.

ADJOURNMENT:

Motion was made by Councilor Ali and seconded by Councilor Chong to adjourn. Passage 9-0 at 7:15pm.

A TRUE RECORD

Ashley Rand, City Clerk

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**PROCLAMATION RECOGNIZING SEPTEMBER 24 TO OCTOBER 2, 2022
AS DIAPER NEED AWARENESS WEEK**

WHEREAS, diaper need is the condition of not having a sufficient supply of clean diapers to keep babies and toddlers clean, dry, and healthy and can adversely affect the health and well-being of babies, toddlers, and their families, and

WHEREAS, national surveys and research studies report that one in three families struggles with diaper need, and 48 percent of families delay changing a diaper to extend the available supply, and

WHEREAS, infants and toddlers go through six to twelve diapers each day during the two to three years they wear diapers, and

WHEREAS, purchasing enough diapers to keep a baby or toddler clean, dry, and healthy can consume 14 percent of a low-wage family's net income, and

WHEREAS, diaper banks across the country saw enormous increases in demand for diapers and expanded their distribution of diapers by an average of 86 percent during the COVID-19 Pandemic, and

WHEREAS, a daily or weekly supply of diapers is generally an eligibility requirement for babies and toddlers to participate in child care programs and quality early-education programs that enable children to thrive and parents to work, and

WHEREAS, without enough diapers, babies and toddlers risk infections and health problems that may require medical attention, resulting in medical costs, destabilizing a family's economic prospects and well-being; and

WHEREAS, Portland is proud to be home to trusted community-based organizations that distribute diapers through various channels, including Michael Klahr Jewish Family Services that recognize the importance of diapers in ensuring health and providing economic stability for families, and

WHEREAS, the staff and volunteers at diaper banks continue to serve on the front lines of Portland's pandemic response by helping families in our communities weather the crisis while experiencing greatly increased demand for diapers due to the pandemic and economic shutdown, and

WHEREAS, the people of Portland recognize that diaper need is a public health issue, and that now that our state on the road to pandemic recovery, diaper banks will continue to play a critical role in supporting families and advancing our collective economic growth

NOW, THEREFORE, BE IT RESOLVED, THAT I, Kate Snyder, Mayor of the City of Portland, Maine and the members of the Portland City Council do hereby declare September 24 to October 2, 2022 as Diaper Need Awareness Week in the city of Portland, and invite citizens of Portland to thank the dedicated volunteers and staff of diaper banks for their meaningful service during this crisis, and to spread awareness of this important issue so that all of Portland's children and families can thrive and reach their full potential.

Signed and sealed this 19th day of September, 2022


**Kate Snyder, Mayor
City of Portland**

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**PROCLAMATION RECOGNIZING SEPTEMBER 26 TO SEPTEMBER 30, 2022
AS CLEAN ENERGY WEEK**

WHEREAS, Maine enjoys abundant forms of renewable energy that powers homes and businesses across the State, and

WHEREAS, the generation of power from renewable sources, including forms such as hydroelectric, wood, wind, and solar, accounts for nearly four-fifths of the net electricity generation in Maine, and

WHEREAS, Maine leads New England in wind-powered generation and ranks sixth in the nation in the share of its electricity generated from wind, and

WHEREAS, the American Council for an Energy-Efficient Economy ranked Maine 16th in its 2020 State Energy Efficiency Scorecard, and

WHEREAS, Maine has established mandates to reduce greenhouse gas emissions 45 percent below 1990 levels by 2030 and 80 percent by 2050 and created the Maine Climate Council to provide recommendations to meet these targets, and

WHEREAS, the City of Portland has established a goal to utilize 100% clean energy for municipal operations by 2040 and to reduce greenhouse gas emissions community wide 80 percent below 2017 levels by 2050, and

WHEREAS, the City of Portland has constructed a 1 mW solar array on Ocean Avenue, a 430 kW array at the Portland Jetport, and a 28 kW array at Riverside Golf Course and has agreements to purchase 23,000 mWhs of electricity annually from renewable energy developers in Maine, and

WHEREAS, National Clean Energy Week provides an opportunity for individuals, local governments, corporations, and other organizations in Maine to champion common sense solutions that address the United States' evolving economic and energy needs,

NOW, THEREFORE, BE IT RESOLVED, THAT I, Kathleen Merchant Snyder, Mayor of the City of Portland, Maine and the members of the Portland City Council do hereby declare September 26 to September 30, 2022 as Clean Energy Week in the city of Portland, Maine and invite the citizens of Portland recognize this observance

Signed and sealed this 19th day of September, 2022


**Kate Snyder, Mayor
City of Portland**

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**PROCLAMATION RECOGNIZING SEPTEMBER 30, 2022 AS THE
NATIONAL DAY OF REMEMBRANCE FOR U.S. INDIAN BOARDING SCHOOLS**

- WHEREAS,** the City of Portland stands in solidarity with Maine tribal, regional, state and national governments to recognize the traumatic and harmful history of Indian Boarding Schools; and
- WHEREAS,** in 2021, more than 1200 potential unmarked graves were discovered at Indian Residential School sites in Canada in the provinces of British Columbia and Saskatchewan prompting the United States to consider its own painful history with Indian Boarding Schools; and
- WHEREAS,** the United States also enacted laws and implemented policies establishing and supporting Indian boarding schools across the nation, beginning with the Indian Civilization Act of 1819 and continuing over a century through the 1960s; and
- WHEREAS,** as a result of those laws, nearly 400 Native boarding schools were established and run by religious organizations or the U.S. government throughout the nation and the Pacific Northwest with over 70 native boarding schools still operating today; and
- WHEREAS,** the National Native American Boarding School Healing Coalition estimates that by 1926 nearly 83% of Native American children were forcibly removed from their homes, families and communities and placed in boarding schools nationwide; and
- WHEREAS,** the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission findings recognized the historical and ongoing cultural genocide of the Wabanaki people as a result of removal, displacement, and failure to recognize the sovereignty of the Maine tribal nations and the rights of their children; and
- WHEREAS,** on September 30, 2021 Congresswoman Sharice Davids, a member of the Ho-Chunk Nation, introduced H.R.5444 - Truth and Healing Commission on Indian Boarding School Policies Act in response to the discoveries made in the United States and Canada in previous years. This commission was intended to begin the process of investigating and analyzing the records from the 408 known Indian boarding schools.
- WHEREAS,** also on September 30, 2021, Senator Elizabeth Warren, introduced S.2907, a companion bill with the same title to further express support for the development of this Commission; and
- WHEREAS,** on May 11, 2022 the first volume of the Federal Indian Boarding School Initiative Investigative report was published by the Department of the Interior indicating that more than 50 burial sites had been discovered at United States Boarding School locations; and

WHEREAS, in her presentation of this volume to the public, Secretary of the Interior Debra Haaland, Laguna Pueblo, said “*The consequences of federal Indian boarding school policies — including the intergenerational trauma caused by the family separation and cultural eradication inflicted upon generations of children as young as 4 years old — are heartbreaking and undeniable*”;

NOW, THEREFORE, BE IT RESOLVED, that I, Kathleen Merchant Snyder, Mayor of the City of Portland, and members of the City Council do hereby recognize September 30, 2022 as a Day of Remembrance for U.S. Indian Boarding Schools.

Signed and sealed this 19th day of September, 2022

A handwritten signature in blue ink that reads "Kate Snyder". The signature is fluid and cursive, with the first name "Kate" and last name "Snyder" clearly legible.

Kate Snyder, Mayor

City of Portland

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 9, 2022

SUBJECT: Order 63-22/23 Appointing Gynt Grube as Assistant Assessor - Sponsored by Danielle West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action

Can action be taken at a later date: No Time sensitive as the city is currently committing the tax roll. This position will act as the Assistant Tax Assessor certified to commit the tax roll and work on appeals.

Does this item involve a new contract with the City: no

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order would appoint Gynt Grube as Assistant Assessor in order to assist the Assessor's Office with timely certification of the tax rolls, issuing assessor decisions, representing the Assessor's Office in appeals, and other assessment duties. Gynt Grube is a highly competent, experienced certified Maine Assessor, serving with Tyler Technologies as a project director for the City's Revaluation project over the past three years.

Five affirmative votes are required for passage after public comment. Staff is requesting that this item be passed as an emergency in order to fill this essential position as soon as possible. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Grube Gynt_RESUME -- 09-12-2022
2. Grube, Gynt Appointed Assistant Assessor 9.19.2022

Prepared by:

Date: 09/09/2022

Gynt Grube – Appraisal Senior Project Supervisor

Summary Mr. Grube has worked for Tyler Technologies | CLT/A&T Division since March 8, 1981. He joined the company as a residential data collector in eastern Massachusetts. He is experienced in all revaluation activities and has provided analysis and valuation support to projects throughout the country. His responsibilities have included training of employees and clients in data collection, analysis and building of valuation models, CAMA implementation, and valuation support. Mr. Grube is currently serving as a Senior Project Supervisor for revaluation projects.

Project Experience Gynt has supervised numerous revaluation projects in Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New Jersey, and Pennsylvania.

Work Experience In addition to supervising projects, Gynt has provided analysis, valuation, and management support to other revaluation projects in the states listed above, and additionally in Vermont, Ohio, New York, North Carolina, Georgia, and Delaware.

- Education**
- Boston College, 1977-79. Majored in Accounting and Finance
 - IAAO Course I (100) Fundamentals of Real Property Appraisal
 - IAAO Course II (200) Income Approach to Value, MAAO, UMass, Amherst, 1994.
 - IAAO Course (112) Advanced Income Approach to Value, Dedham, MA, 1997.
 - IAAO Course III (300) Fundamentals of Mass Appraisal, RIAAO, Cranston, RI, 1996.
 - IAAO Course 201 Appraisal of Land, 2002.
 - Uniform Standards of Professional Appraisal Practice (USPAP), 2 year intervals, current to 2022.
 - Appraisal Ethics Course, American Society of Appraisers, Wallingford, CT, 1995.
 - Rhode Island Assessment Law and Administration Course, RIAAO, Cranston, RI, 1993.
 - “Using GIS & CAMA” course, Fuss & O’Neill, 2002.
 - Various NRAAO seminar courses: 2001, 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2012, 2017, 2018, 2019.
 - Various IAAO seminar courses: 2004 through 2021.
 - Numerous University of Connecticut CAAO seminar courses, since 1995.
 - Various University of Massachusetts MAAO seminar courses, since 1988.
 - New Jersey Association of County Tax Board Assessor Educational Conferences: 2015, 2016, and 2022.
 - NRAAO Educational Conference: 2017, 2018, 2019.
- Certifications**
- State of Connecticut: Land/Residential, Commercial/Industrial, Personal Property, and Revaluation Supervisor Certifications, Certification #224
 - State of Maine Certified Maine Assessor, CMA Certification #677
 - State of New Jersey: Certified Tax Assessor, CTA Certification #2406
 - State of Vermont: Certified Revaluation Project Supervisor
 - State of Delaware: Certified Assessor, Certification # X6-0010042
- Professional Affiliations**
- CAAO - Connecticut Association of Assessing Officers Member
 - IAAO - International Association of Assessing Officers Member
 - RIAAO – Rhode Island Association of Assessing Officers Member

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPOINTING GYNT GRUBE
AS ASSISTANT ASSESSOR**

ORDERED, that Gynt Grube is hereby appointed as Assistant Assessor, pursuant to 30-A M.R.S. § 2552; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Interim City Manager or her designee to execute any documents necessary or convenient to carry out the intent of this Order; and

BE IT FURTHER ORDERED, that this appointment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow Gynt Grube to work as soon as possible.

MEMORANDUM
City Council Agenda Item

FROM: Clare Norton
DATE: August 22, 2022
SUBJECT: Order 64-22/23 Declaring October 2, 2022 the 31st Annual Maine Marathon, Half Marathon & Relay Festival - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Danielle West; Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 9/19/2022

Can action be taken at a later date: No organizer needs event approval.

Does this item involve a new contract with the City: No

PRESENTATION: Andrew J Downs Director of Public Assembly Facilities will be available to answer any questions.

I. SUMMARY

Order declaring The 31st Annual Maine Marathon, Half Marathon and Relay on Sunday October 2nd 2022 as a festival.

II. AGENDA DESCRIPTION

This is the 31st year that the Maine Marathon Committee has sponsored and organized the Maine Marathon. The expected number of registered runners this year is expected to reach 3,500, with approximately 800 anticipated spectators lining much of the sidewalks, parks and pathways along the race route. Since 1997, more than 5.2 million dollars has been raised to support local charities.

The race will take runners from Baxter Boulevard to Washington Avenue onto Veranda Street, continuing on Route 1 and crossing over Martin's Point Bridge into Falmouth and back. Runners will both start and finish at Baxter Boulevard Extension (the area between Forest Avenue and Preble Street).

III. BACKGROUND

This is the 31st year that the Maine Marathon Committee has organized the Maine Marathon.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The City Council to declare The 31st Annual Maine Marathon, Half Marathon and Relay on Sunday October 2nd 2022 as a festival.

V. FINANCIAL IMPACT

All City staff fees, permit fees and equipment usage fees will be paid by the organizer.

VI. STAFF ANALYSIS AND BACKGROUND

The Public Assembly Facilities Division has worked with the organizers on this event in the past and we are confident in their ability to host this festival.

VII. RECOMMENDATION

It is recommended that this order be declared.

VIII. LIST ATTACHMENTS

1. Maine Marathon 2022 Application
2. Maine Marathon 2022 9.19.2022

Prepared by:

Clare Norton

Date: 08/22/2022



APPLICATION FEE \$25.00
PAYMENT MUST BE MADE WHEN SUBMITTING

APPLICATION

(This is a transferrable/non-refundable fee. If your event is permitted, the \$25.00 will be credited toward your permit fee.)

For uses of city property, there are typically: 1) fees charged for use of the area, 2) a security deposit required, and 3) insurance required. There may be fees due and applications required from other City Departments.

TODAY'S DATE		08/10/22		ORGANIZATION NAME		Maine Marathon	
ADDRESS (Street/City/State/Zip)		PO Box 10836, Portland, ME 04104					
CONTACT NAME(S)				TITLE(S)			
PHONE	Bob Dunfey 207-475-5656 Bob Aube 207-650-2939 Steve Lee 207-440-3523 Greg Lull 207-653-3474	PHONE		PHONE		PHONE	
EMAIL	mainemarathon@gmail.com bobaube@mainetrackclub.com slee@mainetrackclub.com glull@maine.rr.com	EMAIL		EMAIL		EMAIL	

PARK AREA / PUBLIC SPACE REQUESTED	Baxter Blvd, Payson Park and Portland streets		
EVENT DAY(S) & DATE(S)	Sunday, October 2, 2022	RAIN DAY(S) & DATE(S) (50% added fee)	N/A
OVERALL EVENT START & END TIME (When setup will begin until cleanup is expected to be complete.)	6 AM (with some setup on Fri and Sat) until 5 PM	EVENT START & END TIME	6 AM – 3 PM, Races all start at 7:45 AM

EVENT NAME	EXPECTED ATTENDANCE
Gorham Savings Bank Maine Marathon, Half Marathon and Relay	3,500 runners, 900 volunteers and hundreds of spectators

DESCRIPTION OF EVENT: Please be as specific as possible regarding area of public space/park that you would like to permit and please describe event in detail. Please include a detailed map of the proposed event area, proposed route &/or proposed street closures where applicable.

The 3 races have the same start time: 7:45am. There is an early start time of 6am for about 50 slower runners and possibly 25 National Guardsmen and women.

Baxter Blvd and Payson Park closed to vehicles: 5am – 2pm.

Preble Street (from Hannaford to Baxter) closed.

The section of street (Baxter Blvd) between Pedro Field and Hannaford Entrance is the Start Finish Line area and where several tents, refreshments, music will be.

Route: start line: Baxter Blvd + Preble St. intersection, runners head north on Blvd., turn left onto Bates St., continue across Washington Ave. and onto Veranda Street, continuing on down across Martin's Point Bridge and into Falmouth/Yarmouth. Runners then return via Rt. One, Martin's Point Bridge, and Veranda Street, but then turn right onto Sherwood Street, then cross over Presumpscot St., then take a left onto East Kidder St., then cross over Washington Ave., continue on West Kidder St., and then veer left down into Payson Park, take a right onto East Entrance, then when reaching Baxter Blvd., take a right back onto Baxter Blvd., continuing around the cove, finishing on Baxter Blvd. beside Pedro Field.

More Detailed list: During the Maine Marathon / Relay and Half Marathon, streets listed below will be closed to vehicular traffic, Sunday, October 2, 2022:

Preble Street Ext (From Forest Ave. to Hannaford driveway.) – 5am – 4pm,

Baxter Blvd. Ext. (From Forest Avenue to Preble Street) – 5am to 4pm,

Baxter Blvd. (From Preble Street Ext. to Bates Street/Washington Avenue) – 5am to 3pm,

Payson Park roads (including West Kidder Street, Fernald Street entrances into Payson Park, from Washington Avenue) – 5am to 3pm.

Facebook:

https://www.facebook.com/mainemarathon/?eid=ARCP9R0uyiHE1EVd2KxmdNfgwakH7oqA_KkvbSmq-L5QYSkIUZUu_1LiWpmhS5hUNU8widXCVUvTYz_9

Instagram: <https://www.instagram.com/stories/mainemarathon/>

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	Please check: ☐ Yes ☐ FEE ☐ Optional ☐ PLEDGES	
IF YES FOR FEES, HOW MUCH?	FEE	\$50 - 200
	STUDENT FEE	\$ N/A

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?

Primarily the USM garage and lots, nearby public lots, some private company lots and streets

PLEASE CHECK OFF AND ANSWER:

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (10'x10' size or smaller) How many?	X SEVERAL		
* Do you wish to set up a tent(s) and/or stage(s) ? A canopy/tent or stage larger than 10'x10' needs a Temporary Tent or Stage Permit issued by Building Inspections. For permit application, please go to: http://portlandmaine.gov/DocumentCenter/Home/View/2317 or contact the Permitting and Inspections Department at buildinginspections@portlandmaine.gov or 874-8703 for more information. PLEASE apply at least 2-weeks before your event. Tent/Stage Size(s): Exact Location(s) of Tent/Stage Placement Requested: *** In order to drive tent stakes into the ground, DIG SAFE must be contacted: 888-344-7233. ***	X 2 (20x40) tents (setup at Pedro Field) permissio n granted by Little League.		
* Will you be setting up tables and/or chairs ? How many tables: many chairs: many	X		
* Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:	X		

		INFLATABLE ARCH AT START/FINISH LINE ON BAXTER BLVD		
*	Will there be refreshments at the event? Do you wish to sell food? If so, you will need approval from PAFD and possibly a Temporary Food Service License from Business Licensing Office. PLEASE provide them at least 2 weeks advance notice (874-8557). List food and drink / Food Trucks, etc.: PLEASE NOTE: A Temporary Food Service License is NOT needed when: - Food Vendors have a current City of Portland Food License - Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment - Bottled water / water is served A TFSL is needed when food vendors are not licensed or when food is being prepared and cooked at the event.X	X FOOD TRUCKS Totally Awesome Vegan PB&ME Vagabond Coffee Pink Waffle Maiz Lucky Lou		
*	Do you wish to sell non-food items (like T-shirts, crafts, cd's, etc.)? If so, please apply for a Street Goods Vendor License(s) at the Business Licensing Office (874-8557) – 2 week notice. List items you wish to sell:		X	
*	Are you setting up a PA (sound) system? Are you planning on having Amplified Music? Band? DJ? Boom Box? If so, your event may require a concert license. PAFD will advise upon review of your application. Amplified speech (i.e. Press Conference) does not require the license, however, a Sound Security Deposit may be required. There are time restrictions for amplified music/speech in Downtown Parks & Squares: limited to 11:45am – 1:15pm and 1 hour between 5pm - 8pm.	X PA System on site at Start/Finish Line (and other areas along the race course). Organizer will keep volume levels down so that neighbors are not disturbed. AND ACUSTIC GUITAR PLAYER IN WINSLOW PARK		
*	Will your event require electricity? Electricity is available at Deering Oaks Park, Monument Square, Congress Square, Tommy's Park, Post Office Park, Payson Park, Preble Street Grass Area, Eastern Prom, Fort Allen Park, and Lincoln Park. A \$40 activation fee is required.	X BAXTER BLVD. (PEDRO FIELD) PAYSON PARK (BASKETBALL COURT + BLVD)		
*	Are you planning on bringing a Grill for a Barbecue ?		x	

	Grilling is subject to weather conditions and possibly Fire Dept. review.			
*	Will the event require reserved parking spaces / parking meters ? How many? 30 "No Parking" signs may be purchased at the PAFD Office, 212 Canco Rd.	x		
*	Will your event need safety vests, signs, barricades and/or cones ? Please list what you would like to borrow/rent: Limited safety vests, cones & barricades may be borrowed/rented from PAFD Office. Traffic signs may be borrowed/rented from Public Works if needed (874-8493).	80+ BARRICADE S, Detour Signs, Road Closed Signs used, 10 Cones used at Ocean Ave. Turning Lane 10 Cones used at Forest Ave. Turning Lane	No vests; we provide our own	
*	Will your event require street closures ? (Please be specific under "Description of Event") Will your event affect METRO BUS ROUTES ? (If service is affected, organizer needs to work directly with METRO for endorsement / feedback). Please check with Glenn Fenton, METRO: 517-3029 (gffenton@gpmetro.com) to discuss.	X WILL CONTACT METRO BUS		
*	Will your event require Police assistance? An event such as a road race, march or parade in the street, would typically require police assistance. To reserve & hire an Officer(s) to be on site at your event, please visit: https://www.portlandmaine.gov/FormCenter/Police-Department-3/Portland-Police-Overtime-Request-128	X		
*	Will your event require Fire/EMS assistance? (For a large walk/race, it may be required.) To hire or inquire about hiring city Fire/EMS staff to be on site, please email fireprevention@portlandmaine.gov well in advance of the event. For general questions, you may also call 874-8400.	X		
*	Will your event require Parking Control assistance? To hire a Parking Control Officer(s) to be on site at your event, please call 874-8910 well in advance to arrange.		X	
Fees for Police, Fire/EMS or Parking Control Staff will be invoiced by those individual departments & should be paid to them directly.				
*	Will your event require porta-restroom rental(s) or need existing porta-restrooms cleaned? (Some of the parks already have porta-restrooms. Event participants may use these, but a \$25 fee is assessed for events where attendance is 150 or more.) Porta-restrooms may be rented from any of the local companies. Units currently on site are through Associated Septic.	X		

INSURANCE CERTIFICATE INFORMATION				
*	Will your event require liability Insurance? (Commercial liability insurance is required for a walkathon, race, festival, press conference, concert, etc. Product liability insurance is also required if the event has been approved for serving food.)	X		
♦ If you answered YES, you shall procure and maintain occurrence-based Commercial General Liability and Product Liability Insurance, when required, in an amount not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage. You shall name the City of Portland as an additional insured or shall obtain a general liability extension endorsement, for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. The terms of this permit and the insurance coverage shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. You shall also be responsible for any and all deductibles and/or self-insured retentions. ♦ Both the Certificate of Insurance and Additional Insured Endorsement shall be sent to clare@portlandmaine.gov and must state that the policy is endorsed to name the City of Portland as an additional insured pursuant to the date of the event (and rain date).				

PUBLIC ASSEMBLY FACILITIES DIVISION POLICIES

EVENT REVIEW

The PAFD Office holds a monthly meeting where proposed events are discussed and reviewed by City Departments. For some events, organizers will be asked to present before the committee. Some potential factors may necessitate your event receive City Council approval.

ELECTRICITY

All cords in the public way must be covered by rugs, mats or orange cones to avoid public hazard. If weather is inclement (drizzle, rain, snow, etc.) we require that you **not use** electricity, unless all connections and equipment are covered and protected from the elements. If a generator is used, please take all necessary measures to ensure safe operation. Bring a fire extinguisher, set generator up away from activities (and combustibles), store fuel source away from the generator and keep children away from the generator.

BARBECUES - GAS GRILLS ONLY

Only GAS GRILLS are allowed in parks/public spaces – i.e. No Charcoal Grills or open burning. Barbecuing must first be approved by PAFD Office and is subject to weather conditions, and possible further review by the Fire Dept. Grills must be set up away from children's activities. You are required to have a fire extinguisher with in the grilling area.

PORTA-RESTROOMS / BATHROOM FACILITIES

Porta-Restrooms are required for large events and events where refreshments are being served. Some of Portland's parks already have portable restrooms from Associate Septic on site (*Preble Street Grass Area at the Preble Street Parking Lot – across from Hannaford's, *Entrance to Dyer's Flat – beside Payson Park, *Deering Oaks Park – Playground + Ravine, *East End Beach - Winter & Early Spring: Just EEB.) If over 150 people are expected to attend the event, a \$25 user fee is required (paid to PAFD). If extra units are rented by organizer, then no additional user fee is assessed. Porta-restrooms are cleaned M, W, & F. If you would like to guarantee that they are cleaned just prior to your event, then you need to call the porta-restroom company (Associated Septic / Royal Flush, 207-799-1980, M-F) to request and pay for a cleaning. If renting units, organizer has the option of renting from Associated Septic / Royal Flush, or from other local companies.

TRASH

All groups must abide by our Carry In/ Carry Out Policy. Please bring extra trash bags and/or trash receptacles and remove all trash. Do not use existing trash barrels or the metal liners inside. You will need to haul all of your trash out of the park/public space or forfeit the security deposit(s). Please recycle whenever possible, (please do not use Styrofoam - it is NOT recyclable). The area will be checked following your event; if park is clean and conditions for use adhered to, your security deposit will be returned to you. Thank you in advance!

MARKING OF GROUNDS

Please DO NOT mark city property in any permanent way. DO NOT use SPRAY PAINT or SPRAY CHALK. DO NOT STAPLE or NAIL anything to trees. Children's Art Chalk can be used on hardscape areas with permission from PAFD Office. Tape may also be used. If markings remain for more than a few rain storms, event organizers are responsible for removing them. If city staff or contractors need to remove the markings, event organizers are responsible for the cost of staff time and materials. You may also place signs on stakes in the grass areas bordering trails/race routes (when applicable). Please remove all signage immediately following the event.

USE OF CANDLES

It is preferred that LED lighted candles or glow sticks are used. If flammable candles are used, please make sure all candles have drip protectors to prevent wax from dripping on hardscape surfaces, which may cause permanent stains/damage. Please make sure all candles are extinguished before being thrown away. Please collect all spent candles so there is no trash left behind. Please take safety precautions: bring a fire extinguisher, gallon of water, etc. in case of fire. **Any damage** (dripped wax absorbed into hardscape causing stains, etc.) **will result in a forfeiture of your security deposit.**

ADA COMPLIANCE

Event organizer must comply with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act (MHRA), including maintaining the permitted use area and all public rights-of-way accessible during the entirety of the permitted event. In the event the permitted area is rendered inaccessible to disabled persons, and/or by request of PAFD staff, the organizer shall act immediately to provide accessibility. All requests to provide interpretive services shall be the responsibility of the organizer to provide and pay for such services. The organizer shall defend, indemnify, and hold the City harmless from any and all liability and damages resulting from alleged violations of the ADA and/or MHRA.

PARKING ON GRASS AREAS / SIDEWALKS / ILLEGALLY PARKED VEHICLES

Vehicles are prohibited from parking on grass areas/sidewalks/park streets (unless specifically approved by city staff). \$20 will be deducted from your security deposit for each vehicle parked on grass/sidewalk areas or vehicles parked illegally. **Any tire ruts/damage to the grass areas will result in a forfeiture of your security deposit.**

RESERVED PARKING

To reserve parking for your event, please contact the PAFD Office (808-5400 x0). Staff will review your request and can issue you "No Parking" signs (\$25 each*). You will need to label signs and tape them to meters or signposts AT LEAST 24 HOURS PRIOR TO YOUR EVENT. (NOTE: If event is on a Sunday or Monday, NP Signs may need to be posted on the preceding Friday by Noon.) Please do not cover up coin slots on meters. If the reserved parking area has no actual parking meters, you may need to tape signs to sign posts, utility poles, trees, or orange cones (placed on the sidewalk beside the street). Please make sure signs are removed once the event is complete.

ALCOHOL / SMOKE-FREE ZONES

By city ordinance, smoking a cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, or other similar product that relies on vaporization or aerosolization, is prohibited at and within 20 feet of the following outdoor recreation and event areas: downtown squares and plazas, trails, parks, playgrounds, beaches, and athletic facilities. Consumption of alcohol is prohibited in public spaces unless specifically approved by City Council. Please inform all participants / attendees.

AMPLIFIED SOUND POLICY

Outdoor events with amplified sound may require an Entertainment License from the PAFD Office. If the Police Dept./City Staff receive noise complaints, they will respond accordingly.

Please set the PA System up with speakers facing away from businesses/residences to lessen impact.
Please keep volume levels low out of consideration for nearby residents and businesses.

The Permittee (organizer) shall not allow the sound emanating from the event to exceed an A-weighted 85 decibels / C-weighted 95 decibels. One verbal warning shall be issued if the sound has been found to have exceeded those limits. The warning may be given to the sound board operator or the organizer/organizer's designee. If the decibel limit is found to have been exceeded a second time during the same event, the entertainment license (or permission to use a bullhorn/PA system) shall be immediately suspended, the PA system / amplification / bullhorn turned off, and the sound security deposit forfeited.

CANCELLATION POLICY

Event must be cancelled with PAFD prior to event date in order to be eligible for a refund.
If cancelled within 2 weeks of scheduled event date, a \$75 cancellation fee may be charged.

NOTIFICATION

Please keep a copy of your event permit on site at all times. City staff may require proof of permit.
If there are members of the public in the reserved space upon arrival, please present the permit as proof of reservation & approved usage. If you need assistance, please contact the Police Department at (207) 874-8574.
Please ask Portland newspapers to run an article alerting the public to the event.
You may put up temporary A-frame signs to alert the public to your event or place signage on orange cones, etc. Signs are to be up DAY OF EVENT ONLY. Please remove all signage immediately following the event.
Please call Portland Police Dept. (874-8574) on the day of your event to remind them it is taking place.
Please notify any nearby businesses, including restaurants that may have tables out for dining, to alert them to your event.

STREET CLOSURE NOTIFICATION

Should event involve a Street Closure, lasting longer than an hour, PAFD Office requires organizers to give advanced notification to area businesses, residents and bus companies (in the form of a "Street Closure Sign Off Sheet"). If event impacts METRO Buses, organizer (in advance) must discuss detour plans with METRO.

REVOCABLE PERMIT

- ◆ The City reserves the unconditional right to control or cancel events to protect and/or prohibit damage to public property.
- ◆ The City reserves the unconditional right to revoke or revise an issued permit.
- ◆ Police or City Staff on site may use their discretion to revise conditions of use.

I HAVE READ AND UNDERSTAND ALL OF THE ABOVE POLICIES	TYPE INITIALS	BD	DATE	8/10/22
--	---------------	----	------	---------

ASSUMPTION OF RISK & LIABILITY

Users of the area agree to accept the grounds in an "as is" condition and shall be responsible for all risk and liability in using the park/public space area for the said event. By returning this form (should permission be granted to use city property), the above parties agree to indemnify, defend, and hold harmless the City of Portland, its employees and agents, from and against all claims arising out of activities during said event.

I have read the Assumption of Risk & Liability Agreement	TYPE INITIALS	BD	DATE	8/10/22
--	---------------	----	------	---------

PLEASE INITIAL & DATE HIGH-LIGHTED YELLOW BOXES ABOVE.

PLEASE RETURN FORM (WORD DOC) AT LEAST 30 DAYS IN ADVANCE TO:

- ◆ Public Assembly Facilities Div. ~ 212 Canco Rd. ~ Portland ~ ME ~ 04103 EMAIL PREFERRED: clare@portlandmaine.gov

FEE SCHEDULE – UPDATED JULY 1, 2019

Fees are tiered and assigned based on the level of demand placed on City resources and impact on City infrastructure.

Simple Event (no registration fee): \$75/hour	Electricity (activation/de-activation) Fee: \$40/flat
Event with registration or pledges & attendance 25 - 300: \$125/hr	Porta Restroom User Fee (if attendance is 150+): \$25
Event with registration or pledges & attendance 301+: \$225/hr	Entertainment License: \$50
Film/Photo Shoot: \$150/day	Barricades: \$5/ea. Rental Fee + \$25/ea. Security Deposit
Public Space/Park Security Deposit: \$100 - \$1000	Bike Racks: \$10/ea. Rental Fee + \$25/ea. Security Deposit
Sound Security Deposit: \$100 - \$1,000	Flashing Lights: \$10/ea. Rental Fee + \$40/ea. Security Deposit
Impact/Street Closure Fee (variable based on impact): \$100-\$500	Cones: \$2/ea. Rental Fee + \$15/ea. Security Deposit
Staff Fee (on site event support): \$37/hour	Safety Vests: \$15/ea. Security Deposit
Administrative Fee (event coordination support): \$40/hour or more	Keys: \$50/ea. Security Deposit
Reserved Parking: \$25 each space	Equipment Delivery Fee: \$100 or more
Cancellation Fee: \$75	Fortification Fee: TBD

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)

Permit Fee for use of area: Number of Hours of Use: Approx.	\$	Entertainment License Fee:	\$
Staff Fee (on site event support):	\$	Equipment Rental Fee:	\$
Admin. Fee (event coordination support):	\$	Public Space / Park / Sound Security Deposit:	\$
Electricity Fee (activation/de-activation):	\$	Borrowed / Rented Equipment Deposit:	\$
Impact/Street Closure Fee (variable based on impact):	\$	Additional Fees: (Porta-Restroom User Fee, "No Parking" Signs, etc.)	\$

CITY OF PORTLAND ACCEPTS CASH, CHECK, MONEY ORDER AND CREDIT / DEBIT CARDS FOR PAYMENT

Checks should be made payable to City of Portland
There will be a 2.65% processing fee added to all Debit / Credit Card transactions.

FOR OFFICE USE ONLY

APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$	SECURITY DEPOSIT:	\$	INSURANCE NEEDED?	Y / N
DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:	

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER DECLARING OCTOBER 2, 2022 THE
31ST ANNUAL MAINE MARATHON, HALF MARATHON &
RELAY FESTIVAL**

ORDERED, that October 2, 2022 from 5:00 a.m. to 5:00 p.m. is hereby declared to be the 31st Annual Maine Marathon, Half Marathon & Relay Festival, sponsored by the Maine Marathon Committee; and

BE IT FURTHER ORDERED, that the 31st Annual Maine Marathon, Half Marathon & Relay Festival area shall be Baxter Boulevard Extension from Forest Avenue to Preble Street, Baxter Boulevard, the Back Cove Trail, and Payson Park; and

BE IT FURTHER ORDERED, that during the 31st Annual Maine Marathon, Half Marathon & Relay Festival the following streets shall be closed to traffic at the following times:

Preble Street Extension from Forest Avenue to Hannaford driveway: 5:00 a.m. to 4:00 p.m.;

Baxter Boulevard Extension from Forest Avenue to Preble Street: 5:00 a.m. to 4:00 p.m.;

Baxter Boulevard (from Preble Street Extension to Bates Street/Washington Avenue 5:00 a.m. to 3:00 p.m.;

Preble Street from Forest Avenue to Baxter Boulevard: 5:00 a.m. to 3:00 p.m.;
and

Payson Park Roads including the West Kidder Street and Fernald Street entrances from Washington Avenue: 5:00 a.m. to 3:00 p.m.; and

BE IT FURTHER ORDERED, that vehicles in violation of the “no parking” signs in the Festival Area (interior roadways) shall be towed at owner’s expense; and

BE IT FURTHER ORDERED, that the 31st Annual Maine Marathon, Half Marathon & Relay Festival area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that admission to run in the races of the 31st Annual Maine Marathon, Half Marathon & Relay Festival inside the Festival Area shall be charged by the Maine Marathon Committee; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to the Maine Marathon Committee under §25-27 of the City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Maine Marathon Committee shall defend, indemnify and hold harmless the City of Portland, its officers and employees, from and against all claims arising out of or resulting from the Festival and/or use of City streets and property for said Festival, and shall procure and maintain public liability insurance in the minimum amount of \$400,000 per occurrence for personal or bodily injury, death or property damage and covering the obligation of indemnification hereunder. Maine Marathon Committee shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. No alcoholic beverages may be sold on the streets or public property during the Festival within the Festival Area;
3. Maine Marathon Committee shall be responsible for all fees for a permit issued from the Public Assembly Facilities Division, as well as for fees for city licenses and the cost of assistance from city staff. Conditions for use of grounds, and requirements for food service, vending sales, tent and stage installations and other items specified in that permit shall be adhered to;
4. Maine Marathon Committee shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Maine Marathon, Half Marathon & Relay Festival;
5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, street goods vendors, and concert licenses for the Festival to those vendors the Maine Marathon Committee has agreed shall participate;
6. The route of the course is subject to change, depending on construction projects along the course and police recommendations leading up to the race; and

BE IT FURTHER ORDERED, that the City Manager is authorized to waive fees and to issue such other temporary licenses, including licenses for food service establishments, as may be required by the City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 26, 2022

SUBJECT: Order 65-22/23 Approving Transfer of Funds under 15 M.R.S. §§5824(3) and 5826(6) Re: Amanda Benwell - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Not applicable

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order authorizes the City Council to approve the transfer of \$1,332.00 and one 9 millimeter Taurus PTIII handgun in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v.Amanda Benwell.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money from this forfeiture order will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law Enforcement Addiction Advocacy Program.

Five affirmative votes are required for passage of items on the consent calendar after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not

limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Benwell Transfer of Funds 9.19.2022
2. Benwell Forfeiture ltr from MaineAG 7.29.2022

Prepared by:

Date: 08/26/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING TRANSFER OF FUNDS
UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
RE: AMANDA BENWELL**

ORDERED, that the City Council hereby approves the transfer of \$1,332.00 and one 9 mm Taurus PTIII handgun in forfeited assets in the case of State of Maine vs. Amanda Benwell from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached “Approval of Transfer.”

STATE OF MAINE
Cumberland, SS

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-18-2575

State of Maine

v.

Amanda Benwell,
Defendant;

And

\$1,332.00 U.S. CURRENCY
Defendant In Rem #1
One 9 mm Taurus PTIII handgun
Serial # TKT73691
Defendant In Rem #2

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City of Portland
Approval of Transfer
15 M.R.S. §5824(3)
and §5826(6)

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem*, namely \$1,332.00 U.S. Currency and one 9 mm Taurus PTIII handgun, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendants In Rem #1 and #2, namely \$1,332.00 U.S. Currency and one 9 mm Taurus PTIII handgun, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on September 19, 2022.

Dated: _____

Mayor
(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
July 29, 2022

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPSCOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

Interim Chief Heath Gorham
Portland Police Department
109 Middle Street
Portland, ME 04101

RE: State of Maine vs. Amanda Benwell
Cumberland County Unified Criminal Court Doc. No. CR-18-2575
Criminal Forfeiture
Required Vote of Municipal Officers/Approval of Transfer of Forfeiture Assets

Dear Chief Gorham:

Enclosed please find a draft Approval form for submission to the municipal officers.

Please inform the municipal officers that:

A. 15 M.R.S.A. §5824(3) requires that, before any forfeitable item may be transferred to a State Agency, County or Municipality, the municipal legislative body must publicly vote to accept the item(s) **if subsequently ordered forfeited by the Court;**

B. Under Rules issued by the Department of the Attorney General, a public vote must be made on each forfeiture "approval" and a "continuing resolution" of approval cannot be accepted;

C. As with all forfeitures, an approval of a transfer by the municipal legislative body does not guarantee either that the Defendant(s) In Rem will in fact be forfeited or, if forfeited, that the Court will order the item(s) transferred to the approving Department, Agency, County or Municipality. The municipal legislative body's approval only signifies that, if the Defendant(s) In Rem are in fact ordered forfeited and, if the Attorney General and the Court agree to a transfer of all or part of the Defendant(s) In Rem to a Department, Agency, County or Municipality based upon the "substantial contribution" of that Department, Agency, County or Municipality, then that entity is in fact, willing to accept the Defendant(s) In Rem or portions thereof. In order to streamline what is otherwise a cumbersome forfeiture process, it is our practice to seek State, county or

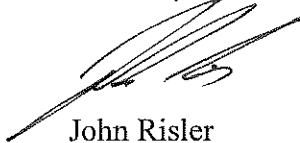
municipal approval in anticipation of the final order of forfeiture. However, final forfeiture is not guaranteed and both the municipal legislative body and the law enforcement agency involved are **cautioned** that they **should not encumber** funds or property until a Final Order granting them lawful title to the property is delivered to them;

D. Under the provisions of the Forfeiture Statute, if the municipal legislative body fails to approve a transfer in a timely manner, any forfeited items shall be transferred to the State of Maine General Fund.

Assuming your municipal legislative body does grant its approval, kindly see to it that the accompanying form is signed by the appropriate person and is "embossed" with the seal of the municipality. Then, please return the **original** to me for filing, and retain a copy for your records.

My sincere thanks for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Risler", with a long horizontal stroke extending to the left.

John Risler
Assistant Attorney General
CRIMINAL DIVISION

JR/lmn
Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-18-2575

State of Maine	}	
	}	City of Portland
v.	}	Approval of Transfer
	}	15 M.R.S. §5824(3) and §5826
Amanda Benwell,	}	
Defendant;	}	
	}	
And	}	
	}	
\$1,332.00 U.S. Currency	}	
Defendant(s) In Rem #1	}	
	}	
One 9mm Taurus PTIII,	}	
Serial # TKT73691	}	
Defendant(s) In Rem #2	}	

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and §5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant In Rem #1 and #2 namely \$1,332.00 U.S. Currency and one 9mm Taurus PTIII, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant(s) In Rem #1 and #2 to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 2, 2022

SUBJECT: Order 66-22/23 Granting Municipal Officers' Approval of Yam Tamblin LLC, dba Blue. Application for Class A Lounge with Indoor Entertainment at 638 Congress Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/29/22. New City and State applications. Change of ownership of an existing establishment.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 2022.09.19_Blue

2. Blue_Council Packet

Prepared by:

Date: 09/02/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Yam Tamblin LLC, dba Blue. Application for Class A Lounge with Indoor Entertainment
at 638 Congress Street**

August 10, 2022

Dear Mayor Snyder and Members of Portland City Council,

We, Yam Tamblin LLC, a newly formed business owned and operated by Andrew Roseman, are purchasing Blue, an intimate music venue and lounge in the "600 Block" of Congress Street, operated by Terez Fraser of Blue T LLC. Yam Tamblin LLC plans to continue running the business as "Blue" without any change to the scope. Celeste Parke, treasurer of Yam Tamblin LLC, will manage the day-to-day operations of Blue.

Ideally, Blue will continue to operate in the same way it has since it opened in 2005. We plan to serve the same simple menu of snacks and desserts in addition to selling alcohol and hosting performances. We are pursuing a Class A Lounge Liquor License and an Entertainment License with Dancing. The space already includes a stage and a bar which we will maintain in the same way.

We have many years combined experience in the food, beverage and live music industries and hope to continue Blue's well established legacy.

The estimated date of transfer is October 1st. Please reach out with any questions or concerns. We look forward to presenting to you at a future City Council meeting.

Sincerely,

Andrew Roseman and Celeste Parke
Yam Tamblin LLC

(203)-464-0272
yam.tamblin@gmail.com



CITY OF PORTLAND

Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Establishment Name (d/b/a):	Blue Phone: 207-774-4111
Location Address:	638 Congress St (#650A) Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	87 Douglass St. Portland Zip: 04102
Contact Person:	Andrew Roseman Phone: 203-464-0272
Contact Person Email:	andrewsroseman@gmail.com
Manager of Establishment:	Celeste Parke Date of Birth: 02/25/1985 Phone: 207-210-2415
Owner of Premises (Landlord):	638 Congress Street Partners LLC
Address of Premises Owner (Landlord):	82 Hanover St, Ste 5 Portland ME Zip: 04101

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate Name	Corporate Mailing Address
Yam Tamblin, LLC	87 Douglass St. Portland Zip: 04102

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Contact Person:	Andrew Roseman	Phone:	203-464-0272
Principal Officers	Title	Date of Birth	Residence Address
Andrew Roseman	CEO	06/18/92	87 Douglass St, 04102
Celeste Parke	treasurer	02/25/1985	87 Douglass St, 04102
Class of Liquor License:		Class A Lounge	



CITY OF PORTLAND

Permitting and Inspections Department

Type of food served:	snacks, desserts	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 25%	Generated from Alcohol: 75%
Hours & days of operation:	Tu, W, Th, F, Sa, S 5pm-12am	
QUESTIONS		
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y/N ☒ Y ☐ N	
If No, please explain: Food will be available entire time, don't necessarily require silverware but will be on plates.		
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	Y/N ☐ Y ☒ N	
If yes, give the distance:		
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)	Y/N ☐ Y ☒ N	
Will you permit dancing after 1:00 a.m.?	Y/N ☐ Y ☒ N	
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y/N ☐ Y ☒ N	
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).		
Will you have any amusement devices (pinball, video games, juke box)?	Y/N ☐ Y ☒ N	
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____		
What is your targeted opening date?	10/1/22	
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	Y/N ☐ Y ☒ N	
If Yes, list name(s) of employee(s) and department(s):		
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	Y/N ☐ Y ☒ N	
If Yes, please list business name(s) and location(s):		
Is any principal officer under the age of 21?	Y/N ☐ Y ☒ N	
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y/N ☐ Y ☒ N	
If Yes, please explain:		

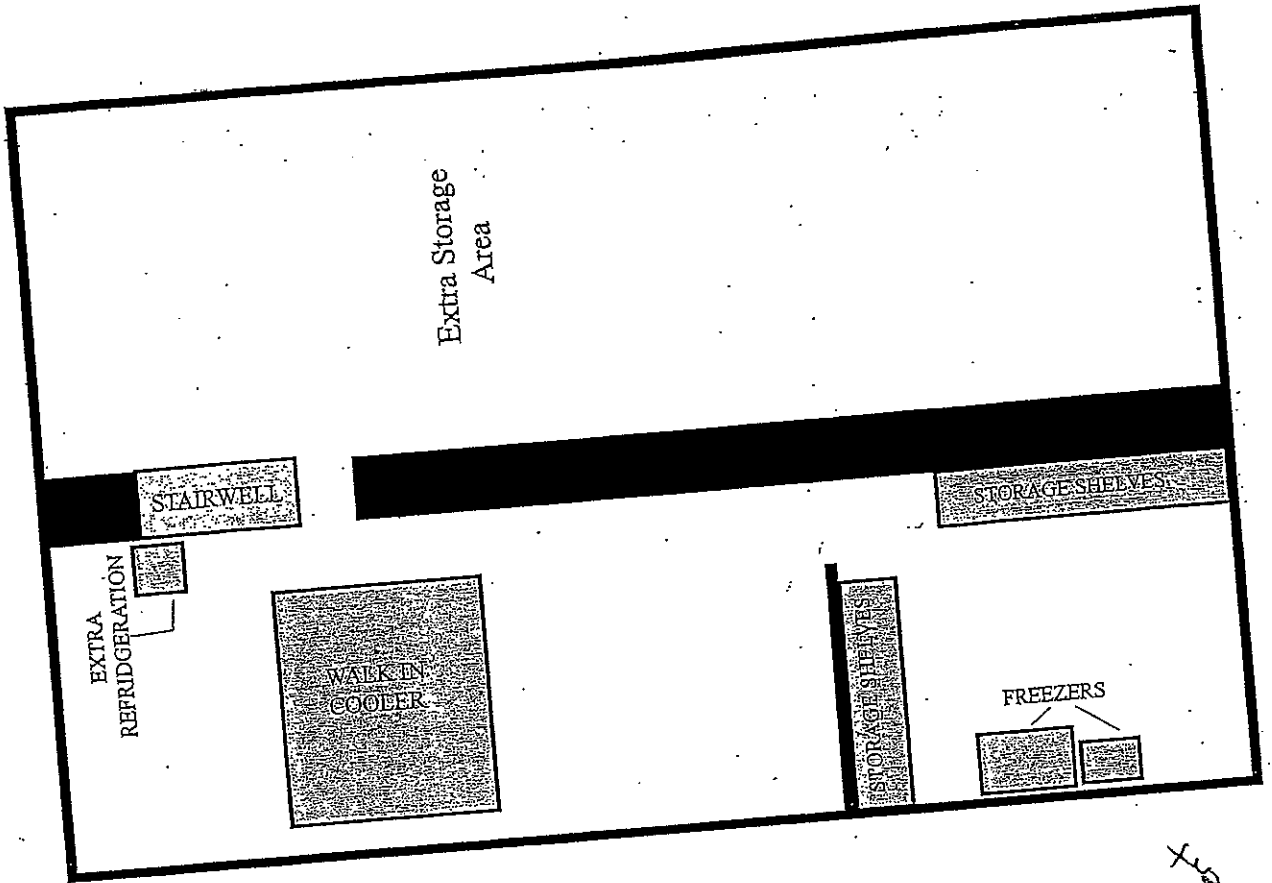
I Celeste Parke do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

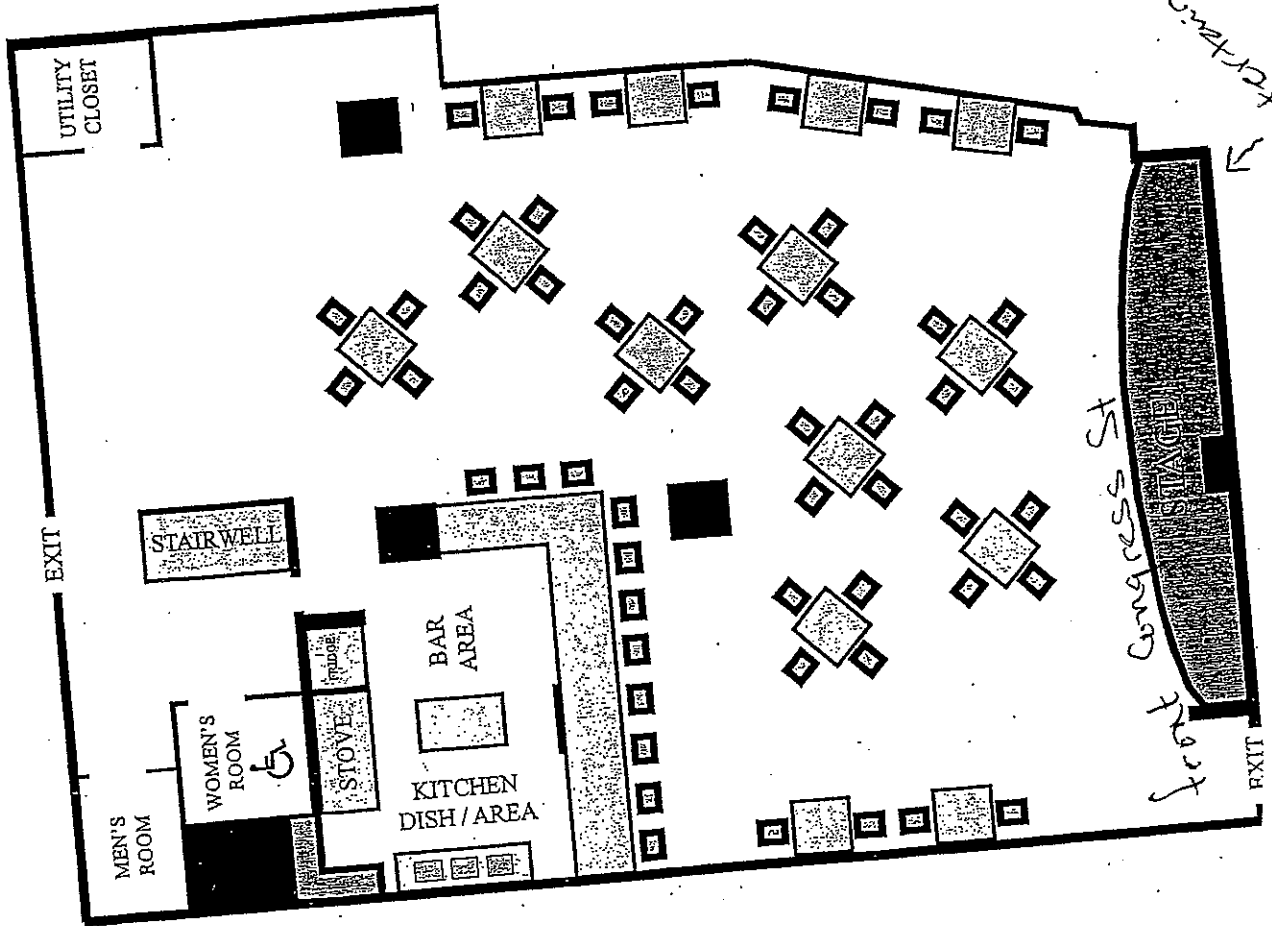
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Celeste Parke Title treasurer Date 8/10/22

BASEMENT



MAIN FLOOR





CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00		☐ Outdoor Entertainment \$700.00		☐ Combined Entertainment \$800.00	
☒ Sound Mitigation Fee \$150.00					
Business Information					
Establishment Name (d/b/a):		Blue		Phone:	207-774-4111
Location Address:		638 Congress St (#650A)		Zip:	04101
Owner Name:		Yam Tamblin, LLC (Andrew Roseman)		Phone:	203-464-0272
Owner Email:		andrewsroseman@gmail.com			
Contact Person responsible for Entertainment:		Andrew Roseman		Phone:	203-464-0272
Contact Person Email:		andrewsroseman@gmail.com			
Manager of Establishment:		Celeste Parke		Phone:	207-210-245
Manager Email:		celeste.parke@gmail.com			

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:

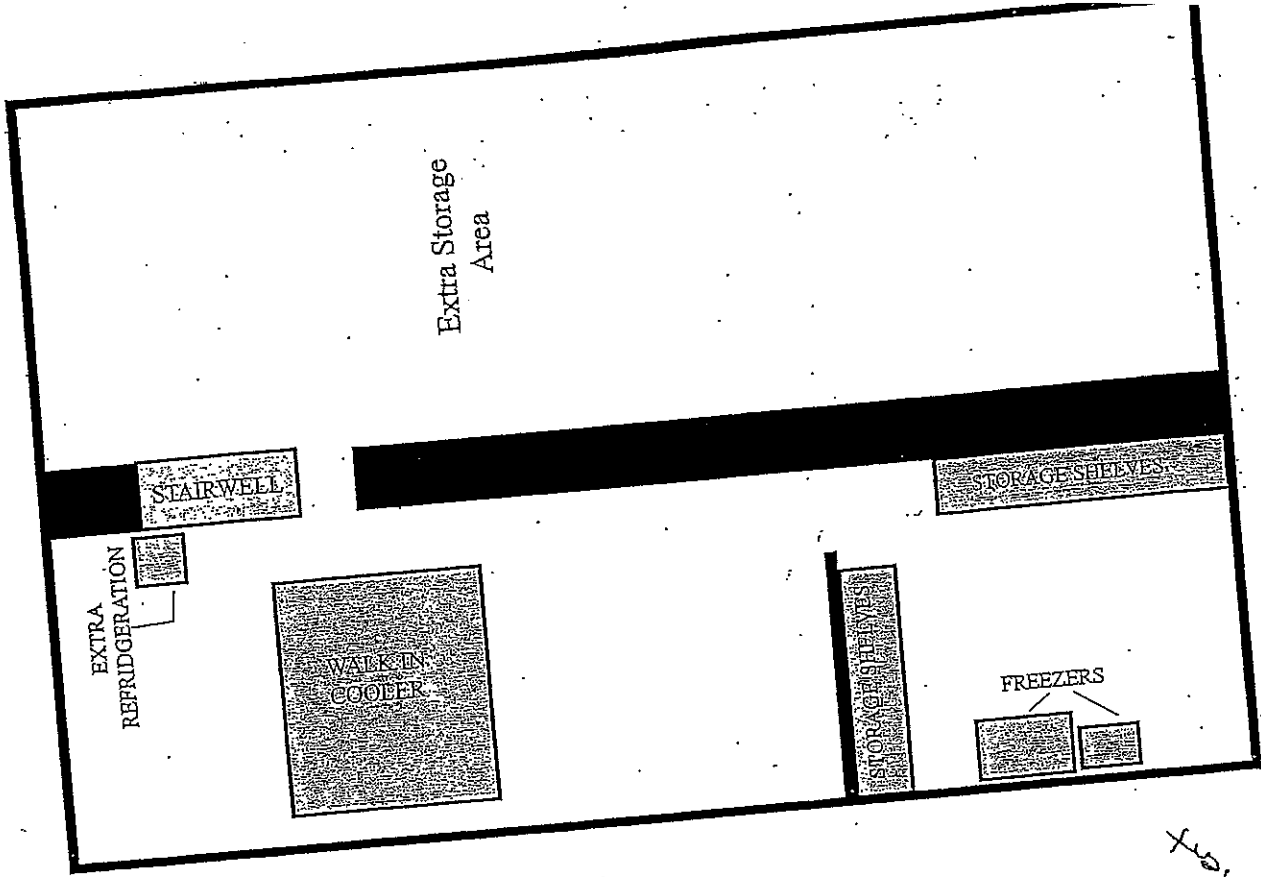
Small venue/bar with food focusing on jazz, folk, rock and other genres.

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

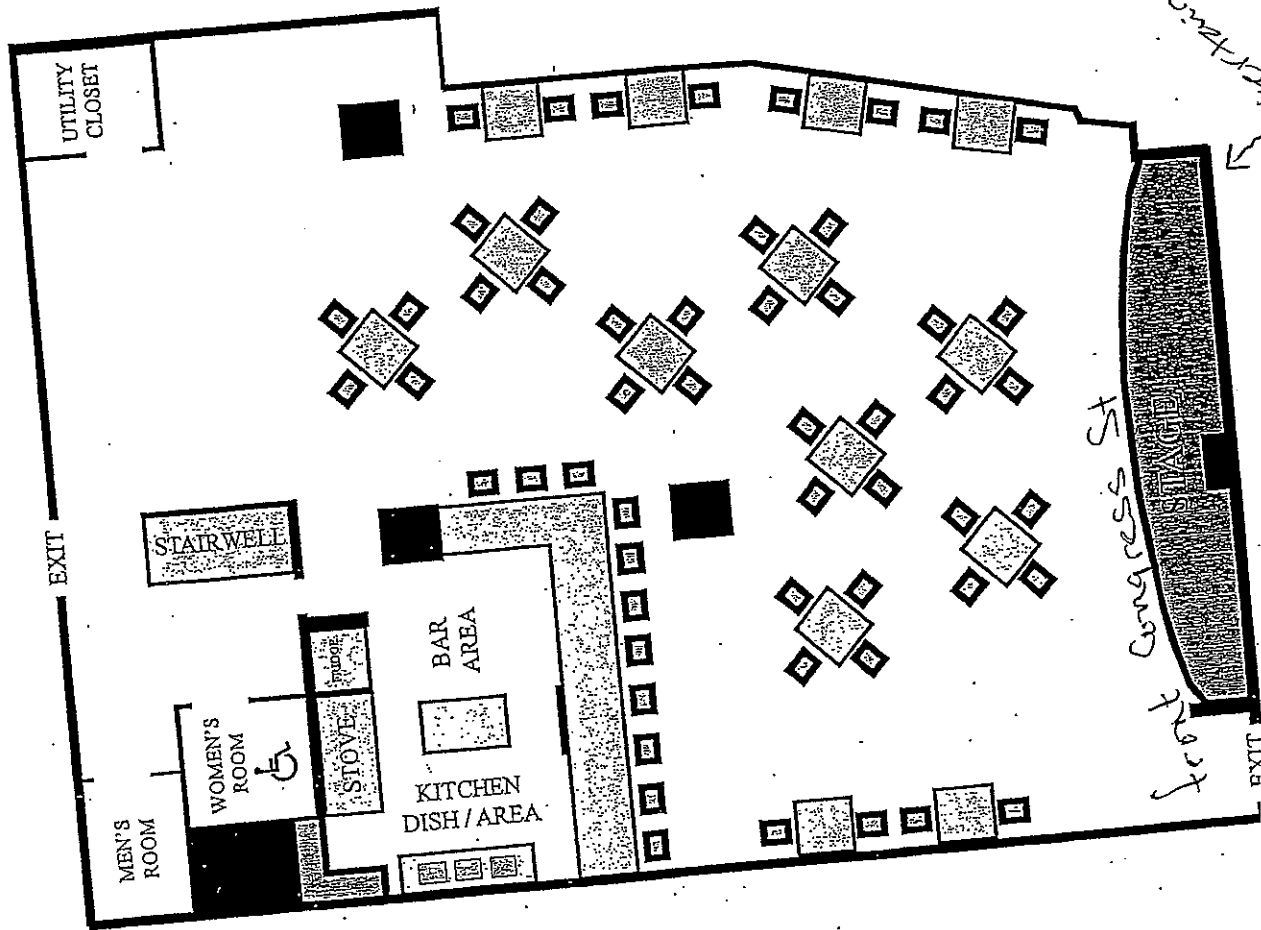
Signature *C. Parke* Title treasurer Date 8/10/22

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov

BASEMENT



MAIN FLOOR



Sound Engineer

Andrew Roseman

Phone: (203) 464-0272

8/23/2022

Sound Mitigation Plan

Blue / 650 Congress St

This sound mitigation plan has been prepared by Andrew Roseman, who is a freelance sound engineer with over 10 years of practical experience at various music venues in and around the greater Portland area.

Blue currently utilizes a sound system designed to provide simple, straight-forward operation typical of most small venues/listening rooms. The system consists of (one) Behringer XR18 digital mixer and two QSC 12" powered monitors mounted on stage left and right. There is also one Harbinger 12" powered speaker floor mounted for stage monitoring. Audio is introduced via industry standard dynamic and condenser microphones (Shure SM58, AT2020, etc.) and instrument/amp outputs, as well as direct-wired auxiliary sends (iPad, cell phone, etc).

Sound mitigation measures are confined to the construction of the bar itself,

which exists in a space designed for commercial use. The street facing facade consists of approx 23' of double-paned insulated glass Windows and an insulated entry door. There is a standard fireproof emergency exit door at the rear of the premises. The remaining walls all intersect with other units, and are thoroughly insulated. The construction inherently reduces sound to levels well below the acceptable decibel range of Portland, as demonstrated by the establishments' 15+ year history. Blue has used the current system since installation for events described below:

As the speakers are located to provide even disbursement of sound throughout the building, the primary direction of the sound projection is towards the interior and rear of the building. Speaker locations are illustrated on the provided diagram. Blue primarily serves as a listening room at audio levels considerably quieter than standard music venues. Events primarily consist of jazz performances, but also extends into folk and other genres characteristically performed at lower volumes. Some performers opt not to use any PA for their performances, resulting in a lower overall room volume. Sound levels are maintained to the same volume used for house music, which should indicate that these performances should have no impact on decibel levels.

Blue does keep a portable on-premise sound reading device, in the event of a

noise complaint. Staff has informed management that this sound level meter, manufactured in accordance to standards prescribed by the American Standards Association, has not been required to be presented during any year of current ownership, as no formal sound complaints have been responded to by the Portland Police Department. Tests have demonstrated that all exterior sound levels have read below the City of Portland guidelines of 50 to 60 Decibels from within 8 feet of any exterior wall.

In conclusion, Andrew Roseman will be maintaining the current system in place, which has been used successfully and without issue for all outlined events, prior to the submission of this application. It is of my opinion that this system, and the building's construction, should suffice for the expectations of the City of Portland.

With your Consideration,

A handwritten signature in black ink, appearing to be 'AR' followed by a stylized flourish.

Andrew Roseman

EATS

MARCONA ALMONDS	6
MEDITERRANEAN OLIVE MIX	6
GRAPE LEAVES	6
BAKED BAGUETTE with OLIVE OIL seasoned w/ cracked black pepper & grated parmesan	7
SIMPLE ARUGULA SALAD dressed with lemon , olive oil, & grated parmesan	7
MEDITERRANEAN PLATE hummus, olives, grape leaves, & baked baguette	13
RED HOT DOG served on a baked baguette bun with curry aioli, jalapeno bacon, and pickled cukes	9
CHEESE PLATE one 12 two 17 three 23 GOAT: Drunken Goat (spain) COW: Mellinda Mae (CT) COW, GOAT, & EWE: Iberico (spain)	
BAKED MAC & CHEESE	13
BAKED MEATBALLS (3) three meatballs in marinara, topped w/ mozzarella, baked & served with a toasty baguette	13
BUTTERNUT SQUASH RAVIOLI roasted in butter & brown sugar, topped with grated parm upon request	12
HOMEMADE BROWNIE A LA MODE Warmed & topped with 2 scoops of vanilla + chocolate sauce	9

WINE

REDS	
SIN ZIN zinfandel (sanoma, CA)	16
GRAPE ABDUCTION blaufrankish (slovenia)	13
CEMBRA CANTINI DI MONTAGA pinot nero (italy)	13
XA DOMECCQ vino tinto (mexico)	10
WHITES	
DRY CREEK chenin blanc (CALI)	16
FAISAO vinho verde (portugal)	10
ROSE	
BILLA HAUT rose (languedoc roussillon, france)	11
OTHERS	
bunraku SAKE (bottle)	42
la contesse PROSECCO (split)	10
smith woodhouse LBV PORT	10

NON-ALC

lemonade | san pellegrino | acqua panna | cane cola
ginger brew | rootbeer | tea | coffee for one (for two - 8) **6**

MOCKTAILS

would you prefer....FLORAL, SWEET, or BITTER **8**

COCKTAILS

REVOLVER coffee liquor, bourbon, orange bitters	13
LAVENDER LEMONADE vodka, lemon, lavender simple, seltzer	11
BLUE RUM PUNCH coconut infused rum, pineapple, lemon tumeric, honey simple	12
BOURBON SWEET TEA evan williams, honey simple, blarney black iced tea	12
THE OLD FASHIONED	15
SAZERAC lime, simple, pernod rinse, and bitters	12
KING COLE bourbon, fernet, and simple	12
The BLUE MANHATTAN BLANTON'S MANHATTAN	15
WHISKEY SOUR	11
MARTINI (gin or vodka) GREY GOOSE VODKA or BIMINI GIN MARTINI	14
COSMO	12
LAVENDAR G+T	12
PALOMA hornitos, lime, simple, grapefruit juice & seltzer	11
NEGRONI MEZCAL NEGRONI	12
FRENCH 75	11
BEES KNEES gin, lemon, honey simple	11
ROARING RUM ration rum, lime, simple, ginger brew, candied ginger	11

BEER & more

DRAFT	
definitive WALRUS MUSIC (sour: mango, passionfruit, pineapple)	9
allagash RIVER TRIP (belgian session ale)	8
lone pine PORTLAND ALE	8
bunker MACHINE CZECH PILZ	9
mast landing NEON SAILS (IPA)	9
goodfire SUPER PRIME (DIPA)	9
definitive CONTEE (kolsh)	9
battery steele OBSCURUM (imp. / dbl milk stout)	9
CAN/BOTTLES	
narragansett LAGER	4
allagash WHITE	7
uff DRY HOPPED CIDAH	8
athletic brewing RUN WILD IPA non-alc	7
uff KOMBUCHA (cranberry)	9



Zachary Lenhart <zlenhart@portlandmaine.gov>

Blue - 638 Congress St

Eric Nevins <erickn@portlandmaine.gov>

Tue, Aug 30, 2022 at 4:34 PM

To: Zachary Lenhart <zlenhart@portlandmaine.gov>

Approved

On Tue, Aug 30, 2022 at 3:58 PM Zachary Lenhart <zlenhart@portlandmaine.gov> wrote:

[Quoted text hidden]

--

Eric Nevins
Lieutenant
Portland Police Department
(207) 874-8513



Zachary Lenhart <zlenhart@portlandmaine.gov>

Blue - 638 Congress St

Matthew Coldwell <mcoldwell@portlandmaine.gov>

Wed, Aug 31, 2022 at 1:15 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erickn@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Kevin Schneck <kschneck@portlandmaine.gov>, Glen McGary <glenm@portlandmaine.gov>

The current legal use for 650A-652 is restaurant and bar. This is ok with Zoning,

Thank you,

Mac

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]

City of Portland

Sound Mitigation Review

Date: 9/6/2022

Business Blue

Applicant Andrew Roseman

DESCRIPTION		yes	no
Sound system appropriate for the size venue		Yes	
Performance space located in an appropriate location		Yes	
Performance space facing in an appropriate direction to control sound		Yes	
Surrounding surfaces appropriate to control sound		Yes	
Additional sound absorbing features			
additional notes	long history of no issues		
Approved		Yes	
DIRECT ALL INQUIRIES TO:			
Kevin Schneck			
(207) 756-8433			
kschneck@portlandmaine.gov			

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on September 19, 2022 at 5:00 P.M., virtually Yam Tamblin LLC, dba Blue. Application for Class A Lounge with Indoor Entertainment at 638 Congress Street - Sponsored by Danielle P. West, Interim City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



September 9, 2022

Yam Tamblin LLC
87 Douglas Street
Portland, ME 04102

Re: Yam Tamblin LLC, dba Blue. Application for Class A Lounge with Indoor Entertainment at 638 Congress Street

Dear Yam Tamblin LLC:

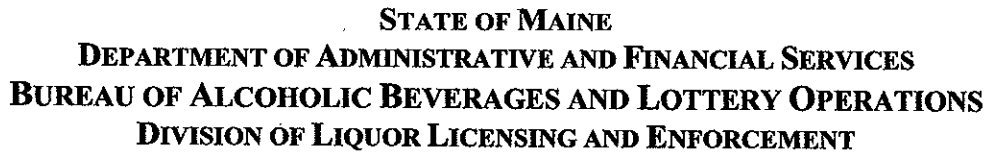
This letter shall serve as a reminder of the public hearing before the Portland City Council on Thursday September 19, 2022 at 5:00 p.m., for the review of application for Class A Lounge with Indoor Entertainment at 638 Congress Street. The meeting will take place in person and virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on September 16, 2022.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes ☐ No ☐	

Legal Business Entity Applicant Name (corporation, LLC): Yam Tamblin LLC	Business Name (D/B/A): Blue
Individual or Sole Proprietor Applicant Name(s):	Physical Location: 650 Congress St A, Portland 04101
Individual or Sole Proprietor Applicant Name(s):	Mailing address, if different: See here
Mailing address, if different from DBA address: 87 Douglass St., Portland 04102	Email Address: andrewsroseman@gmail.com
Telephone # Fax #: 203-464-0272	Business Telephone # Fax #: 207 774-4111
Federal Tax Identification Number: 88-3530369	Maine Seller Certificate # or Sales Tax #: Applied for 8/10/22
Retail Beverage Alcohol Dealers Permit:	Website address: www.portcityblue.com

1. New license or renewal of existing license? ☒ New Expected Start date: 10/1/22
☐ Renewal Expiration Date: _____
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: \$25,000 Beer, Wine or Spirits: \$75,000 Guest Rooms: _____
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)
☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|--|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☐ Class A Restaurant/Lounge
(Class XI) | ☒ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☐ Other: _____ | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

87 Douglass St, Portland ME 04102

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Andrew Roseman	06/18/92	Connecticut
Celeste Parke	02/25/85	Vermont

Residence address on all the above for previous 5 years

Name	Address:
Celeste Parke	87 Douglass St, Portland ME 04102 240 Valley St, Portland 04102 140 Oxford St #3, Portland 04101
Name	Address:
Andrew Roseman	same as above
Name	Address:
Name	Address:

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☐ Yes ☒ No

17. Does the licensee/applicant(s) own the premises? ☐ Yes ☒ No

If No, please provide the name and address of the owner:

Port Property, 82 Hanover St Suite 5, Portland 04101

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

2 floors (1 basement-storage only), top floor with
bar, tables, stage and 2 bathrooms

20. What is the distance from the premises to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: State Street Church

Distance: 1500 ft.

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 8/10/22



Signature of Duly Authorized Person

Celeste Parke

Printed Name Duly Authorized Person

Signature of Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license or transfer of the location of an existing on-premises license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

2. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;

E. A violation of any provision of this Title;

F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and

G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. Repealed

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.

4. Repealed

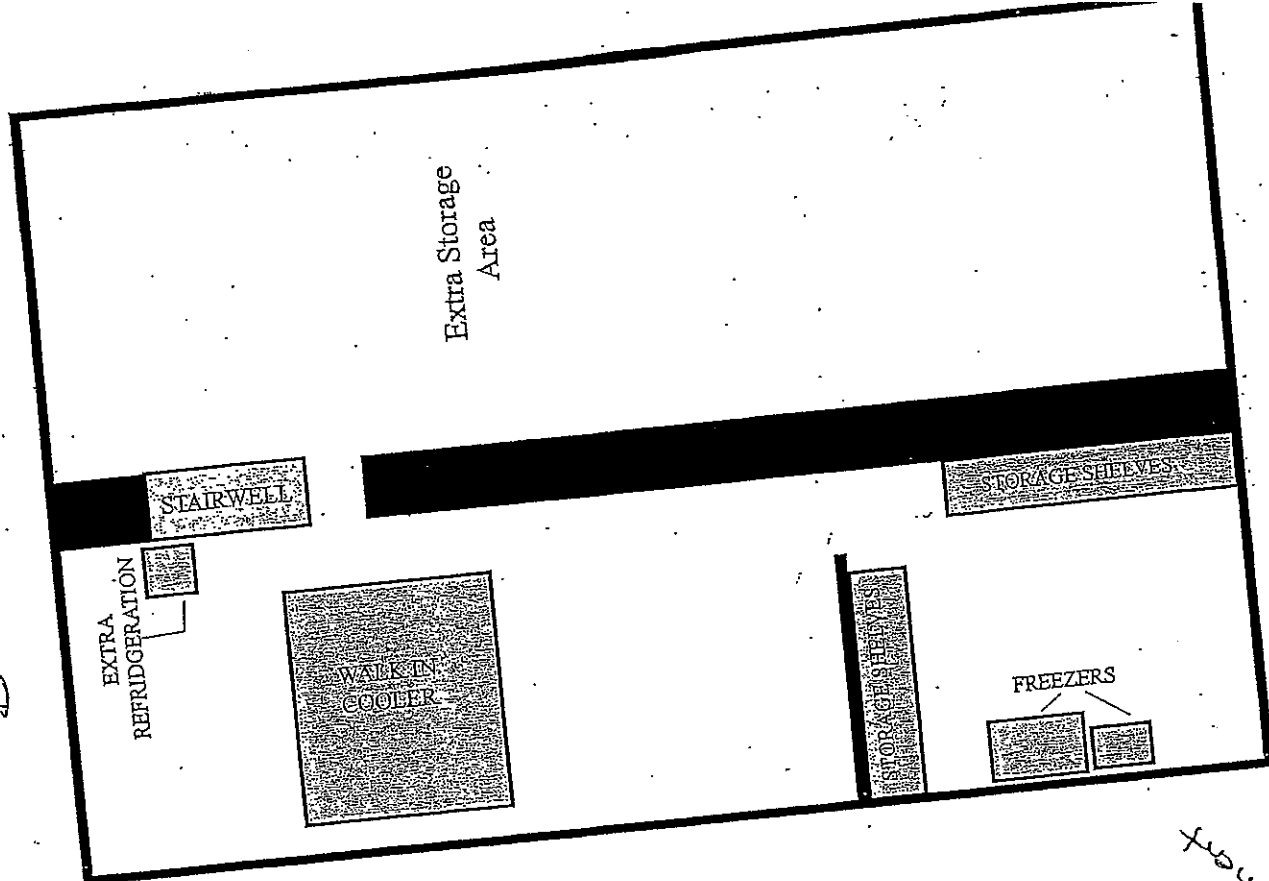
5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

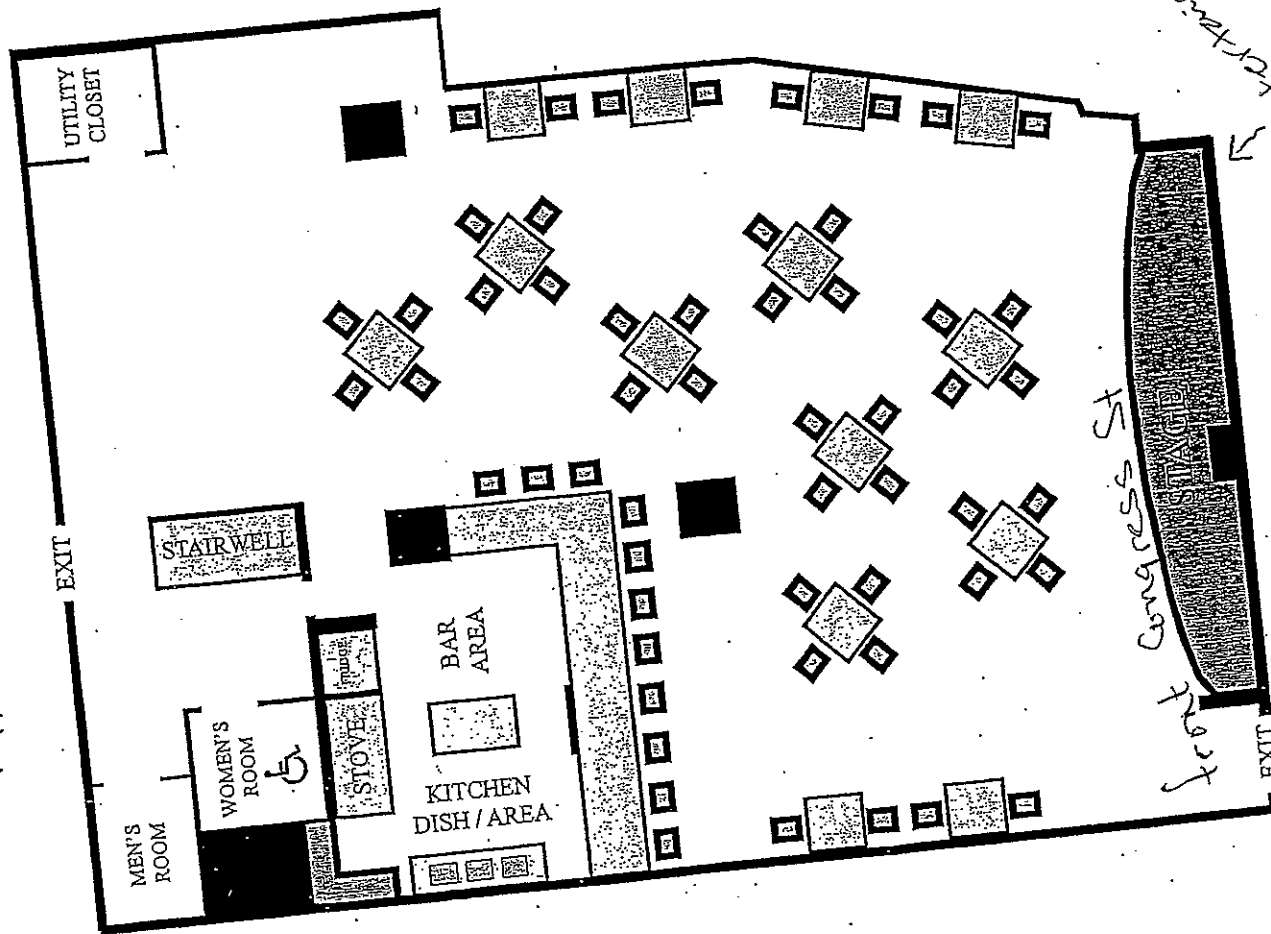
Section IV: Terms and Conditions of Licensure as an Establishment that sells liquor for on-premises consumption in Maine

- The licensee/applicant(s) agrees to be bound by and comply with the laws, rules and instructions promulgated by the Bureau.
- The licensee/applicant(s) agrees to maintain accurate records related to an on-premise license as required by the law, rules and instructions promulgated or issued by the Bureau if a license is issued as a result of this application.
 - The licensee/applicant(s) authorizes the Bureau to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also any books, records and returns during the year in which any liquor license is in effect.
- Any change in the licensee's/applicant's licensed premises as defined in this application must be approved by the Bureau in advance.
- All new applicants must apply to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for its Retail Beverage Alcohol Dealers permit. See the TTB's website at <https://www.ttb.gov/nrc/retail-beverage-alcohol-dealers> for more information.

BASEMENT



MAIN FLOOR



Section V: Fee Schedule

Filing fee required. In addition to the license fees listed below, a filing fee of \$10.00 must be included with all applications.

Please note: For Licensees/Applicants in unorganized territories in Maine, the \$10.00 filing fee must be paid directly to County Treasurer. All applications received by the Bureau from licensees/applicants in unorganized territories must submit proof of payment was made to the County Treasurer together with the application.

Class of License	Type of liquor/Establishments included	Fee
Class I	For the sale of liquor (malt liquor, wine and spirits) This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers	\$ 900.00
Class I-A	For the sale of liquor (malt liquor, wine and spirits) This class includes only hotels that do not serve three meals a day.	\$1,100.00
Class II	For the Sale of Spirits Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; and Vessels.	\$ 550.00
Class III	For the Sale of Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class IV	For the Sale of Malt Liquor Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class III and IV	For the Sale of Malt Liquor and Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 440.00
Class V	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Club without catering privileges.	\$ 495.00
Class X	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Class A Lounge	\$2,200.00
Class XI	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Restaurant Lounge	\$1,500.00

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

1. Exact legal name: Yam Tamblin, LLC
2. Doing Business As, if any: Blue
3. Date of filing with Secretary of State: 8/2/22 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:
5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Andrew Roseman	87 Douglass St 04102 240 Valley St 04102 140 Oxford St #3 04101	06/18/92	owner CEO	100%
Celeste Parke	87 Douglass St 04102 240 Valley St 04102 140 Oxford St #3 04101	02/25/85	treasurer	0%

(Ownership in non-publicly traded companies must add up to 100%.)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 2, 2022

SUBJECT: Order 67-22/23 Granting Municipal Officers' Approval of Four Ball LLC, dba Rathskeller on Wharf. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 51 Wharf Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/29/22. New City and State applications. Establishment currently holds Class I FSE with Outdoor Dining on Public Property.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 2022.09.19_Rathskeller
2. Rathskeller_Council Packet

Prepared by:

Date: 09/02/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Four Ball LLC, dba Rathskeller on Wharf. Application for Class XI Restaurant/Lounge
with Outdoor Dining on Public Property at 51 Wharf Street**

Dear Mayor Snyder and Members of the City Council,

I am submitting an application for renewal of our liquor at Rathskeller On Wharf. Please note that we are looking to change our license from Class I to Class XI.

Thank you for your consideration of our application.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Minervino', written over the printed name.

Thomas Minervino



CITY OF PORTLAND

Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Establishment Name (d/b/a):	RATHSKELLER ON WHARF Phone: (207) 747-4263
Location Address:	51 WHARF ST Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	51 WHARF ST, PORTLAND, ME Zip: 04101
Contact Person:	TOM MINERVINO Phone: (207) 831-3634
Contact Person Email:	TOM.MINERVINO@GMAIL.COM
Manager of Establishment:	MARGARET MINERVINO Date of Birth: 3/11/86 Phone: (207) 749-8199
Owner of Premises (Landlord):	FORE STREET PARTNERS, LLC
Address of Premises Owner (Landlord):	PO BOX 66749, FALMOUTH, ME Zip: 04105

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate Name	Corporate Mailing Address
FOUR BALL LLC	51 WHARF ST, PORTLAND, ME Zip: 04101

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Contact Person:	TOM MINERVINO		Phone:	(207) 831-3634
Principal Officers	Title	Date of Birth	Residence Address	
THOMAS MINERVINO	Member	1/18/82	60 STARBIRD RD, PORTLAND, ME 04102	
MARGARET MINERVINO	Member	3/11/86	33 BEECHWOOD AVE WESTBROOK, ME 04092	
MICHAEL BARTON	Member	4/30/81	78 LINCOLN ST, PORTLAND, ME 04103	
Class of Liquor License:		CLASS A RESTAURANT/LOUNGE		

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557

bi@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

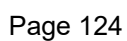
Type of food served:	BURGERS, WINGS, FISH & CHIPS	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 30 35%	Generated from Alcohol: 65%
Hours & days of operation:	MON-THURS: NOON-11 P.M.; FRI+SAT: NOON-1 A.M. SUN: NOON-11 P.M.	
QUESTIONS		Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?		☒ Y ☐ N
If No, please explain: LIMITED FOOD MENU AFTER 10 P.M.		
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?		☒ Y ☐ N
If yes, give the distance:		
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)		☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?		☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)		☒ Y ☐ N
If yes, will the outside dining be on ☒ PUBLIC or ☐ PRIVATE property (circle one).		
Will you have any amusement devices (pinball, video games, juke box)?		☒ Y ☐ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____		
What is your targeted opening date? CURRENTLY OPEN		
Does the issuance of this license directly or indirectly benefit any City employee(s)?		☒ Y ☐ N
If Yes, list name(s) of employee(s) and department(s):		
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?		☒ Y ☐ N
If Yes, please list business name(s) and location(s): TOMASO'S CANTEN, 18 HAMPSHIRE ST		
Is any principal officer under the age of 21?		☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?		☒ Y ☐ N
If Yes, please explain:		

I THOMAS MINERVINO do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature THOMAS MINERVINO Title MEMBER Date 8/29/22



RATHSKELLER

— ON WHARF —

APPS

CAESAR SALAD 8

Add blackened or fried chicken or haddock +3

MAINE POTATO WEDGES 8

Add cheese sauce +2, chicken or smoked beef +3

PLOWMAN'S PLANK 12

Italian meats, cheese, marinated olives, hot cherry peppers, crostini

FRIED PICKLES 10

House pickles, horseradish cream sauce

BRUSSELS SPROUTS 10

Hot local honey vinaigrette, smoked bacon

WINGS (bone-in or boneless) 12

Buffalo, BBQ, Dirt, or Spicy Chipotle

Served w/ house ranch or BCD

ONION RINGS 9

Served w/ remoulade

HADDOCK BITES 10

Served w/ tartar sauce or remoulade

PLATES

MAC AND CHEESE 12

Add smoked beef or buffalo chicken +3

FISH & CHIPS 17

Local haddock, Maine potato wedges, slaw, tartar sauce

* * *

SIDES 3

Cole Slaw, Pickles, Cowboy Candy (candied peppers and onions w/ a kick)

BURGERS & SANDWICHES

Served w/ Maine potato wedges and house pickles

Add cheese +1, bacon +2

BASIC B* 9

Pineland Farms quarter pound patty, American cheese, potato bun

SPECIAL B* 11

As above, plus North Country Smokehouse bacon, lettuce, tomato, special sauce

SKELLER BURGER* 14

Double patty, double cheese, fried onions, sub roll

SOUTHERN FRIED CHICKEN 13

Buttermilk and Crystal brined chicken breast w/ remoulade and slaw – ask to make it spiccccy

CHICKEN BACON RANCH 15

Fried chicken w/ bacon, lettuce, tomato, house ranch

FISH SANDWICH 14

Local haddock, fried or blackened, w/ lettuce, tomato, tartar sauce

SMOKED BEEF CHEESESTEAK 14

House smoked beef, cheese sauce, Cowboy Candy, lettuce

TURKEY BLT WRAP 13

Roasted turkey, bacon, lettuce, tomato, aioli

CHICKEN BOMB 13

Grilled marinated chicken, cheese sauce, peppers, onions, lettuce

ITALIAN 16

Capicola, Genoa salami, mortadella, provolone, olive tapenade, cherry pepper hots, lettuce, oil & vinegar

*Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness



CITY OF PORTLAND
Permitting and Inspections Department

**Outdoor Dining Permit on Public Property
Supplemental Application**

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
Valid April 1-November 15

☒ Legal Advertisement Deposit \$100.00
☒ Outdoor Dining on Public Property \$84.00 plus \$2.00 per Square foot $\$2.00 \times 160 \text{ SF} = 404$
☐ Outdoor Dining on Public Property in a City Park \$84.00 plus \$6.30 per Square foot $\$6.30 \times \text{SF} = \text{_____}$

Business Information	
Establishment Name (d/b/a):	RATHSKELLER ON WHARF Phone: 207 747-4263
Location Address:	51 WHARF ST Zip: 04101
Mailing Address:	51 WHARF ST Zip: 04101
Contact Person:	TOM MINERVINO Phone: 207 831-3634
Contact Person Email:	TOM.MINERVINO@GMAIL.COM
Manager of Establishment:	MARGARET MINERVINO Date of Birth: 3/11/86 Phone: 207 749-8199
Owner of Premises (Landlord):	FORE STREET PARTNERS, LLC
Address of Premises Owner (Landlord):	PO BOX 66749 Zip: EALMOUTH, ME 04103

Owner Information

Corporate Name		Corporate Mailing Address	
FOUR BALL LLC		51 WHARF ST Zip: PORTLAND, ME 04101	
Contact Person:	TOM MINERVINO	Phone:	207 831-3634
Principal Officers	Title	Date of Birth	Residence Address
TOM MINERVINO	MEMBER	1/18/82	60 STARBUCK RD, PORTLAND, ME 04102
MARGARET MINERVINO	MEMBER	3/11/86	33 BEECHWOOD, WESTBROOK, ME 04092
MICHAEL BARTON	MEMBER	4/30/81	77 LINCOLN ST, PORTLAND, ME 04103

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557
bl@portlandmaine.gov • www.portlandmaine.gov

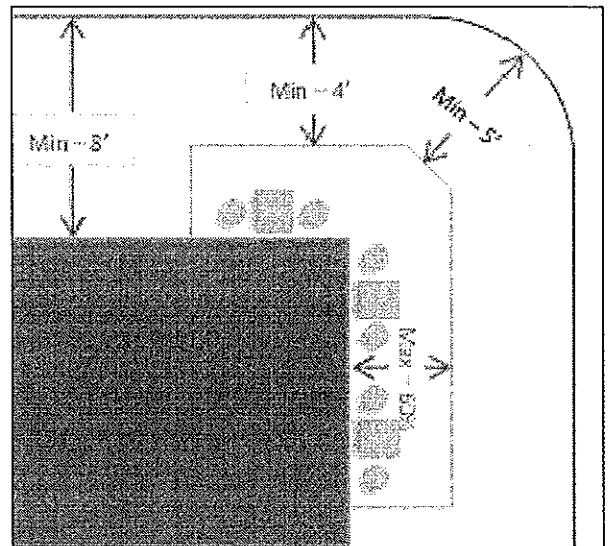


CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	CLASS A RESTAURANT CLASS 1 FSR
Type of food served:	TAVERN FARE
Please circle all that will be served:	<u>Beer</u> <u>Wine</u> <u>Liquor</u>
Hours & days of operation:	M-TH NOON-11 PM, FRI-SAT NOON-1 AM, SUN NOON-11 PM
Number of Tables	3
Number of Chairs	12

Design and Construction

Existing Sidewalk Width (property line to curb)	Sidewalk Dining Allowed?
< 8'0"	No
≥ 8'0"	Yes – up to 60% of
Sidewalk Type	Sidewalk Passage Width
Standard sidewalk	4'0"
Street corner	5'0"



- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.
- Egress must be maintained free of obstruction.
- Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.
- Umbrellas do not require a permit.
- Umbrellas must be secured and maintain the height clearance for sidewalk passage.

Barriers

- If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- Shall not exceed 42" in height and may not include commercial signage.

Example barrier types that meet regulation



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CITY OF PORTLAND

Permitting and Inspections Department

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature *[Signature]* Title MEMBER / OWNER Date 4/6/22

For Administrative Use Only

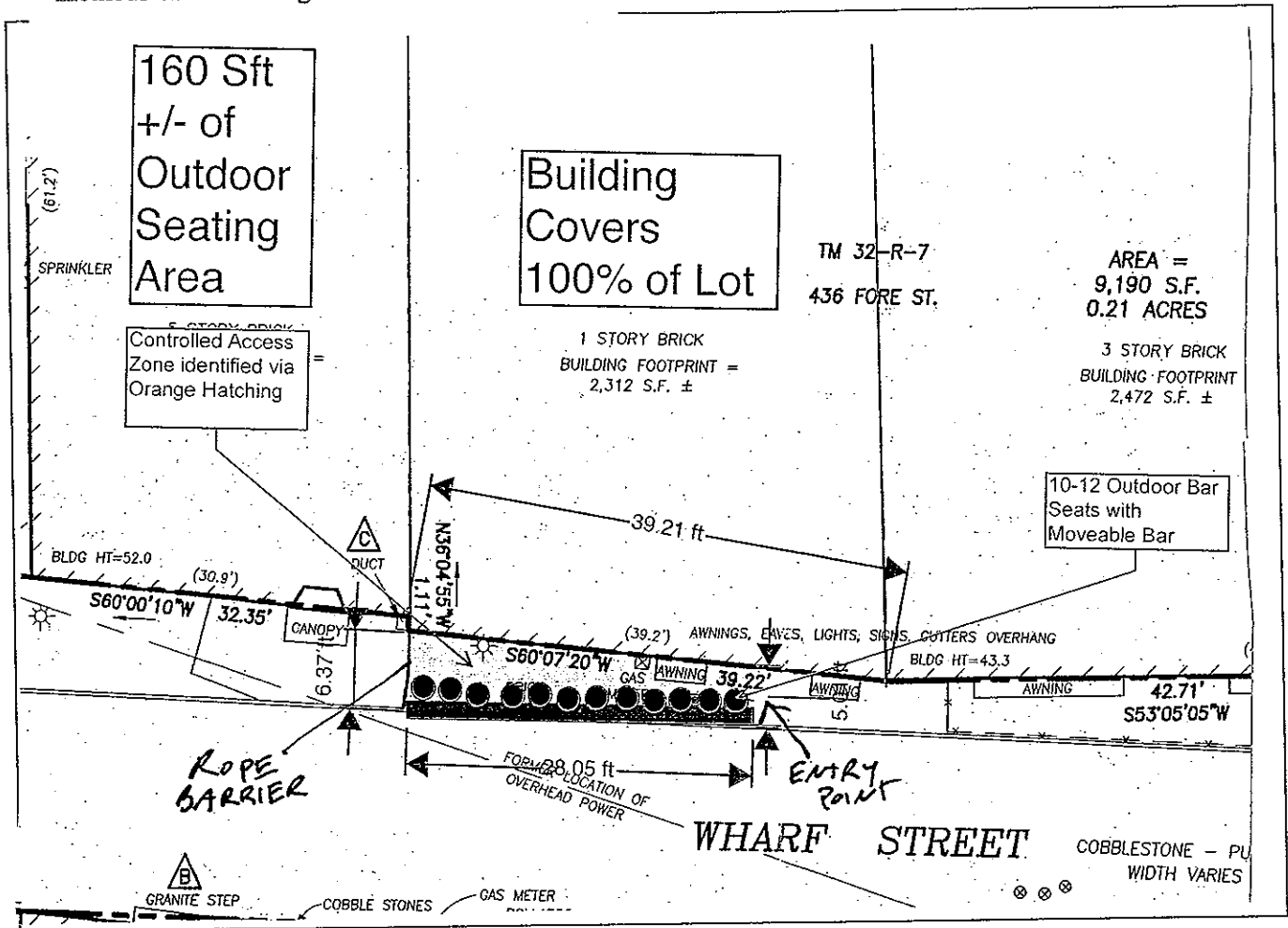
Amount: _____	Request Date / Approval	Notes: _____
Date Paid: _____	FD: _____	
CC _____ CA _____ CK _____	Health: _____	
	PD: _____	
Amount: _____	Treasury: _____	
Date Paid: _____	Zoning: _____	
CC _____ CA _____ CK _____		

Diagram for Extension of Privileges Area

The following restrictions apply to outdoor extension of privileges:

- There must be a stanchion or a fence completely enclosing the area.
- Signs must be posted stating "No alcohol beyond this point".
- There must be sufficient employees at the extension area of premises who would be able to control and monitor the area.

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary / permanent license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your where consumption will occur including methods of monitoring and containment of the area(s).

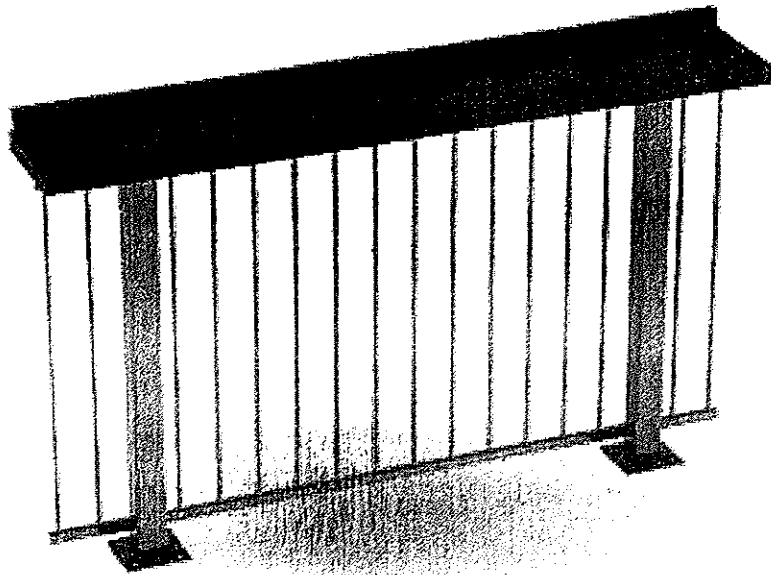


For Office Use Only:

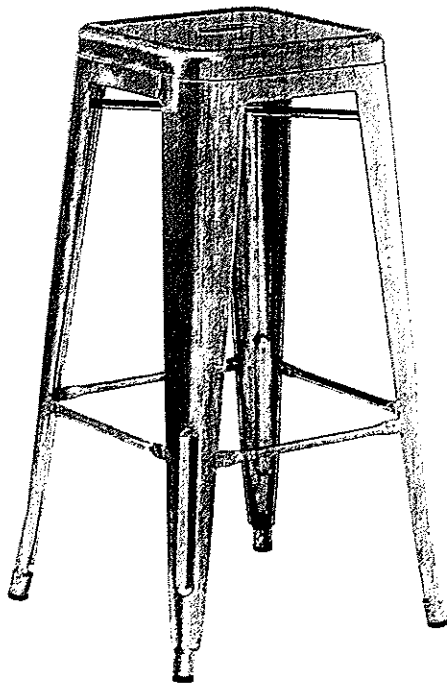
Date Filed: _____ Date Issued: _____ Issued By: _____

☐ Approved ☐ Not Approved

Bar will be in 3 movable sections similar to this, and will serve as the barrier along the street.



Seating will be outdoor bar stools like this:





Zachary Lenhart <zlenhart@portlandmaine.gov>

Rathskeller on Wharf - 51 Wharf St

Eric Nevins <erich@portlandmaine.gov>
To: Zachary Lenhart <zlenhart@portlandmaine.gov>

Tue, Aug 30, 2022 at 4:33 PM

approved

On Tue, Aug 30, 2022 at 4:11 PM Zachary Lenhart <zlenhart@portlandmaine.gov> wrote:
[Quoted text hidden]

--

Eric Nevins
Lieutenant
Portland Police Department
(207) 874-8513



Zachary Lenhart <zlenhart@portlandmaine.gov>

Rathskeller on Wharf - 51 Wharf St

Matthew Coldwell <mcoldwell@portlandmaine.gov>

Thu, Sep 1, 2022 at 8:21 AM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erickn@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>

After a bit of research, Zoning has determined the legal use of this space is restaurant/bar. This is approved by Zoning.

Thank you,

Mac

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on September 19, 2022 at 5:00 P.M., virtually Four Ball LLC, dba Rathskeller on Wharf. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 51 Wharf Street - Sponsored by Danielle P. West, Interim City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



September 9, 2022

Four Ball LLC
51 Wharf Street
Portland, ME 04101

Re: Four Ball LLC, dba Rathskeller on Wharf. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 51 Wharf Street

Dear Four Ball LLC:

This letter shall serve as a reminder of the public hearing before the Portland City Council on Thursday September 19, 2022 at 5:00 p.m., for the review of application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 51 Wharf Street. The meeting will take place in person and virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on September 16, 2022.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes ☐ No ☐	

Legal Business Entity Applicant Name (corporation, LLC): FOUR BALL LLC	Business Name (D/B/A): RATHSKELLER ON WHARF
Individual or Sole Proprietor Applicant Name(s):	Physical Location: 51 WHARF ST, PORTLAND, ME 04101
Individual or Sole Proprietor Applicant Name(s):	Mailing address, if different:
Mailing address, if different from DBA address:	Email Address: TOM.MINERVINO@GMAIL.COM
Telephone # Fax #: (207) 831-3634	Business Telephone # Fax #: (207) 747-4263
Federal Tax Identification Number: 84-3790416	Maine Seller Certificate # or Sales Tax #: 1206331
Retail Beverage Alcohol Dealers Permit:	Website address: WWW.RATHSKELLER.ME

1. New license or renewal of existing license? ☐ New Expected Start date: _____
☒ Renewal Expiration Date: 10/7/22
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: \$485K Beer, Wine or Spirits: \$260K Guest Rooms: _____
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)
☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|---|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☒ Class A Restaurant/Lounge
(Class XI) | ☐ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☐ Other: _____ | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

51 WHARF ST, PORTLAND, ME 04101

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☒ Yes ☐ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address
THREE BALL LLC/DBA LEGENDS REST TAVERN	CR-2081- 10761	655 MAIN ST, WESTBROOK, ME 04092

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
THOMAS MINERVINO	1/13/82	PORTLAND, ME
MARGARET MINERVINO	3/11/86	PORTLAND, ME
MICHAEL BARTON	4/30/81	PORTLAND, ME
Residence address on all the above for previous 5 years		
Name THOMAS MINERVINO	Address: 60 STARBIRD RD, PORTLAND, ME 04102	
Name MARGARET MINERVINO	Address: 33 BEECHWOOD AVE, WESTBROOK, ME 04092	
Name MICHAEL BARTON	Address: 78 LINCOLN ST, PORTLAND, ME 04103	
Name	Address:	

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☒ Yes ☐ No

17. Does the licensee/applicant(s) own the premises? ☐ Yes ☒ No

If No, please provide the name and address of the owner:

FORE STREET PARTNERS, LLC, PO BOX 66749,
FALMOUTH, ME 04105

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

60% seat dining area including bar, booth and
table seating, plus 4 outdoor ~~bar~~ dining tables
on Wharf St for seasonal seating.

20. What is the distance from the premises to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: FIRST PARISH

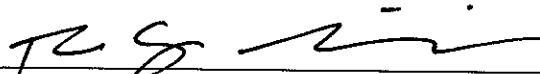
Distance: .5 MILES

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 8/29/22


Signature of Duly Authorized Person

THOMAS S. MINERVINO
Printed Name Duly Authorized Person

Signature of Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license or transfer of the location of an existing on-premises license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

2. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;

E. A violation of any provision of this Title;

F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and

G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. Repealed

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.

4. Repealed

5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

Section IV: Terms and Conditions of Licensure as an Establishment that sells liquor for on-premises consumption in Maine

- The licensee/applicant(s) agrees to be bound by and comply with the laws, rules and instructions promulgated by the Bureau.
- The licensee/applicant(s) agrees to maintain accurate records related to an on-premise license as required by the law, rules and instructions promulgated or issued by the Bureau if a license is issued as a result of this application.
 - The licensee/applicant(s) authorizes the Bureau to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also any books, records and returns during the year in which any liquor license is in effect.
- Any change in the licensee's/applicant's licensed premises as defined in this application must be approved by the Bureau in advance.
- All new applicants must apply to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for its Retail Beverage Alcohol Dealers permit. See the TTB's website at <https://www.ttb.gov/nrc/retail-beverage-alcohol-dealers> for more information.

Section V: Fee Schedule

Filing fee required. In addition to the license fees listed below, a filing fee of \$10.00 must be included with all applications.

Please note: For Licensees/Applicants in unorganized territories in Maine, the \$10.00 filing fee must be paid directly to County Treasurer. All applications received by the Bureau from licensees/applicants in unorganized territories must submit proof of payment was made to the County Treasurer together with the application.

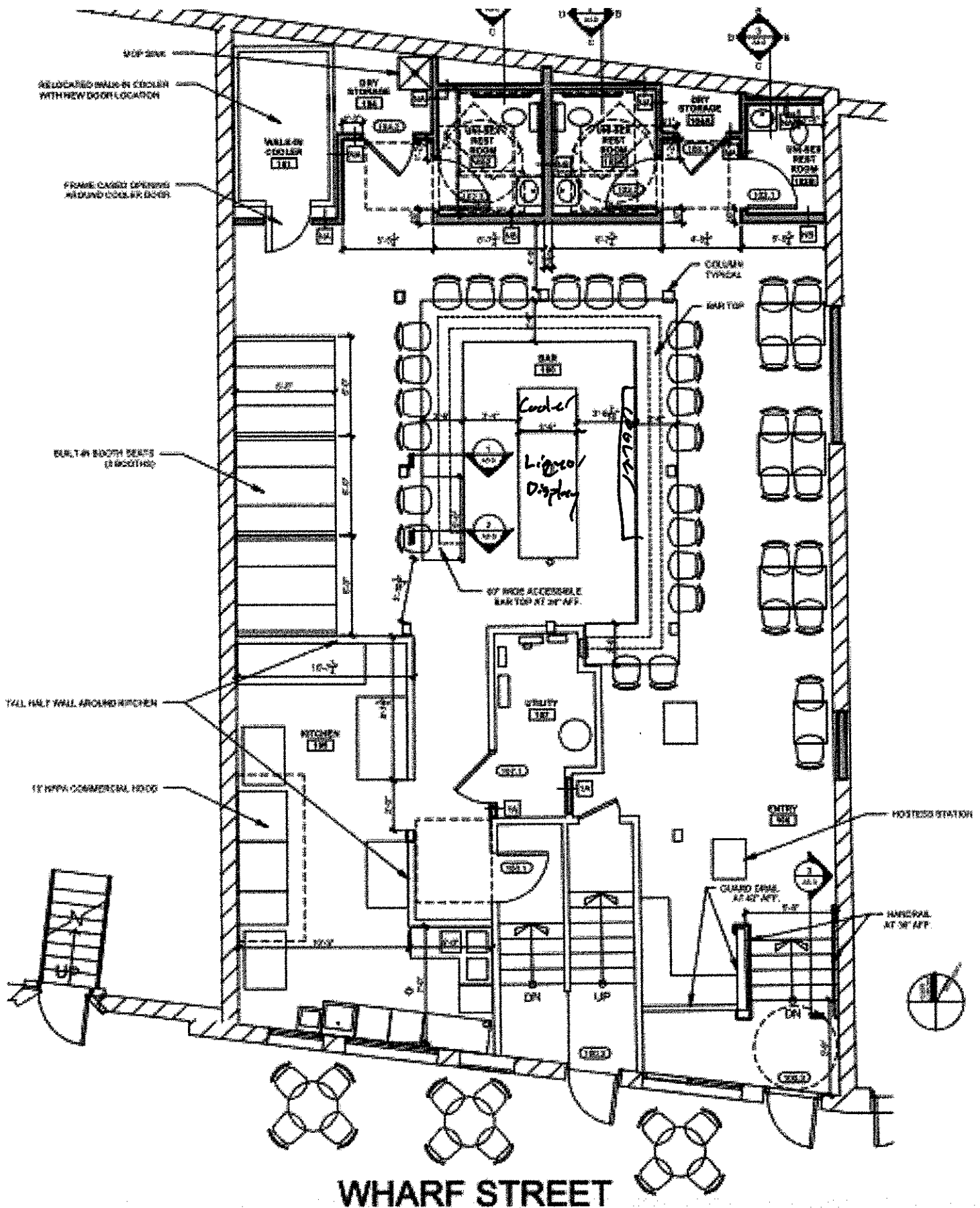
Class of License	Type of liquor/Establishments included	Fee
Class I	For the sale of liquor (malt liquor, wine and spirits) This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers	\$ 900.00
Class I-A	For the sale of liquor (malt liquor, wine and spirits) This class includes only hotels that do not serve three meals a day.	\$1,100.00
Class II	For the Sale of Spirits Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; and Vessels.	\$ 550.00
Class III	For the Sale of Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class IV	For the Sale of Malt Liquor Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class III and IV	For the Sale of Malt Liquor and Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 440.00
Class V	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Club without catering privileges.	\$ 495.00
Class X	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Class A Lounge	\$2,200.00
Class XI	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Restaurant Lounge	\$1,500.00

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.

PLEASE SEE ATTACHED.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: FOUR BALL LLC
2. Doing Business As, if any: RATHSKELLER ON WHARF
3. Date of filing with Secretary of State: 7/22/19 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
THOMAS MINERVINO		1/18/82	MEMBER	33.3%
MARGARET MINERVINO		3/11/86	MEMBER	33.3%
MICHAEL BARTON		4/30/81	MEMBER	33.3%

(Ownership in non-publicly traded companies must add up to 100%.)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 2, 2022

SUBJECT: Order 68-22/23 Granting Municipal Officers' Approval of Fat Dragon LLC, dba Empire Venue. Application for Class A Lounge with Indoor Entertainment at 575 Congress Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/17/22. New City and State applications. New ownership of a previous establishment at the same location.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 2022.09.19_Empire Venue

2. Empire Venue_Council Packet

Prepared by:

Date: 09/02/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Fat Dragon LLC, dba Empire Venue. Application for Class A Lounge with Indoor
Entertainment at 575 Congress Street**

August 12th, 2022

Theresa Chan
Empire Venue
575 Congress St, 2nd Floor
Portland, ME 04101

Mayor Kate Snyder
& Portland City Council
389 Congress St. Suite 208
Portland, ME 04101

Letter of Intent

Dear Mayor Snyder and Members of the Portland City Council,

We seek to apply for a liquor license for the Empire Venue located at 575 Congress St on the 2nd floor.

Prior to the pandemic, the venue's primary use was a comedy club and private event space. We suspended business in March of 2020. We are seeking to re-open with a like operation; offering an enjoyable entertainment space to the Portland community.

Thank you for your attention.

Sincerely,

Theresa Chan



CITY OF PORTLAND

Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Establishment Name (d/b/a):	Empire Venue 207-406-0344 Phone:
Location Address:	575 Congress St, Portland ME 04101 Zip:
If new, what was formerly at this location:	
Mailing Address:	210 High St, Portland ME 04101 Zip:
Contact Person:	Theresa Chan 207-406-0344 Phone:
Contact Person Email:	theresa.b.chan@gmail.com
Manager of Establishment:	Theresa Chan Date of Birth: 5/24/1986 207-406-0344 Phone:
Owner of Premises (Landlord):	571 Enterprises LLC
Address of Premises Owner (Landlord):	138 Grant Rd, Freeport ME 04032 Zip:

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate Name	Corporate Mailing Address
Fat Dragon LLC	210 High St, Portland ME Zip: 04101

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Contact Person:	Theresa Chan		Phone:	207-406-0344
Principal Officers	Title	Date of Birth	Residence Address	
Theresa Chan	President	5/24/1986	210 High St, Portland ME	
Yue Chan	Member	9/28/1954	138 Grant Rd, Freeport ME	
Shui Chan	Member	12/21/1956	138 Grant Rd, Freeport ME	
Penn Chan	Member	2/24/1989	7 Stetson Ct, Portland ME	
Class of Liquor License: A Lounge				

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557

bl@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	Chinese appetizers, small plates	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 20%	Generated from Alcohol: 80%
Hours & days of operation:	Sunday, Monday, Wednesday - Saturday 5-1am	
QUESTIONS		
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?		Y/N ☒ N
If No, please explain: Small plates and appetizers served during operating hours		
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?		Y/N ☒ N
If yes, give the distance:		
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)		Y/N ☒ N
Will you permit dancing after 1:00 a.m.?		Y/N ☒ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)		Y/N ☒ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).		
Will you have any amusement devices (pinball, video games, juke box)?		Y/N ☒ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____		
What is your targeted opening date? 10/1/2022		
Does the Issuance of this license directly or indirectly benefit any City employee(s)?		Y/N ☒ N
If Yes, list name(s) of employee(s) and department(s):		
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?		Y/N ☒ N
If Yes, please list business name(s) and location(s): Fat Dragon LLC DBA Empire, same location		
Is any principal officer under the age of 21?		Y/N ☒ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?		Y/N ☒ N
If Yes, please explain:		

I Theresa Chan do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Theresa Chan Title Manager Date 8/12/22



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00	☐ Outdoor Entertainment \$700.00	☐ Combined Entertainment \$800.00
☒ Sound Mitigation Fee \$150.00		

Business Information			
Establishment Name (d/b/a):	Empire Venue	Phone:	207-406-0344
Location Address:	575 Congress St, 2nd Floor, Portland ME		Zip: 04101
Owner Name:	Theresa Chan	Phone:	207-406-0344
Owner Email:	theresa.b.chan@gmail.com		
Contact Person responsible for Entertainment:	Theresa Chan	Phone:	207-406-0344
Contact Person Email:	theresa.b.chan@gmail.com		
Manager of Establishment:	Theresa Chan	Phone:	207-406-0344
Manager Email:	theresa.b.chan@gmail.com		

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:
Venue space for comedy shows and private events

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

Signature Theresa Chan Title Manager Date 8/12/22

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov

Sound Mitigation Plan for Empire Venue

Sound System

- X32 compact by Behringer sound mixer
- Delta Max Loudspeaker (x4): DLM-1152A
- DB Technologies S30 subs (x2)
- All portables not installed

Sound Mitigation

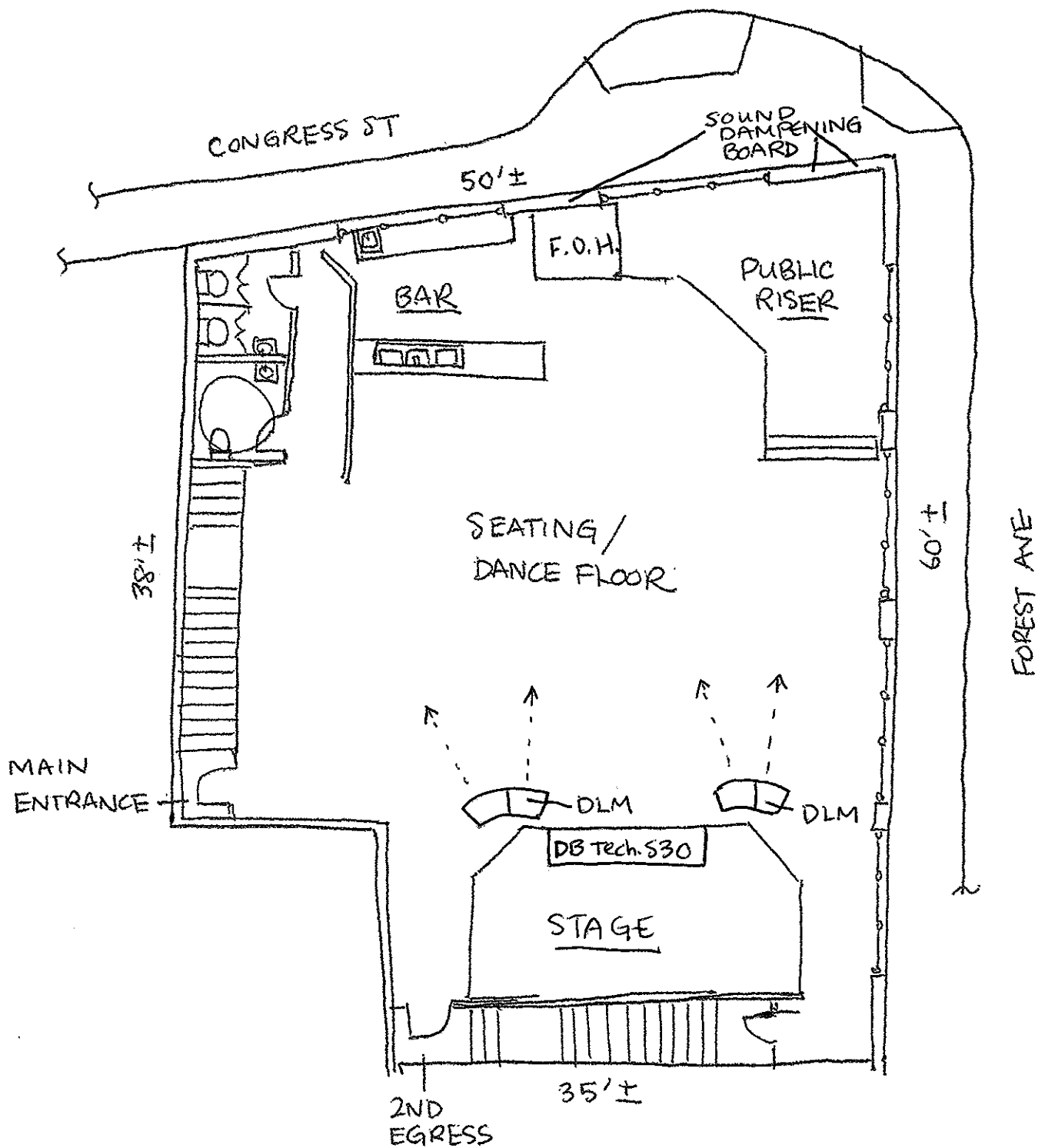
- Sound dampening curtains and double paned glass on all windows
- Sound absorbing foam on large patches of exposed brick
- Improved sound leakage from roof with insulation and wood panelling
- Expected sound readings from closest residents is 10 decibels outside, however will be hard to discern music noises from motor vehicles on Congress Street and Forest Avenue
- Indoor entertainment decibel measurements 8 feet from outer wall is anticipated to never exceed 45 decibels
- BAFX Decibels Reader will be actively used to monitor sound, even though capacity will never exceed 250
- We will be using Sound Lab software to actively monitor and record sound data

Prepared by:



Richard Reynolds
Professional Sound Engineer
30 Days Later
90 Saco Falls Way
Biddeford, ME 04005
207-615-4491

***** FLOOR LAYOUT *****



- EMPIRE VENUE -
2ND FLOOR
575 CONGRESS ST.
PORTLAND, ME

Sample Bar Menu:

SNACKS

Crispy Pork Dumplings

Char Siu Bao

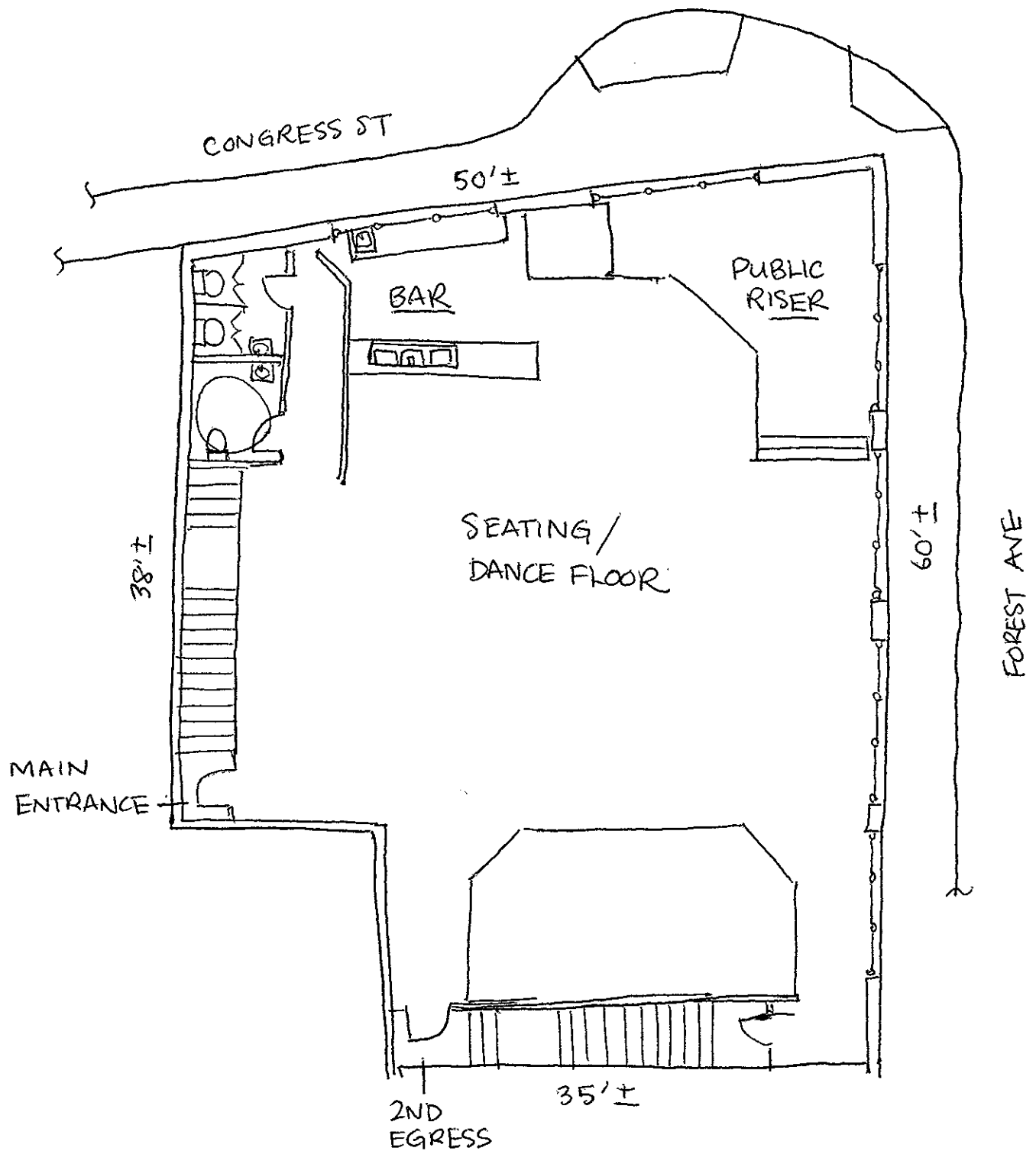
Braised Beef Bao

Vegetable Spring Rolls (Vegan)

Hot & Sour Soup (Vegetarian, Gluten-Free)

Chicken & Corn Egg Drop Soup (Gluten-Free)

***** FLOOR LAYOUT *****



- EMPIRE VENUE -
2ND FLOOR
575 CONGRESS ST.
PORTLAND, ME



Zachary Lenhart <zlenhart@portlandmaine.gov>

Empire Venue - 575 Congress St

Eric Nevins <erick@portlandmaine.gov>

Tue, Aug 30, 2022 at 4:33 PM

To: Zachary Lenhart <zlenhart@portlandmaine.gov>

Approved

On Tue, Aug 30, 2022 at 3:46 PM Zachary Lenhart <zlenhart@portlandmaine.gov> wrote:

[Quoted text hidden]

--

Eric Nevins
Lieutenant
Portland Police Department
(207) 874-8513



Zachary Lenhart <zlenhart@portlandmaine.gov>

Empire Venue - 575 Congress St

Matthew Coldwell <mcoldwell@portlandmaine.gov>

Wed, Aug 31, 2022 at 1:19 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erick@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Kevin Schneck <kschneck@portlandmaine.gov>, Glen McGary <glenm@portlandmaine.gov>

The current legal use of 575 Congress ST is restaurant. Zoning approves.

Thank you,

Mac

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]

Sound Mitigation Review

Applicant Theresa Chan

Yes

kschneck@portlandmaine.gov

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on September 19, 2022 at 5:00 P.M., virtually Fat Dragon LLC, dba Empire Venue. Application for Class A Lounge with Indoor Entertainment at 575 Congress Street - Sponsored by Danielle P. West, Interim City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



September 9, 2022

Fat Dragon LLC
210 High Street
Portland, ME 04101

Re: Fat Dragon LLC, dba Empire Venue. Application for Class A Lounge with Indoor Entertainment at 575 Congress Street

Dear Fat Dragon LLC:

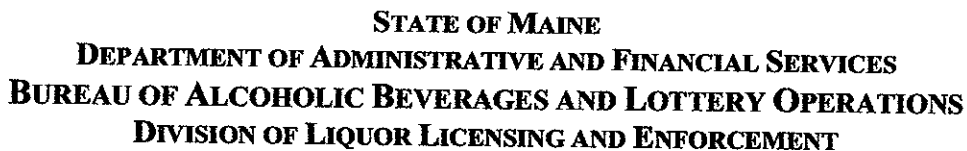
This letter shall serve as a reminder of the public hearing before the Portland City Council on Thursday September 19, 2022 at 5:00 p.m., for the review of application for Class A Lounge with Indoor Entertainment at 575 Congress Street. The meeting will take place in person and virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on September 16, 2022.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes ☐ No ☐	

Legal Business Entity Applicant Name (corporation, LLC): Fat Dragon LLC	Business Name (D/B/A): Empire Venue
Individual or Sole Proprietor Applicant Name(s):	Physical Location: 575 Congress St, Portland ME 04101
Individual or Sole Proprietor Applicant Name(s):	Mailing address, if different:
Mailing address, if different from DBA address:	Email Address: theresa.b.chan@gmail.com
Telephone # Fax #:	Business Telephone # Fax #: 207-406-0344
Federal Tax Identification Number: 90-0956695	Maine Seller Certificate # or Sales Tax #: 1164635
Retail Beverage Alcohol Dealers Permit:	Website address:

1. New license or renewal of existing license? ☒ New Expected Start date: 10/01/2022
☐ Renewal Expiration Date: _____
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: _____ Beer, Wine or Spirits: _____ Guest Rooms: _____
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)

☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|--|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☐ Class A Restaurant/Lounge
(Class XI) | ☒ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☐ Other: _____ | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

575 Congress St, Portland ME 04101

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Theresa Chan	05/24/1986	New York, New York

Residence address on all the above for previous 5 years	
Name Theresa Chan	Address: 210 High St, Portland ME 04101
Name	Address:
Name	Address:
Name	Address:

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☒ Yes ☐ No

17. Does the licensee/applicant(s) own the premises? ☐ Yes ☒ No

If No, please provide the name and address of the owner:

571 Enterprises LLC, 138 Grant Road, Freeport ME 04032

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

Event space with service bar

20. What is the distance from the premises to the **nearest** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: Cathedral Church of St Luke

Distance: 0.20

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 8/12/22



Signature of Duly Authorized Person

Signature of Duly Authorized Person

Theresa Chan

Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license or transfer of the location of an existing on-premises license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

2. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;

E. A violation of any provision of this Title;

F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and

G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. Repealed

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.

4. Repealed

5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

Section IV: Terms and Conditions of Licensure as an Establishment that sells liquor for on-premises consumption in Maine

- The licensee/applicant(s) agrees to be bound by and comply with the laws, rules and instructions promulgated by the Bureau.
- The licensee/applicant(s) agrees to maintain accurate records related to an on-premise license as required by the law, rules and instructions promulgated or issued by the Bureau if a license is issued as a result of this application.
 - The licensee/applicant(s) authorizes the Bureau to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also any books, records and returns during the year in which any liquor license is in effect.
- Any change in the licensee's/applicant's licensed premises as defined in this application must be approved by the Bureau in advance.
- All new applicants must apply to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for its Retail Beverage Alcohol Dealers permit. See the TTB's website at <https://www.ttb.gov/nrc/retail-beverage-alcohol-dealers> for more information.

Section V: Fee Schedule

Filing fee required. In addition to the license fees listed below, a filing fee of \$10.00 must be included with all applications.

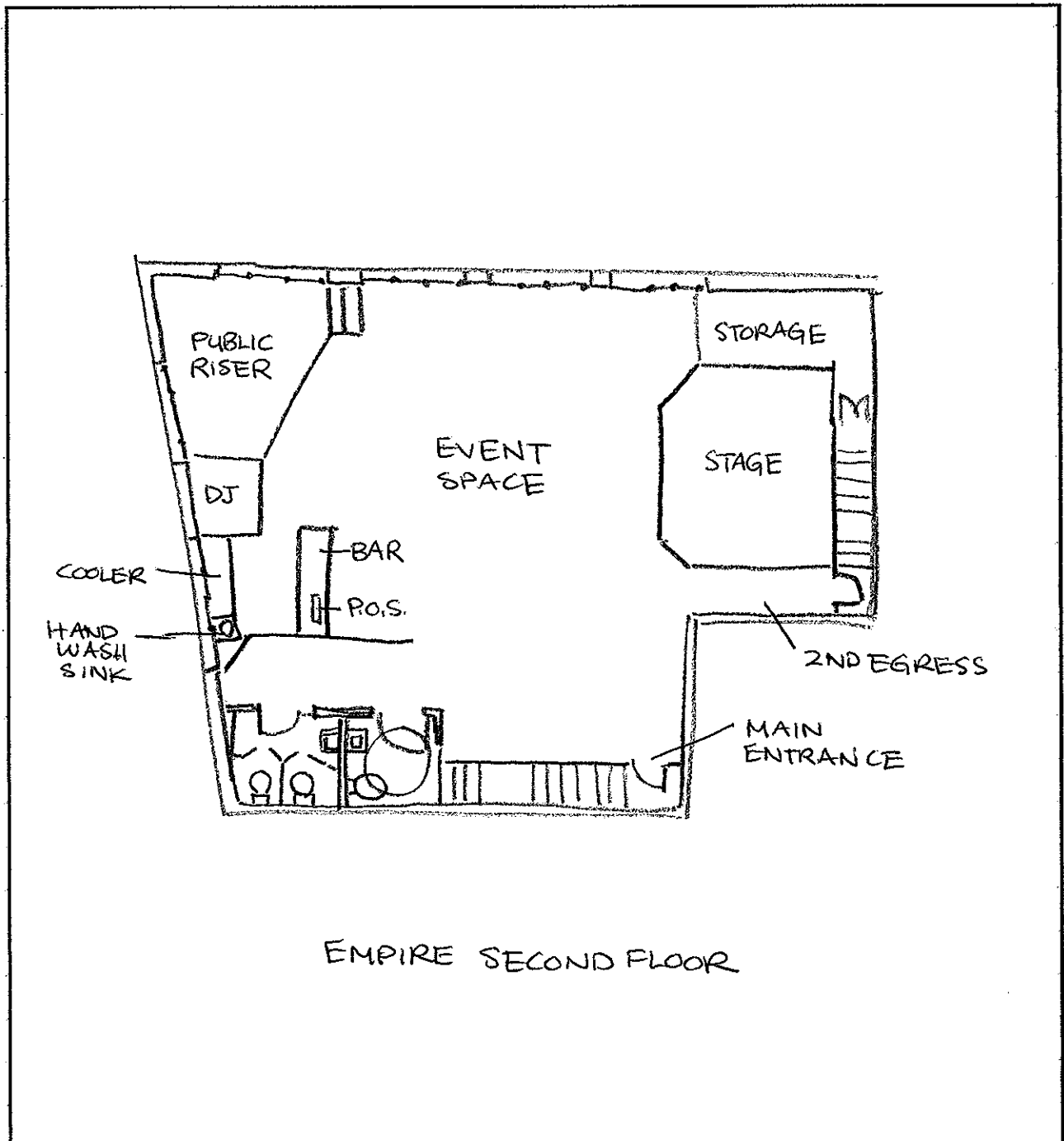
Please note: For Licensees/Applicants in unorganized territories in Maine, the \$10.00 filing fee must be paid directly to County Treasurer. All applications received by the Bureau from licensees/applicants in unorganized territories must submit proof of payment was made to the County Treasurer together with the application.

Class of License	Type of liquor/Establishments included	Fee
Class I	For the sale of liquor (malt liquor, wine and spirits) This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers	\$ 900.00
Class I-A	For the sale of liquor (malt liquor, wine and spirits) This class includes only hotels that do not serve three meals a day.	\$1,100.00
Class II	For the Sale of Spirits Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; and Vessels.	\$ 550.00
Class III	For the Sale of Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class IV	For the Sale of Malt Liquor Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class III and IV	For the Sale of Malt Liquor and Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 440.00
Class V	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Club without catering privileges.	\$ 495.00
Class X	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Class A Lounge	\$2,200.00
Class XI	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Restaurant Lounge	\$1,500.00

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: Fat Dragon LLC
2. Doing Business As, if any: Empire Venue
3. Date of filing with Secretary of State: 4/15/2013 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Theresa Chan	210 High St, Portland	5/24/86	President	35%
Yue Chan	138 Grant Rd, Freeport	9/28/54	Member	27.5%
Shui Chan	138 Grant Rd, Freeport	12/21/56	Member	27.5%
Penn Chan	7 Stetson Ct, Apt 2, Portland	2/24/89	Member	10%

(Ownership in non-publicly traded companies must add up to 100%.)

To: Mayor Snyder and members of the City Council

From: Christine Grimando, Director, Planning & Urban Development
Nell Donaldson, Director of Special Projects, Dept. of Planning & Urban Development

Date: September 14, 2022

RE: Update on ReCode Portland Phase II

I. INTRODUCTION

In February 2022, staff from the Department of Planning & Urban Development and Camiros, the City's ReCode consultant, held a workshop with the City Council on [ReCode Portland](#), the multi-phased process of rewriting Portland's land use code. The workshop included a review of the mechanics of land use regulation in Portland, an overview of the completed Phase I of ReCode, and an update of work to date in Phase II, with a focus on the first major deliverable of Phase II, the land use code evaluation. This communication provides a brief update on the ongoing work of ReCode Phase II and upcoming milestones.

II. WHERE WE ARE NOW

The City's ReCode consultant and staff are currently in the iterative process of drafting and reviewing potential amendments to the land use code. Staff anticipates a public engagement process to share amendments beginning this winter. Building off the multi-faceted public outreach for this project so far, upcoming engagement will include broad open houses, targeted forums on particular topics or issues that arise, and additional focused outreach with community groups, neighborhood associations, and other stakeholders. In addition, draft amendments will be shared online for digital commenting, as well as in workshops with the Planning Board and City Council. As always, this process will be adapted as needed to ensure that members of the public are aware of the ReCode work, and that all interested stakeholders are able to participate.

III. HOW WE GOT HERE: LAND USE CODE EVALUATION

In the winter of 2021/2022, just prior to the February Council workshop, the City published the ReCode Phase II [land use code evaluation](#). This document functioned as an audit of the existing land use code and an analysis of its content in light of the policy guides of [Portland's Plan](#). The code evaluation highlighted a number of areas in which the code could be modified to better help the City achieve its goals from a land use perspective, including recommendations related to base zones, use regulations, and dimensional standards. The evaluation also made structural recommendations and suggested updates to continue the organizational work of Phase I. A summary of the recommendations of the code evaluation can be found [here](#).

A. Outreach & Engagement Methods

At the time of the Council's February workshop, Planning & Urban Development staff, along with Camiros, had just begun the outreach and engagement process around the code evaluation. Recognizing the technical nature of this work, the engagement process was focused on promoting broad public awareness of the code evaluation and providing a variety of ways to engage and give feedback.

In order to make the code evaluation more accessible to a general audience, a shorter [summary version](#) and a [video](#) were produced, both of which highlighted key findings of the evaluation in more quickly digestible formats. These materials, in addition to the complete code evaluation, were published on the [ReCode website](#) and promoted through various channels: the February Planning Board and Council workshops; the City's Friday news round-up; the direct mailing lists of the Planning & Urban Development Department, Planning Board, and ReCode; the City's [CivilSpace](#); the Planning & Urban Development Department social media accounts; direct email to leaders of community organizations; and direct email to contacts from recent land use applications. At their request, staff also met with representatives of Portland Downtown, the Portland Society of Architects, Baxter Academy of Arts and Sciences, and the Peaks Island Council to provide information on the code evaluation. Promotional materials were translated for a multilingual audience.

In addition to encouraging the public to read and learn about the code evaluation, the Planning & Urban Development Department asked the public to provide feedback in multiple ways that might appeal to varying audiences. The code evaluation was available for direct public comment through Konvio, a document comment portal on the ReCode website. A survey on the findings of the code evaluation was published online for a month in late winter. And the City hosted two virtual public forums on the code evaluation in early March. Altogether, over 250 members of the public participated in these public engagement opportunities.

It is important to note that public engagement around the code evaluation has also continued; in late August, staff released a targeted questionnaire to island stakeholders on island zoning. This questionnaire is ongoing, and will help inform potential amendments to island zoning in particular. As of this writing, staff has received almost 450 responses.

B. Public Engagement Findings

In late spring of 2022, staff posted the [findings of the code evaluation public engagement](#) to date on the ReCode website. Altogether, the input gleaned through this engagement affirmed many of the recommendations of the code evaluation. Key themes included:

1. Some land use strategies, like encouraging transit-oriented, mixed-use development along existing transit corridors, were widely supported as measures that could help the City achieve many goals related to housing, transportation, economic, and climate change.
2. Not surprisingly, a significant amount of feedback focused on the housing recommendations of the code evaluation, with strong support for adjusting dimensional standards and uses to support greater housing diversity across residential and mixed-use zones.
3. Participants were also interested in the complete neighborhoods recommendations of the land use code evaluation, supporting the idea of adding pockets of mixed-use zoning to neighborhoods and expanding neighborhood-scale commercial uses in residential zones.
4. Participants generally supported many of the climate change-related strategies recommended by the code evaluation, including planning for less intensive growth in areas of high flood risk, revising

standards to support solar and other green energy installations, and strengthening natural resource protections.

5. Lastly, participants generally indicated interest in further refining parking standards, supporting emerging uses and industries through use permissions, creating and preserving visual and physical access to the waterfront, and supporting walkable, pedestrian-scaled urban design.

The findings of the public engagement are directly informing the draft land use code amendments currently under development.

IV. RELATED WORK

Meanwhile, staff has been working on several related initiatives. In June, the Planning & Urban Development Department published [Part II](#) of the annual housing report for 2021, which included a review of recent trends in affordable and market rate housing. This report was presented to the Council's Housing and Economic Development Committee at their June 21 meeting. It built from the Department's work with NYU's Housing Solutions Lab, which is providing staff across the Housing and Economic Development and Planning Departments with structured opportunities to review existing housing policy and programs, consider best practices that address the city's current needs around supply, diversity, and affordability, and coordinate on policy and programs moving forward.

In May, the Department of Planning & Urban Development was awarded a Climate Action Grant from the Governor's Office of Policy, Innovation, and the Future for the development of climate resiliency zoning. This work is a direct outgrowth of *One Climate Future*, and will involve the development of two basic zoning mechanisms: a resiliency overlay focused on adapting to the risks of flooding from sea level rise and storm surge, and a set of city-wide standards focused on adapting to the effects of higher intensity rainstorms and heat. As noted above, public engagement for ReCode shows support for this initiative, which will, to the extent possible, be integrated with ReCode moving forward. As of the writing of this memo, staff has received two consultant proposals for this work, and hopes to have a consultant under contract this fall.

To: Mayor Snyder and members of the City Council

From: Christine Grimando, Director, Planning & Urban Development

Date: September 14, 2022

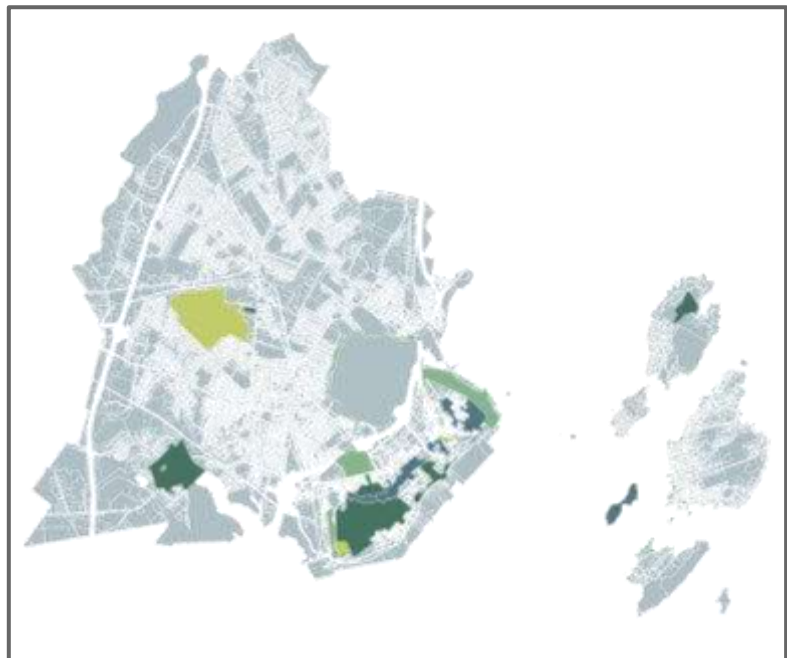
RE: Historic Preservation Impact Study Communication

1. INTRODUCTION

On April 12, 2021, the City Council passed a resolution outlining funding and scope for a Historic Preservation Impact Study. The project is currently underway, with a draft study anticipated later this fall. Below is an overview of the study background, progress, and next steps.

2. STUDY BACKGROUND AND PURPOSE

Since the adoption of the Historic Preservation Ordinance by the City Council in 1990, approximately 2,000 properties throughout the City, in a diverse range of neighborhoods and contexts, have been designated as historic properties.



Map of Local Historic Cemeteries (Light Green), Landscapes (Medium Green), and Districts (Dark Green and Dark Blue-Gray)

Over the course of the Munjoy Hill

Historic District designation process, many questions arose about preservation's relationship, citywide, to housing costs, sustainability, economic development and other city goals. Though there was some data available to address questions in the scope of that particular designation review, the impacts of the City's historic preservation program had not been fully evaluated. As a result, the Council directed staff to initiate a study to address the following:

The goal of the study is to serve as that evaluation. Per the Council resolution, the study will analyze the following:

1. Job creation and income generated by historic rehabilitation activity or other preservation efforts in Portland's historic districts;
2. The economic impact of cultural heritage tourism and its relative impact in relation to other forms of tourism in Portland;
3. Demonstrated effect of historic districts on property values and rent within those districts as compared to non-historic districts;
4. The role of historic preservation in downtown commercial economic vitality;
5. The contribution of historic preservation to Portland's sustainable development (smart growth principles, energy conservation, climate resilience, green infrastructure, etc.); and
6. The social & racial impacts of historic preservation including, but not limited to, the opportunities in Portland's historic districts as it is related to the development of low and moderate income housing compared with other, non-historic districts parts of the City.

3. STUDY PROCESS

In January 2022, PlaceEconomics was selected as the project consultant, with data collection commencing in March. PlaceEconomics conducted a site visit in late April to all of the historic districts in the city and interviewed stakeholders with areas of expertise related to affordable housing, community organizing, development, historic preservation, real estate, and sustainability.

Over the course of May and June, PlaceEconomics continued to conduct interviews with stakeholders, collected and analyzed data, and released a community survey gauging community perceptions of historic preservation. Work from July to September has focused on preparation of the draft report.

Periodically throughout the study, an advisory group consisting of eleven people with backgrounds in historic preservation, affordable housing, economic development, historic preservation, and sustainability have provided input. The advisory group met in April and July, with a final meeting still pending to discuss the upcoming draft report.

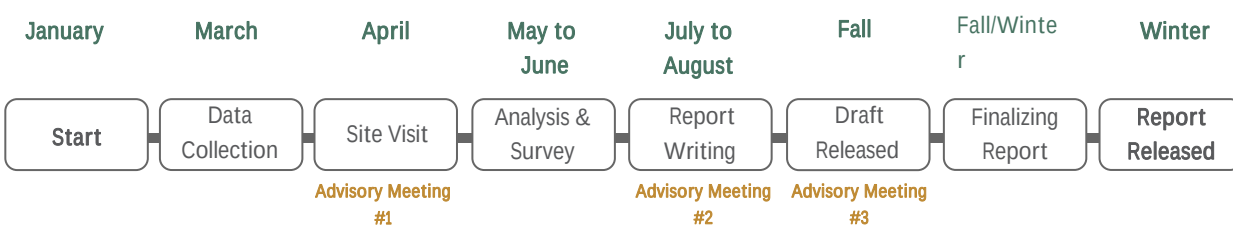
4. STUDY REPORT

The report will be organized around the six analysis areas established within the Council resolution outlining the study scope. The report includes data from City departments, the United States Census, the Maine Historic Preservation Commission, and other local, State, and national sources. Findings for local districts will be compared to similar neighborhoods that are not local districts, as well as to the remainder of the City. Along with these comparative analyses, viewpoints from community stakeholders and results from the community survey have been included to determine how community perceptions on historic preservation align with findings.

5. NEXT STEPS

The next several months will focus on internally reviewing the draft report, gathering feedback on the draft and preparing a final report. The timeline for next steps includes:

- A. On September 21, the Historic Preservation Board will receive a similar communication on the current status of the project.
- B. A draft of the report will be released for public comment in Fall 2022
- C. In Fall and early Winter, public and staff comments will be compiled and addressed in the preparation of the final report.
- D. Upon completion of the final report, there will be a presentation of the report findings to the City Council and Historic Preservation Board.



Members of the public can stay up-to-date on the project by visiting the project [Civil Space page](#), where the link to the draft report and final report will be posted when available.

ATTACHMENT

1. 4-12-21 Council Resolution

Resolve 7-20/21
Passage: 9-0 on 4/12/2021

Effective 4/22/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**RESOLUTION REQUESTING A REPORT ON THE IMPACTS OF HISTORIC
DISTRICTS IN THE CITY OF PORTLAND**

WHEREAS, the City Council of Portland, Maine, has approved and established a total of eleven (11) historic districts over the years, including for Congress Street, Deering Street, Evergreen Cemetery, Fort McKinley on Great Diamond Island, House Island, How Houses, India Street, the Old Port, Portland Company, Stroudwater and the West End; and

WHEREAS, during the years in which these neighborhoods and island areas have had historic district zoning in place, property owners have worked with the Historic Preservation Office in the Department of Planning and Urban Development to maintain historic standards; and

WHEREAS, given this long history, it would be possible to collect data in such matters as employment, property values, cultural heritage tourism, environmental issues, downtown revitalization, and equity and inclusion for both the areas in these historic districts and the areas outside them; and

WHEREAS, in order to understand ramifications of the effects on the residents and the city created by the historic districts, an in-depth analysis would guide future actions by both the City's Planning staff and the City Council; and

WHEREAS, the City Council is considering the establishment of a twelfth Historic District on Munjoy Hill in 2021:

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor Kate Snyder, and the Portland City Council hereby support the City Manager's commissioning of a report that would delineate the impacts of the historic districts located within the City of Portland; and

BE IT FURTHER RESOLVED, that the Mayor and the Portland City Council, among other things, seek to specifically learn more about the following impacts:

- Job creation and income generated by historic rehabilitation activity or other preservation efforts in Portland's historic districts;

- The economic impact of cultural heritage tourism and incremental impact relative to other forms of tourism in Portland;
- Demonstrated effect of historic districts on property values and rent within those districts as compared to non-historic districts;
- The role of historic preservation and downtown commercial district revitalization in Portland, Maine;
- The contribution of historic preservation to broader sustainable development, Smart Growth, energy conservation, and environmentally-sensitive or green community planning in Portland, Maine; and
- The social & Racial Impacts of Historic Preservation including, but not limited to, the opportunities in Portland's historic districts as it is related to the development of low and moderate income housing compared with other, non-historic district parts of the City.

MEMORANDUM

To: Mayor Snyder and members of the City Council

From: Christine Grimando, Planning & Urban Development Director

Date: September 14, 2022

Subject: Green Building Code Exemption

[Chapter 6 of the City Code](#) includes Article VII, Green Building Code, which includes energy, performance and roofing requirements for constructing and renovating buildings owned, occupied or funded (minimum thresholds apply) by the City of Portland. Sec. 6-170 includes exemption provisions from these standards, as well as a requirement (Sec. 6-170.e) that the Director of Planning & Urban Development submit a report to the City Council with a list of each applicant and project granted a partial exemption over the previous year and the reason for the exemption. Qualifying reasons for an exemption include (sec. 6-170.a-d contains the full criteria for determining if a project qualifies):

1. A conflict of green building requirements with other government requirements and building standards;
2. Required alterations to an historic building that would compromise its historic character as determined by the Historic Preservation Board;
3. Specific circumstances that would defeat the purpose of the standards.

The cost of renovations, time added to a project, or challenges the requirement might bring to fulfilling other City goals (such as affordable housing), are not a basis for exemption; each of the qualifying factors are rooted in conflicting building and design requirements.

There were no exemptions given in the previous year. There were also no denials of exemption requests. One applicant has been given preliminary feedback that they would qualify for an exemption based on the materials they submitted detailing the challenges of meeting multiple standards in the course of the renovation project. As they have not yet applied to do this work, the exemption will be official at the time of

their building permit application. That project is Portland Housing Authority's renovation of 284 Danforth Street (Harbor Terrace).

Since the passage of the citizen-initiated Green New Deal on November 3, 2020, there have been a number of inquiries to Planning & Urban Development as well as to Permitting & Inspections, about how to how to qualify for an exemption. The 2020 changes are pertinent to the number of inquiries in that they prompted interpretation questions, applied to more projects than previously (minimum thresholds for applicability were lowered), and had a built-in initial delay, as they are applicable to projects for which site plan or (if site plan is not required) building permit applications are filed after December 6, 2020. Many of the inquiries to-date were from applicants looking ahead to developments to make sure they were designing appropriately or prepared to qualify for exemptions if need be. It is likely that some of these inquiries will result in formal requests for exemptions in the coming year.

Executive Summary

Chapter 6 of the City of Portland’s municipal code requires the Sustainability Director to provide an annual report describing progress made across the city to reduce reliance on fossil infrastructure in buildings. This inaugural report will provide a brief summary of greenhouse gas emissions from the building sector and highlight some existing high performing buildings. It will note several advanced building technologies being implemented across the city and then discuss recommendations for amendments to City Code that can be adopted in the upcoming year to reduce reliance on fossil fuels in Portland.

Buildings built without reliance on fossil fuel infrastructure

The greenhouse gas inventory completed as part of the One Climate Future plan indicates that buildings contribute over 60% of the CO₂ emissions from Portland as a whole.

EMISSIONS BY SECTOR

34% COMMERCIAL BUILDINGS

22% RESIDENTIAL BUILDINGS

0.3% WASTEWATER

3% SOLID WASTE

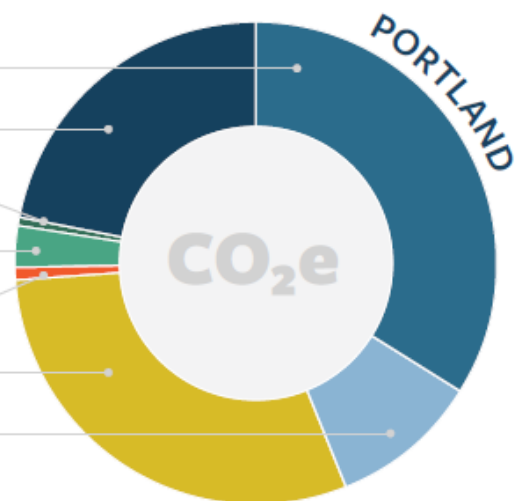
0.8% WATERBORNE TRANSPORTATION

30% ON-ROAD TRANSPORTATION

10% INDUSTRIAL BUILDINGS

840,419 MTCO₂e

OF GREENHOUSE GASES EMITTED IN 2017



Commercial buildings – offices, warehouses, hotels, retail establishments – account for more than half of these building emissions with residential buildings accounting for about a third. This

is because nearly all of the buildings in Portland use natural gas or oil in their day to day operations, primarily for space heating and heating domestic hot water.

Out of the thousands of buildings in the city, very few completely avoid the use of fossil fuels. These include two single family homes, one building in 2009 that achieved LEED Platinum certification and another built in 2015 meets Passive House standards. An apartment building at 89 Anderson Street (Redfern Mews) is fully electric and also has rooftop solar to reduce the use of grid electricity. Another notable example is Parris Terraces on Parris Street, which uses about half of the energy of a typical apartment building because it incorporates many Passive House features. Bayside Anchor, located at the corner of Boyd Street and East Oxford Street, serves as a green building landmark in Portland. Built in 2015 it contains 45 apartments for low and moderate income residents. It meets Passive House standards for energy efficiency and generates electricity onsite with a large solar array on the roof, although it does use natural gas for domestic hot water. These buildings demonstrate that architects and developers have the knowledge and materials to build the kind of buildings we need to achieve the City's climate goals while keeping occupants comfortable and safe.

While the Sustainability Office is not aware of any high performing or fossil fuel free buildings constructed during the past year, we recognize that several are currently under construction and will be completed in the next couple of years. These include:

- 201 Federal Street, a 263 unit apartment building under construction on Federal Street that will be fully electric, including for domestic hot water, and will pioneer the use of highly efficient “all in one” heat pumps in each of the apartments as opposed to a typical ducted system.
- Portland Commons, student housing on the University of Southern Maine campus that will meet Passive House standards,
- The new City shelter on Riverside Street that will meet at least LEED Silver Standards and include a large rooftop solar array to meet much of the facility's electrical needs.

We will provide more detailed information about these buildings in a future report.

Green Building Technologies

A number of energy efficient building technologies that have been developed and pioneered in Europe and Japan are starting to be used in projects here in Portland. These include:

Variable Refrigerant Flow (VRF) systems — VRF systems work in a manner similar to the ductless mini-split heat pumps that are increasingly common in Portland homes and businesses. VRFs have an outdoor condenser unit that conditions a refrigerant that circulates throughout a building. Multiple indoor units connected to the condenser provide either heating or cooling, depending on the temperature and the unit's settings. The indoor units allow building occupants to control the temperature in their space more easily than with conventional HVAC

systems. Because VRF systems run at variable speeds they use energy more efficiently than traditional systems that are either on or off.

Dedicated Outdoor Air Systems (DOAS) with Energy Recovery Ventilators (ERV) – Unlike conventional HVAC systems, DOAS only bring outside air and circulating stale air to the outside. This ensures that occupants benefit from healthy indoor air quality. DOAS often use an ERV to pre-warm or pre-cool the outside air as it enters the building by transferring heat from the exhaust air to the incoming air if heating is required or vice-versa, depending on the outdoor air temperature. This reduces the load on the heating and cooling system to reduce energy consumption of the heating/cooling system. Because DOAS do not provide all of the heating/cooling requirements of a building, they are often paired with a VRF system.

AIO units – 201 Federal Street is pioneering the use of an “all in one” system to provide heating and cooling for each of the 263 units. Each apartment will have its own dedicated indoor unit that will work much like a common mini-split heat pump that transfers heat to the interior space or to the exterior, depending on the outside temperature. This technology works very well for buildings with many discrete spaces with occupants who may want different temperature settings, such as apartment buildings, condominiums, or hotels. Another key advantage of AIO systems is that they do not require installing long runs of duct work throughout the building.

Wood Construction – Highly energy efficient mechanical systems reduce energy consumption and carbon emissions from building operations but they don’t reduce the carbon embedded in the materials used for constructing the building. Commercial buildings and large apartment buildings typically use steel and concrete, the production of which is highly carbon intensive, which means constructing buildings with them produces a lot of emissions that are not captured in typical greenhouse gas inventories. Some architects and builders are now employing designs and construction practices using wood and cellulose, which can sequester carbon rather than emitting it. Parris Terraces is a recent example of a fairly large wood building constructed in Portland.

Projects under construction in neighboring communities are pioneering the use of cross laminated timber (CLT). This product layers lumber boards to create strong panels suitable for walls, floors, roofs, and elevator shafts. The 2021 International Building Code allows for CLT to be used for buildings up to eight stories tall, which accounts for the vast majority of construction in Portland.

Relevant Legislation enacted at the State and Local Level that Reduces Reliance on Fossil Fuels

Recent State Level Legislation:

- **C-PACE** – The State recently adopted legislation allowing municipalities to adopt Commercial Property Assessed Clean Energy programs. C-PACE programs make it

easier for private lenders to support businesses wishing to undertake energy efficiency of clean energy projects by placing a lien on the property as an assurance of payment. If the borrower fails to meet their payments the private lender can work with the municipality to enforce the lien. This de-risks the loan allowing the lender to offer financing with payments that are less than or equal to the energy savings derived from the project being funded. More than thirty states across the country have adopted this program and have demonstrated its effectiveness. The State has designated Efficiency Maine as the program administrator who will coordinate the loan process between the private lenders, the participating businesses, and participating municipalities. Municipalities wishing to participate in the program must adopt a local ordinance authorizing the program. Efficiency Maine plans to provide a model ordinance later this year.

- **Energy Efficient Affordable Housing** – During the last session the State adopted LD1656 – An Act To Promote Energy-efficient Affordable Housing that requires construction projects funded by the Maine State Housing Authority to meet certain energy performance standards, including full electrification of the systems used for heating, cooling, domestic hot water, and cooking.

Recent Local Ordinances:

- **Adoption of the IECC 2021** – On July 1, 2021 the City began enforcing IECC 2021, the voluntary “stretch” code authorized by MUBEC Board pursuant to changes in legislation governing the State’s unified building code. The legislation allows municipalities to enforce the base energy code established by the MUBEC Board, or a voluntary energy code as designated by the MUBEC Board. Portland residents voted in 2020 to require adoption of the voluntary energy code. New buildings built under this new standard are 30% more energy efficient than under the previous code, IECC 2009 and 10% more efficient than buildings built using the State’s base code, which is IECC 2015.

Recommended Changes to City Code to Reduce the Use of Fossil Fuels

In November 2020, the City adopted One Climate Future. It describes a variety of strategies and actions designed to achieve our established carbon reduction goals:

- Using 100% clean energy for municipal operations by 2040
- Reducing carbon emissions from all community sources 80% from 2017 levels by 2050

Succeeding in these goals will depend on promoting the efficient use of energy. It will also lead us to use electricity to operate buildings instead of fossil fuels such as heating oil, gasoline, and propane. The City has two short term opportunities to make progress in these areas:

1. Consider adopting C-PACE when Efficiency Maine issues the model ordinance.

Adopting C-PACE will provide Portland businesses with an affordable financing tool to support energy efficiency and clean energy projects in their buildings. This will support the local economy by helping them reduce their energy costs and help achieve the City's goal to eliminate carbon emissions. This action is in Section BE 3.3 of One Climate Future.

2. Adopt changes to Chapter 14 as part of ReCode

ReCode is Portland's effort to update its land use code and align it with the objectives outlined in Plan 2030 and One Climate Future. In November 2020 the City Council adopted Phase One of this initiative. As part of this vote, they eliminated parking minimums within .25 miles of fixed route transit and authorized residential properties to have two accessory dwelling units (ADUs). Both of these policies align with goals outlined in One Climate Future to reduce automobile dependence by promoting neighborhood density in locations served by transit. While Phase One of ReCode primarily focused on reformatting and restructuring the code, Phase Two presents the City with an opportunity to implement key recommendations in One Climate Future that can reduce the use of fossil fuels for transportation. This includes a wide range of strategies in OCF:

- Complete Neighborhoods and Transit Oriented Development (TLU 1.2)
 - Increase density in areas served by transit and promote development that facilitates walking and cycling instead of driving
 - Promote the development of neighborhoods with nearby opportunities for shopping, work, and recreation
- Parking requirements (TLU 1.6)
 - Build on parking policies adopted in ReCode Phase 1 to ensure parking requirements do not hinder development of housing and the proliferation of ADUs
- Green Infrastructure (CR 4.2)
 - Establish standards that expand the deployment of green infrastructure to absorb stormwater and reduce urban heat island impacts.

Research indicates that electrifying buildings and transportation in Portland will require access to three times more electricity than is currently used in the city. We will continue to work with the electric utility to develop this understanding, which will inform future policy recommendations to encourage beneficial electrification and discourage the use of fossil fuels.

Assessment of the benefits of adopting this policy

One Climate Future includes a goal that all new construction in Portland be net zero by 2030. Adopting the State's voluntary energy code and requiring that new buildings built using City funds be high performance clearly align with this goal. However, it is too early to clearly assess the benefits of these policies because few, if any, buildings constructed under these rules are currently operational. We will monitor the energy performance of these new buildings and share our findings in future reports.

City of Portland | Executive Department

Danielle West, *Interim City Manager*



To: Mayor Snyder and City Councilors

From: Danielle West, Interim City Manager

Date: September 15, 2022

Re: Fiscal Impact of the November 2022 Citizen Initiatives and Charter Commission Proposals

In response to a September 1, 2022 request by Mayor Snyder for staff's evaluation of the fiscal impact of the Citizen initiatives and Charter Commission proposals voters will be presented with on the November ballot, we have prepared the following memo.

The amounts contained herein reflect only estimates of how much it would cost the City to implement the proposals, on an annual basis. These costs include investments explicitly mandated in the proposals, as well as costs related to the day-to-day administration of the proposed regulations and programs.

In total, we estimate the cost of all of the Charter Commission proposals to be an estimated \$1,000,000 annually. The cost of all of the citizen initiatives is estimated to be more than \$5,500,000 annually. The total estimated increase to the City budget required for both the Charter Commission proposals and the Citizen Initiatives would be in excess of \$6,500,000.¹² The costs included in this total are based on current staffing levels, pay grades, and construction/material costs. The costs also include the loss of revenue.

This total does not include costs that, although likely, were impossible to confirm prior to implementation. For example, Question 5 (regarding changes to the City Charter re: school budget autonomy) may prevent overall cost savings the City has seen as a result of the Council's budgetary review authority and may have additional costs required due to the lack of clarifying details within the proposal.

If \$6,500,000 in new costs and revenue losses were added to the overall City operating budget, there would be an increase in the mill rate of \$0.44, or 3.4%. For a Portland homeowner with the median home value of \$365,000, these changes would add an estimated \$161 in property taxes annually.

¹ The total estimated cost of implementing Charter Commission recommendations is exactly \$1,005,521; the total estimated cost of implementing the Citizen Initiatives is \$5,579,141.

² \$250,000 of the over \$6.5 million estimated total represents capital expenditures for renovations required to accommodate new employees, and should not be a recurring expense.

Costs associated with each individual proposal are outlined in more detail below. Please note that Question 1 (Amendment to Preamble), Question 4 (Proportional Ranked Choice Voting), and Question 6 (Peaks Island Council) were determined to not carry significant implementation costs, and have been omitted from this memo.

I. Citizen Initiatives (Questions A, B, C, D, E)

- **Question A (An Act to Regulate Short-Term Rentals in Portland and Prohibit Corporate and Absentee Operation of Short-Term Rental Properties): \$175,000**

This initiative, along with Question B and Question C (below), introduces new regulations to short-term rentals. All three require a significant increase in administrative tasks related to the regulation and oversight of short-term rentals, including notifications, enforcement, and record keeping.

Staff estimate that one (1) additional enforcement officer and one (1) administrative staff member would be required to effectively implement Question A, carrying a total cost of \$150,000 (salaries and benefits).

Lastly, as office space at City Hall is currently over capacity, expansions or major changes to existing spaces would be required to accommodate these additional staff members. Staff estimate these changes would cost approximately \$25,000.

- **Question B (An Act to Reduce the Number of Short Term Rentals in Portland): \$127,500**

This initiative would result in a loss of approximately \$127,500 in revenue earned each year from short-term rental registration fees.

Staff do not believe there would be significant additional costs related to the implementation of this initiative.

- **Question C (An Act to Protect Tenants in Portland): \$175,000**

Similar to costs reflected in the implementation of Question A, this initiative would require a significant increase in administrative tasks related to the regulation and oversight of short-term rentals, including notifications, enforcement, and record keeping.

Staff estimate that one (1) additional enforcement officer and one (1) administrative staff member would be required to effectively implement Question C, carrying a total cost of \$150,000 (salaries and benefits).

Lastly, as office space at City Hall is currently over capacity, expansions or major changes to existing spaces would be required to accommodate these individuals. Staff estimate these changes would cost approximately \$25,000.

- **Question D (An Act to Eliminate the Sub-Minimum Tipped Credit Wage, Increase the Minimum Wage and Strengthen Protections for Workers):** \$2,101,641 (excluding any impact to the Portland Public Schools)

This initiative requires the creation of a Department of Fair Labor Practices, which would be responsible for the enforcement of wage and worker safety laws. Staffing this Department would require, at minimum, a Director, one Enforcement Officer, and one Administrative Assistant (\$300,000).

As office space at City Hall is currently over capacity, expansions or major changes to existing spaces would be required to accommodate these individuals. Staff estimate these changes would cost approximately \$25,000.

In addition, if the City were to increase employee wages to reflect the new minimum wage of \$18/hour (or \$27/hour for overtime), the total increase in cost to the City's operating budget would be an estimated \$701,641.³

In the event that the City increased employee wages, there may also be cost implications for other employees making slightly above the minimum wage. In many instances, those employees have additional qualifications or skills that justify the gap between their wage and the wages of employees earning less. A minimum wage increase would exacerbate these so-called "compression issues" and, in many instances, push the wages of staff to nearly the same wage as their supervisors. To address these issues, the City has estimated an additional \$875,000 may be required to adjust wages for employees making between \$0.00 and \$5.00 above the proposed new minimum wage.

Finally, there would be a fiscal impact related to all contracted services with vendors who are currently paying below \$18 per hour. The City spends approximately \$20,000,000 on contractual services each year, so the cost implications could be significant. For the purposes of this analysis, staff have estimated a 1% potential increase in this cost category, which represents a \$200,000 annual increase in costs related to contractual services.

³ Sec. 9-36(b) of Portland City Code states that the wages of city employees are not subject to ordinances or amendments to ordinances made by citizen initiatives. Therefore, any increase in city employees' wages to reflect the new minimum wage would need to be determined based on guidance (legal and otherwise) during the municipal budgeting process.

- **Question E (An Act to Restrict Cruise Ships): \$3,000,000**

Cruise ship activity generates public revenue through a head tax (starting at \$14.50 per passenger and increasing \$0.50 each year thereafter) and infrastructure fee (\$2.00 per passenger) paid by each cruise ship that docks and disembarks in the City of Portland.

In the years immediately preceding the COVID pandemic, taxes and fees paid by ships carrying over 1,000 passengers totalled approximately \$2,800,000 annually. Staff estimate that, between FY24 and FY28, this revenue would total an annual average of over \$3,000,000. This revenue would be lost under the proposed restriction.

Beyond that direct loss, the required cancellation of port visits by cruise ships carrying more than 1,000 passengers is likely to have a significant impact on the Portland economy: many businesses and individuals, including artists, vendors, stores, and the working waterfront rely on cruise ships for support.

Staff do not believe that significant expenditures would be required to implement this initiative. However, there may be additional pressure on the City to financially support portions of the working waterfront industry that may be negatively affected by the loss of revenue from larger cruise ships.

II. Charter Commission Recommendations (Questions 2, 3, 5, 7, 8)

- **Question 2 (Charter Commission Governance Recommendation): \$398,021**

This recommendation would require additional funding for elected officials' compensation, due to both an increase in the total number of elected officials and an increase in the compensation for the elected positions. The increase in compensation for school board members, councilors and mayor is estimated at \$155,000.

A change in the size of the City Council would also require renovations of Council Chambers (unless an alternative location for Council meetings was selected). These renovations would also require compliance with updated building code. We estimate these renovations could cost up to \$150,000.

The recommendation also requires that a special election be held if an elected position is vacated more than six months prior to the next municipal election. Administration of a special election is estimated at \$75,000.

The salary of a city administrator would be based on a number of factors, including the priorities of a strong mayor, the pool of candidates, and negotiations. Based on information provided by International City/County Management Association

(ICMA), it's possible that a skilled city administrator could command a very high salary.

ICMA, whose members include municipalities with both Mayor-Council and Council-Manager government systems, provided data and insight that suggests a competitive salary for an Administrative Officer could be more than the current City Manager salary. From Jason Grant, Director of Advocacy at ICMA:

"In comparing compensation of a city manager under council-manager form of government versus the strong mayor form, the political nature of the appointment becomes a factor that influences the negotiation for pay. Under a council-manager system, the city manager understands that there is greater stability considering that they are held directly accountable for performing their duties effectively. However, in a strong mayor system, they are directly tied to the political will of the mayor. So, regardless of their effectiveness in achieving the goals of the mayor, if the mayor loses an election, the city administrator may be out of a job. And so, a manager will seek greater compensation when there is greater volatility in the role."

ICMA provided the salaries for city administrator positions in 10 cities with populations similar to that of Portland. After adjustments based on BestPlaces.net's cost of living index, they determined that the median salary for a city administrator in a city of approximately Portland's size was \$189,892. Of the 10 cities identified, the lowest salary was \$116,362; the highest was \$342,551.

Mr. Grant recommended that Portland budget a minimum of \$200,000 for the salary of a city administrator. For comparison's sake, the base salary of Portland's most recent City Manager was \$181,079.

It is important to acknowledge that the salary of a chief administrator will ultimately be determined by the executive Mayor and Council. Additionally, the salary for this position could change as mayoral administrations do, or even year-over-year. Mr. Grant acknowledged that, regardless of the salary associated with this position, a municipality will likely be able to find a candidate to fill it, although the candidate pool may be very limited if the salary offered is not competitive.

- **Question 3 (Charter Commission Clean Elections Recommendation):**
Approximately \$290,000

The amount originally suggested by the Charter Commission was approximately \$290,000 for this program, and includes staffing costs as well as public campaign funds for qualifying candidates.

However, staff notes that the true cost of this initiative seems impossible to predict at this time. It will depend on the structure of the ordinance ultimately adopted by the Council and the number of eligible candidates in any given election cycle.

- **Question 5 (Charter Commission School Board Budget Autonomy Recommendation):** Unknown

Costs associated with this recommendation are difficult to predict, since much of it depends on how this new authority would be exercised. It is possible, however, that historic cost savings that have occurred as a direct result of the Council's budgetary oversight may not be realized and ultimately cost the taxpayers additional money.

More specifically, the current City Charter requires Council approval of the School Board's final budget, as well as collaboration between the two bodies.⁴ Over the last 20 years, this oversight and collaboration has resulted in a total of more than \$4,500,000 in reductions to the District's proposed operating budget.⁵ Without this history of oversight and collaboration, the school mill rate would be at least 4.4% higher than it is currently.

Another concern is the uncertainty of the proposal's legality.⁶ Given that, the City may face legal challenges resulting in an additional expense to the City – either in the form of time and resources spent by Corporation Counsel's office or fees (likely in excess of \$50,000 or more) for outside counsel to assist the City.

Lastly, another important factor to note is that given the lack of oversight by the Council and depending on how this new authority is ultimately exercised, this proposal could also potentially have a negative impact on the City's overall credit score, and thus impact the interest rates on all City-issued debt.⁷

⁴ The Charter currently requires that the School Board and the City Council meet jointly at least twice to review the proposed school budget. It also permits the City Council to reduce the amount of the school budget with at least six votes.

⁵ Staff analysis showed that, on average, the proposed school budget was reduced by an average of at least \$225,000 every year as a result of Council oversight.

⁶ The Charter Commission's attorney declined to provide a legal opinion in support of the proposal due to his concerns regarding its legality. In order to meet the statutory requirement that a legal opinion in support of each proposal be submitted, the Commission did submit the opinion of an attorney representing the Schools and the School Board.

⁷ The City's credit rating currently covers both School and City operations, and the City handles all bonding for the school district and municipal operations. These two roles will likely continue under this proposal. Given this, removing the City Council from the School District's budgetary process could be viewed as an increase in risk by the credit rating agencies. Since the City's current S&P rating of AAA is based in part on "very strong management, with strong financial policies and practices under our Financial Management Assessment methodology, coupled with a strong institutional framework score," any decrease in the Financial Management Assessment could decrease the AAA rating of the City. This

- **Question 7 (Charter Commission Civilian Police Review Board (CPRB) Recommendation): \$180,000**

This recommendation mandates that funding be provided for, at minimum, a community liaison and a police liaison to support the CPRB. The cost above reflects the salaries and benefits for two full-time employees.

Lastly, as office space at City Hall is currently over capacity, expansions or major changes to existing spaces would be required to accommodate these individuals. Staff estimate these changes would cost approximately \$25,000.

- **Question 8 (Charter Commission Ethics Commission Recommendation): \$137,500**

This recommendation suggests that an Accountability Officer be hired by the City in order to fulfill specific duties and responsibilities. Staff estimate compensation for this position at \$125,000 (salary and benefits).

As office space at City Hall is currently over capacity, expansions or major changes to existing spaces would be required to accommodate this individual. Staff estimate these changes would cost approximately \$12,500.

could ultimately result in an increase in the cost of future debt issuance due to higher interest rates on issued bonds.

MEMORANDUM
City Council Agenda Item

FROM: Tom Caiazzo

DATE: September 6, 2022

SUBJECT: Order 58-22/23 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action 9/19/2022

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: The union agreement has been reviewed.

PRESENTATION: Tom Caiazzo, Deputy Human Resources Director, and Keith Hansen, Senior HR Analyst, will be available to answer any questions.

I. SUMMARY

II. AGENDA DESCRIPTION

This order approves the negotiated collective bargaining agreement between the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00, Labor and Trades, for the period of July 1, 2022 to June 30, 2025. This proposal is presented after receiving guidance from the City Council in executive session and having reached a tentative agreement with Labor and Trades, which was voted on and approved by the members.

The tentative agreement provides for a 3% general wage increase for FY23; a 3% general wage increase for FY24; and a 2.5% general wage increase for FY25. The proposal also increases night and weekend shift differentials, upgrades to several positions in the pay plan and the addition of a 20+ year step to ensure that employees in those positions are paid competitively and in line with their peers who are performing comparable work. Finally, the proposal adds Juneteenth as a paid holiday, implements earned paid leave, removes gender-specific language and makes other minor adjustments in the agreement between the parties. The total estimated cost of the negotiated changes to L&T's 3-year contract is \$1,954,728.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Labor and Trades represents a wide range of employees across nearly all of the departments in the City. It includes Parks Maintainers, Arborists and Horticulturalists in the Department of Parks, Recreation and Facilities and nearly all Maintenance Worker and Mechanic positions in the Departments of Public Works. Labor and Trades also represents Trades Workers and HVAC Technicians in Public Buildings and the Jetport, and many other skilled and semi-skilled positions across the City. When fully staffed, Labor and Trades would represent approximately 165 City employees.

The previous contract with Labor and Trades expired on June 30, 2022.

The proposed contract provides for the creation of several market rate pay plans to try to keep wages competitive with others in similar industries. It also upgrades several positions that were not competitive in the market and were under classified in the existing pay plan. All of the changes are intended to make the City a competitive employer in these areas.

This proposed agreement is presented after receiving guidance from the City Council in executive session and is in line with that guidance received. The tentative agreement was approved by Labor and Trades members on June 13, 2022.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To approve a competitive successor collective bargaining agreement, allowing the City to recruit and retain excellent employees.

V. FINANCIAL IMPACT

Fiscal Impact Note is included in the backup materials.

VI. STAFF ANALYSIS AND BACKGROUND

Staff has conducted a survey of other industry wages and terms of work; negotiated diligently with Labor and Trades; consulted the City Council for guidance; and worked with the administration to arrive at a tentative agreement that is fair and competitive.

VII. RECOMMENDATION

To adopt the proposed agreement as presented.

VIII. LIST ATTACHMENTS

1. AFSCME Local 481-00 Labor & Trades Contract 9.1.2022
2. LABOR & TRADES 2022 - 2025 DRAFT with Changes
3. Labor and Trades Fiscal Impact Note

Prepared by:

Tom Caiazzo

Date: 09/06/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING THE
COLLECTIVE BARGAINING AGREEMENT WITH
THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME) LOCAL 481-00 LABOR & TRADES**

ORDERED, that the attached Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor & Trades for July 1, 2022 through June 30, 2025, is hereby approved.

AGREEMENT BETWEEN
CITY OF PORTLAND
AND
AFSCME LOCAL 481-00
LABOR AND TRADES

July 1, 2019~~22~~ – June 30, 2021~~25~~

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AGREEMENT

This Agreement made and entered into this ~~21st day of January 2015~~ **___ day of September 2022**, by and between the CITY OF PORTLAND, hereinafter referred to as "City" and Local 481, American Federation of State, County, and Municipal Employees, AFL-CIO, Council 93, hereinafter referred to as the "Union".

1. PREAMBLE

- 1.1 Pursuant to the provisions of the Municipal Public Employees Labor Relations Law (Chapter 9-A), Title 26, Maine Revised Statutes Annotated), the parties have entered into this Agreement with the goal of establishing mutual rights, preserving proper employee morale, and promoting effective municipal operations.

2. RECOGNITION

- 2.1 The City hereby recognizes that the Union is the sole and exclusive representative of a Unit consisting of all permanent employees (as defined in Appendix A) working in the job classifications in the attached classification and pay plans (except those excluded by Chapter 9-A, Title 26, M.R.S.A. and excluding all temporary, seasonal, on-call, or probationary employees as defined below and in Appendix A) in the following Departments and Divisions:

Parks, Recreation and Facilities Management (Public Assembly Facilities Division and Public Buildings Division)
Health and Human Services (Barron Center and Social Services Division)
Parking Division
Public Works
Aviation and Transportation

- 2.2 The Union shall bargain for such permanent employees in the above unit with respect to wages, hours of work, working conditions, and all other terms and conditions of employment.
- 2.3 All new employees in permanently budgeted positions shall serve a probationary period of six (6) months, and shall have no seniority, grievance, or other rights during this period, except as otherwise specifically provided in this Agreement. During the six (6) month probationary period, the appointing authority may remove the probationer at any time if their work or conduct are found below satisfactory standards. Notwithstanding the foregoing, probationary employees do receive holidays and earn vacation and sick leave during the probationary period, and can use vacation or sick leave during the probationary period, unless specifically prohibited by a section of the Agreement. Probationary employees shall not be assigned to perform higher pay for higher classification work provided in Article 22.

- 2.4 Upon completion of the six (6) month probationary period, the probationary period shall be considered part of the employee's seniority time. In addition, any employee who becomes a permanent employee, and who has previously served in the same classification as a temporary, seasonal, or project employee, shall have such temporary, seasonal, or project time credited against their probationary period.
- 2.5 Permanent part-time employees shall be covered by all of the provisions of this contract, and shall be entitled to benefits as outlined in Appendix A, which is attached hereto and incorporated herein.
- 2.6 The City shall provide the Union with a monthly listing of the names and addresses of new employees and the names of separated employees. The City shall also notify the Union of new job classifications when created with an opinion from the Human Resources Department as to the appropriate bargaining unit for such new classifications.
- 2.7 The City and the Union agree to meet at reasonable times to discuss additions to and deletions from the recognition clause for possible changes in the recognition clause, and such changes will be by mutual agreement.

3. NO DISCRIMINATION BY PARTIES

- 3.1 Employees covered by the Agreement shall have all the rights afforded under Section 963 of Chapter 9-A, Title 26, M.R.S.A.
- 3.2 No employee shall be favored or discriminated against by either the City or the Union because of his or her membership or non-membership in the Union.
- 3.3 The parties agree that they shall not unlawfully discriminate against any employee because of race, color, sex (including pregnancy), sexual orientation, gender identity or expression, physical or mental disability, religion, age, ancestry, national origin, veteran's status, genetic information, previous assertion of a claim or right under the Maine Workers' Compensation Act, previous actions taken or protected under the Maine Whistleblowers Protection Act, or any other protected group status as defined by applicable law.

4. DUES

- 4.1 The City shall deduct regular weekly dues, PEOPLE, and premiums for income protection insurance for employees participating in the AFSCME Income Protection plan, as outlined in Article 18, INSURANCE, upon receipt of a signed authorization form from members and a certified statement from AFSCME Council 93 as to the amount for dues and fees. The signed authorization for deduction of dues shall be in the form attached hereto and marked Exhibit A.
- 4.2 For employees hired into a permanent position shall either (1) join the Union, or (2) sign

a non-member waiver form supplied by the union. Employees shall have 10 days after completion of their probationary period within which to join the Union or sign a non-member waiver form supplied by the union.

4.2.1 Upon receipt of a written authorization card from the employee, the City shall deduct full Union dues

4.2.2 Employees who wish to become non-members shall notify the City and the Union in writing thirty (30) days prior to the expiration of this agreement.

4.2.3 P.E.O.P.L.E. Deduction: The City agrees to deduct from wages of any employee who is a member of the Union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the City and the Union. The City agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

4.3 Amount of Dues

In the event of a change in the amount of dues or fees during the term of this Agreement, AFSCME Council 93 shall so inform the Director of Human Resources of the City in writing. After receipt of same, dues or fees as therein noted shall be deemed to have been authorized to be withheld on behalf of the employees who had previously signed authorization forms as noted.

4.4 Dues Transmittal

The City shall forward all such dues and fees so collected to Council No. 93, Boston Massachusetts Business Office at 8 Beacon Street. All dues and fees collected shall be submitted to AFSCME Council 93 utilizing electronic deposit with all member rosters emailed to duesrosters@afscme93.org, on or before the 15th of the month following the month in which they were collected from the employees. Any premiums collected shall be forwarded to the Maine Benefit Trust. The Benefit Trust will notify the City of the amounts of premiums to be deducted.

4.5 Indemnification

The Union shall defend, indemnify, and hold the City harmless against any and all claims or suits which may arise out of or result from the dues or fee deductions taken, or not taken, pursuant to this Article, and the transmission thereof to the Union, said indemnification to include all costs and attorney's fees resulting from any such claims or suits.

5. TIME OFF WHILE PERFORMING UNION DUTIES

- 5.1 The Local Union President and/or Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, for meeting with City officials concerning Union business provided, in the judgment of the City, said time off does not interfere with work flow requirements.
- 5.2 The Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, during regular shift hours for investigating grievances, up to a maximum of one (1) hour per grievance, but not to exceed a total of three (3) hours per week, except with the permission of the Department Head or designee. The Chief Steward, or other authorized representative, shall not leave **his/her** **their** regularly assigned work in order to investigate a grievance without first obtaining approval of **his/her** **their** supervisor or other management representative holding a position of Section Head or Division Head. Such approval shall be granted with a twenty-four (24) hour notice to the supervisor or other management representative as defined above. A notice shorter than 24 hours shall not be arbitrarily denied.
- 5.2.1 If an employee is facing disciplinary action, the Chief Steward or other Union Steward will be permitted to attend the disciplinary hearing or the hearing will be postponed until the Chief Steward or other Union Steward is available.
- 5.3 The City agrees to meet once per month with a Union Committee to discuss matters pertaining to non-grievable items not covered in this Agreement provided the Union Committee submits a written agenda of the items for discussion at least three (3) working days prior to the meeting date. Such meetings shall be held at mutually convenient times. Whenever such meetings are held during normal working hours, the Union Committee shall be composed of not less than three (3) and not more than five (5) representatives.
- 5.4 During the term of this Agreement, up to two (2) weeks shall be allowed off the job, without pay, for no more than two (2) Union representatives at one time, to attend any regional, state, or national meetings of the American Federation of State, County, and Municipal Employees. No time off shall be granted under this paragraph unless the Department Head or designee gives permission and determines there is sufficient staffing available for departmental operations. This provision does not limit the Union to select the same two (2) representatives for the several meetings, but the aggregate time allowed for leave shall not exceed twenty (20) work days during each calendar year.

6. BULLETIN BOARDS

- 6.1 The City shall permit the reasonable use of bulletin boards by the Union for the posting of notices relating to Union business provided that any such notice shall not be in violation of local, state, or federal law.

7. ACCESS TO PREMISES

- 7.1 With the permission of the appropriate Division Head, such permission not to be arbitrarily withheld, representatives of the American Federation of State, County, and Municipal Employees, Council No. 93, and Local 481, may enter City premises for the investigation of pending disputes under the contract. A list of authorized Union representatives who may enter City premises shall be furnished by the Union within forty-five (45) days of the effective date of this Agreement to the appropriate Department Head, Division Head, and Director of Human Resources.

8. MANAGEMENT RIGHTS

- 8.1 The City retains all right and authority to manage and direct its employees, except as otherwise specifically provided in this Agreement.

9. DEPARTMENT RULES

- 9.1 The Union acknowledges the right of the City to make such rules and regulations governing the conduct of its employees as are not specifically inconsistent with the provisions of this Agreement.
- 9.2 The Unit President, the field representative for the Union, and the Chief Steward shall be supplied with a copy of the new or amended rule at least eight (8) working days prior to the posting of the new or amended work rule on the bulletin boards.
- 9.3 When work rules are changed or amended or new rules are established, they shall be posted on all bulletin boards for a period of ten (10) consecutive work days before becoming effective.
- 9.4 All Department rules and regulations shall be posted in conspicuous locations throughout the Department in order for employees to familiarize themselves with these rules. The City agrees to provide employees with an annual review of work rules when requested by the Union.
- 9.5 Employees will comply with all existing rules which are not in conflict with the terms of this Agreement. Any complaint involving discrimination in the application of new or existing rules may be processed through the grievance procedure.

10. STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED

- 10.1 The Union agrees that during the term of this Agreement, neither it nor its officers or members will engage in, encourage, sanction, support, or suggest any (1) strikes, (2) slowdowns, (3) mass absenteeism, (4) mass resignations, or (5) picketing which would

involve suspension of or interference with normal work of the Department or other City Departments, or (6) any other similar action which would involve suspension of or interference with the normal work of the department or other City Departments.

- 10.2 In the event that Union members participate in such activities in violation of this provision, the Union shall notify those members so engaged to cease and desist from such activities and shall instruct the members to return to their normal duties. Any employee participating in these prohibited activities may be discharged by the City. The City agrees not to engage in any lockout of employees during the term of this Agreement.

11. GRIEVANCE PROCEDURE

- 11.1 Should the Union, or an employee in the Unit, feel aggrieved concerning the interpretation or application by the City of any provision in this Agreement, the Union may seek adjustment of the grievance as follows:

11.1.1 The Union, through the Chief Steward, or other authorized Union representative, shall take up the grievance with the employee's Division Head or designee. The Division Head or designee shall issue a decision within ten (10) working days from the date the Union filed the grievance with the Division Head or designee.

11.1.2 If the grievance is not resolved at Step 11.1.1, within five (5) working days after receipt of the decision of the Division Head, the Union shall submit the details of such grievance in writing to the Department Head. Within five (5) working days thereafter, the Department Head or designee shall meet with a representative of the Union for the purpose of adjusting or resolving such grievance. Within ten (10) working days after said meeting, the Department Head or designee shall render a written decision.

11.1.3 If the grievance is not resolved at Step-11.1.2, within ten (10) working days after receipt of the written decision of the Department Head or designee, the Union representative may appeal to the Director of Human Resources by filing a written notice of appeal together with copies of the written grievance and the 11.1.2 decision. The Director of Human Resources or designee shall meet with the Union within fifteen (15) working days following receipt of the Union's written appeal to hear the grievance and shall provide a written decision within ten (10) working days of the date of the hearing.

11.1.4 If the grievance is not resolved at Step 11.1.3, within fifteen (15) working days after receipt of the written decision of the Director of Human Resources or designee, the Union representative may appeal to the City Manager by filing a written notice of appeal together with copies of the written grievance and responses at Steps 11.1.2 and 11.1.3. The City Manager or designee shall meet with the Union within twenty (20) working days following receipt of the Union's written appeal to hear the grievance and shall provide a written decision within

fifteen (15) working days of the date of the hearing.

- 11.1.5 In the event that the decision of the City Manager rendered pursuant to 11.1.4 above is not acceptable to the Union, within fifteen (15) working days after receipt of the decision at Step 11.1.4 it may request in writing that the matter be submitted to arbitration. The City and the Union shall mutually agree upon an arbitrator when possible. In the event they are unable to agree upon an arbitrator within seven (7) days of the request for arbitration, the arbitrator shall be selected through the Labor Relations Connection (LRC) in accordance with the rules of said Association then in full force and effect. The Union must submit a written arbitration request to the Labor Relations Connection (LRC) within sixty (60) days of the date of the City Manager's decision; if they fail to do so, they have forfeited their right to pursue the grievance to arbitration. Thereafter, arbitration shall be had in accordance with the rules of the Labor Relations Connection (LRC). Said Arbitrator shall have no authority to add to, subtract from or modify the provisions of this Agreement. The arbitrator's decision shall be final and binding upon the parties hereto. The expenses of the arbitrator shall be borne equally by the parties.
- 11.1.6 The time limits for processing of grievances may be extended by written consent of the parties. Steps 11.1.1, 11.1.2, or 11.1.3 in the grievance procedure may be waived by written mutual consent of the parties. Absent such written extension, the Union may not appeal the grievance to the next step of the grievance procedure if they exceed the contractual time period for appealing the grievance; if the City exceeds the contractual time period for responding to a grievance without a written extension, the grievance will proceed to the next step of the grievance procedure providing the Union submits a timely written appeal to the next step.
- 11.1.7 At Steps 11.1.2, 11.1.3, 11.1.4 of the grievance procedure, the Department Head, Director of Human Resources, or City Manager may act through his/her their Deputy, Assistant, or other duly authorized representative.
- 11.1.8 All grievances shall be commenced not later than thirty (30) days after the occurrence of the event giving rise to the grievance, or within thirty (30) days after the time such event became known to the employee or employees concerned, whichever shall be later.
- 11.1.9 Nothing in this Article shall diminish the right of any employee covered hereunder to present his/her their own grievance as set forth in Title 26, Maine Revised Statutes Annotated up to and including the Manager's level. Any grievance processed by the Union shall go to a Grievance Committee of the Union before processing at Step 3 of the grievance procedure.

12. SAVINGS CLAUSE

- 12.1 If any Article or section of this Agreement, or any riders thereto should be held invalid by operations of law or by any tribunal of competent jurisdiction, or if compliance with the enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or any riders thereto shall not be affected thereby.
- 12.2 Within thirty (30) days after the expiration of the time for appeal from a final decree of a court of competent jurisdiction and no appeal having been filed, the City and the Union agree to meet to negotiate in regard to the specific Article, section, or rider held invalid by the court. This exception to Article 41, Embodiment, shall not be construed as limiting or otherwise modifying such Article 41, except as herein stated. The parties shall be required to negotiate only as to the specific Article, section, or rider declared invalid, and shall not be required to negotiate while any appeals of a decision are pending, but may do so upon mutual agreement.

13. WAGES AND SALARIES

- 13.1 Effective July ~~73, 2019~~**2022**, employees will receive a **3.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-~~2(2)~~. ~~Also, a 12+ year step will be added to the pay plan retroactive to July 7, 2019~~ **After the 3.0% COLA is implemented, a twenty plus year step will be added to the pay plan.**
- 13.2 Effective July ~~52, 2020~~**2023**, employees will receive a ~~2.75~~**3.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-~~2(3)~~. ~~Also, a 15+ year step will be added to the pay plan effective July 5, 2020.~~
- 13.3 Effective July 7, 2024, employees will receive a 2.5% across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-2.**
- 13.~~34~~ Wages of permanent part-time employees shall be based upon the seniority step pay plans (Appendix B-~~(2)(3) and (4))~~) but such employees' base weekly wages shall be pro-rated on the basis of a forty (40) hour work week.
- 13.~~45~~ Retroactive pay increases will be paid to active employees and retirees as of the date of signing of this Agreement, for the period beginning on ~~July 7, 2019~~ **July 3, 2022** through ~~July 1, 2020, employees will receive (the "period of retroactivity")~~. **the date of signing (the "period of retroactivity")**. Retroactive pay will be determined by multiplying the difference between the employee's base wage during that same time period as determined by Appendix B-~~(2) and if necessary B(3) and B(4)~~ times the number of weeks at the new base wage and including all overtime. In the case of a promotion during the period of retroactivity, the employee's pay will be based upon the employee's time in each position.
- 13.6 Effective upon Council approval of this Agreement, all non-probationary**

bargaining unit employees will receive a one-time payment in the amount of three hundred dollars (\$300.00).

- 13.57 Employees who successfully complete the required certification tests and other criteria as outlined in departmental career ladders will be promoted in accordance with the appropriate career ladder following review and approval by the Department Head and Human Resources Director that all certification criteria have been satisfied. The promotion will be effective on the beginning of the full pay period following completion of all required criteria as certified by Human Resources. Employees are responsible for renewing all licenses used to justify the promotion and must satisfactorily complete all re-certifications (internal and external) in accordance with department policy. Failure to do so will result in a demotion to the appropriate pay grade, and the corresponding reduction in pay, providing the City has made available periodic opportunities for the employee to operate equipment on which they must re-certify.
- 13.68 The City has implemented a paperless pay stub system. All current and newly hired employees will have mandatory direct deposit for all monies owed by the City. A reloadable debit card will be supplied to employees who do not want their paycheck deposited directly to a financial institution at no cost to the employees.

14. OVERTIME

- 14.1 This section is intended to provide a basis for calculation of any payment of overtime. The total hourly rate shall include all stipends and differentials paid hereunder, unless excluded under the Fair Labor Standards Act.
- 14.2 Except as provided in 14.2.1 below, eight (8) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule.
- 14.2.1 Public Works employees who work the weekend shift during the winter period shall be scheduled to work three 13 hour shifts and shall receive forty (40) hours of pay. This Friday through Sunday schedule is their regular work week. Their hourly rate of pay will be adjusted for the winter period in accordance with the Fair Labor Standards Act (regular weekly salary divided by 39 hours worked).
- 14.3 Except as provided in 14.3.2 below and Appendix A for part-time employees, a monetary rate of one and one-half (1-1/2) times the base hourly rate shall be paid for all work performed by employees covered by this Agreement during the work week in excess of forty (40) hours per week or eight (8) hours per day, but not for both; provided, however, that payment shall be modified under the circumstances described in Section 14.3.1 below.

- 14.3.1 Notwithstanding 14.3 above, if an employee uses sick time at the start of or during his regular shift, after working 16 consecutive hours or more previously the same pay period, then the overtime shall be paid at a straight time rate for the number of hours equivalent to the number of sick hours used.
- 14.3.2 Employees who work the weekend shift during the winter period will not be eligible for overtime after eight (8) hours per day on a regularly scheduled work day; instead, they will be eligible for overtime on a regular work day if they work in excess of their regularly scheduled thirteen (13) hour shift. These employees will be paid at time and one-half their adjusted hourly rate for all additional hours worked during Monday through Thursday, providing they do not call out sick during their regularly scheduled weekend hours.
- 14.4 With the concurrence of the Department Head and the employee, compensatory time off at a time and one-half rate may be provided in lieu of the mandatory overtime payment. In no case shall an employee accrue more than one hundred (100) hours of such compensatory time.
- 14.4.1 Employees may earn up to a maximum of one hundred (100) hours of compensatory time during the calendar year beginning with the first full week in January. This comp time will become a comp bank whereas an employee can either use the time off similar to vacation time or he/she they can cash it out at any time during the year. If an employee still has a comp balance on the books at the end of December each year, the comp bank will be cashed out during the first pay date, in January on a yearly basis to zero out any balances.
- 14.5 For the purposes of this section, "Hours Worked" shall mean only one of the following:
- 14.5.1 Hours actually worked.
 - 14.5.2 Hours compensated for by holiday base pay.
 - 14.5.3 Hours compensated for by bereavement leave.
 - 14.5.4 Hours compensated for by vacation pay.
 - 14.5.5 Hours compensated for by compensatory time off.
 - 14.5.6 Hours compensated for by Jury/Witness pay only during periods of mandatory overtime.
 - 14.5.7 Hours compensated for by Earned Paid Leave (EPL).**
- 14.6 For the purposes of this section, "Hours Worked" shall not include:
- 14.6.1 Hours compensated for by holiday premium pay.
 - 14.6.2 Hours compensated for by call-back pay.
 - 14.6.3 Hours compensated for by jury/witness pay, except as provided in 14.5.6 above.
 - 14.6.4 Hours compensated for by reserve service leave.
 - 14.6.5 Hours compensated for by sick leave pay.
 - 14.6.6 Hours compensated for by personal leave pay.

14.7 Department Heads or his/her **their** designee will discuss distribution of overtime with the Union upon request.

14.8 The following paragraphs apply to non-mandatory overtime.

14.8.1 When overtime work is necessary, the City will make every reasonable effort to distribute overtime that is scheduled at least 24 hours in advance equally among the regular, full-time employees. The City shall keep a list of employees who are on call for overtime that becomes available during the work week and weekends. Except as provided in 14.8.1.1 below, overtime will be offered first to employees in the Section, next to employees in the Division, and next to employees in the Department; provided that the employees are capable of performing the work. Except as provided in 14.8.1.1 below, the overtime list will be rotated so that an equal distribution of overtime will be afforded all employees; however the City will not make such reasonable effort in cases where employees refuse overtime work. Except as provided in 14.8.1.1 below, non-bargaining unit employees will not be offered scheduled overtime opportunities until after all available qualified bargaining unit employees in the Department are offered the overtime.

14.8.1.1 The Public Works Department will maintain an overtime log book in the Communications Center. Each Wednesday morning by 12:00 noon, full-time employees in the Department interested in volunteering for overtime starting the following Saturday may sign up. These volunteers must agree to work the total number of hours required for that assignment. Assignments may be scheduled throughout the week at any time so employees must make sure to sign the overtime log book by the Wednesday noon deadline. Should they decide to sign the book after the deadline to sign the book and the overtime was already filled, this will not be considered a missed opportunity. Employees will be required to enter their own names into the overtime book. The removal of the names may only be done by a Section Head, Manager, or Director. In the absence of a Section Head, Manager, or Director, a Supervisor may be sought to approve the removal of the name(s). Failure to respond to a work assignment will be deemed as an unexcused absence and will be subject to disciplinary action.

14.8.2 When non-scheduled overtime occurs, such as when a particular project extends beyond the end of the normal shift, the bargaining unit employee working on that project during the day will be offered the overtime first and will not be required to sign the overtime book. When feasible, the supervisor will offer the overtime next to other Section employees; however, if the supervisor determines such a canvass is not feasible, the overtime will be offered to non-bargaining unit employees also assigned to that project during the day. Non-bargaining unit employees not assigned to work where the overtime occurs during the normal shift will not be offered the overtime prior to other available qualified bargaining unit employees in the Division.

14.8.3 When the City makes unintentional errors when calling employees to offer scheduled overtime opportunities, the following remedy for such missed opportunity shall apply to the employee who should have been called. Such employee will be granted an opportunity to work overtime equal to the number of hours s/he would have worked had s/he been properly scheduled. Such work shall be meaningful and beneficial to the City. Such overtime opportunity will be scheduled at a time that is mutually agreeable to the City and to the employee and shall not result in another otherwise deserving departmental employee to lose an overtime opportunity in order to satisfy the earlier error.

14.8.4 BARRON CENTER OVERTIME PROCEDURES

14.8.4.1 Non-Winter Period

Emergency/unforeseen events – first call will be to the person on standby for the week. If additional overtime is necessary, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

14.8.4.2 Winter Period

Winter period is defined as November through April. Overtime is not considered voluntary during the winter period. Maintenance employees in the laundry division will also be utilized when necessary.

For known weather events – a schedule for additional hours/shifts will be posted prior to the event.

For unforeseen weather events and emergencies – the person on standby will be called first. If more than one person is needed, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

14.8.5 JETPORT OVERTIME PROCEDURES

14.8.5.1 The Jetport will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis. **In the event there are no volunteers, management may elect to leave a shift unfilled if conditions permit.**

14.9 When personnel are required to perform preparation for, participation in and clean-up related to Memorial Day and July 4th activities and cruise ship visits, overtime will be scheduled in accordance with normal departmental procedures **as outlined in 14.8.1. If after following normal department procedures there are not enough**

volunteers, the City will solicit qualified volunteers on a unit-wide basis at least three (3) weeks prior to the scheduled overtime. If there are still not enough volunteers, employees will be mandated beginning with the least senior employee starting in the Section, then Division, and then Department.

- 14.10 The City will make available information on overtime distribution and accumulations as follows: Actual Hours Worked, Missed Overtime Opportunities, and Total Hours Combined. If the Union believes that the city is not making every reasonable effort to distribute overtime equally and make accurate postings, then, upon request, the City will meet with officers of the Union to discuss Union suggestions for the improvement of the City's procedure.

14.10.1 Public Works will make available information on overtime distribution and accumulations based on Actual Hours Worked only. The Public Works overtime list will be zeroed out for the first full week in July each year as opposed to twice a year.

- 14.11 Overtime shall not be voluntary during the winter period or during periods of imminent danger to the health, safety, and property of Portland citizens (hereinafter referred to collectively as involuntary overtime). Definition of the winter period varies by Department. Unless specified otherwise in Appendix H or Appendix J the period is November through April. Imminent danger determinations are made by the City Manager or designee. Overtime required to complete scheduled sanitation and recycling removal is considered to be involuntary overtime for the full calendar year. When, in cases of emergency, personnel and/or equipment are called in from other Departments, the personnel from other Departments shall be released from their duties when the workload lessens, unless they are acting as relief workers for regular, full-time workers.

14.11.1 Winter Operations Staffing

Employees' shifts and job responsibilities shall remain as current except as provided below. The City will limit each employee's winter operation obligation to sixteen (16) consecutive hours, with an eight (8) consecutive hours off-duty period, in the Public Works Department; exceptions to this schedule may be made if extenuating circumstances exist. Staffing and operational issues require that Aviation and Transportation employees continue to work throughout the snow event.

- 14.11.1.1 Aviation and Transportation employees may take breaks as necessary and as approved by their supervisor. They will follow the break guidelines as outlined in Appendix J in order to balance the safety and operational needs at the Jetport.
- 14.11.1.2 Three (3) Public Buildings employees will be available to assist Public Works with snow plowing, sand/salt and snow removal operations throughout the storm.

- 14.11.1.3 Workers' Compensation claimants may be assigned transitional work, including shift work, which meets the needs of the City and the injured employee.
- 14.11.1.4 Employees shall be available at all of the following times:
 - A. When directed to be available.
 - B. Employees will be notified of predicted weather events through informational postings at the work site. Each employee is responsible for checking these postings daily.
- 14.11.1.5 Employees shall be available during the winter months as follows:
 - A. Employees must "be available" during the winter period and will need to provide a telephone number where they can be reached while fulfilling their responsibility to the City to be available.
- 14.11.1.6 Employees who are not available as defined above will be subject to progressive discipline.
- 14.11.2 The City reserves the right to make all decisions regarding the City's response to the emergency. The parties agree that employees from other bargaining units and from other departments may be utilized as necessary to supplement unit members regularly assigned to snow removal or other emergency operations providing that unit members in other departments who volunteer to participate in winter operations outside of their regularly scheduled shift are called first.
- 14.11.3 Hardship

The City recognizes that certain individual situations may cause hardship in regards to involuntary overtime and/or shift assignments. Requests for hardship exemptions for overtime, shifts or other extraordinary circumstances will be considered through the following process. All employees with current or predictable hardship situations must request a hardship exemption. The request must be submitted in writing to a departmental representative as designated by the Department Director by September 1st. Hardships being requested for medical reasons for either a shift exemption or an overtime exemption will be handled by the Department Director in consultation with appropriate staff resources. The City shall not unreasonably deny such requests.

14.12 Call-Back Pay

- 14.12.1 Employees called back to work **and report to the work site** shall receive a minimum of three (3) hours pay at the overtime rate for the work for which they are called back, or may receive one and one half (1-1/2) times their base hourly rate under the above provisions, whichever is greater, but not both.
- 14.12.2 Employees who report to **the work site** within thirty (30) minutes of the time they are first called shall be paid from the time of said call; otherwise, they shall be paid from the time they report to **the work site**.
- 14.12.3 If an employee is called into **the work site** within one hour of the normal starting time for their shift, such time shall be paid at the one and one-half (1 ½) overtime rate for the actual time worked. If such call-in is an hour or longer prior to the start of the normal work shift, the "call-back" provisions in 14.12.1 and 14.12.2 shall apply.
- 14.12.4 An employee is not eligible for any additional "call-back" pay under this provision if they are called back to **the work site** within one (1) hour of the time they arrived for a previous "call-back." If an additional "call-back" occurs beyond one (1) hour from arrival time of a previous "call-back" the employee will receive additional "call-back" pay. If additional "call-backs" occur within one (1) hour and the employee is at work beyond two (2) hours the "call-back" pay provision shall apply.
- 14.12.5 Employees that respond remotely or over the phone to calls and do not report to the worksite shall receive pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote or phone work. If the employee must respond to the work site, the above call-back provisions shall apply.**
- 14.12.6 Employees that are called back to work will report to the work site and/or respond remotely as soon as possible. Failure to report to the work site and/or respond remotely within two (2) hours from the time they are first called shall forfeit that day's stand-by pay outlined in 14.13.**

14.13 Stand-by Pay

- 14.13.1 If a Division elects to designate a person to be on-call, they will solicit volunteers and designations will be made from qualified volunteers providing sufficient volunteers are available. If a sufficient number of qualified volunteers are not available within the Division or the Department, the City will designate a qualified Division employee to be on stand-by. Such designation shall be made on the basis of inverse order of seniority on a rotating basis. ~~The payment for the stand by designation shall be \$18.00 per day on weekdays and \$27.00 on weekend days and holidays.~~ **The payment for the**

stand-by designation shall be one and one half (1 ½) hours per day on weekdays, weekend days and holidays.

~~14.13.2 Employees designated to be on stand-by may respond to issues over the phone. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.~~

14.13.32 Water Resources Stand-By

14.13.32.1 There will be a primary and a secondary person to respond during off-duty hours to address sewer problems or emergencies. The City, call service or S.C.A.D.A. system will contact the primary responder to assess the situation. The primary responder will determine if the secondary responder needs to be called.

The primary responder who responds remotely to Water Resources calls shall receive ~~for an initial call, one half hours (1/2) pay at the applicable overtime rate~~ **pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote work.** ~~For all additional calls within the twenty four hour period, pay will be for actual hours worked at the applicable overtime rate.~~ If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

14.13.32.2 The primary responder responsibility will rotate between the City's Water Resources ~~Maintenance Worker III's~~ **Senior Technician's** assigned to sewers. The secondary responder responsibility will rotate among the unit members of the Water Resources Wastewater Section of Public Works. Pump station on-call responsibility will rotate between the other ~~Maintenance Worker III's~~ **Senior Technician's** in the Water Resources division. **Effective January 2023, the primary responder and the pump station on-call responsibilities will be combined. There will be one (1) pager rotation that will rotate between the six (6) ~~Water Resources Maintenance Worker III's~~ Water Resources Senior Technician's.**

If the necessary employee training that is needed to combine the primary responder and the pump station on-call responsibilities is not completed 30 days prior to implementation, the effective date will be delayed until July 1, 2023.

~~14.13.32.3 The primary responder only will receive stand-by pay of one hour of straight time pay on week days and one hour of overtime pay on week-end days and holidays.~~

14.13.43 Streets and Islands Beeper Program

14.13.43.1 The Public Works 30-week **Streets** beeper program for mainland personnel will be **year-round for the duration** ~~continued for the non-winter period during each year~~ of this contract. **A volunteer list will be posted twice annually (mid-December and mid-June) and then weekly assignments will be made in order of seniority by the Principal Admin Officer and will be posted at least one week prior to the start of the program for January and July. This beeper will not be utilized for pre-scheduled overtime during the winter period or if more than one person is needed at the time of the initial page.**

14.13.43.2 The Public Works Islands beeper program will be continued year-round for the duration of this contract.

14.13.3.3 Effective July 1, 2022, the "Dead Animal Pager" Memorandum of Agreement dated January 13, 2011, will be terminated and the pick-up of dead animals will be assigned to the Public Works year-round beeper program. Employees responding to dead animal pick-up calls during their regular work shift shall respond as soon as possible if such response does not interfere with normal work-flow requirements. Employees called back to work and report to the work site in response to dead animal pick-up calls shall receive call-back pay in accordance with the provisions in 14.12.

14.13.54 Traffic Section Stand-By

14.13.54.1 The Union will provide the City with a primary person to respond during off-duty hours to address Traffic problems and/or emergencies.

14.13.54.2 The primary responder responsibility will rotate between the City's (2) Systems and Lighting Technicians and the Traffic Signal Repair Worker, creating a three (3) person (minimum) rotation. The Pager Swap Form shall be filled out at least 24 hours ahead of any personnel changes to the rotation. Other Traffic Division employees may be required to be on call when needed.

14.13.54.3 The primary responder who responds remotely to traffic calls shall receive ~~for an initial call, one half hours (1/2) pay at the applicable overtime rate~~ **pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote work.** ~~For~~

all additional calls within the twenty four hour period, pay will be for actual hours worked at the applicable overtime rate. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

15. MEAL ALLOWANCE (RESERVED)

15.1 An employee shall receive an additional ten (\$10.00) dollars as a meal allowance whenever said employee shall have worked a period comprising twelve (12) consecutive hours (including meal and rest breaks and incentive time) except as provided in 15.1.1 below. Incentive time for the purpose of this article is defined in Article 14.11 and 20.4.

15.1.1 Public Works and Fleet Services employees who work the weekend shift during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred sixty (\$160.00) at the start of each winter period in December to cover the entire designated winter period.

15.1.2 Public Works employees during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred sixty (\$160.00) dollars at the start of each winter period in December to cover the entire winter designated winter period. Employees assigned on a regular basis to help Public Works from Parks, Rec & Facilities during the designated winter period will also receive one hundred sixty (\$160.00) dollars at the start of the winter period in December to cover the entire designated winter period.

***This article is eliminated effective July 5, 2020.**

16. HOLIDAYS

16.1 The following holidays shall be paid holidays for all employees covered by this Agreement:

- | | |
|-------------------------------|---|
| 1. New Year's Day | 9. Columbus Day Indigenous Peoples' Day |
| 2. Martin Luther King Jr. Day | 10. Veterans Day |
| 3. President's Day | 11. Thanksgiving Day |
| 4. Patriot's Day | 12. Day following Thanksgiving Day |
| 5. Memorial Day | 13. Christmas Eve (1/2 day except as noted below) |
| 6. Juneteenth | 14. Christmas Day |
| 7. Independence Day | |
| 8. Labor Day | |

16.1.1 Compensation of permanent full-time employees, who work a 5-day Monday through Friday schedule, for the holidays listed above is described in paragraph 16.2.

16.2. Compensation of permanent full-time employees who work a 7-day

coverage schedule is described in paragraph 16.3. Holiday payment for permanent full-time employees who work a modified schedule is defined in the Memorandum of Agreements that outline the terms and conditions of that schedule. Compensation for permanent part-time employees for the holidays listed above is described in paragraphs 16.4 and Appendix A.

16.2 Permanent employees working a Monday through Friday Work Schedule

16.2.1 Payment for full-day holidays under this Article shall be made on the observed, not the actual, holiday. If any of the above full-day holidays falls on a Sunday, the following Monday shall be the observed holiday. If it falls on a Saturday, the preceding Friday shall be the observed holiday. Employees will receive base holiday pay equal to the hours they would normally work that day of the week. Employees who work on the holidays will receive additional compensation as outlined in 16.5.

16.2.2 Permanent full-time employees receive a half-day holiday on Christmas Eve in those years that December 24th falls on a Monday, Tuesday, Wednesday or Thursday. The second half of the employee's shift is the holiday period. The employee will receive base holiday pay for the second half of the shift; if the employee works the second half of their scheduled shift, s/he will also receive holiday premium pay as outlined in 16.5. If December 24th is not a regular work day for the employee, the employee will not receive any holiday base pay for Christmas Eve but will be paid in accordance with 16.5 if s/he is called into work after Noon on December 24th providing December 24th falls on a Monday, Tuesday, Wednesday or Thursday that year.

16.2.3 For permanent full-time employees, full-day holidays that fall on an employee's regularly scheduled day off, s/he may elect to receive one of the following: equivalent hours of base holiday pay equal to the number of hours the employee normally works during the week in which the holiday occurs, or a day off with pay in the same work week which the holiday occurs, immediately prior to or following the holiday.

16.2.4 If an observed full-day holiday occurs during the work week in which an employee is actually on schedule vacation, the employee will not be charged a vacation day for the day of the observed holiday. This provision also applies in those years that Christmas Eve falls on a Monday, Tuesday, Wednesday or Thursday.

16.3 Permanent Employees Working a Seven-Day Coverage Schedule

16.3.1 Seven-day coverage employees means employees who work a five (5) day schedule that is other than a Monday through Friday schedule. This designation may apply on either a seasonal or year-round basis.

16.3.2 Payment for New Year's Day, July 4th and Christmas Day shall be on the actual,

not the observed, holiday for seven-day coverage employees. Payment for all other holidays shall be on the observed holiday. Payment for full-day holidays (actual or observed) shall be base holiday pay equal to the number of hours the employee normally works that day of the week.

16.3.3 For full-time employees, the employee has the options described in 16.3.2 above if one or more of the actual full-day holidays listed above in 16.3.2 falls on an employee's scheduled day off. The provisions of 16.2.3 are also applicable if the employee is not regularly scheduled to work on the observed date of one or more of the holidays not specifically listed above.

16.3.4 Seven-day coverage employees receive a half-day holiday on Christmas Eve in those years that December 24th falls on a day that the employee is regularly scheduled to work. The employee will receive holiday base pay for the second half of their shift and will receive holiday premium pay as described in 16.5 if required to work during the second half of their shift.

16.4 Permanent-Part-Time Employees

16.4.1 Part-time benefit eligible employees receive base holiday pay only if the holiday falls on a day the employee is regularly scheduled to work. The amount of holiday pay will be based on the number of hours the employee would normally be scheduled to work on that day of the week.

16.4.2 Part-time employees who work on a holiday receive holiday premium pay as outlined in 16.5 below, for the actual hours worked on the holiday.

16.4.3 Part-time employees do not receive any additional pay, comp time, or additional time off when a holiday falls on the employee's scheduled day off.

16.5 Holiday Premium Pay

16.5.1 Except as provided in 16.5.3, employees who work on an observed holiday during the twenty-four (24) hour span of the observed holiday, or in the case of Christmas Eve during the second half of the hours normally worked during their shift, shall be entitled to their base pay, plus one and one-half (1-1/2) times their base hourly rate for all hours worked during the normal scheduled work shift of the employee. The twenty-four (24) hour span for any overlapping shift, starts at the beginning of the shift.

16.5.2 Any hours worked in excess of the number of hours the employee is normally expected to work during the above-described holiday period shall be compensated at a rate of two (2) times the employee's base hourly rate.

16.5.3 Employees who work on Thanksgiving Day or Christmas Day, during the twenty-four (24) hour span of the ~~observed~~ **actual** holiday, shall be entitled to

their base pay plus one of the following for all hours worked that day:

16.5.3.1 double time their base hourly rate; or

16.5.3.2 compensatory leave earned at the double time rate.

16.5.4 Solid Waste Division employees and volunteers performing sanitation and recycling duties who work on the actual or observed holidays of Memorial Day, Independence Day and Labor Day shall be entitled to their base pay plus one of the following for all hours worked that day:

16.5.4.1 double time their base hourly rate; or

16.5.4.2 compensatory leave earned at the double time rate.

16.5.45 Solid Waste Division employees regularly assigned to perform sanitation and recycling duties will work on the actual or observed holidays that fall during their regular schedule except for the actual Christmas Day holidays and the actual New Year's Day holidays. Employees will be expected to pick up sanitation and recycling on the Saturday prior to or following for both of these holidays if the holiday falls on a weekday. If Christmas and New Year's fall on the weekend then employees will be expected to pick up sanitation and recycling on the observed holiday. Employees will receive overtime compensation for actual hours work on the Saturday prior to or following for both Christmas and New Year's holidays. Thanksgiving pick up will be collected on the Saturday following Thanksgiving and the Friday after will be picked up that day. The Thanksgiving Holiday period will be paid as follows:

Thursday – (no work) eight hours holiday premium pay

Friday – eight hours holiday premium pay plus time and one half for all hours worked up to eight hours and double time for all hours worked over eight hours.

Saturday - eight hours holiday premium pay plus time and one half for all hours worked up to eight hours and double time for all hours worked over eight hours.

16.5.45.1 Sanitation and Recycling collection will be picked up on the actual or observed holiday and will be staffed using unit volunteers from throughout the Department during both non-winter and winter months. Employees will receive overtime pay for only the actual hours worked on the Saturday, as well as holiday base pay if the observed holiday is worked. Solid Waste unit employees shall be given priority over other Department unit employees for such overtime. The practice of starting Holiday pick-up at 0700 instead of the normal start time will cease.

16.5.4~~5~~.2 Notwithstanding the above, a minimum of seven (7) Solid Waste unit employees shall be required during holiday collection and Saturday collection before or after a holiday. The remaining six (6) employees necessary to fully staff this operation may come from employees who volunteer for this purpose by signing the overtime volunteer book in the Department's Communications Center.

16.5.4~~5~~.3 If the Solid Waste Section fails to acquire the seven (7) volunteers from within its ranks or the six (6) Departmental volunteers necessary to satisfy the staffing requirements outlined in 16.5.4.2 above, the remaining positions shall be filled on a mandatory basis via reverse seniority from the remaining Solid Waste employees who did not volunteer.

16.6 Public Works employees working the weekend shift during the winter period shall be paid as follows:

16.6.1 If the holiday falls on an employee's regularly scheduled work day but the employee is not scheduled to work that day, the employee will receive thirteen (13) hours of base holiday pay at their straight time hourly rate.

16.6.2 If the holiday falls on an employee's regularly scheduled work day and the employee is scheduled to work that day, the employee will receive base holiday pay plus actual hours worked at time and one-half times their straight time hourly rate during the 24-hour span of the holiday. In the event the employee works more than their regular scheduled hours, they will receive double time instead of time and one-half for any hours worked in excess of thirteen.

16.6.3 If the holiday falls on an employee's regularly scheduled day off and they do not work the holiday, the employee will receive eight (8) hours of straight time pay.

17. VACATIONS AND EARNED PAID LEAVE

17.1 Subject to the limitation on accumulation and earning of vacation leave set forth in Subsection 17.4 vacation leave shall be earned from the date upon which the employee is first covered by this Agreement. Other non-bargaining unit employment with the City will be credited provided it is consecutive City service.

17.2 Except as provided in Appendix G, vacation leave shall be earned by permanent full-time employees at the rate of ~~1.54~~ **.77** hours per week in the first through the second year of service; ~~2.31~~ **1.54** hours per week in the third through sixth year of service; ~~3.08~~ **2.31** hours per week in the seventh through nineteenth year of service; and ~~3.85~~ **3.08** hours per full payroll week in the twentieth and each succeeding year of service. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with

annual accrual amounts of ~~80~~ 40 hours, ~~120~~ 80 hours, ~~160~~ 120 hours, and ~~200~~ 160 hours. This year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of these annual amounts.

17.3 Vacation leave earnings shall be credited and posted on a weekly basis. For purposes of this Article, years of service is defined as permanent consecutive City service.

17.4 Employees may accumulate earned vacation time on the following basis:

17.4.1 All employees hired prior to January 1, 1979 may accumulate up to a maximum of 240 hours of vacation leave.

17.4.2 All employees hired on or after January 1, 1979 may accumulate up to a maximum of 160 hours of vacation leave.

17.4.2.1 Any employee with 20 years of service or more may accumulate up to 200 hours; however the maximum payout for vacation leave will remain at 160 hours.

17.4.3 In the event that an employee has accumulated the maximum amount of leave, including time converted from sick to vacation leave pursuant to Article 24.3, Conversion of Sick Leave, such employee shall not earn any additional vacation leave. The employee will begin earning vacation leave again in the month in which the earned leave drops below the maximum, but such earnings shall not be retroactive.

17.5 Vacations shall be scheduled by the Department Head or designee, throughout the calendar year as long as such scheduling does not interfere with normal work-flow requirements as determined by said Department Head. Subject to the foregoing, seniority of employees within division will be the basis for scheduling vacations.

17.6 Employees may use accumulated vacation days on a single day or hourly basis, provided that the request has been made prior to noon of the preceding workday and has been approved by the Department Head or designee.

17.7 Employees shall be compensated for all accumulated vacation leave at the time of separation subject to the limitation on the maximum accumulation **as outlined in article 17.4.1, 17.4.2 and 17.4.2.1.**

17.8 Vacation Call-In Pay

17.8.1 An employee who is actually on scheduled vacation and is called in to work once the vacation has started shall be paid a rate of two and one-half (2 1/2) times his base hourly rate for all hours worked during his normal work shift of eight (8), ten (10) or twelve (12) hours. Any hours worked in excess of the employee's normal

work shift during vacation call-back time shall be compensated at the rate of three (3) times the employee's base hourly rate. In addition, the employee called in from vacation time shall have his lost time from vacation rescheduled according to the manner set forth in this section, provided that the rescheduling does not interfere with another employee's scheduled vacation, who is in the same job classification.

17.9 Earned Paid Leave

17.9.1 Upon execution of this Agreement and pursuant to 26 M.R.S. Sec. 637, employees will accrue one (1) hour of Earned Paid Leave (EPL) for every forty (40) hours worked and shall be subject to the City's personnel policies regarding EPL. EPL shall be credited and posted on a weekly basis.

17.9.2 Employees may accumulate up to a maximum of forty (40) hours of EPL in a calendar year. Unused EPL hours will roll over from one calendar year to the next, but employees will not be awarded more than 40 hours in a calendar year, including hours that are rolled over.

17.9.3 EPL may be used for 1) an emergency, illness, or sudden necessity; or 2) any reason other than emergency, illness, or sudden necessity, including vacation or personal time. Where EPL is taken for an emergency, illness, or sudden necessity, the employee must make a good faith effort to provide as much notice as is feasible under the circumstances, and in accordance with the Department's regular procedures. Where EPL is taken for any reason other than emergency, illness, or sudden necessity, an employee must request to take EPL in accordance with the Department's regular procedures as outlined in article 17.5.

17.9.4 Employees hired prior to January 1, 1979 shall be compensated for all accumulated vacation leave and EPL at the time of separation with a combined maximum payout of 240 hours. Employees hired on or after January 1, 1979 shall be compensated for all accumulated vacation leave and EPL at the time of separation with a combined maximum payout of 160 hours. Any accrued EPL over these amounts is forfeited at the time of termination of employment.

17.9.5 If at any time Maine's EPL law is rescinded, employees shall not earn any additional EPL and vacation leave accrual rates will be restored as follows: 1.54 hours per week in the first through the second year of service; 2.31 hours per week in the third through sixth year of service; 3.08 hours per week in the seventh through nineteenth year of service; and 3.85 hours in the twentieth and each succeeding year of service.

18. INSURANCE

18.1 Life Insurance

18.1.1 The present practice with respect to City and employee participation in the cost of the Maine Public Employees Retirement System group life insurance premiums shall be continued. Dependent and supplemental life insurance is also available at the employee's expense for those who participate in the group life insurance plan. The City reserves the right to obtain benefits equal to or better than the basic Maine Public Employees Retirement System Group Life Insurance Plan from an alternative source and to offer said alternative plan on the same terms as above during the life of this Agreement.

18.1.2 The City agrees to continue life insurance deductions on a pre-tax basis as provided by the Internal Revenue Service.

18.2 Medical Insurance

18.2.1 The City provides a self-insured health insurance benefits program with claims administration by a third-party administrator.

18.2.1.1 The City's health plan shall include a four hundred dollar (\$400) deductible for the single plan and eight hundred dollar (\$800) deductible for the family plan per year.

18.2.1.2 The City agreed to establish a reserve account of one hundred fifty thousand dollars (\$150,000) to be used as outlined by the Health Insurance Advisory Committee.

18.2.2 For employees who are hired into a permanent position prior to March 1, 1985, the City will pay the full cost of the medical insurance premium for an individual or family subscription as appropriate per employee as outlined in section 18.2.5 below.

18.2.3 For employees who are hired into a permanent position on or after March 1, 1985, ~~the City will pay the full cost of the medical insurance premium for an individual subscription per employee and for one half (1/2) of the cost of the family subscription for an employee who is eligible for and who elects to have said family medical insurance coverage. The City will pay fifty three percent (53%) of the difference between the cost of the individual subscription for an employee who is eligible for and who elects to have said family medical insurance.~~ the City will pay 85% of the medical insurance premium for an individual subscription per employee. Annually, the employee will have the opportunity to earn up to a 15% premium credit by meeting the five (5) requirements of the City's wellness program.; 3% for each requirement as recommended by the Health Advisory Committee. **The City will pay fifty-three percent (53%) of the difference**

between the cost of the individual subscription for an employee who is eligible for and who elects to have said family medical insurance.

- 18.2.4 The City's contribution for the individual or family premium as determined under subsections 2 or 3 above will be prorated for permanent part-time employees as provided in Appendix A.
- 18.2.5 The City will pay, or share in the payment of in the case of permanent part-time employees, or employees eligible for insurance under subsection 3 above, only the subscription level to which an employee is entitled by virtue of the number of people ~~he/she~~ **they** may insure. However, employees who are members of the same family and eligible for more than one family subscription will be entitled to full or part payment, as appropriate, from the City for no more than one family subscription, with other family members entitled only to individual subscriptions. Said subscription shall be on the same terms and conditions as specified in subsections 18.2.1 - 18.2.4 above.
- 18.2.6 The City will provide the Union with thirty (30) days prior notice of any change in insurance provider, and the Union shall have ten (10) days thereafter within which to comment on such change.
- 18.2.7 The City shall begin payment on health insurance premiums on the first full month of employment. Upon separation, any balance due for that month's employee's premium will be deducted from the employee's final paycheck or balance billed if the final paycheck is insufficient to cover the amount due.
- 18.2.8 The City agrees to continue dependent care health benefit deductions on a pre-tax basis as provided by the Internal Revenue Service. The City further agrees to continue pre-tax health care flexible spending accounts effective January 1, 2002.
- 18.2.9 Re-opener: Notwithstanding any provision of this Agreement, either party may reopen this health insurance article and the salary article on or after July 1, 2001. The salary article shall only be reopened if the health insurance article is renegotiated and upon request of either party. Any subsequent negotiations shall be conducted in accordance with the most recent executed ground rules.
- 18.2.10 A member of the bargaining unit may be appointed by the bargaining unit to serve on a Health Insurance Advisory Committee, comprised of one (1) member from each participating bargaining unit in the City and an equal number of City representatives. The parties agree to participate in quarterly Labor/Management Advisory meetings to review claims experience data, track the effectiveness of the-plan design changes and any other health benefit issues of concern to either party.
- 18.2.11 Except as provided in 18.2.12.1 below, the City agrees to continue health care benefit deductions on a pre-tax basis as provided by the Internal Revenue Service.

18.2.12 For the purposes of this article "family" is defined as spouse or domestic partner, and dependents. To enroll a domestic partner on the City's health insurance plan, the employee must satisfy the City's eligibility requirements for claiming an individual as a domestic partner. **The tax treatment of the domestic partner portion of coverage shall be governed by state and federal law.**

~~18.2.12.1 The portion of the employee's health insurance contribution for domestic partner coverage as outlined in 18.2.3 above will be taken on a post-tax basis.~~

~~18.2.12.2 The City's contribution to the premium cost for domestic partner coverage and coverage of dependents of the domestic partner will be reported as imputed income at year end, in accordance with Internal Revenue Service regulations, and will be calculated into the employee's gross earnings as taxable wages.~~

18.3 Income Protection and Dental Insurance Deductions

18.3.1 The City agrees to deduct premiums for the Union's income protection plan for employees participating in said plan and so long as the Union makes said plan available. The deduction for the Union plan will be made pursuant to Article 4, Dues. Following contract execution employees will have the option to participate in the MMEHT Income Protection Plan.

18.3.2 Employees may participate in any dental insurance plan which may be made available to employees at their own cost and through payroll deductions. Employees may enroll a spouse and dependent children on the plan. Employees may enroll a domestic partner on the plan providing the employee satisfied the City's eligibility requirements for claiming an individual as a domestic partner. In no case shall the City be required to make a dental insurance plan available to employees.

19. **PENSIONS**

19.1 The City is a participating local district under the Maine Public Employees Retirement System (MainePERS). Permanent/project employees who work a normal week of 21 hours or more per week are required to join the retirement system program in accordance with the MainePERS Rules, or join the City's alternative **ICMA-RC 401(a)** plan as provided below. The employee's decision to join either plan **is may be** irrevocable for all periods of employment with the same employer as per MainePERS laws and rules.

19.1.1 The City shall continue to participate in the **MainePERS Regular Benefit Plan, as described in 5 M.R.S. Sec. 18451-A ("AC Plan")**. **Maine Public Employees Retirement System (MainePERS) Regular Plan, Rule 94-411, Chapter 803, Sec. 7,**

(Regular Benefit Plan AC). The City further agrees to continue to participate in the cost of pension payments under the options presently in effect. The MainePERS Board of Trustees may establish by rule the rate at which members (employees) who participate in the **AC Plan Consolidated Plan, and the City as an employer,** contribute to that plan.

- 19.1.2 The City currently offers an **ICMA** 401(a) defined contribution qualified pension plan to new hires and current employees as an alternative to participation in the **Maine Public Employees Retirement System (MainePERS)** defined benefit plan. Each participant has a plan account **into** which employee and employer contributions are made. Plan benefits are based on the total amount of money in the participant's account at retirement or eligible event. **Maine Revised Statutes Title 5, Section 18252-B sets forth:** The employee **contribution rate shall be 7.05%** and **the** employer contribution rates shall be **7.5%**.
- 19.2 The City agrees to continue to participate in a qualified deferred compensation plan for permanent part-time employees who work 20 hours or less per week. The deferred compensation plan provides for immediate vesting and optional withdrawal of the account balance upon the employee's termination.
- 19.3 The Union agrees not to grieve, arbitrate nor litigate on behalf of any employee(s) any claim or claims, directly or indirectly, arising out of the City's practice in regard to employee voluntary buy-back, solely at employee expense, of retirement service for the first six months of employment for employees hired prior to July 1, 1984.
- 19.4 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service. State Income Tax deductions will be calculated in accordance with State Tax Law.

20. REGULAR HOURS OF WORK

- 20.1 The regular work week shall consist of five (5) consecutive days. The regular hours of work, or shift, shall be eight (8) consecutive hours, excluding interruptions for lunch or meal periods. Upon mutual agreement between the City and the Union the regular work week may be modified in whole or in part to meet the service needs of the citizens of Portland and to provide flexibility to the employees. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule. Thirteen (13) hours worked shall constitute a day's work and thirty-nine (39) hours worked shall constitute a week's work at base hourly rates of pay for employees on a three (3), thirteen (13) hour day work schedule. A proposed modification which affects one or more but not all divisions will be voted on by the affected sections within the affected division, provided the modification relates to hours of work and related articles only.

20.1.1 There will be one weekend schedule, in addition to the three (3) five-day weekday

shift schedules, at Public Works during the winter period. The weekend schedule will consist of a three (3) day, **thirteen (13)** hour shift on Friday, Saturday, and Sunday.

20.2 Each employee shall be scheduled to work a shift with regular starting and ending times. Upon the determination by the City of its staffing needs, assignments to work weeks and shifts shall be made from the classification or classifications needed. Except as provided in 20.2.1, **and** 20.2.2 **and** ~~20.2.3~~ below, such shift assignments shall be made first on the basis of volunteers by seniority and then on the basis of inverse seniority, defined as time in the classification. Work schedules showing employee shifts, work days, and hours shall be posted on all department bulletin boards at all times. Work schedules shall not be changed, except for emergencies or for good cause, including, but not limited to achieving operating economies, adjusting to technological changes, affecting a change in work program, or reflecting a change in work site. Except in the event of an emergency, the City agrees to provide employees a minimum of two (2) weeks' notice of work schedule changes by posting such changes on departmental bulletin boards.

20.2.1 A designated representative from the Department of Public Works will distribute a Labor and Trades Winter Shift Assignment Selection Sheet at the beginning of September to all employees subject to winter shift assignments. Employee's preferences for winter shift assignments will be selected with this Selection Sheet and submitted to the designated representative prior to September 15. The designated representative from the Department of Public Works will put the shift list together based on seniority. Public Works positions that are exempt from winter shift assignments will be listed in Appendix H. The City will finalize the winter shift schedule on or before October 1.

20.2.2 Assignment of Public Works employees eligible to bid on the first, second, third week day shifts and the weekend day shift shall be on the basis of overall bargaining unit seniority.

20.3 Except as provided in 20.3.1 or 20.3.2 below, unpaid lunch or meal periods of thirty (30)-minutes shall be in the middle of the work shift. Morning and afternoon coffee or rest breaks of fifteen (15) minutes maximum duration shall be granted by the supervisor, but no such break need be granted during periods of emergency operation affecting the health, safety, and property of Portland's citizens. The supervisor of crews working in areas where coffee is not readily available shall have complete discretion as to the number of employees who can leave the job site, and how coffee or refreshments are obtained. Employees in the unit shall have a ten (10) minute cleanup period immediately prior to their lunch period and immediately prior to the end of their shift, except during periods of emergency operation affecting the health, safety and property of Portland's citizens. Modifications shall be allowed upon mutual agreement between the City and the Union.

20.3.1 Employees working in Public Works will receive a paid lunch during the winter period.

20.3.2 For all other departments, with the approval of the Department Director, or Designee, employees working in certain divisions and sections may have the option of a thirty (30)-minute paid meal break in the field. The meal break shall occur as close to mid-shift as possible, at the discretion of the Supervisor. A twenty (20)-minute mid-morning break may also be taken in the field. One person may be designated to obtain food and beverages for the crew. The break will not start until the "runner" returns with food and work will resume at the end of the specified mid-morning break (20 minutes) or meal break (30 minutes.) If a store or restaurant is located adjacent to a work site employees may purchase food during the 30-minute meal break, but the total meal period will not exceed 30-minutes. The two, 10-minute wash up periods are eliminated before lunch and at the end of the work shift. The end of the work shift shall be thirty (30) minutes earlier. Punch out time is five (5) minutes prior to the end of the shift. Crews may break down work sites ten to twenty minutes prior to punch out time in order to allow adequate travel time back to a central location. The location of the job site and distance from the central home base will determine the time in which work sites are broken down. Managers and Supervisors shall have discretion to determine when it is feasible for breaks and meals to be taken on-site due to severe or inclement weather conditions. Modifications shall be allowed upon mutual agreement of the City and the Union.

20.4 Solid Waste

20.4.1 Employees may be required to stay after the required work within Sanitation and Recycling is completed to assist with snow plowing and winter operations, holiday trees collection, spring and fall leaf collection, and emergency situations. When required to stay and work on the above-mentioned operations, Sanitation and Recycling section employees are eligible for overtime pay after the completion of their normal work shift of eight (8) hours.

The parties agree that for the Spring and Fall leaf collection duties, the City will solicit volunteers first from within the Solid Waste/Recycling section and then Citywide with the exception that at least one employee per truck will be from the Solid Waste/Recycling section to drive the routes. This provision will be for the Fall 2019 and Spring 2020 leaf collections unless the parties agree to extend this for future years.

20.4.1.1 Employees within the Solid Waste section may be assigned to either the Sanitation crew or the Recycling crew. Within this section employees will have a primary assignment to either the Sanitation or Recycling crew but management may use people in either program as needed. For example, management may utilize staff normally assigned from one crew to supplement the other crew to cover full or partial day absences or to temporarily readjust staffing in the event of equipment failures or other unanticipated events as well as the management of daily workload issues. Temporary changes in assignments shall not be made in an

arbitrary or capricious manner.

- 20.4.1.2 Island Maintenance Workers assigned to Sanitation and Recycling will be covered by this provision (Incentive Work Schedule) only on the days they are assigned to a packer or recycling truck for their full shift (Monday's or Tuesday if Monday is a holiday). On days they are not assigned to a packer or recycling truck, they will be required to work a full eight (8) hour shift performing other duties within the Division as assigned by the Islands Supervisor or Foreman.
- 20.4.2 Any hours not actually worked up to eight hours under the incentive plan shall be compensated at the individual's regular rate of pay and shall count as hours worked under Article 14, Overtime, and Article 15, Meal Allowance, in accordance with the collective bargaining agreement.
- 20.4.3 Employees regularly assigned to perform Sanitation and Recycling duties will not be subjected to winter shift schedule changes; they will, however, be subject to mandatory overtime. When required to assist with the plowing of snow during their regularly scheduled shift, which shall occur in those emergency situations when the Director determines that plowing takes priority over Sanitation and/or Recycling duties, and when trash/recycling pickup is cancelled. These employees may be required to work Saturday to pick up trash/recycling that may have been cancelled during this emergency situation. The City agrees to utilize volunteers from the overtime desired list first in these situations.
- 20.5 The Traffic Section personnel will need to make schedule changes for striping of crosswalks and long lines for the months of May through September every year (possibly longer or shorter based on weather). Traffic personnel consisting of Maintenance Workers and the Traffic Sign Computer Operator will modify their regular work week in conjunction with the striping program. The specific dates of work schedule changes will be based on the contractor's striping schedule and daily weather conditions. Other Labor & Trades Traffic section personnel will participate as needed. The normal work hours for employees participating in this program are anticipated to be 9:00 p.m. to 5:00 a.m. Their exact schedule (both in terms of hours and length of shift) may vary from week to week due to weather conditions, contractor's schedules and other factors. Overtime will be paid after eight (8) hours per day. Employees may use accrued benefit time (vacation, personal, or comp time) to make up any shifts cancelled due to weather conditions, as an alternative to making the shifts up later in the week. Employees who work a majority (more than 20 hours) of any of these weeks on **second or** third shift are eligible for night shift differential for the full week. The Union agrees to waive the two-week notification period for other employees who may be asked to participate in this striping program. Notification will be on Friday of the week prior.

21. NIGHT SHIFT, IN-CHARGE **AND WEEKEND DIFFERENTIAL**

21.1 Night Shift Differential

- 21.1.1 Except as provided in 21.1.2 below, employees who work a night shift on a regular basis with fifty percent (50%) of the regular hours being worked after 6:00 p.m. shall receive a shift differential allowance of ~~forty-five~~ **fifty-five** cents (~~\$.45~~ **\$.55**) per hour for the entire night shift. Employees who work a night shift on a regular basis with fifty percent (50%) of regular hours being worked after 11:00 p.m. shall receive a shift differential allowance of ~~sixty-five~~ **seventy-five** cents (~~\$.65~~ **\$.75**) per hour for the entire night shift.
- 21.1.2 Employees in the Public Works Department or Parks, Recreation and Facilities department who work the weekend shift schedule during the winter will receive ~~\$.50~~ **\$.60** cents per hour **for the forty (40) hours** associated with the weekend day schedule and second shift schedule and ~~\$1.00~~ **\$1.10** per hour **for the forty (40) hours** associated with the third shift schedule.

21.2 In-Charge Differential/Stipends

- 21.2.1 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Barron Center to provide supervision to the maintenance crew. Such employee will receive additional pay of \$1.00 per hour for performing these duties.
- 21.2.2 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Social Services Division to provide supervision to the Social Services facilities staff and to assist the Social Services Facilities Manager with determining future building and plant needs. Such employee will receive additional pay of \$1.00 per hour for performing these duties.
- 21.2.3 Employees who maintain a current State of Maine Municipal Right-of-Way Pesticide License, Category 6 A/D, shall be paid a \$1.00 per hour stipend for the actual hours worked performing an authorized pesticide spraying operation.
- 21.2.4 The Airport Manager or designee may designate a third-shift Airport Maintenance Worker to be in-charge of third-shift maintenance personnel as described in Appendix J. Such employee will receive additional pay of \$1.25 per hour for performing these duties.
- 21.2.5 ~~Mechanic~~ **Auto Technician** and Autobody Repair personnel in Fleet Services who possess up-to-date ASE and/or EVT certifications will be compensated with a ~~\$.25~~ **\$.50** per hour stipend for each certification up to a maximum of eight (8) total certifications.

21.2.5.1 The Parts Specialist will be compensated with a \$.50 per hour stipend for up-to-date, parts-related ASE and/or EVT

certifications, up to a maximum of two (2) total certifications.

21.2.6 Welding personnel in Fleet Services are eligible for a \$1.00 per hour stipend after obtaining an American Welding Society Unlimited Thickness Plate certification or \$1.00 per hour after obtaining a Pipe Certification from the State of Maine Board of Boilers and Pressure Vessels. Maximum welding stipend allowed is \$2.00 per hour.

21.2.6.1 A designated Island employee may qualify, with provided proof of certification, for the welding stipend for all hours worked.

21.2.7 Employees will receive stipends listed above in 21.2.5, 21.2.6 and 21.2.6.1 after they provide written proof to the Fleet Services Manager or Principal Administrative Officer that they have obtained the required certification(s). Stipends shall be effective at the start of the next payroll period following submission of the proof of the certification(s) to the City.

21.2.8 The Public Works Director or designee may designate a **Mechanic III Auto Technician II** at Fleet Services to be the Lead Heavy Equipment Technician. Such employee will receive additional pay of \$1.00 per hour to perform the duties as required by the Fleet Manager.

21.2.9 The Public Works Director or designee may designate a **Mechanic III Auto Technician II** at Fleet Services to be the Lead Police vehicle **mechanic technician**. Such employee will receive additional pay of \$1.00 per hour to perform the duties as required by the Fleet Manager.

21.2.10 The Public Works Director or designee may designate Maintenance Workers with a Class A license in the Streets and Sidewalks and Water Resources Divisions to do work required under a Class A license. Designated employees will receive additional pay of \$1.00 per hour for all hours worked. The total number of employees in each Division needed to perform Class A work will be determined by the Public Works Director or designee.

21.3 Weekend Differential

21.3.1 Except as provided in 21.1.2 above, employees who are scheduled to work a weekend shift on a regular basis shall receive a weekend differential allowance of sixty cents (\$.60) per hour for all hours worked.

22. HIGHER PAY FOR HIGHER CLASSIFICATION OF WORK

- 22.1 The City shall maintain and make available to the Union detailed descriptions of the duties of each employee classification. Such descriptions may be amended from time to time by the City. An employee may be temporarily assigned to work in any position in a higher classification, if the need arises during a workday. On the following workday, such assignment shall be given to any available qualified employee having such higher classification.
- 22.2 Any employee who is temporarily assigned to work of a higher classification for which a higher rate of pay is applicable shall, if he performs such work for a minimum of one full hour, be paid at the "6 month to 1 year" pay step in the higher classification or the first step in the higher classification which guarantees a minimum of a three-percent increase in pay, whichever is greater. This provision applies to higher class assignments in Local 481-00 and Local 481-07.
- 22.3 Employees who are assigned work in a higher classification for eight (8) consecutive workdays or more shall be entitled on the ninth workday of such assignment to compensation at the appropriate seniority step of the higher classification pay grade. Vacation leave or holidays shall be paid at this higher rate beginning on the ninth day of the employee's assignment to the higher classification of work.
- 22.4 Should an employee be temporarily assigned to work of any lower classification, they shall not suffer any reduction in his negotiated rate of pay while so working.
- 22.5 Maintenance Workers (pay grade 14) who are assigned to dig graves using a backhoe in the Cemeteries will be paid as Maintenance Worker I (pay grade 16) in accordance with 22.2 or 22.3.

23. TOOL ALLOWANCE

- 23.1 The City and the Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a three hundred-fifty dollar (\$350.00) tool allowance per fiscal year for tools purchased during that fiscal year. The tool allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance pro-rated for that year and any overpayment will be deducted from their separation pay.

Classification List

Trades Worker I, II and III

- 23.2 **Effective July 1, 2022**, The City and Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a **seven** **eight** hundred dollar (~~\$700~~**800**) tool allowance for tools purchased during that fiscal year. The tool

allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance for the year pro-rated and any overpayment will be deducted from their separation pay.

Classification List

Autobody Repair Worker

~~Mechanic I~~

~~Mechanic~~ **Auto Technician I**

~~Mechanic~~ **Auto Technician II**

~~1st Class~~ **Welder Machinist I**

~~2nd Class~~ **Welder Machinist II**

~~3rd Class Welder~~

- 23.3 Airport Maintenance Workers and Assistant Airport Facilities Technicians will be issued an initial tool pouch upon hire by the Department that will contain the tools necessary to their job. The list of tools that are currently being provided are listed in Appendix J (Jetport). They will be expected to use these tools for work purposes only and to take proper care of them. In the event a tool is damaged during performance of City work, the Department will replace the tool. The employee will be personally responsible for replacement of City issued tools that are used for non-City purposes. All tools will be returned to the City at termination of employment.
- 23.4 The tools purchased in accordance with this article are tools that are used on a regular basis by the employee for their City job. Such purchases are to be pre-approved by the employee's Division Head or designee.

24. SICK LEAVE

- 24.1 For full-time employees who work the standard 5-day schedule sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation. Full-time permanent employees who work a 3-day or 4-day schedule shall accrue sick leave at the rate of 2.31 hours per week beginning with the first payroll week of service with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 96 hours for employees working a 5-day schedule and 120 hours for employees working a 3-day or 4-day schedule. The year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the annual amount.
- 24.2 Sick leave may be used only in the following cases:

24.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities

(including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which ~~he or she~~ **they is are** assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.3 Employees who wish to use sick leave to care for a domestic partner in accordance with 24.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

24.3 Conversion of Sick Leave to Vacation

24.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of vacation leave.

24.3.2 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of pay at their regular rate.

24.3.3 Employees may make one of the above elections only once for any consecutive twelve month period, and only once during any twelve month period.

24.4 Conversion of Sick Leave to Personal Leave

24.4.1 Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees with at least twelve months of service on July 1st of each fiscal year who wish to make such a conversion will notify the City of their decision during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for converting sick leave to vacation.

24.4.2 Sick leave will be converted to personal leave at the time the conversion is elected and the personal leave balance will change as personal leave time is used. In no event shall the employee's personal leave balance exceed two (2) days in any fiscal year. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, providing the total balance of personal leave for the upcoming fiscal year does not exceed two (2) days.

24.4.3 Personal leave is intended to be used for personal needs and is not to be used to circumvent departmental procedures for processing vacation requests. When using personal leave time, the employee is not required to give the reason for the use of such time. However, the employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit and will comply with the minimum notice requirements listed below. Personal leave requests will not be approved on a retroactive basis.

24.4.3.1 During periods of mandatory overtime, a twenty-four hour notice is required for the use of personal leave. The employee is responsible for contacting the Department Director or designee to request the time off; Dispatch does not have the authority to approve such requests. Failure to provide this notice or failure to contact one of the individuals listed above may result in a denial of the use of personal leave. In the event of a denial, the employee must report to work as scheduled and will be disciplined for failure to do so. The City reserves the right to deny personal leave requests made in compliance with the 24-hour notice request in the event that the employee will be required for emergency operations.

24.4.3.2 In the case of emergencies, personal leave must be requested and approved prior to the start of the employee's shift and will not be approved on a retroactive basis. The City will make every effort to accommodate these requests, even during periods of mandatory overtime; however, requests may be denied during periods of mandatory overtime if the employee is needed for emergency operations.

24.4.4 Personal leave does not count as "hours worked" for the purpose of calculating overtime and personal leave balances are not payable at separation from employment. However, any employee shall have the option at separation to convert unused personal leave to sick leave.

25. ON-THE-JOB-INJURIES

25.1 Employees who have been injured while performing an official duty shall be paid for the

time lost on the date of injury. Such pay will not extend beyond the normally scheduled work shift, exclusive of overtime. Such time lost will not be charged to sick leave. After a period of twelve (12) consecutive months on Workers' Compensation, an employee shall not earn holidays, vacation days, or sick leave. An employee may elect to use any accumulated days to make up the difference between their Workers' Compensation and their regular weekly salary.

25.2 Transitional Work

25.2.1 It is the goal of the City of Portland to assist an employee who sustains a work-related injury to return to the position they held at the time of their injury. To that end, the City has defined specific work assignments or "Transitional Work" that will be made available to those injured workers who, in the judgment of the City, will probably be able to return to "Regular Work" within three years of the date of injury. This decision will be based in part on information provided by health care professionals.

25.2.1.1 "Transitional Work is defined as a temporary job assignment created for the purpose of this provision or a regular job assignment that has been modified to eliminate or significantly limit one or more of its essential functions temporarily for the purpose of this provision.

25.2.1.2 "Regular Work" is defined as the position the employee held at the time of injury or, in the event that position is not available, another suitable position.

See Appendix E-2 for a sample Transitional Work agreement.

25.2.2 Eligibility

Participation in the Transitional Work Program will be limited to a period of three (3) years after the date of initial injury. In order to be eligible for assignment to Transitional Work, an employee (1) must have sustained an injury arising out of and in the course of employment with the City of Portland; (2) must have the approval of a treating physician; and (3) must sign a Transitional Work Agreement. The City will provide Transitional Work within the injured employee's department providing such work is available.

25.2.3 Duration of Assignment

An employee who meets the eligibility requirements in this policy will be assigned to the next available Transitional Work assignment and will be permitted to work up to ninety (90) days in that assignment. If at the end of the ninety (90) day period, the employee has not been released to Regular Work, the employee will no longer be eligible for Transitional Work unless further medical evidence is presented that permits the City to believe that, with reasonable further periods of

Transitional Work, the employee will probably be able to return to Regular Work. If such evidence is provided, the City may offer additional periods of Transitional Work for up to three years from the initial date of injury.

If, during the course of the Transitional Work, it becomes evident to the City that the injured worker probably will not be able to return to Regular Work within three (3) years of the date of injury, the Transitional Work may be terminated. Such employees retain any rights they may have under M.R.S.A. Sec. 217 with regard to employment rehabilitation.

25.2.4 Re-Employment within Three Years of Date of Injury

25.2.4.1 If an employee becomes capable of performing the essential functions of the position held on the date of injury, with or without reasonable accommodation, within three years of the date of injury, the employee may return to work in that capacity. Upon return to work, the employee shall receive pay and benefits at the level **he/she they** would have received if the injury had not occurred.

25.2.4.2 If the employee cannot return to the position held on the date of injury within three years of the date of injury, the City will evaluate the employee's ability to perform other permanent assignments at an equal or lower pay grade within the bargaining unit.

25.2.4.3 Upon a determination of capability to work, the employee will provide the City with **his/her their** current medical restrictions and the positions **he/she they** wishes to be considered for if unable to return to "Regular Work". If the employee is able to return to work for the City, but not in the position held at the time of injury, pay and benefits shall be determined by the City under the appropriate bargaining agreement and with the concurrence of the bargaining unit representative. If the employee should return to a non-union position, the City's Non-Union Personnel Policy will determine pay and benefits.

25.2.4.4 The acceptance or refusal of appointment to a position other than the position held on the date of injury shall not terminate the employee's right to seek re-employment in the position held on the date of injury.

25.2.4.5 This section assumes that the employee remains in active status and has not been terminated in accordance with 25.4.2. In the event that an employee terminated in accordance with 25.4.2 becomes capable, within the 3-year period from date of injury, of performing **his/her their** previously held position, s/he will be returned to that position if it is vacant and will receive the contractual rate of pay for that position. If the previously held position is not available or another position in that classification is not available, s/he will be placed in a vacant bargaining

unit position as soon as a position the employee is qualified to perform becomes available. The employee will receive the rate of pay they were receiving when they were terminated for the remainder of the three (3) year period or the contractual rate of pay for that position, whichever is greater, until a position in the previously held classification becomes available.

25.3 Except as provided in 25.3.2 below, effective January 1, 2004, employees out on Workers' Compensation must pay their pension contribution based on the wage portion of the Workers' Compensation benefits that the employee receives. All pension payments will be made pursuant to the rules of the Maine Public Employees Retirement System. If payment is not made within thirty (30) days of when the employee receives the Workers' Compensation benefit, the employee will be responsible for accrued interest until all contributions are paid.

25.3.1 Employees out on Workers' Compensation prior to January 1, 2004 may pay their pension contribution on an optional basis under the rules of the Maine Public Employees Retirement System. If such employee contribution is paid while the employee is out on Workers' Compensation or by the end of the calendar year during which the employee lost time, the employee is required to pay their contribution amount. If the employee pays their share after this date, they will be responsible for their contribution plus interest in accordance with Maine Public Employees Retirement System laws. The City will pay its share, including interest, in accordance with Maine Public Employees Retirement System laws.

25.3.2 The City has provided notice to the Maine Public Employees Retirement System of employees out on Workers' Compensation between January 1, 2004 and October 28, 2005, and has paid the interest accrued from January 1, 2004 through the date of the letter(s) sent to each employee by the Maine Public Employees Retirement System regarding payment of pension contributions on their Workers' Compensation benefits. If payment is not made within thirty (30) days of when the employee receives the MainePERS letter, the employee will be responsible for accrued interest until such contributions are paid.

25.3.3 Retirement service credit will be provided only for time for which pension contributions have been made.

25.4 Termination of Employment

25.4.1 In those cases where an employee is unable to perform regular Work and health care professionals determine, at any point during the three (3) year period following date of injury, that the employee will be unable to return to regular Work during the three (3) year period, the employee may be terminated from employment on or after eighteen (18) months following date of injury. This termination is non-disciplinary and the employee will receive a 90-day notification.

25.4.1.1 In the event the City exercises its right to terminate as described above prior to three (3) years from date of injury, and providing the employee becomes capable of returning to Regular Work prior to the three (3) year date, s/he will be returned to work at the contractual rate of pay for the position or the same rate of pay as s/he was receiving at the time of termination, whichever is greater.

25.4.2 If unable to return to Regular Work by the date specified in the ninety (90) day notification listed in 25.4.1 above and, providing the updated medical report indicates a work capacity, the employee will provide the City with ~~his/her~~ **their** current medical restrictions and the positions ~~he/she~~ **they** wishes to be considered for as an alternative to termination. The provisions of 25.2.4 will apply if the employee is capable of performing another permanent budgeted position within the City that is available within the ninety (90) day period.

26. UNUSED SICK LEAVE UPON SEPARATION

- 26.1 During the term of this Agreement, when an employee is laid-off, the employee shall receive an amount equal to ~~his/her~~ **their** salary at the time of lay-off for one-half (1/2) the number of days of ~~his/her~~ **their** accumulated unused sick leave up to a maximum of ninety (90) days of pay.
- 26.2 During the term of this Agreement, when an employee retires from continuous permanent active service with the City and is immediately eligible for retirement benefits, ~~he/she~~ **they** shall be entitled to receive an amount equal to ~~his/her~~ **their** salary at the time of retirement for one-half (1/2) of accumulated sick leave up to a maximum of ninety (90) days of pay, provided the employee has a minimum of sixty (60) days of sick leave accumulated. Retiring employees with less than sixty (60) days shall not receive any payment.
- 26.3 In the event of death before retirement of an employee covered by this Agreement, unused sick leave shall be paid to the employee's designated beneficiary or estate, in the salary equivalent to one-half (1/2) of ~~his/her~~ **their** then accumulated unused sick leave, said payment not to exceed payment for ninety (90) days.
- 26.4 In the event of death in the line of duty of an employee, the City shall pay one hundred percent (100%) of ~~his/her~~ **their** total accumulated unused sick leave balance to the employee's designated beneficiary or estate.
- 26.5 For resigning employees of good standing with less than ten (10) years of continuous permanent service with the City, payment shall be one-fifth (1/5) of accumulation with a maximum payment of twenty four (24) days; for resigning employees of good standing with ten (10) years or more of continuous permanent service with the City, payment shall be one-half (1/2) of accumulation with a maximum payment of forty-five (45) days. A good standing resignation is considered to be two (2) weeks' notice of resignation.

27. LEAVES OF ABSENCE

27.1 Short-Term Leave of Absence

A regular employee may be granted a leave of absence without pay by a Department Head when approved by the Director of Human Resources, for a period deemed necessary by the employee for the purpose of the leave, but not in excess of sixty (60) days. The employee requesting such leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

27.2 Special Leaves (Long-Term)

The City Manager, upon the recommendation of the Department Head and the Director of Human Resources, may authorize special leaves of absence with or without pay for any period or periods not to exceed one calendar year for the following purposes: attendance at college, university or business school for the purpose of training in subjects relating to the work of the employee and which will benefit the employee and the City service; urgent personal business requiring the employee's attention for an extended period, such as settling an estate, liquidating a business; or for purposes other than the above that are deemed beneficial to the City service. The employee requesting such special leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

27.3 Family Medical Leave

27.3.1 Consistent with the applicable state or federal Family Medical Leave law, employees may be eligible for unpaid, job protected leave of up to twelve (12) weeks. Requests for leave pursuant to this provision shall be made to the appropriate department Human Resources representative and will be administered in accordance with applicable law, as may be amended from time to time. An employee who has been employed for twelve (12) consecutive months and who has worked 1250 hours in the last twelve months may be entitled to up to twelve (12) consecutive weeks of Family Medical Leave in any twelve month period. The twelve month period during which this entitlement may occur is measured backward from the date the employee's first FMLA leave begins.

27.3.2 Whenever possible, the employee must give at least thirty (30) days notice to their department Human Resources representative of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving such notice. The leave may be consecutive, intermittent, or on a reduced hourly schedule if the City and employee agree, or if medically necessary. Upon request, the employee shall provide medical certification, in the

form of a completed City of Portland Health Care Provider Certificate Form, of the need for the leave. FMLA leave is governed by the requirements of the state and/or federal FMLA laws, as they apply. If the requirements, benefits, definitions and/or scope of FMLA changes during the term of this Agreement, such changes are automatically incorporated by this Agreement.

27.3.3 Employees who request to use Family Medical Leave for the purpose of caring for a domestic partner, or child or parent of domestic partner, must satisfy the City's eligibility requirements for claiming an individual as a registered domestic partner.

27.3.4 Substitution Provision – Paid

The City may require the use of accrued paid benefit leave, including sick leave, vacation leave, personal leave and compensatory time to the extent that it is allowed under State and/or Federal Family Medical Leave laws while the employee is on an unpaid Family Medical Leave or extended medical/disability leave of absence.

27.4 Disability Leave

27.4.1 When disabled, an eligible employee may be placed on an unpaid leave of absence not to exceed three months if (1) either the employee or his/her **their** attending physician requests same, or (2) the employee's attendance or performance becomes unsatisfactory because of the disability. Should the Department Head determine that an employee's attendance or performance is unsatisfactory because of a disability, the employee may be required to take a leave of absence. In making such a determination, the Department Head shall place major emphasis upon the recommendation of the employee's physician, as the recommendation concerns the employee's health and physical capabilities. In the event the employee does not have a physician, the Department Head may direct the employee to go to a physician selected by the City. In order that such physician shall have the necessary facts upon which to base his/her **their** recommendation, the Department Head and the Director of Human Resources shall furnish the physician with a statement concerning the requirements of the job and the conditions under which it is performed. In any instance in which the Department Head requires the employee to go on leave of absence, if the affected employee files a grievance, the burden of proof shall then be upon the City as to the correctness of such determination. In the event such determination is found to be unjustified, the employee involved shall be reimbursed for all lost time and/or restored all lost sick leave credits. The initial twelve (12) week period of disability leave will be processed as Family Medical Leave if the disability is covered by the Family Medical Leave Act.

27.4.2 Except for emergencies, the employee shall submit written notification to the Department Head at least two weeks prior to his/her **their** anticipated departure stating the probable duration of the leave. The Department Head may require the employee to provide a statement from his/her **their** physician setting forth (1) the

anticipated duration of the disability, and (2) whether the employee may continue to perform **his/her** **their** work assignments.

- 27.4.3 Upon written request of the employee submitted to the Department Head at least two weeks prior to the expiration of the granted leave, and at the discretion of the City Manager, after recommendation of the Department Head and the Director of Human Resources, a disability leave of absence without pay may be extended or renewed for an additional period of time but not to exceed a total of twelve months duration.
- 27.4.4 Disabilities caused or contributed to by pregnancy are, for all job-related purposes, temporary disabilities.
- 27.4.5 Accumulated sick leave benefits shall be applied to any portion of the requested or required leave so eligible at the option of the employee, but cannot be used to extend a disability leave beyond the twelve-month period.
- 27.5 The employee is expected to return to work upon the expiration of the granted leave or to have arranged an extension of the leave prior to its expiration. Failure on the part of the employee to return to work on the expiration of the granted leave may be deemed a resignation from service.
- 27.6 Employee's requests for leaves of absence under this Article shall not be denied in an arbitrary or capricious manner, but remain discretionary with the City except in the case of Family Medical Leave under 27.3.2.
- 27.7 Any leave of absence taken in accordance with this Article (Article 24) shall not be deemed a break in service for seniority purposes. The City shall continue to provide the employee with health insurance coverage for the duration of any authorized leave. Employees shall not accrue sick or vacation leave or receive payment for holidays for the duration of any authorized leave that exceeds twelve (12) weeks in duration.

28. OTHER LEAVE

28.1 Bereavement Leave

An employee shall be excused from work for up to five (5) work days because of death of a spouse or domestic partner, a child **(including the death of a spouse's or domestic partner's child)** or a parent and three (3) work days because of death in **his/her** **their** immediate family, as defined **below in 28.1.2**, and shall be paid **his/her** **their** regular rate of pay for the scheduled working hours missed. Not more than eight (8) hours per day (10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) shall be paid under this Article. It is intended that this time off be used for the purpose of handling necessary arrangements and attendance at the funeral. ~~Immediate family is defined to mean brothers, sisters,~~

half brothers, half sisters, daughter in law, son in law, mother in law, father in law, grandparents, grandchildren, step children, children of a domestic partner, step parents, sister in law and brother in law. Immediate family also includes members of domestic partner's family similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner. An employee may use three (3) more calendar days of bereavement leave chargeable to sick leave immediately annexed to the initial leave if in the sole opinion of the Department Head the additional time is needed for travel or because of other extenuating circumstances. Said extension shall not be arbitrarily withheld. Bereavement leave charged to sick leave shall not count as sick leave usage for the purposes of Article 24.3, Sick Leave Conversion to Vacation.

28.1.2 Immediate family is defined to mean brothers, sisters, half-brothers, half-sisters, daughter-in-law, son-in-law, mother-in-law, father-in-law, grandparents, grandchildren, step-parents, sister-in-law and brother-in-law and includes members of domestic partner's family similarly related provided the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.

28.2 Funeral Leave

In addition to the foregoing, one (1) day (8 hours for employees working a 5-day schedule, 10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) may be used for attendance at the funeral of the following relatives: aunt, uncle, niece, nephew, or other relative living in the same household or a domestic partner's relative that is similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner. **and includes members of domestic partner's family similarly related provided the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.**

28.3 Personal Leave

Personal leave, without pay, may be granted to employees covered by this Agreement by the appropriate Department Head or his authorized representative, if such Department Head or authorized representative deems there is good and sufficient reason for granting said personal leave. A minimum twenty-four (24) hour notice is required to be given by the employee, excluding Mondays and days following a holiday in emergency situations. However, on such Mondays and days following a holiday, the employee shall give notice in the most practical manner within fifteen (15) minutes after the start of the normal work day so that the appropriate Department Head can make adjustments in the day's work schedule.

28.4 Military Leave

Military leave and rights to re-employment after such leave shall be available to employees under the terms and conditions of applicable federal and/or state law as may be amended

from time to time. Any person restored to service under such law shall be restored with accrued seniority.

28.5 Reserve Service Leave

Reserve service leave and rights to re-employment after such leave shall be available to employees who are members of the organized military reserves or National Guard, under the terms and conditions of applicable federal and/or state law as may be amended from time to time. For any period of Reserve Service Leave of up to three (3) weeks in any calendar year, the City will pay the difference between the employee's total service pay for said field duty and the employee's regular compensation, the sum of both payments to equal the regular weeks' pay of the employee had ~~he/she~~ **they** been in the City service during this period. The employee using Reserve Service Leave shall furnish ~~his/her~~ **their** Department Head with an official statement of reserve service pay received.

28.6 Any disputes as to rights under applicable federal and/or state law in regard to military leave and reserve service leave are not arbitrable but may be determined by a court of competent jurisdiction.

28.7 Jury/Witness Pay

28.7.1 The City shall pay to an employee called for jury duty the difference between ~~his/her~~ **their** regular pay and ~~his/her~~ **their** juror's pay. The employee shall notify the City as soon as possible of ~~his/her~~ **their** intention to serve as juror. The employee will continue to be paid regular weekly wages during the term on the jury and upon receipt of juror's pay will present an official statement of juror's pay. If such juror's pay is less than the employee's regular wages for the period served as a juror, the employee shall submit to the City the entire portion of that juror's pay. However, if such juror's pay is greater than the employee's regular wages for the period served as a juror, the employee shall submit to the City that portion of the juror's pay which equal the wages paid to ~~him/her~~ **them** for the period served as a juror.

28.7.2 The City shall pay to an employee subpoenaed to appear as a witness in a case, other than a case in which the employee is a plaintiff, the difference between ~~his/her~~ **their** regular pay and ~~his/her~~ **their** witness pay. Such witness pay shall be handled in the same manner as jury pay above.

28.8 Jury/Witness Duty

In the event an employee is called to jury duty or is subpoenaed as a witness in a case (wherein the employee is not a plaintiff or a defendant in the case), ~~he/she~~ **they** shall be granted leave to fulfill that obligation. The employee will be excused from the shift that encompasses the majority of hours on the same calendar day as the jury/witness duty.

All jury/witness duty requests must be pre-discussed with the Department Head or

designee. The Department Head or designee and the employee will predetermine based on the specific situation whether the employee will be available to work for a full or partial shift.

An employee who is excused by the Court earlier than originally anticipated is required to contact their immediate supervisor promptly. The supervisor will determine if there is work to be done and whether or not the employee will be required to report for City duty on that day.

Employees who work part time will be granted leave with pay for the hours or days that the employee is excused for jury duty and for which the employee was scheduled to work.

Employees on jury/witness duty leave when a City holiday occurs will receive their normal holiday pay. Actual jury duty service on a holiday will not result in any additional compensation or time off since jury duty service is not considered to be City employment.

29. PERSONNEL EVALUATIONS

- 29.1 The City and the Union agree that all evaluating during the life of this Agreement will be made according to the system outlined in Appendix C.
- 29.2 The AFSCME Performance Appraisal Committee shall continue to meet on an as needed basis during the term of this agreement to monitor the effectiveness of the appraisal process and to recommend changes as appropriate.

30. CLOTHING

- 30.1 All employees in the Unit shall wear the clothing provided by the City during work hours, and maintain a clean and neat appearance. Employees shall report to work with the City-provided personal protective equipment (PPE) necessary for their job. The Department Director, or designee, may require employees to turn in clothing and PPE provided by the City upon separation.
- 30.2 The City will make available outerwear appropriate for the work being performed on an "as needed" basis, as determined by the Department Director, or designee.
- 30.3 The City agrees to provide **Mechanics Auto Technicians** with 6 sets of shirts and pants, including six (6) summer shirts per week through a lease agreement and 1 pair of insulated winter coveralls and 1 pair of regular coveralls per fiscal year. **Mechanics Auto Technicians** who choose not to participate in a lease agreement will receive the clothing described in 30.7, below.
- 30.4 Individual Division Heads shall determine appropriate footwear for employees in their divisions. The City agrees to reimburse all employees covered by this Agreement up to a

maximum of \$200.00 towards the purchase of safety-toe footwear (as specified by the American National Standards Institute – Z41.1 – 1967), protective toe caps, laces and boot liners per fiscal year. Remaining footwear balances at the end of the fiscal year will not be forwarded or “rolled over” to the next fiscal year. Employees who receive reimbursement for boots within 30 days of separation with the City, will have the reimbursement deducted from their separation pay.

The Department will contribute an additional \$75 per fiscal year towards the purchase of safety footwear for Forestry and Horticulture employees. **The \$200.00 boot provision and the extra \$75 will sunset July 5, 2020.**

- 30.5 The City will reimburse employees up to a maximum of \$150 during the remaining term of this Agreement toward the purchase price of safety prescription eyeglasses (as specified by the American National Standards Institute – Z87.1.)
- 30.6 The City shall furnish employees with the personal protective equipment (PPE) necessary to perform their job. Replacements shall be on an “as needed” basis as determined by the Department Director or designee. Employees are expected to properly care for personal protective equipment issued to them.
- 30.7 The City agrees to provide employees who work predominantly a 5-day schedule with 5 summer shirts, and a combination of 5 winter shirts or sweatshirts. Employees working a 5-day schedule will be reimbursed up to a maximum of \$150 per fiscal year toward the purchase of pants. Employees who work predominantly a 4-day or 3-day schedule will receive 4 summer shirts, and a combination of 4 winter shirts or sweatshirts. Employees who work a 4-day or 3-day schedule will also be reimbursed up to a maximum of \$150 toward the purchase of pants per fiscal year. Employees can purchase any number of pair of pants for the amount of money listed above but there will be no replacements and employees will be expected to be in proper clothing provided by the City. The City will provide employees with 1 winter jacket and replacement will be made on an “as needed” basis. The City is not required to provide clothing if an employee is out of work during the season of issuing. The employee will be issued clothing for the season they return to work as defined in Appendix H or J.

Effective July 5, 2020, the \$150 pants allowance will be eliminated.

31. JOB TRAINING

- 31.1 The City shall continue its policy of providing employee training through participation in the financing of credit and non-credit training courses related to the duties and responsibilities of the employees as City resources allow.
- 31.2 General job training will be provided periodically on an individual and group basis, both on the job and off when, in the opinion of the City, such training is necessary.

- 31.3 Employees having attained the Maintenance Worker III classification at Public Works via the old career ladder, or through the terms of this Agreement, shall not be required to re-certify on various pieces of equipment, or other Departmental functions, in order to maintain their Maintenance Worker III classification and pay grade. Maintenance Worker III employees will be required to plow one-person during winter operations. Any Maintenance Worker II employee promoted to a Maintenance Worker III, under the terms of this Agreement, who chooses not to plow one-person during winter operations shall remain a Maintenance Worker II.
- 31.3.1 Maintenance Worker I employees, so classified at pay grade 14 prior to this Agreement, may be promoted to a Maintenance Worker I classification at pay grade 16 by completing the old Maintenance Worker II career ladder.
- 31.4 If the City requires specific training for existing employees in a given classification, the City will pay for the course work and will provide straight time pay for all hours spent in training beyond the normal work day, straight time until total hours worked that week equal forty (40) and time and one-half for hours over forty (40) in accordance with the Fair Labor Standards Act.
- 31.5 Probationary employees, including those employees fulfilling a promotional probationary period, shall be expected to fulfill the licensing requirements of their classification during the probationary period without any financial contribution from the City. The employee is expected to meet the licensing requirements during the applicable probationary period unless unable to do so as a result of circumstances beyond the employee's control, such as the timing of examinations by a third party.
- 31.6 When the employee is required by the City to travel overnight, the City agrees to reserve the overnight accommodations and pre-pay the lodging expenses. Employees will be reimbursed for meal expenses in accordance with Administrative Regulation 1 after submitting receipts. Employees using a personal vehicle while traveling on City business will be reimbursed in accordance with the current IRS mileage rate.
- 31.7 Any employee who is designated by the Department Director or designee to teach equipment operation to other employees shall receive a \$1.50 per hour training differential for the time spent in an authorized training session, providing the training is conducted during the employee's regular work hours. Employees who provide training outside of their regular work hours will receive time and one-half their regular base hourly rate and the \$1.50 per hour training differential.

32. WITHDRAWAL OF RESIGNATION

- 32.1 An employee may resign in good standing by giving written notice to ~~his/her~~ **their** Department Head at least fourteen (14) calendar days in advance of the effective date of his resignation. An employee may, with the approval of the Department Head, withdraw his resignation during the fourteen (14) day notice period. Such approval shall not be

arbitrarily denied.

33. FILLING OF JOB VACANCIES

- 33.1 Except as provided in 33.1.1 and 33.1.2 below job openings shall be posted on departmental bulletin boards for a minimum of seven (7) working days. At the time of posting, the Unit Presidents will be sent selection criteria for posted openings in their Unit. The posted notice shall describe the job and any pertinent job specifications. Suitable transfers will be allowed. A transfer shall be considered suitable if it is in the same classification or is a position of equal pay grade in the unit and, in both instances, the employee must be qualified as determined by the City. If there are qualified applicants and unless there are unusual or emergency circumstances, the vacancy shall be filled within thirty (30) working days from the date of application closing, which date shall appear on the posted notice. This time limit may be extended by the City, when in its sole discretion it is necessary to do so, but to a date not to exceed forty (40) calendar days from the application closing date.
- 33.1.1 The City is not required to post job openings prior to offering that opening to a bargaining unit employee in order to fulfill its requirement to make reasonable accommodation in accordance with federal or state law.
- 33.1.2 In accordance with past practice, the City is not required to post job openings if an additional vacancy in the same classification and same Division becomes available prior to the close of the selection process on the initial vacancy. The City will post the additional vacancy for a seven (7) working day period to determine if any additional applicants are interested in the position when the additional vacancy is in a different division or department.
- 33.2 Employees in any City Department may apply for unit vacancies which are posted. Among applicants the City considers to be qualified, the vacancy shall be filled in the following preferential order: first by the unit applicant employed by the Department in which the vacancy occurs, secondly, by the bargaining unit applicant and, thirdly, all other applicants including non-employee applicants.
- 33.3 Upon execution of this Agreement, the City retains the right to fill Maintenance Worker I vacancies, at pay grade 16 (formerly MW II position), with individuals as a Maintenance Worker, at pay grade 14 (formerly MW I position), if the selected applicant, in the sole discretion of the City, does not meet an acceptable portion of the Maintenance Worker I job requirements. If the selected employee is able to meet all the requirements of the Maintenance Worker I classification over time, the City shall have the right to promote the employee to Maintenance Worker I at pay grade 16 without posting.
- 33.4 Upon execution of this Agreement, the City also retains the right to fill Maintenance Worker III vacancies, at pay grade 18, with individuals as either a Maintenance Worker I, at pay grade 16, or a Maintenance Worker II, at pay grade 17, if the selected applicant, in the

sole discretion of the City, does not meet an acceptable portion of the requirements of the Maintenance Worker III job requirements. If the selected employee is able to meet all the requirements over time, the City shall have the right to promote the employee to Maintenance Worker II, at pay grade 17, or Maintenance Worker III, at pay grade 18, without posting.

- 33.5 Employees who, pursuant to Article 31, JOB TRAINING, have completed training courses satisfactorily as determined by the City shall be given a preference for promotion over other applicants, provided that the training relates directly to the duties and/or skills required for the promotional position, and the employee is otherwise qualified for the position.
- 33.6 Should a successful applicant become convinced within the first twenty-five (25) working days that s/he cannot cope with the new job, or should the City become convinced, within thirty (30) working days of the employee's appointment that the employee cannot fulfill the requirements of the job, then the reason therefore shall be put in writing, the employee's Unit President notified, and the employee shall be returned to the former job. If an employee moves to a lower level position, the employee must meet all licensing requirements for the new position within thirty (30) working days of the appointment.
- 33.7 An employee appointed to a unit position shall be paid from the date of appointment at the permanent rate for the position at that employee's seniority step. Seniority shall be continuous permanent City service.
- 33.8 If an individual unit applicant for a position has cause for disputing the choice of the City, he may appeal the City's action using the established grievance procedure.
- 33.9 Notwithstanding the above, and regardless of whether or not the applicants are City employees, the City may hire any qualified Island resident applicant to fill an Island position over applicants who are not Island residents.
- 33.10 Temporary Assignments
 - 33.10.1 Whenever the City determines that temporary assignments are required, the most junior person in classification, based on continuous service time in classification, from the available daily work pool of employees in the Division shall be assigned the substitute work.
 - 33.10.2 The City shall have the sole authority to determine whether workers who are normally assigned to a permanent crew shall be placed in the daily worker pool.
 - 33.10.3 Workers assigned outside of their normal classification shall be exempt for this selection procedure based on seniority within classification, unless otherwise determined by the City.

33.10.4 Unless otherwise agreed by the City and the Union, this procedure shall be consistently applied. The most junior worker shall be the substitute assigned.

33.10.5 This provision is not intended to impact the winter work schedule.

33.11 Temporary Filling of Foreman and Supervisor Vacancies

33.11.1 The City will maintain a list of employees who are interested in filling in as Foreman or Supervisor when a temporary vacancy exists. This list will include date of request and area(s) of preference.

33.11.2 When the City determines a Foreman or Supervisor position needs to be filled on a temporary basis, the City will select someone from this list taking into consideration the following factors: job requirements, the employee's qualifications, and how often the employee has been offered a temporary Foreman vacancy during the preceding twelve month period.

33.11.3 Qualified employees will be offered such positions within their Section (if no Section exists, then within Division) on a rotating basis.

33.12 New Hires

The City, at its sole discretion, may hire new employees with prior experience up to the four (4) year step on the appropriate salary grade for similar work with similar scope and responsibility provided they meet all of the City's requirements for the position as outlined in the job description and selection criteria. Prior experience will be determined by crediting one (1) year for every one (1) year of previous experience the City deems to be relevant in scope and responsibility. The Union shall be notified by the City of any new hire placed at the four (4) year step. Effective July 3, 2022, current employees being paid less than the four (4) year step will receive similar, non-retroactive credit up to the four (4) year step for previous experience for similar work prior to being hired by the City. Prior experience will be determined by crediting one (1) year for every one (1) year of previous experience the City deems to be relevant in scope and responsibility. New hires and current employees will be required to provide documentation of their prior relevant experience before receiving advanced pay placement and subsequent step movement will be based on this initial service credit plus permanent continuous service with the City in the same classification. This advanced placement is for pay purposes only and does not affect any other benefits, including seniority.

34. **DISCIPLINARY PROCEDURE**

34.1 No employee shall be discharged, demoted, or suspended except for just cause (including

but not limited to violations of any rules as provided above) and notice of the reasons for such disciplinary action shall be stated in writing and given to the employee affected and/or the Chief Steward, but in every case to the President, within five (5) days after the effective date of the action. Under the normal circumstances, disciplinary action shall be taken by the City within thirty (30) days of when the Department Head or his appropriate designee learns of the event giving rise to the disciplinary action. Said 30-day time frame shall not apply to disciplinary actions for abuse of sick leave. The 30-day time frame is delayed in the case of vehicle accidents providing the employee's Department has an Accident Review Committee (which may be a subcommittee of the departmental Safety Committee). The 30-day time frame begins when Department managers meet to discuss the accident following receipt of the Accident Review Committee report.

34.2 Any disciplinary action imposed upon an employee may be processed as a grievance through the regular grievance procedure and the Union shall have the right to take up matters of suspension, demotion or discharge at Step 11.1.3 of the procedure.

34.3 Pursuant to N.L.R.B. v. Weingarten, the City recognizes the right of an employee to have a Union representative present at a disciplinary hearing or meeting.

34.4 Written reprimands shall be removed from the personnel file after a period of two years provided that there has not been a recurrence of that offense during that two year period.

34.5 Disciplinary Suspensions

34.5.1 Employees with suspensions of two (2) days or less in their files may have those suspensions removed after a period of five (5) years or more.

34.5.2 Employees may request to have suspensions of three (3) days or more removed after a period of five (5) years. The Director of Human Resources will review such requests on a case by case basis. Factors that will be considered are the employee's prior disciplinary record, their overall personnel record, and their conduct since the discipline was taken.

35. PERSONNEL REDUCTIONS AND SENIORITY

35.1 Reductions in personnel by the City result solely from the elimination of positions by department and by classification.

35.2 For purposes of personnel reductions and bumping within the unit, seniority is defined as continuous permanent City service, and seniority rosters will be compiled on that basis.

35.2.1 In the event of a tie in seniority dates, the employee who has worked in the classification the longest will be deemed the more senior. In the event that the appointment date to present classification is the same, the employee who first applied for the position will be deemed the more senior. If the application dates

are the same, the tie-breaking decision will be made by a toss of the coin.

- 35.2.2 Union officers shall have preferred seniority over all other employees for purposes of the exercise of bumping rights. Between such officers, seniority shall be in the following order:

Unit Chair
Chief Steward
Unit Vice-Chair
Unit Recording Secretary
Unit Treasurer
Shop Steward

In the event that more than one person holds a particular office listed above, bumping shall be determined by seniority based on time in that Union Offices, as determined by the Union.

- 35.3 In the event of a personnel reduction, positions eliminated will be identified by department, then by classification, by division, and by shift assignment, and the employee with the least seniority in the position eliminated, as defined above, will be the employee placed on lay-off.

~~35.3.1 In the event of a personnel reduction, pursuant with the execution of this Agreement, Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, will be considered equal to Maintenance Worker III employees, at pay grade 18. Their seniority will be blended with Maintenance Worker III employees in determining seniority for the purposes of exercise of bumping rights. This provision applies to active Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, at time of execution of this Agreement. This provision shall not apply to employees hired after April 23, 2009.~~

- 35.4 In the event of a personnel reduction resulting in lay-off, employees placed on lay-off may elect to bump into other unit positions in the following order:

35.4.1 The employee will first be offered any suitable vacant position in the department which is reducing its personnel. If there are no such vacancies, the employee will be offered any suitable vacant position in the bargaining unit. A vacant position shall be deemed to be "suitable" if it is in the same classification or is a position of an equal pay grade in the unit which the employee is qualified to perform, as determined by the City. The employee shall take a suitable vacant position rather than bumping other employees, unless the employee can show:

- 35.4.1.1 that taking said vacancy would result in economic hardship for the employee such as a significant increase in travel time to work or inability to use the employee's normal mode of transportation; or

- 35.4.1.2 that taking said vacancy would result in personal hardship, such as a change in shift or conflict in the employee's working relationships.
- 35.4.2 If there are no vacant positions to which the employee can transfer, the employee shall bump the least senior employee in the same classification in the Department. If there are no least senior employees in the same classification in the Department, the employee can bump the least senior employee so classified in the bargaining unit.
- 35.4.3 If there are no least senior employees in the same classification in the bargaining unit, the employee may bump the least senior employee in the next lower level of the job family, as determined by Appendix D, or the employee can bump the least senior employee in a position once held.
- 35.4.4 If there are no available positions under subsections 35.4.1-35.4.3 above, the employee may bump the least senior employee in positions which the City determines the employee is qualified to perform. Whenever an employee bumps into a new classification, the employee must have any licenses required in that classification.
- 35.4.5 The City's determination as to qualifications of an employee to perform a job shall be final so long as it is not arbitrary and capricious.
- 35.5 Employees may opt to accept lay-off at any point in the bumping process rather than exercising their bumping rights.
- 35.6 No employee may bump into a promotional position. An employee who bumps into a position under subsections 35.4.1-35.4.4 above shall be paid at the rate provided in this Agreement for that classification except as provided in 35.3.1. The appointment date of employees who bump will not change as a result of the bumping.
- 35.7 Employees who are laid off will receive separation pay as provided in Article 26.
- 35.8 Seniority rosters will be posted in work locations and sent to the Unit Chair in January of each year. Separate seniority rosters shall be maintained for permanent full-time and part-time employees.
- 35.9 Recall
- 35.9.1 Employees who are laid off or who bumped into positions under Section 35.4.1-35.4.4 above shall have an 18-month recall right to the classification from which the employee was laid off, and in the reverse order of lay off.
- 35.9.2 Employees laid-off and on the recall list may be offered temporary, seasonal, on call, or project work but performance of said work will not affect or extend the recall period. Refusal of said work shall not affect the person's recall period.

35.9.3 The City may rely on its records for the last address of the laid off employees, and may remove from the list a person who does not respond or accept recall to work within ten (10) working days after certified mailing of notification. A copy of such recall notification shall be mailed to the Chair of the Unit for his information. If an employee retires, resigns, or is terminated from permanent City service for cause, the employee shall be removed from the recall list and lose all rights to recall.

36. SAFETY

36.1 Safety Committees shall function to review safety procedures and make advisory recommendations to Department Heads regarding new safety procedures or modifications to current safety procedures that may be needed. The Department Head or designee shall respond to all written recommendations from the Safety Committee within thirty (30) days. The departmental Safety Committees shall be composed of at least as many labor representatives as management representatives. The Union will appoint labor representatives and alternates to serve on departmental Safety Committees unless there is agreement between the City and the Union which modifies Committee representation. The Risk Manager or designee shall provide technical assistance to the Committee. The Risk Manager or designee shall hold the tie-breaking vote regarding advisory recommendations to the Department Heads.

36.2 Safety Standards

All employees shall follow safety standards while on duty for the City. This shall include, but not be limited to: the wearing and use of safety equipment, i.e. personal protective equipment, head protection, eye and face protection, foot protection, hearing protection, or any other equipment provided or furnished in any way by the City. The employees shall observe all safety rules and regulations established and posted by the City. Failure on the part of the employee to abide by such safety standards will result in disciplinary action.

36.3 Driver's Daily Checklist and Use of City Equipment

The employees agree to perform daily Vehicle Condition Reports and other maintenance checks on their vehicles as established within their particular Department. Employees agree to help maintain the condition and life of City equipment through proper and safe operation.

36.4 Departmental Accident Review Committees shall function to recommend accident prevention methods, determine preventability of employee vehicle accidents, and make recommendations for improvements to fleet safety policy. These departmental committees shall be composed of at least as many labor representatives as management representatives and will include a safety professional to chair the committee.

37. LICENSE REQUIREMENTS

- 37.1 It shall continue to be the City's policy to require employees who operate City vehicles to have and maintain a valid Maine Motor Vehicle Operator's license as required by the employee's classification. The City will periodically verify such a license. Consequences for loss of license(s) are defined as follows:
- 37.1.1 Loss of a Maine Motor Vehicle Operator's license for a period of up to six (6) months will result in an automatic demotion for the duration of the license suspension. "Demotion" for the purposes of this policy shall be equivalent to a 10% reduction in pay.
- 37.1.2 Loss of a Maine Motor Vehicle Operator's license, or a required CDL license, if not covered under the City's Drug and Alcohol Policy, for a period of more than six (6) months will result in immediate termination of employment. Any medical condition shall be reviewed on a case by case basis.
- 37.2 The City will do license verifications. Upon request, a copy of this report will be sent to the employee.
- 37.3 Employees who are required to possess a CDL license by the City will be subject to the City's Drug and Alcohol Policy.

38. JOB SPECIFICATIONS

- 38.1 Within thirty (30) days after execution of the Agreement, the City agrees to supply the Unit Chair and bargaining agent with copies of unit job specifications, including those modified during the negotiations which preceded this Agreement. Thereafter, the City agrees to submit all modified specifications to the Unit President and the bargaining agent for Union review and recommendations. Said recommendations must be submitted to the City within ten (10) working days after receipt of the job specifications.

39. LEGAL AID AND PROTECTION

- 39.1 The City will, with the consent of the employee, assume the defense of and indemnify any employee against a claim which arises out of an act or omission occurring within the course or scope of ~~his/her~~ **their** employment and for which the City is liable under the Maine Tort Claims Act, 14 M.R.S.A. 8101 et seq. up to the statutory limit of \$400,000. The City, at its discretion, may provide such defense and/or indemnification through a self-insurance program or through insurance coverage limited to Four Hundred Thousand Dollars (\$400,000), including costs other than defense costs, for any and all claims arising out of a single occurrence, to be purchased by the City.

- 39.2 The City will, with the consent of the employee, assume the defense of and indemnify any employee up to the statutory limit of \$400,000 of the Maine Tort Claims Act against any claim which arises out of an act or omission occurring within the course or scope of his employment and for which the City is not liable, provided that such defense or indemnification is not contrary to public policy, and the City determines that the employee acted in good faith and did not willfully or knowingly violate any ordinance, rule, or regulation of the City.
- 39.3 In all cases in which the City has assumed the defense of an employee, the City, acting through its Corporation Counsel, has the right to arrange, at the City's expense, for an attorney selected by the Corporation Counsel, to defend the employee. In the event the City determines outside counsel is needed for a particular case, Corporation Counsel will consider counsel requests submitted by an employee but reserve the right to either approve or decline that request. Further, in all cases in which the City has assumed the defense of an employee, the Corporation Counsel may, in its discretion, authorize and accept settlement of the case. Corporation Counsel reserves the right, in his/her **their** discretion, to consult with the City Council prior to settlement in a particular case.
- 39.4 The above legal aid and protection is also extended, on the same terms and conditions, to former employees for claims against them for acts or omissions during their employment with the City in positions covered by this Agreement.
- 39.5 It is a condition of the City's obligation to defend and/or indemnify an employee hereunder that the employee shall fully cooperate with the City in any claim by or against the City regardless of whether the employee works for the City at the time that the claim is filed. "Full cooperation" hereunder shall include, without limitation, providing information to the City and its attorneys, including attorneys designated or hired by the City, appearing and/or participating as a witness in the case when requested to do so by the City, including, without limitation, participating in all pre-trial and trial proceedings. "City" as used under this section shall include officers, employees and agents of the City, including without limitation, attorneys designated or hired by the City. Except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, failure to fully cooperate with the City on any case may result in disciplinary action against the employee and denial of the indemnification obligation hereunder unless otherwise required by the Maine Tort Claims Act.
- 39.6 Paragraph 39.5 above may not be construed to imply that an employee who is not a defendant has no duty to fully cooperate with the City and its representatives, when the City and its representatives, in their sole discretion, determine that the employee has information relevant to the claim or the defense of the claim against the City or another employee of the City. In such a situation, except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, the non-defendant has a duty to fully cooperate with the City as a condition of employment.

39.7 The City agrees to release the employee from ~~his/her~~ **their** shift for appearances at any necessary proceedings on the date of such proceedings and at the request of the City's designated defense attorney. Should the proceedings conclude prior to the end of the employee's shift, the employee may be required to report for duty for the remainder of ~~his/her~~ **their** shift.

39.7.1 Employees who are required by the City to appear on behalf of the City at a court hearing outside of their regularly scheduled hours will be compensated with three (3) hours of straight time pay or time and one-half pay for actual time spent in pre-trial and trial proceedings, whichever is greater. Employees who work second or third shift and who spent the majority of the day in court may take straight time pay for the hours spent in court and credit these hours against their shift requirement for that day, with pre-approval from the Department Head or designee.

39.7.2 Employees will receive straight time pay for the hours spent in pre-trial and trial proceedings that occur during their regularly scheduled work hours. In the event that the time spent in pre-trial or trial proceedings begins during regularly scheduled hours and extends beyond the end of their regular work day, the employee may be eligible for overtime pay in accordance with Article 14.3 for the additional hours but will not be eligible for the three (3) hour minimum for off-duty hours.

40. PRINTING OF AGREEMENT

40.1 The City agrees to supply the Union with copies of the Agreement in legible print, within forty-five (45) days after the signing of the Agreement.

41. EMBODIMENT OF AGREEMENT

41.1 The Parties acknowledge that during the negotiations which preceded this Agreement each had unlimited rights and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered in this Agreement.

42. UNIT WORK

42.1 The City reserves the right to make all decisions in regard to contracting for the delivery of City services, including the contracting of work normally done by employees in the unit

and even if such contracting results in the layoff of permanent City employees. Except for emergencies, the City agrees to give the Union sixty (60) days' notice of a decision to subcontract unit work when subcontracting would result in the layoff of permanent City employees. Upon written request of the Union, the City shall negotiate the impact of the subcontracting which results in the laying off of permanent City employees. The impact bargaining shall not serve as a bar to the implementation of the said subcontracting.

- 42.2 The City will meet with the Union to discuss the availability of positions within City government for which the laid-off employee is determined to be qualified and the availability of any training programs which may be applicable to the employee. In reviewing these placement possibilities, every effort will be made to seek matches of worker's skills and qualifications with available, comparable positions.

43. TERM OF AGREEMENT

- 43.1 This Agreement shall be effective July 1, ~~2019~~**2022** (unless otherwise specified within) and shall remain in full force and effect until June 30, ~~2021~~**2025**. The Union shall notify the City in writing prior to June 30, ~~2019~~**2022** that it desires to modify this Agreement. If said notice is given, this Agreement shall remain in full force and be effective during the period of negotiations.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their
Representatives duly authorized on the date and year stated below.

DATED: _____

FOR THE CITY:

Jon Jennings, City Manager

Thomas Caiazzo, Chief Negotiator

FOR THE UNION:

Steve Lyons
Field Services Director
AFSCME Council 93

James Mackie
President – AFSCME Local 481-00

Scott Ouillette, Labor & Trades

Unit Chair Local 481-00

Mike Vance
Chief Steward - AFSCME Local 481-00

Walter Gray, Local 481-00
Negotiating Committee

Paul Hallstrom, Local 481-00
Negotiating Committee

APPENDIX A

DEFINITIONS OF EMPLOYMENT

- I. **Permanent Employees** are employees who are appointed to a permanently budgeted position on either a full-time or part-time basis and have completed any required probationary period for such position.
- A. **Full-time employees** are regularly scheduled to work the regular work week on a continuing basis. Such employees receive full benefits as outlined in the AFSCME Local 481-00 Agreement between the City and the Union.
- B. **Part-time employees** are regularly scheduled to work less than the regular work week on a continuing basis. Those part-time employees regularly scheduled to work 20 hours a week or more shall be entitled to the following benefits on a pro-rated basis only:
- 1) Sick leave accrual: weekly pro-ration based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
 - 2) Vacation accrual: weekly pro-ration based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
 - 3) City participation in the cost of medical insurance based on the employee's standard hours; ~~and~~
 - 4) Holidays, except that such employees shall be compensated for a holiday only if it falls on an employee's regularly scheduled work day. Base holiday pay shall equal the number of hours the employee is regularly scheduled to work on that day of the week. Holiday premium pay is outlined in Article 16.5.

Part-time employees who are regularly scheduled to work less than 20 hours a week shall not be entitled to any sick leave, vacation leave, or holidays, and the City shall not participate in any of the cost of medical coverage.

Part-time employees are entitled to overtime pay under Article 12, Overtime, only after they have worked in excess of forty (40) hours per week or in excess of both their regularly scheduled work day and eight (8) hours that day.

APPENDIX A (cont'd)

- II. **Non permanent employees** are on-call, temporary, or seasonal employees as follows, and are excluded from the provisions of this Agreement:
- A. **On-call employees** are persons who are not regularly scheduled to work, but who are available to work on an intermittent, as-needed basis. Such persons shall be paid only for those hours actually worked. A permanent City employee may work in an on-call position, such as cashier at the parking garage, on a regularly scheduled basis as a second City job, but such an employee shall be entitled only to regular pay for such hours worked and shall not be entitled to any other benefits for such on- call employment.
 - B. **Seasonal employees** are persons in positions in an industry designated by the State or by the parties as a seasonal industry, e.g. summer recreation, golf, parks and cemetery programs, Portland's Downtown District, Ferry Terminal, Construction Company and Hadlock Field. The employee will expect to be terminated at the end of the season. Such employees will be paid only for those hours actually worked. Seasonal employees are intended to supplement regular employees.
 - C. **Temporary employees** are persons who are regularly scheduled to work a standard work week or less, for a definite, limited period of time, usually not to exceed six (6) months, or who are appointed to replace an employee on leave of absence or at long-term training. Temporary employees shall not work more than six (6) consecutive months, unless they are replacing a permanent employee on leave. In such cases, employees shall have an estimated termination date from the date of initial employment, but in no case shall such term exceed more than one (1) year except with the concurrence of the Union.
 - D. **Project employees** are persons appointed to work on a special project of limited duration or to a position of longer duration not to exceed two (2) years that is funded by non-City funds; or to fill in for a permanent employee on an approved leave of absence. Project employees may work a standard work week or less and are eligible for full or pro-rated benefits as appropriate under this Agreement on the same basis as permanent full and part-time employees after completion of a probationary period. Notwithstanding the foregoing, Article 24, PERSONNEL REDUCTIONS AND SENIORITY, will not apply to project employees and they will be terminated upon completion of the special project or elimination of the non-City funding source with no bumping or recall rights. All other provisions of this Agreement shall cover project employees on the same basis as permanent employees, except that project employees are excluded by the Maine State Retirement System's regulations from participating in its term life insurance program.

APPENDIX B-1
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Base Rate Designations

Grade 8

Grade 10

Custodial Worker (reclassified to Grade 11)
Laborer

Grade 11

Custodial Worker
Floating Custodial Worker

Grade 13

Grade 14

Building Maintenance/Custodial Worker
Maintenance Worker

Grade 15

3rd Class Welder Assistant (F) (moved to new market pay plan)
Trades Worker I

Grade 16

Arborist I (moved to new market pay plan)
Journeyman Electrician
Maintenance Worker I
Maintenance Worker I (**Islands**) (**I**)
Maintenance Worker I (Solid Waste) (G)
Mechanic I (F) (moved to new market pay plan)
Water Resources Technician I

Grade 17

HVAC Technician I (moved to new market pay plan)
Maintenance Worker II
Maintenance Worker II (**Islands**) (**I**)
Maintenance Worker II (Solid Waste) (H)
Parts Specialist (F)
Trades Worker II
Water Resources Technician II

Grade 18

Arborist II (moved to new market pay plan)

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Facilities Electrician

Facilities Plumber

Horticulturist

Maintenance Worker III

Maintenance Worker III **(Islands) (I)**

Maintenance Worker III (Solid Waste) (H)

~~Mechanic II (F)~~ **(moved to new market pay plan)**

Park Maintainer

~~Parking Meter Technician-III~~

Parks Facilities Assistant

~~PDD Steward~~ **(reclassified to Grade 19)**

Sewer Facilities Technician

Water Resources Technician III

~~2nd Class Welder Machinist (F)~~ **(moved to new market pay plan)**

~~Traffic Computer Sign Operator~~ **(moved to new market pay plan)**

Grade 19

~~Arborist III~~ **(moved to new market pay plan)**

Athletic Facilities Steward

Assistant Dispatcher

~~Autobody Repair Worker (F)~~ **(moved to new market pay plan)**

~~HVAC Technician II~~ **(moved to new market pay plan)**

Master Electrician (B)

~~Mechanic III (F)~~ **(moved to new market pay plan)**

PDD Steward

Playground Technician **(M)**

~~Trades Worker III~~ **(moved to new market pay plan)**

~~Traffic Signal Repair Worker (A) (J)~~ **(moved to new market pay plan)**

~~1st Class Welder Machinist (F)~~ **(moved to new market pay plan)**

Grade 19M

~~Facilities Master Electrician (B) (L)~~ **(moved to new market pay plan)**

~~Facilities Master Plumber (D) (L)~~ **(moved to new market pay plan)**

~~HVAC Technician III (E)~~ **(moved to new market pay plan)**

Recreation ~~Facilities Technician~~ **(moved to new market pay plan)**

~~Systems and Lighting Technician (A) (C) (K)~~ **(moved to new market pay plan)**

~~Water Resources Maintenance Worker III~~ **(moved to new market pay plan)**

Market Rate Designations

16M-ARI

Arborist I

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

18M-ARII

Arborist II

19M-ARIII

Arborist III

20M-TW

Trades Worker III

21M-WLI

Welder Machinist I – 2nd Class (F)

22M-WLII

Welder Machinist II – 1st Class (F)

23M-MCI

Auto Technician I (F)

24M-MCII

Auto Technician II (F)

25M-TC

Traffic Computer Sign Operator

26M-PT

Playground Technician

27M-AU

Autobody Repair Worker (F)

28M-TS

Traffic Signal Repair Worker (A) (J)

29M-PF

Recreation Facilities Technician

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

30M-WR

Water Resources Senior Technician

31M-WF

Public Buildings & Waterfront Facilities Technician

32M-HVI

HVAC Technician I

33M-HVII

HVAC Technician II (E)

34M-SL

Systems & Lighting Technician (A) (C) (K)

35M-ME

Facilities Master Electrician (B) (L)

36M-MP

Facilities Master Plumber (D) (L)

Airport Market Rate Designations

Grade 15A

Airport Maintenance Worker I (6 month max)

Grade 16A

Airport Maintenance Worker **II I**
Airport Facilities Technician Assistant I

Grade 18A

Airport Facilities Technician Assistant II

Grade 19A

Airport Maintenance Worker **III II**

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Grade 19MA

~~Airport Airfield Electrician~~ (moved to new market pay plan)
Airport Facilities Technician

Grade 20MA

Airport Airfield Electrician

- (A) Employees in this classification who possess a valid State of Maine Masters Electrician License will receive a 3% stipend in addition to their base weekly pay.
- (B) Employees in this classification who possess IMSA Level II for Fire Alarms or Street Lighting will receive a 3% stipend in addition to their base weekly pay.
- (C) Employees in this classification who possess IMSA Level III traffic signal will receive a 3% stipend in addition to their base weekly pay.
- (D) Employees in this classification who possess a Natural Gas & Propane license will receive a 3% stipend in addition to their base weekly pay.
- (E) Employees in this classification who possess all three of the required will receive a 3% stipend in addition to their base weekly pay.
- (F) Employees in this classification will receive a \$1.00 per hour **Fleet** market rate stipend.
- (G) Employees in this classification will receive a ~~\$0.50~~ **\$1.00** per hour **Solid Waste** market rate stipend.
- (H) Employees in this classification will receive a ~~\$1.00~~ **\$2.00** per hour **Solid Waste** market rate stipend.
- (I) Employees in this classification will receive a \$1.00 per hour Islands market rate stipend.**
- (J) Employees in this classification will receive a \$3.00 per hour market rate stipend.**
- (K) Employees in this classification will receive a \$5.00 per hour market rate stipend.**
- (L) Employees in this classification will receive a 6% per hour market rate stipend.**
- (M) Employees in this classification will receive a \$1.50 per hour market rate stipend.**

Effective 7/7/2019							
Pay Grade	2	3	4	5	6	7	8
	6 mos - 1Yr	1 - 2 Yrs	2 - 4 Yrs	4 - 6 Yrs	6 - 8 Yrs	8 - 12 Yrs	12+ Yrs
6	\$ 578.00	\$ 589.20	\$ 603.20	\$ 619.20	\$ 635.20	\$ 650.80	\$ 670.40
	\$ 14.45	\$ 14.73	\$ 15.08	\$ 15.48	\$ 15.88	\$ 16.27	\$ 16.76
7	\$ 638.40	\$ 652.80	\$ 666.80	\$ 684.00	\$ 702.00	\$ 720.00	\$ 741.60
	\$ 15.96	\$ 16.32	\$ 16.67	\$ 17.10	\$ 17.55	\$ 18.00	\$ 18.54
8	\$ 650.80	\$ 663.60	\$ 680.00	\$ 697.20	\$ 714.00	\$ 732.00	\$ 754.00
	\$ 16.27	\$ 16.59	\$ 17.00	\$ 17.43	\$ 17.85	\$ 18.30	\$ 18.85
10	\$ 674.40	\$ 686.80	\$ 705.20	\$ 722.80	\$ 739.20	\$ 757.60	\$ 780.40
	\$ 16.86	\$ 17.17	\$ 17.63	\$ 18.07	\$ 18.48	\$ 18.94	\$ 19.51
11	\$ 688.00	\$ 702.00	\$ 720.00	\$ 737.20	\$ 755.60	\$ 775.20	\$ 798.40
	\$ 17.20	\$ 17.55	\$ 18.00	\$ 18.43	\$ 18.89	\$ 19.38	\$ 19.96
13	\$ 704.00	\$ 716.80	\$ 736.00	\$ 754.00	\$ 772.80	\$ 792.40	\$ 816.00
	\$ 17.60	\$ 17.92	\$ 18.40	\$ 18.85	\$ 19.32	\$ 19.81	\$ 20.40
14	\$ 721.60	\$ 734.80	\$ 753.20	\$ 771.60	\$ 792.00	\$ 810.00	\$ 834.40
	\$ 18.04	\$ 18.37	\$ 18.83	\$ 19.29	\$ 19.80	\$ 20.25	\$ 20.86
15	\$ 737.20	\$ 752.80	\$ 771.20	\$ 790.80	\$ 809.20	\$ 830.00	\$ 854.80
	\$ 18.43	\$ 18.82	\$ 19.28	\$ 19.77	\$ 20.23	\$ 20.75	\$ 21.37
16	\$ 752.00	\$ 768.40	\$ 785.20	\$ 806.00	\$ 826.00	\$ 845.20	\$ 870.40
	\$ 18.80	\$ 19.21	\$ 19.63	\$ 20.15	\$ 20.65	\$ 21.13	\$ 21.76
17	\$ 770.00	\$ 784.40	\$ 803.60	\$ 824.40	\$ 843.60	\$ 866.40	\$ 892.40
	\$ 19.25	\$ 19.61	\$ 20.09	\$ 20.61	\$ 21.09	\$ 21.66	\$ 22.31
18	\$ 792.40	\$ 806.80	\$ 827.20	\$ 848.80	\$ 869.20	\$ 891.20	\$ 918.00
	\$ 19.81	\$ 20.17	\$ 20.68	\$ 21.22	\$ 21.73	\$ 22.28	\$ 22.95
19	\$ 830.80	\$ 848.80	\$ 869.60	\$ 890.80	\$ 914.40	\$ 936.40	\$ 964.40
	\$ 20.77	\$ 21.22	\$ 21.74	\$ 22.27	\$ 22.86	\$ 23.41	\$ 24.11
19M	\$ 936.00	\$ 964.40	\$ 994.40	\$ 1,023.20	\$ 1,053.20	\$ 1,085.20	\$ 1,117.60
	\$ 23.40	\$ 24.11	\$ 24.86	\$ 25.58	\$ 26.33	\$ 27.13	\$ 27.94
Add new 12+ year step (3% higher than previous step)							

Effective 7/5/2020								
Pay Grade	2	3	4	5	6	7	8	9
	6 mos - 1Yr	1 - 2 Yrs	2 - 4 Yrs	4 - 6 Yrs	6 - 8 Yrs	8 - 12 Yrs	12 - 15 Yrs	15+ Yrs
6	\$ 614.00	\$ 625.60	\$ 639.60	\$ 656.40	\$ 672.80	\$ 688.80	\$ 708.80	\$ 750.00
	\$ 15.35	\$ 15.64	\$ 15.99	\$ 16.41	\$ 16.82	\$ 17.22	\$ 17.72	\$ 18.75
7	\$ 676.00	\$ 690.80	\$ 705.20	\$ 722.80	\$ 741.20	\$ 760.00	\$ 782.00	\$ 825.60
	\$ 16.90	\$ 17.27	\$ 17.63	\$ 18.07	\$ 18.53	\$ 19.00	\$ 19.55	\$ 20.64
8	\$ 688.80	\$ 702.00	\$ 718.80	\$ 736.40	\$ 753.60	\$ 772.00	\$ 794.80	\$ 838.80
	\$ 17.22	\$ 17.55	\$ 17.97	\$ 18.41	\$ 18.84	\$ 19.30	\$ 19.87	\$ 20.97
10	\$ 712.80	\$ 725.60	\$ 744.40	\$ 762.80	\$ 779.60	\$ 798.40	\$ 822.00	\$ 866.80
	\$ 17.82	\$ 18.14	\$ 18.61	\$ 19.07	\$ 19.49	\$ 19.96	\$ 20.55	\$ 21.67
11	\$ 726.80	\$ 741.20	\$ 760.00	\$ 777.60	\$ 796.40	\$ 816.40	\$ 840.40	\$ 885.60
	\$ 18.17	\$ 18.53	\$ 19.00	\$ 19.44	\$ 19.91	\$ 20.41	\$ 21.01	\$ 22.14
13	\$ 743.20	\$ 756.40	\$ 776.40	\$ 794.80	\$ 814.00	\$ 834.00	\$ 858.40	\$ 904.00
	\$ 18.58	\$ 18.91	\$ 19.41	\$ 19.87	\$ 20.35	\$ 20.85	\$ 21.46	\$ 22.60
14	\$ 761.60	\$ 775.20	\$ 794.00	\$ 812.80	\$ 833.60	\$ 852.40	\$ 877.20	\$ 923.60
	\$ 19.04	\$ 19.38	\$ 19.85	\$ 20.32	\$ 20.84	\$ 21.31	\$ 21.93	\$ 23.09
15	\$ 777.60	\$ 793.60	\$ 812.40	\$ 832.40	\$ 851.60	\$ 872.80	\$ 898.40	\$ 945.20
	\$ 19.44	\$ 19.84	\$ 20.31	\$ 20.81	\$ 21.29	\$ 21.82	\$ 22.46	\$ 23.63
16	\$ 792.80	\$ 809.60	\$ 826.80	\$ 848.00	\$ 868.80	\$ 888.40	\$ 914.40	\$ 962.00
	\$ 19.82	\$ 20.24	\$ 20.67	\$ 21.20	\$ 21.72	\$ 22.21	\$ 22.86	\$ 24.05
17	\$ 811.20	\$ 826.00	\$ 845.60	\$ 867.20	\$ 886.80	\$ 910.40	\$ 936.80	\$ 984.80
	\$ 20.28	\$ 20.65	\$ 21.14	\$ 21.68	\$ 22.17	\$ 22.76	\$ 23.42	\$ 24.62
18	\$ 834.00	\$ 848.80	\$ 870.00	\$ 892.00	\$ 913.20	\$ 935.60	\$ 963.20	\$1,012.00
	\$ 20.85	\$ 21.22	\$ 21.75	\$ 22.30	\$ 22.83	\$ 23.39	\$ 24.08	\$ 25.30
19	\$ 873.60	\$ 892.00	\$ 913.60	\$ 935.20	\$ 959.60	\$ 982.00	\$1,010.80	\$1,061.20
	\$ 21.84	\$ 22.30	\$ 22.84	\$ 23.38	\$ 23.99	\$ 24.55	\$ 25.27	\$ 26.53
19M	\$ 981.60	\$1,010.80	\$1,041.60	\$1,071.20	\$1,102.00	\$1,135.20	\$1,168.40	\$1,223.60
	\$ 24.54	\$ 25.27	\$ 26.04	\$ 26.78	\$ 27.55	\$ 28.38	\$ 29.21	\$ 30.59

Add new 15+ year step (3% higher than previous step. Also add in \$.50 per hour that covers pants, meal allowance, boots and winter stipend.

AIRPORT PAY SCALE									
AFSCME Labor & Trades									
Effective July 2019									
2.50%									
PAY GRADE		Recruit	2	3	4	5	6	7	8
			6 mos- 1yr	1-2 yrs	2-4 yrs	4-6 yrs	6-8 yrs	8 - 12 yrs	12+ yrs
15A		\$18.21							
16A		\$20.24	\$21.08	\$21.56	\$22.03	\$22.61	\$23.15	\$23.70	\$24.41
18A		\$21.01	\$21.88	\$22.28	\$22.84	\$23.44	\$24.02	\$24.61	\$25.35
19A		\$22.11	\$23.04	\$23.52	\$24.11	\$24.69	\$25.34	\$25.95	\$26.73
19MA		\$24.88	\$25.91	\$26.71	\$27.54	\$28.33	\$29.19	\$30.07	\$30.97

AIRPORT PAY SCALE										
AFSCME Labor & Trades										
Effective July 2020										
2.75%										
PAY GRADE		Recruit	2	3	4	5	6	7	8	9
			6 mos- 1yr	1-2 yrs	2-4 yrs	4-6 yrs	6-8 yrs	8 - 12 yrs	12 -15 yrs	15+ yrs
15A		\$18.71								
16A		\$20.80	\$21.66	\$22.15	\$22.64	\$23.23	\$23.79	\$24.35	\$25.08	\$25.83
18A		\$21.59	\$22.48	\$22.89	\$23.47	\$24.08	\$24.68	\$25.29	\$26.05	\$26.83
19A		\$22.72	\$23.67	\$24.17	\$24.77	\$25.37	\$26.04	\$26.66	\$27.47	\$28.29
19MA		\$25.56	\$26.62	\$27.44	\$28.30	\$29.11	\$29.99	\$30.90	\$31.82	\$32.77

- Effective October 2, 2017 the new Airport market rate pay plans went into effect. All stipends and additional add pays went away as they are now built into the pay plan.

APPENDIX C-1

UNION INTENT STATEMENT

It is the intent of the collective bargaining units of APSOME Locals 481 and 1373 to incorporate into the collective bargaining agreements a fair and objective performance appraisal process which will be used to evaluate our members on a yearly basis.

Our goal is to create a performance review tool which is effective in reviewing an employee's job performance in many fair and objective categories while minimizing subjective or critical assessments of their abilities.

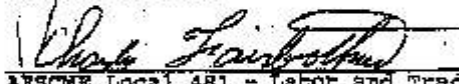
The annual performance evaluation should be a positive and constructive experience which recognizes performance that fulfills or exceeds job requirements and also develops a plan to correct or modify performance that needs improvement.

Locals 481 and 1373 urge you to participate in the performance appraisal process in a jointly cooperative manner that enhances job satisfaction and promotes customer service.



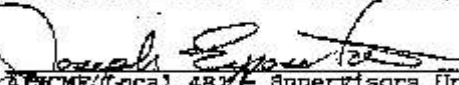
CESA Local 1373

1-17-96
Date



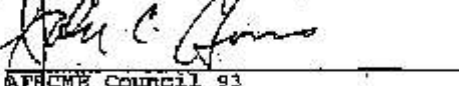
APSCME Local 481 - Labor and Trades Unit

1-17-96
Date



APSCME Local 481 - Supervisors Unit

1-17-1996
Date



APSCME Council 93

1-17-96
Date

APPENDIX C-2

PERFORMANCE APPRAISAL PROCESS

1. At the time of hire, each employee receives the following information and documents:
 - City mission statement
 - Division and department mission statement
 - Job description
 - Department/division work rules, policies and procedures
 - List of department/division performance expectations not covered by the above documents
 - Performance appraisal form and intent statement

These materials are discussed with the employee and the employee signs off that s/he has received the documents and understands the information. The employee receives a copy of the sign off sheet and a copy is forwarded to Human Resources for the employee's personnel file.

2. Each employee receives a three (3) and six (6) month appraisal during their first six months of employment. Within the first six (6) months the manager must decide if they are recommending that this employee be retained on a permanent basis. At the six (6) month appraisal, goals and objectives are jointly developed for the next six (6) month period in preparation for the annual appraisal.

3. Each employee receives an annual appraisal twelve (12) months from date of hire and subsequent annual appraisals on the anniversary date. When employees change classifications, their performance appraisal anniversary date changes to reflect time in their current position. All appraisals should be completed within thirty (30) days of the anniversary date. They should be done as close to the anniversary date as possible.

- A. The employee is given the option of submitting a self-appraisal to their supervisor prior to the supervisor rating the employee's performance. The supervisor and employee may decide to exchange forms at the appraisal discussion instead of the employee submitting their form first.

The supervisor will then complete the appraisal form and provide the employee with a copy. In the categories that the supervisor rates the employee's performance at either the high or low end of the scale, s/he must support the rating with examples in the comment section for that category. Supervisors are encouraged to provide examples in all categories; employees are encouraged to do the same on the self-appraisal.

In order to make the appraisal as complete and objective as possible, the supervisor may solicit input from others prior to completing the appraisal, including input from the manager who will review the complete appraisal and other persons who have supervised the employee during the rating period. If input is solicited from persons other than the rater and reviewer, they should be noted on the appraisal form and also the period of time they provided supervision to the employee.

- B. The performance appraisal discussion will be held in a location where there will be no interruptions and at a time that is convenient for both parties. It is recommended that an hour be allotted for each performance appraisal discussion. The full hour may not be needed for every performance appraisal, depending on the amount of discussion needed to fully cover all

-2-

performance categories. It is preferable to allot more time than is necessary and end early than to run out of time and need to either rush or reschedule the discussion.

- C. The appraisal is a summary of the previous year's performance and should reflect the full twelve months. It should include both what the employee has done well and the areas that are in need of improvement. The comment lines below each category are to be used to further explain the rating or to provide examples that support the rating. The information provided in the appraisal should not be new to the employee; feedback should be given throughout the year and documented by the supervisor in a personnel file for future reference.
 - D. Personal goals and objectives are then jointly developed for the next rating period. The employee's personal goals and objectives should reflect the employee's role or contribution towards achievement of the group goals. Their goals should build on areas of strength and address issues of personal growth that will enhance their ability to make significant contributions to the work team, the division and the department. There should be a thorough discussion about what support the employee needs in order to accomplish these goals and objectives.
 - E. The employee may add comments to the appraisal form if they disagree with the appraisal or portions thereof.
4. The completed appraisal form is submitted to the Reviewer for his/her **their** signature and comments and then to the appropriate Division or Department Head or designee for signature and review. The appraisal is returned to the employee for their final sign-off and then it is forwarded to Human Resources. The employee will be offered a copy of the appraisal.
- At the employee's request, the self-appraisal completed by the employee will be attached to the appraisal completed by the rater (which is the official appraisal) when it is submitted to Human Resources for placement in the employee's personnel file.
- 5. It is recommended that the employee and supervisor meet mid-year for a progress check on their jointly developed goals and objectives. A mid-year check is required if, in the supervisor's opinion, the employee's performance is deficient in any of the categories. This discussion will be documented. The supervisor and employee may also need to meet if the employee's goals need to be revised. Changes in work team goals, unanticipated needs that arise, or noticeable changes in the employee's performance may make this appropriate. At any time, the employee may request to meet with their supervisor to discuss their goals and objectives. Employees are encouraged to monitor their own performance and to initiate discussions with their supervisor during the rating period if they have questions or concerns about their progress.
 - 6. When a supervisor leaves City employment, they will provide the employee with a written assessment of the employee's performance using the performance appraisal form. This appraisal will be placed in the employee's personnel file along with any comments the employee wishes to make. Each Department is responsible for ensuring that this occurs prior to the supervisor's departure.

APPENDIX C-3
AFSCME Units Annual Performance Appraisal
Six Month – Annual

The City and Union jointly encourage all employees to self-evaluate. A copy of this form will be provided to the employee for their self evaluation.

Name:

Distribution:

Job Title:

Appointment Date:

Rating Period:

Union Affiliation:

Rater:

Please check the statement(s) in each category that best describe(s) employee performance during the rating period.

1. Job Knowledge: Knowledge of procedures and processes required to do the job.

Supervisor Employee

- a. Has mastered all duties and/or skills and is creative in his/her **their** approach to doing the job.
- b. Is competent in dealing with difficult or complex issues, and understands all phases of their job.
- c. Demonstrates adequate knowledge of routine aspects of job.
- d. Barely satisfactory knowledge of routine aspects of job.
- e. Lack of knowledge affects productivity.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

2. Quantity of Work: Attention to work process, workload, timeliness and deadlines.

Supervisor Employee

- a. Industrious, does more than is required without compromising time management or quality.
- b. Always completes acceptable amount of work.
- c. Usually completes an acceptable amount of work.
- d. Not completing acceptable amount of work.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

3. Quality of Work: Applies job knowledge to achieving division mission.

Supervisor Employee

- a. Applies creative assessment and problem solving to their work process.
- b. Has a grasp of work process which produces effective results that meet quality and accuracy standards.....
- c. Has a basic understanding of the work process, applies it sporadically.
- d. Lacks a basic understanding of work process.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

APPENDIX C-3 (cont'd)

Performance Review – Page 2

4. Judgement and Decision Making: Ability to make sound decisions and appropriate recommendations.

Supervisor Employee

- a. Applies logic to data collection/decisions, recommendations reflect above average insight and foresight.....
 - b. Usually makes sound decisions (decisions which are relevant, based on guidelines and other resources).....
 - c. Sometimes does not evaluate all relevant data before arriving at a decision.
 - d. Makes poor decisions, avoids making decisions.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

5. Effort/Initiative: Extent that the employee sees what needs to be done and does it without being told or reminded.
Commitment to get the work done and furthering the Division mission.

Supervisor Employee

- a. Is consistently self-directed while honoring policy limits; behavior exemplifies Division mission.
 - b. Takes initiative to work on tasks, puts forth adequate effort to achieve job requirements, behavior is consistent with Division mission.
 - c. Needs occasional prompting, puts forth minimal effort, behavior occasionally supports Division mission.....
 - d. Needs frequent prompting; puts forth no effort, behavior may contradict Division mission.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

6. Planning and Organizing: Orderliness, efficiency and planning ahead.

Supervisor Employee

- a. Able to anticipate events and organize work effectively in unusual or emergency situations.
 - b. Highly efficient and organized; plans ahead; strong overall sense of work priorities.
 - c. Efficient, plans work and utilizes time properly, realizes work priorities.
 - d. Occasional tendency to put work off, work backs up.
 - e. Little inclination for devising better means of managing time, poor organizer.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

7. Internal Communication: The degree to which the employee engages in and takes responsibility for two-way communication with co-workers, supervisors, and subordinates.

Supervisor Employee

- a. Consistently demonstrates the ability to listen effectively, clarifying statements of others as necessary and articulates thoughts clearly and appropriately.
 - b. Demonstrates ability to listen and process information effectively and accurately.
 - c. Has difficulty listening, does not always transfer accurate information effectively, and does not always articulate thoughts clearly and appropriately.
 - d. Does not listen or articulate thoughts clearly and appropriately; may perpetuate misinformation.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

APPENDIX C-3 (cont'd)

Performance Review – Page 3

8. Personal and Job Growth: The degree to which the employee seeks to expand professionally.

Supervisor Employee

- a. Actively pursues opportunities for growth and development.
- b. Seeks out feedback and makes extra effort to improve, regularly accepts and takes advantage of opportunities for growth and development.
- c. Accepts performance feedback; makes effort to change and sustains that effort; attends mandatory training as required.....
- d. Has difficulty accepting performance feedback and expresses little interest in training opportunities; requires prompting to sign up for required training.
- e. Ignores performance feedback; consistently refuses offers for skills training or professional development; does not sign up for required training.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

9. Customer Service: The degree to which the employee views customers as partners and facilitates access to services, without regard to individual differences.

Supervisor Employee

- a. May identify customer service trends and applies creative thinking to improve all aspects of customer service while providing high quality service to all customers.
- b. Solicits feedback from all customers and communicates this information to appropriate staff.
- c. Exhibits commitment to fulfilling our obligation to serve all customers.
- d. Exhibits limited commitment to the need to incorporate customer service concepts into routine.
- e. Exhibits no commitment to the need to incorporate customer service concepts into practice.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

10. Contribution to Team Effort: The degree to which an employee contributes to a positive work environment through respectfulness, creativity, cooperation and teamwork.

Supervisor Employee

- a. Demonstrates positive team leadership ability; seeks opportunities to work with all persons.
- b. Consistently makes positive contributions to team effort; reaches out to all team members and includes them in work efforts and team activities.
- c. Makes an overall positive contribution to team effort; makes effort to include all team members in work efforts and team activities.
- d. Makes minimal contributions to team effort; may exclude some team members from work efforts or team activities.....
- e. Undermines team effort; excludes some team members from work efforts or team activities.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

11. Safety: The degree to which the employee contributes to work place safety.

Supervisor Employee

- a. Actively contributes to departmental safety efforts.
- b. Identifies unsafe working conditions and notifies appropriate personnel.
- c. Uses good judgment and follows safety guidelines.
- d. Occasionally neglects safety guidelines.
- e. Engages in unsafe behaviors; disregards safety guidelines.

Comments: _____

APPENDIX C-3 (cont'd)

Performance Review – Page 4

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

12. Use of City Resources: The degree to which the employee maintains City equipment and materials.

Supervisor Employee

- a. Exhibits a superior use and care of City resources.
- b. Exhibits strong commitment to maintenance and conservation of City resources.
- c. Pays adequate attention to maintenance and conservation of City equipment and resources.
- d. Makes minimal effort towards maintenance of City equipment and resources.
- e. Does not pay attention to maintenance of City equipment and resources.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

13. Attendance: The degree to which the employee is at work and on time.

Supervisor Employee

- a. Absences or tardiness are rare.
- b. Absences and tardiness are within acceptable range as defined by Department policy; or the City average if there is no Department policy. Absences may exceed City average if there was an isolated extended period of sickness.
- c. Absences or tardiness exceed acceptable standard; a chronic pattern of absenteeism may exist.
- d. Is often absent or late; chronic pattern of absenteeism exists.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

Fill out the next section (14) only on employees with supervisory responsibilities.

14. Supervisory Responsibilities: The degree to which the employee has developed effective leadership abilities and provides effective leadership to their team without regard to individual differences.

Supervisor Employee

- a. Supervisor has developed a high performing team and most decisions are made by the team; supervisor encourages creativity and initiative among all team members.
- b. Supervisor has delegated some decision-making to team and regularly provides team development opportunities; demonstrates effective leadership and conflict resolution skills.
- c. Supervisor is an effective team leader to all team members; seeks to motivate all employees to apply themselves to their work; demonstrates basic conflict resolution skills.
- d. Supervisor does not provide work team with leadership necessary to be an effective team; employee motivation and conflict resolution skills are below average.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

Overall Summary of Performance and Accomplishments in the last rating period:

APPENDIX C-3 (cont'd)

Performance Review – Page 5

Goals and Areas of Job Growth for the next rating period.

List goals as discussed between supervisor and employee. Describe how they will be achieved.

Employee Comments

Did you choose to self-evaluate? **Yes** **No**

How can your supervisor/employer **support** you in your growth?

What type of training or work opportunity is needed for successful completion of your goals?

After reviewing this evaluation I choose to take the following action:

_____ I am in agreement with this performance appraisal; no action is needed.

_____ I am not in full agreement of my evaluation, discussions with my rater have failed to satisfy me but I elect to take no action.

_____ I choose to meet with my Department personnel to attempt to resolve my concerns. I am not waiving my rights to file a grievance in accordance with my Union contract if this meeting does not meet my needs. My Union Steward is allowed to attend if I so choose.

_____ I disagree with my evaluation and wish to have a meeting with the Director of Human Resources, but am not waiving my rights to file a grievance.

_____ I disagree with my evaluation and intend to follow the grievance procedures as outlined in the Union contract.

Rater and Reviewer Authorization

Rater Signature

Date

Reviewer Comments: _____

Reviewer Signature

Date

Signature of Department Head/Division Head
(if other than reviewer)_____

Date

Employee Confirmation

Comments:

Final signature: I have reviewed this evaluation, Rater and Reviewer comments, and my signature signifies that I am aware of its contents.

Employee Signature

Date

APPENDIX C-4

PERFORMANCE IMPROVEMENT PROGRAM

Improvement is necessary in the following areas, and will be reviewed in six weeks with the employee:

<u>Performance Factors</u>	<u>Improvement Needed</u>
1. Job Knowledge	
2. Quantity of Work	
3. Quality of Work	
4. Judgment and Decision Making	
5. Effort/Initiative	
6. Planning and Organization	
7. Internal Communication	
8. Personal and Job Growth	

APPENDIX C-4 (cont'd)

9. Customer Service _____

10. Contribution to Team Effort _____

11. Safety _____

12. Use of City Resources _____

13. Attendance _____

14. Supervisory Skills
(if applicable) _____

Employee Comments:

Rater Comments:

Employee Signature

Date

Rater Signature

Date

Reviewer Signature

Date

Dept/Division Head Signature

Date

APPENDIX D
LABOR AND TRADES
JOB FAMILIES

1. Mechanical Services

Mechanic III

Autobody Repair Worker

Mechanic Auto Technician II

Mechanic Auto Technician I

Parts Specialist

2. Maintenance Operations

Parks Recreation Facilities Technician

Athletic Facilities Steward

Maintenance Worker III/Parks Facilities Assistant/PDD Steward/**WR Technician III**

Maintenance Worker II/ **WR Technician II/WR Technician I**

Maintenance Worker I

Maintenance Worker

Laborer

Horticulturist

Park Maintainer

Playground Technician

3. Support Staff

Building Maintenance/Custodial Worker

Floating Custodial Worker

Custodial Worker

4. Welding Services

1st-Class Welder Machinist II

2nd-Class Welder Machinist I

3rd-Class Welder Assistant

5. Electrical Services

Airport Airfield Electrician/Facilities Master Electrician/

Systems and Lighting Technician/Airport Facilities Technician (Electrical)

Master Electrician

Airport Facilities Technician Assistant II (Electrical)/Facilities Electrician

Journeyman Electrician/Airport Facilities Technician Assistant (Electrical)

6. Airport Facilities

Airport Facilities Technician (HVAC)

Airport Facilities Technician Assistant II (HVAC)

Airport Facilities Technician Assistant I (HVAC)

Appendix D (cont'd)

7. Airport Operations

~~Airport Maintenance Worker III~~

Airport Maintenance Worker II

Airport maintenance Worker I

Airport Airfield Electrician

8. Forestry Operations

Arborist III

Arborist II

Arborist I

9. Facilities Management

Facilities Master Plumber

~~HVAC III~~

HVAC **Technician** II

HVAC **Technician** I

Trades Worker III

Trades Worker II

Facilities Plumber

Trades Worker I

Public Buildings & Waterfront Facilities Technician

10. Positions Not Grouped

Assistant Dispatcher

Traffic Signal Repair Worker

Traffic Sign Computer Operator

Water Resources Senior Technician

APPENDIX E-1

City of Portland Transitional Work Policy

It is the policy of the City of Portland to provide suitable return-to-work/transitional work opportunities for employees who have a work capacity, following a work-related injury or illness. These transitional work assignments are designed to enable the employee to return to work in a productive capacity, focusing on his or her abilities to work within the restrictions or limitations prescribed by the medical practitioner.

Transitional Work assignments and job restrictions are coordinated by the employee's supervisor, departmental Workers' Compensation Liaison and the Workers' Compensation and Safety Manager. Assignments are temporary in accordance with labor contracts and Workers' Compensation Law.

Each assignment requires active participation of all parties to ensure that the employee's abilities are properly matched with job requirements, thereby avoiding any further injury. Every effort is made to find work similar to the employee's pre-injury assignment but may on occasion require working in another department. The return-to-work program's ultimate priority is to have the employee return to their regular assignment in a safe and timely manner.

Any employee working a transitional work assignment or with restrictions must communicate frequently with their supervisor, Workers' Compensation liaison, and the Workers' Compensation and Safety Manager regarding worsening or improvement of their condition or changes in the prescribed restrictions.

Excerpted from July 12, 2004 revision of City's Risk Manual, Section III – Work Related Injuries and Reporting

APPENDIX E-2

TRANSITIONAL WORK AGREEMENT

The Employee and Employer hereby enter into this agreement for a period of Transitional Work as follows:

- 1) The date upon which the Employee sustained an injury is _____, 20____.
- 2) Pursuant to the City of Portland's Transitional Work Program, the Employee will return to work in a Transitional Work assignment on _____, 20____.
- 3) Attached is a copy of the Transitional Work Program of the City of Portland which the Employee has read and understood.
- 4) The parties agree that the term of this Transitional Work Assignment shall be 90 days from the return to work date above to _____, 20____.

Dated this ____ day of _____, 20____.

Employee

City of Portland

APPENDIX F

MEMORANDUM OF AGREEMENT

The purpose of this agreement is to confirm the understanding of the parties concerning the use of workfare clients.

1. Workfare clients will be used for projects or seasonal work. However, to preserve as many unit positions as possible and to allow the City maximum flexibility, workfare clients may be given assignments listed on Attachment A. Individual exceptions may be made by the Union signatories. Social Services will coordinate assignment of workfare clients with departmental needs in accordance with this intent. Should a question arise concerning the assignment of workfare clients, the City will meet with the Union promptly to discuss and resolve the question.
2. Whenever Workfare clients are assigned to work with regular City employees, such assignments will be of a laboring or entry-level clerical nature and will not include the use of equipment that is not normally used by such entry-level employees.
3. Workfare clients will be allowed to operate hand mowers, string trimmers and similar equipment, but will not be allowed to operate other motorized equipment.
4. Workfare clients will be allowed to work in the place of temporary and seasonal employees provided that the above-outlined qualifications apply.
5. Direct supervision of workfare clients will be provided by regular City employees. Any Labor and Trades employee supervising workfare clients will be compensated at his/her **their** regular rate, or, if supervising four or more at grade 18.
6. Workfare clients will be provided with a workfare orientation by Social Services with reinforcement provided by City staff. Appropriate job site training will be provided by City staff.
7. Social Services will provide workfare clients with necessary work clothing such as work boots, gloves.
8. City employees and workfare clients will treat each other with respect.
9. Social Services will monitor workfare assignments, client performance, training needs, and supervision through job site visits as needed.
10. The parties agree to meet when requested to do so.

APPENDIX F (cont'd)

This agreement shall continue until terminated by either party. The terminating party shall give at least 30 days' notice of its intent to terminate. Changes may be made by mutual agreement of both parties at any time.

For the City of Portland

Date

For AFSCME Council 93

Date

For Labor and Trades Unit

Date

APPENDIX F (cont'd)

ATTACHMENT A

City Workfare Locations and Example Assignments

Parks and Open Spaces Division:

Parks, Cemeteries and Open Spaces - Litter patrol, raking, weeding, trimming, mowing, seeding, planting flowers

Golf Course – Litter patrol, raking, mowing

Health and Human Services Department:

Barron Center – Grounds work and custodial related projects, including building maintenance.

Social Services - Oxford Street Shelter and Family Shelter - custodial and building maintenance, light clerical tasks such as filing, photocopying, etc.

Recreation and Facilities Management Department

Public Buildings Division - custodial and building maintenance

Public Services Department

Streets and Utilities Division - patching, hand sweeping, reclamation site inventory and sorting, litter patrol

Central Services Division - cleaning equipment, custodial services

Engineering Division:

Traffic Section - painting, sign pole straightening

Engineering Section - filing, data entry

Police Department - litter patrol, cruiser cleaning, custodial services, building maintenance

Aviation and Transportation Department

Maine State Pier, Fish Pier, International Ferry Terminal, Jetport - litter patrol, sweeping, hand painting, weeding, separating fish net

APPENDIX G

BARRON CENTER SIDE AGREEMENT

The City of Portland and AFSCME Local 481-00 in an attempt to institute a sick leave usage incentive program have mutually agreed to the following program at the Barron Center:

1. Notwithstanding Article 24 - SICK LEAVE and Article 17 VACATION, effective January 1, 1987 and continuing, the AFSCME Labor and Trades bargaining unit members located at the Barron Center shall be participating in the City's sick leave incentive plan.
2. Sick leave shall accrue at the rate of .92 hours per week with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 48 hours. The year-end adjustment for employees who have not been employed for a full calendar year will be based on a pro-ration of the annual amount.
3. Vacations shall accrue according to the following schedule:

0 - 3 years - 2 weeks - 1.54 hours per week
3+ - 5 years - 3 weeks - 2.31 hours per week
5+- 9 years - 4 weeks - 3.08 hours per week
9 + years - 5 weeks - 3.85 hours per week

The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with annual accrual amounts of 80 hours, 120 hours, 160 hours and 200 hours. The year-end adjustment for employees who have not been employed for the full calendar year will be based on a pro-ration of these annual amounts.

4. The provisions of the collective bargaining agreement pertaining to unused sick leave upon retirement shall be prorated consistent with the terms of this side letter.
5. The provision for conversion of sick leave to vacation in Article 24.3 is modified as follows: a Barron Center employee is eligible for conversion if (s)he uses the equivalent of one or fewer sick days within a twelve (12) consecutive month period.

For the City of Portland

Date

For AFSCME Council 93

Date

For Labor & Trades Unit

Date

APPENDIX H WINTER PERIOD DEPARTMENTAL PROCEDURES

General procedures that apply to all departments are outlined in Article 14.11. Additional procedures that are specific to individual departments are outlined below.

Public Works

1. The winter period shall begin the first full week in November and end on the Saturday of the last full week in April. Winter shift assignments will begin on the Sunday following Thanksgiving.
2. Employees will work either a Monday through Friday eight (8) hour schedule, or a weekend schedule of three thirteen (13) hour days. The Department will determine the number of employees on each shift no later than September 1 each year.
3. Employees shall remain available and able to be reached by telephone during periods of imminent weather. These employees shall submit only one telephone number to the Communications Center which shall be the number used for this purpose.
4. The Department maintains an overtime log book in the Communications Center. Employees interested in volunteering for overtime that may occur during the upcoming week may sign up on any day of the week. If additional employees are needed for a shift or operation, the volunteers will be called in the order they appear on the winter overtime list. If there are not enough volunteers to meet the department's need, employees who did not volunteer will be called in from the overtime list.
 - A. Any volunteer who does not accept the overtime, or is not available, will be referred to management for review.
 - B. If there are not enough volunteers to meet the department's need and the employees who did not volunteer are called in, these employees will be considered to have been "forced in" because all overtime during the winter period continues to be mandatory.
 - C. Because the voluntary component of these procedures impacts the City's ability to equalize overtime, the Union agrees that equalization of overtime grievances will not be filed providing that the procedures outlined above are followed.
5. Solid Waste personnel will not be expected to assist with the plowing effort on a scheduled work day during their shift unless trash and recycling pickup is cancelled. If Solid Waste personnel are required to work overtime during the winter period, they will be guaranteed eight (8) hours off between shifts unless volunteering to stay on until trash/recycling is finished.

6. ~~The following stipends are in effect for the winter period:~~

APPENDIX H (cont'd)

~~A. All OPP current/future qualified employees will receive sixty cents (\$.60) for all hours worked during the winter operations period as defined in Article 14.11.1 and Appendix H. 1. Eliminated effective July 5, 2020.~~

6. ~~These e~~ Employees will not be required to operate ~~a one person unit~~ **winter related equipment** for more than sixteen (16) consecutive hours unless on a volunteer basis up to twenty (20) hours.

~~B. All other employees from other departments who are OPP qualified and who assist Public Works during winter ops will receive \$2.00 per hour base pay during a plowing storm or a sand/salt operation. These employees will not be required to operate a one person plow unit for more than sixteen (16) consecutive hours.~~

7. When employees request a winter vacation, they will designate whether or not they will be available during the Sunday through Saturday period of the vacation. Employees who indicate they will be available will not receive vacation call-in pay if they respond to calls during their normal working hours, including weekend periods, and they are not eligible for vacation call-in pay outside of these hours. They will be given option of taking vacation pay, in addition to overtime, or they may reschedule vacation time and not receive vacation pay. Employees who indicate they are not available are eligible for vacation call-in pay if they are called during the 24-hour period (midnight to midnight) of the vacation day. Normally, employees will not be called while on scheduled vacation; however, if an employee is called while on scheduled vacation, they will notify the Dispatcher that they are on scheduled vacation.
8. Three (3) employees for first shift and one (1) employee per shift for second, third and weekend day shifts will be allowed to be on vacation during the winter period. Vacation requests that are being requested for the first full week in November thru the last full week in April must be submitted in writing to the Winter Manager, or designee, during the month of September and will be processed after the winter shift schedule is finalized. Employees will be informed by October 15 if their vacation request has been approved or denied. The winter period vacations will be scheduled in accordance with a "pick" procedure. On the first "pick" employees who submitted a vacation request in September for the upcoming winter period will be granted time by seniority for one period of consecutive days off (up to a two week maximum). After all employees have had their first "pick" a second pick will be done in order of seniority for open slots on the schedule. This procedure will continue until the winter vacation schedule has been filled or all employee requests have been processed, whichever occurs first. Employees who do not submit a vacation request prior to October 1st may schedule vacation time on a first come-first served basis after the schedule as described above is finalized. The Winter Manager, or designee, may at any time grant more vacations than described above that allow additional vacations on an "available" basis, meaning the employee can be off on vacation but may be called in if there is a winter event. Employees who are allowed to be off on vacation on an "available" basis will not receive vacation callback pay.

APPENDIX H (cont'd)

9. Public Works Director or designee evaluates hardships based on an annual basis, not a seasonal basis. The hardship period begins on the last Sunday in November and continues through the last Saturday in November of the following year. Hardship requests that develop during the year (following the submission date of September 1) may be submitted at the time they become known to the employee.
10. The following employees shall be exempted from winter shifts:
 - Traffic Computer Sign Operator
 - Solid Waste
 - Portland Downtown District
 - Systems and Lighting Technicians
 - Water Resources
 - Islands
 - Fleet services (shifts applicable to Fleet functions only)
 - Assistant Dispatcher
 - Traffic Signal Repair Worker
11. During a winter plowing event, unless otherwise specified herein, employees will be assigned to street sanding/salting, plowing and all other Departmental snow removal operations. The on-call primary responder for the Water Resources Division and the Traffic Division shall be exempt from winter operations for the period they are on-call unless they voluntarily sign the overtime book or a state of emergency is declared by the City Manager or ~~his/her~~ **their** designee.
12. During the winter period, overtime that is unrelated to winter may be necessary if the work cannot be done during regular hours. If this is the case, the overtime will be scheduled by section first and then by the overtime log book. The employee signing the overtime log book must be qualified to do the work. Employees looking to work the overtime by section will still be required to sign the overtime log book.
13. If needed, up to three (3) employees per storm from the Public Buildings Division will be provided during the winter period. If needed, employees from Cemeteries, Forestry, Horticulture and Athletic Facilities Division will be utilized to assist the Department of Public Works with plowing and other winter operational functions.
 - A. Other department personnel who assist Public Works with plowing may participate in Public Works voluntary sign-up procedure described in #4 of the Public Works section of Appendix H. Other department personnel will only be offered overtime after all Public Works volunteers on the list have been contacted. There will be no effort to equalize distribution of overtime to other department volunteers.

APPENDIX J

JETPORT PROCEDURES

I. Winter Work Rules

The ability of the Aviation and Transportation Department to carry out vital City operations during the winter depends on the faithful observance of these RULES by employees involved in winter operations.

- A. Overtime is not voluntary between November 15 and April 15. No employee shall fail or refuse to report for overtime work when directed to report for overtime work at any time during the period of November 15 through April 15. (Or during periods of imminent danger to the health, safety, and property of Portland citizens.)
- B. Employees shall be available to be called for overtime work during the period of November 15 through April 15 at all of the following times:
 - 1. When directed to be available.
 - 2. When weather forecasts predict snow, icing, high winds and/or tides, heavy rains, possible refreezing, etc. Each employee is responsible for checking forecasts posted near their time clock.
 - 3. During Winter Precipitation at the Jetport all employees will be kept as informed as possible as to the likelihood of call-in to minimize disruptions of their off-time. However some situations occur unforeseen.
- C. The employee must keep telephone lines reasonably open and available for calls. Employees shall provide the department with their home telephone number. They may provide another telephone number for winter calls. If they provide a second telephone number they will inform the Department management which is the primary number and which is the secondary number.
- D. The employee must be able to be reached in a manner acceptable to the Department. The employee will be responsible for notifying the Department of how it can contact the employee.
- E. City-furnished telephone pagers offer the employee the ability to move about normally during the winter months with the condition of reasonable availability. Use of these pagers is recommended when furnished. Maintenance employees who elect not to accept a City-furnished pager and who choose to use a cell phone as their primary number for the winter period may request and receive a dollar amount equivalent to what the City would have spent for the pager.

APPENDIX J (cont'd)

- F. An employee may request to be excused from the requirements of being available for overtime work as stated in Rule 2. A request to be excused will be permitted only if received no later than noon the day before, except in special cases. These requests will not be granted automatically but will depend upon the needs of the Department.
- G. Snow removal vehicle assignments will be made storm by storm by the Director of Operations or Designee. Maintenance Workers may be asked to operate a variety of pieces of equipment, depending on the needs of the Department at any particular time.
- H. The department will address absences on a case-by-case basis and may take whatever action it deems necessary.
- I. Any employee who is unable to report for snow plowing because of illness should contact the Department immediately and make this known to the individual in charge. The Department reserves the right to require medical certificates.
- J. Guidelines for Taking Breaks
 - 1. Drivers should take a ten-minute stretch break at least every two hours.
 - 2. Drivers should take regular meal breaks at convenient times.
 - 3. After approximately 12 hours of work, drivers should take a thirty (30) minute break for a meal or rest stop.
 - 4. A work limit of 16 continuous hours should be followed unless the driver and Supervisor agree that unusual conditions require the hours to be extended. The final decision as to driving longer than 16 hours will be made by the Airport Operations Manager or **his/her** **their** designee.
 - 5. Drivers should take a break from plowing duties whenever they feel they are too tired to drive safely on the airfield.
 - 6. A fine balance must be maintained between keeping our properties safe and employee off-time/breaks. At times, a somewhat extended "PUSH" followed by a longer rest break may need to be employed - safety being the controlling factor.
- L. The following procedure will be used at the Jetport for scheduling winter operations:

APPENDIX J (cont'd)

1. Employees will submit vacation requests for the upcoming winter period on the first three (3) business days following September 15. All requests submitted during this time period will be reviewed on the following business day and will be treated as if they were received on the same date. Only one person may be on vacation at a time and seniority will determine who receives the vacation if more than one person has requested the same time off except that employees requesting a full week off will receive priority over more senior employees requesting a single day off.
2. The winter vacation schedule will be posted on a board and will be kept up-to-date by Department management. It is the responsibility of the employee going on vacation to check the board to find out if s/he will be on call on their regular days off following the vacation period.
3. Vacation requests received after the time frame outlined in paragraph 1 will be posted by the Airport Operations Manager. They will be approved for open slots on the schedule (for days that no one is on scheduled vacation).
4. Once a vacation request has been approved in accordance with these guidelines, it will not be canceled due to shortage of staff (vacant positions), sick leave usage within the department or because a more senior person wants the same time off. If necessary, the Department reserves the right to utilize contract personnel during these periods.
5. If the vacation starts immediately after an employee's regular days off, the employee will not be on call on those regular days off. The employee may also request not to be on call on their regular days off following the vacation period. If another employee is not on scheduled vacation the following week, the employee will not be on call on their days off following the vacation period; if another employee is on vacation the following week, the employee will go back on call for their regular days off following their vacation period.
6. A similar procedure will be utilized for the non-winter period with requests being submitted by February 15 for the April 15 – November 15 time period. The number of employees who will be allowed off at the same time will be determined by the Airport Operations Manager based on staffing needs.

APPENDIX J (cont'd)

II. List of Approved Tools

Listed below are the tools that will be provided to employees hired by the Jetport (new hires or transfers) on or after July 1, 1996. ~~The list may also be used by employees eligible for a tool allowance as a guideline for determining what tools to request approval to purchase with their tool allowance.~~

A. Hand Tools

- 1 Leather tool apron
- 1 Canvas tool tote
- 1 Pair safety glasses
- 1 Pair hearing protectors
- 1 SAE metric socket wrench set (= Craftsman #33623 or equivalent)
- 1 3/8" to 7/8" open end box ratchet wrench set
- 1 6" adjustable wrench
- 1 8" adjustable wrench
- 1 10" adjustable wrench
- 1 utility knife
- 1 torpedo level
- 1 24' carpenter level
- 1 line level
- 1 "wiggy" electrical tester
- 1 wall outlet tester
- 1 hot stick tester
- 1 4-in-one screwdriver
- 1 nail hammer
- 1 ball peen hammer
- 1 6" tapping knife
- 1 10" tapping knife
- 1 electrical crimper/stripper
- 1 drywall saw
- 1 5-in-one paint tool
- 1 14" mud trowel
- 1 quick square
- 1 6" combo square
- 1 8" linesman's plier
- 1 6" pliers
- 1 8" needle nose pliers
- 1 8" diagonal cutting pliers
- 1 multi-sized notched trowel
- 1 cement finishing trowel
- 1 12" channel lock pliers

APPENDIX J (cont'd)

1	razor scraper
1	2" putty knife
1	chalk line
1	6" vise grips
1	10" vise grips
1	needle nose vise grips
1	nut driver set (5/32" to 9/16")
1	30' tape measure
1	file set
1	pipe cutter #10 Rigid
1	pipe cutter #20 Rigid
1	straight pair of aviation snips
1	wire stripper
1	fuse puller (large)
1	pipe wrench 8"
1	10" pipe wrench
1	punch set (nail and drift)
1	set wood chisels
1	set cold chisels
1	"T" allen wrench set
1	pocket allen wrench
1	speed wrench 1/2" drive
1	hacksaw
1	mini hack saw
1	mini mag light case
1	3/8" drive ratchet extension set
1	1/2" drive ratchet extension set
1	drill index
1	drill holster
1	dead blow hammer
1	screwdriver set
1	wire brush
1	wrecking bar
1	wonder bar
1	caulking gun
1	grease gun
1	pair 6 "C" clamps
1	rivet tool
1	7 pc. 3/8" drive allen wrench set
1	17 pc. metric combination wrench set
1	8 pc. ratchet wrench set
1	12 pc. 1/2" drive impact socket set

B. Battery/Power Tools

- 1 3/8" drill - power
- 1 cordless drill/driver - battery
- circular saw – power
- sabre saw – power

C. Other

- 1 paint brush assortment
- 1 wood bit set
- 1 lockout/tagout equipment
- 1 roller tray
- 1 9" paint roller
- 1 4" paint roller

APPENDIX K

Welding Career Ladder - MEMORANDUM OF UNDERSTANDING

The City of Portland and AFSCME Local 481 have reached the following mutual understanding concerning the implementation of the career ladder program for Welders under the Labor and Trades Collective Bargaining Agreement:

1. The 3rd Class Welder Assistant position is an entry level position and the successful applicant must meet the hiring requirements of the City. The pay grade is 15 under the classification plan (Appendix B-1).
2. The 2nd Class Welder Machinist position is for new employees and/or any 3rd Class Welder Assistant who meets the following criteria:
 - A. Has received a "Unlimited Thickness Plate" certification as issued by the American Welding Society, and
 - B. Demonstrates the ability to read blueprints and perform shop mathematical calculations; and
 - C. Possesses some knowledge of machinist and sheet metal trades, and
 - D. Has at least three (3) years of experience in welding work of a journeyman level.
 - E. Possesses a Class B License

Placement at pay grade 18 shall occur when the employee has provided written proof of receipt of the certification and license listed in A and E, has successfully completed an in-house proficiency exam comprised of B and C, and documents the experience requirement listed in D. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and authorized by the Fleet Manager.

3. The 1st Class Welder Machinist position is for new employees and/or any 2nd Class Welder Machinist who meets the following criteria:
 - A. Has received a "Pipe Certification" as issued by the Maine Board of Boilers and Pressure Vessels and
 - B. Possesses a State of Maine Class B driver's license, and
 - C. Demonstrates proficiency in shop fabrication, field fabrication and rigging abilities, and
 - D. Demonstrates thorough knowledge of machinist and sheet metal trades, and
 - E. Demonstrates high level of skill in the use of shop tools and equipment, and
 - F. Has at least five (5) years' experience in welding and machinist work above the journeyman level.

The pay grade for this position is 19. Placement at pay grade 19 shall occur when the

APPENDIX K (cont'd)

employee has provided written proof of receipt of the certification listed in A, the license required in B, has successfully completed an in-house proficiency exam comprised of C, D, and E, and documents the experience requirement listed in E. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and is authorized by the Fleet Manager.

4. Employees are responsible for annual re-certifications and re-licensures. Failure to maintain certifications and licensures shall result in loss of classification and pay status until such time as recertification or re-licensure is obtained. It shall be the employee's responsibility to inform the Fleet Manager of any change in status in certification or licensure. Failure to inform shall be grounds for discipline in accordance with the provisions of the Agreement.

AGREED TO BY:

City of Portland

Date

AFSCME Labor & Trades

Date

AFSCME Council 93

Date

APPENDIX L-1

MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)

BARRON CENTER

Absolute:

Must have fulfilled the requirements of a Maintenance Worker and has been permanently classified as a Maintenance Worker for six (6) months.

Must pass a safety course approved by the City's Safety Officer

Primary (all Apply):

Box Truck Operator (Internal)

Front End-Loader Certification (internal)

Working knowledge of Nursing Home State and Federal Regulations (Internal Test >70%)

Ability to operate 4X4 pick-up with plow (internal)

Demonstrated ability to prioritize work tasks, work independently and make sound decisions (Internal)

Secondary: (Select Three)

Metal Stud Framing Certification (Internal/External)

Plumbers License or Apprentice/Journeyman level of training

Electrician's License or Apprentice/Helper level of training

Finish Carpentry (internal/external)

Drywall Repair Certification (Internal/External)

Plumbing Repair Certification (Internal)

Computer Proficiency in Microsoft Office Suite (Internal/External)

Building Fire Alarm Working Knowledge (Internal via Supervised Alarm Drills)

December 2008

APPENDIX L-1

MAINTENANCE WORKER III CAREER LADDER – (Pay Grade 18)

BARRON CENTER

Absolute:

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour OSHA 1910 class approved by the City's Safety Officer

Primary (3 Required):

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by City Safety Coordinator (internal or external)
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

Optional (None required but 2 electives may replace maximum of 1 primary):

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Journeyman level of training (external)
- Locksmith certification (external)
- Microsoft software certification (internal or external)

December 2008

APPENDIX L-2

MAINTENANCE WORKER CAREER LADDER

SOCIAL SERVICES DIVISION

The Custodial Worker is the entry level classification in the Division of Social Services. Employees hired within this classification must meet the qualifications on the following page(s).

The Custodial Worker is the first step on the Maintenance Worker Career Ladder. Employees who wish to move up the ladder into the Maintenance Worker, I & II classifications must meet the qualifications for each "step", as described in this appendix.

The management personnel with the Division of Social Services encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to your Division Head or Union Representative.

November 2019

APPENDIX L-2 (cont'd)

MAINTENANCE WORKER CAREER LADDER – (Pay Grade 14)

SOCIAL SERVICES DIVISION

Absolute:

- Fulfills the requirements of Custodial Worker and has been permanently classified as Custodial Worker for a minimum of one (1) year
- Demonstrates the ability to work effectively with low-income clients including the homeless who have barriers to self-sufficiency.
- Demonstrates the ability to communicate with a diverse consumer group.
- Possesses physical strength and ability to perform the essential functions of the job and ability to withstand exposure to varied climatic conditions while performing job duties.
- Pass safety course approved by City's Safety Officer (internal or external)

Primary:

- Working knowledge of Division's safety rules and regulations (internal)
- Demonstrated ability to prioritize work tasks, work independently and make sound decisions (internal)
- Demonstrated ability to operate a variety of automotive and lawn maintenance equipment, including rototiller, skill saw, miter saw, air guns and 4X4 pick-up with a plow attachment (internal)
- Demonstrated ability to repair and maintain small motor equipment (internal)
- Basic carpentry certification (internal)

November 2019

APPENDIX L-2 (cont'd)

MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)

SOCIAL SERVICES DIVISION

Absolute:

- Fulfills the requirements of Maintenance Worker and has been permanently classified as Maintenance Worker for six (6) months
Must pass a safety course approved by the City's Safety Officer
Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)

Primary:

Demonstrates the proper operating techniques for the following Division equipment:

4X4 pickup truck with 7' plow attachment
Walk behind snow blower
Walk behind rotary motors
Walk behind rototiller
Leaf blower
String trimmer
Air-activated air-gun
Bobcat Skid Turn
Table Saw
Miscellaneous power tools
Carpentry certification (internal or external)

Secondary: (Select three)

- Ability to read construction plans and blueprints (internal or external)
- Building alarm/security system certification (internal or external)
- Personal safety/defense training certification (internal or external)
- Successfully complete ergonomics course approved by the City's Safety Coordinator (internal or external)
- Demonstrated knowledge of Hotel/Motel Fire Code regulations (internal or external)
- Drywall repair certification

November 2019

APPENDIX L-2 (cont'd)

Maintenance Worker II Career Ladder (Pay Grade 17)

Social Services Division

Absolute:

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum of six (6) months.
- Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)
- Must pass OSHA course approved by the City's Safety Officer

Primary:

- Successfully complete supervisory course (internal or external)
- Demonstrated ability to interpret blueprint plans for building renovations (internal)
- Advanced building alarm/security system certification (internal or external)
- Demonstrated ability to train low income clients in basic maintenance tasks and basic employment skills (internal)

Secondary: (Select three)

- Plumbers course (internal or external)
- First Aid or CPR certification (internal or external)
- Successfully complete home wiring course or other electrical course approved by the Public Buildings Manager (internal or external)
- Successfully complete effective communication course approved by the Division Director
- Vinyl, carpet and tile installation certification (internal)
- Painting certification (internal)

November 2019

APPENDIX M
TRADES WORKER II (pay grade 17)
PUBLIC BUILDINGS

Absolute:

- Fulfills the requirements of Trades Worker I and has been permanently classified as a Trades Worker I for a minimum of 6 months.
- Must pass the 30-hour 1910 OSHA class approved by the City's Safety Coordinator

Primary: (3 Required)

- Knowledge and practices of roof repair on rubber membrane roofs, asphalt roofs, and metal roofs.
- Knowledge and practices of paint and wall finishes to include but not limited to paint types, caulking types, and the uses of proper products for each application.
- Knowledge and practices of hazard awareness to include lead paint, asbestos, mold, and other environmental and health hazards.
- Knowledge and ability to read and understand blueprints to be able to perform the work required

External: (none required but 2 electives may replace maximum of 1 primary)

- Knowledge of variety and grade of fasteners, and the proper use and application.
- Knowledge and ability to do construction layout for both new construction and renovations at a competent level.
- Knowledge and ability to install and repair VCT, carpet, hardwood and other flooring types at a competent level.
- Knowledge and ability to install and repair masonry products such as concrete pads, block walls, and brick work.

December 2008

APPENDIX M
TRADES WORKER III (pay grade 19)
PUBLIC BUILDINGS

Absolute:

- Fulfills the requirements of Trades Worker II and has been permanently classified as a Trades Worker II for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour 1910 OSHA class approved by the City's Safety Coordinator

Primary (3 Required):

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by Safety Officer
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

External: (None required but 2 electives may replace maximum of 1 primary):

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Helper level of training (external)
- Locksmith certification (external)
- AutoCad Certification (internal or external)

December 2008

APPENDIX N

ARBORIST I FORESTRY DIVISION

The Arborist I is the entry level position for the Arborist classification in the Portland Public Services Department. Employees hired within this classification must meet the qualifications outlined in the Arborist I attachment. The Arborist I is also the first step on the Arborist Career Ladder.

Employees who wish to advance into the Arborist II and III classifications must satisfy the requirements at each level of the career ladder before they may move to the next level of the career ladder.

Management of the Public Services Department encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to the Parks and Open Space Manager, City Arborist or your Union representative.

APPENDIX N (cont'd)

ARBORIST I FORESTRY DIVISION

Absolute Requirements:

- Must possess valid Maine Class C Operator license at time of hire and must obtain valid Maine Class B motor vehicle operator's license within probationary period.
- Must possess Maine Arborist license at time of hire or obtain within one year of date of hire.
- Must possess and maintain a good driving record (pre-employment screening required).
- Possess basic knowledge of the hazards and applicable safety standards associated with arboriculture.
- Possess basic knowledge of arboriculture and landscape skills, tree identification, tree physiology, and insect and diseases of shade trees.
- High school diploma or equivalent.
- Possess physical strength and agility necessary to perform the essential functions of the position and the ability to withstand exposure to varied weather conditions while performing job duties.

Primary Requirements:

- Ability to understand and follow oral and written directions.
- Ability to establish and maintain effective working relationships with other employees, supervisors and the public.
- Ability to operate a variety of forestry equipment, including equipment used in Winter Operations.
- Possess willingness, ability and aptitude to climb and work in trees using a rope and saddle.
- Possess willingness to qualify for the position through department field test consisting of:
 - Climbing tree to 25' using rope and saddle.
 - Complete vehicle/equipment circle test.
 - Operate bucket truck.
 - Demonstrate proper technique in operating chainsaw and brush chipper.
 - Demonstrate proper tree pruning techniques
 - Identify specific species of trees.

Training and Experience Desired:

- Previous work experience or training in arboriculture.
- Documented electrical safety training or experience.
- Holds current Maine Arborist License or ISA Certification.
- Possess valid Maine Class B driver's license.

APPENDIX N (cont'd)

ARBORIST II FORESTRY DIVISION

Absolute Requirements:

- Fulfilled the requirements of an Arborist I.
- Valid Maine Class B Motor Vehicle Operator's License
- Possess physical strength and agility to perform the essential functions of the position
- Satisfactorily complete 10-hour OSHA course relevant to Forestry that is approved by the City's Safety Coordinator
- Possess aptitude to qualify for the position by completing field test consisting of:
- Properly set up tree and climb up to 55' using proper ANSI approved techniques, using a 'throw-ball' and 'foot-lock' or 'hip-thrust' techniques.
 - Properly set up aerial lift truck to reach desired targets within a tree up to 65' in height. (Internal)
 - Complete circle check and demonstrate operating techniques on Brush Chipper, Stump Grinder and Log Loader. (Internal)
- Complete leaf and twig identification test for native and exotic trees. (Internal)
- Pass basic EHAP, (Electrical Hazard Awareness Program) test (Internal).

Primary Requirements:

- Maine Arborist License (External)
- Maine Pesticide Applicator's License with either category 3A or 6D (municipal or ornamental). (External)
- Certified to operate and perform basic maintenance of Forestry equipment: Chain saw (including chain sharpening), brush chipper, stump grinder, log loader, aerial lift. (Internal)
- Possess CPR and First Aid certification. (Internal or external)
- Knowledge and understanding of ANSI and OSHA requirements and standards pertaining to arboriculture, including: ANSI Z.133, A300, and OSHA 1910.331/269.
- Obtained 'skilled' level in the use of ropes, pulleys and lowering devices.
- Certified in the planting, fertilization and watering of trees and shrubs. (Internal)
- Certified to operate the following winter operations equipment: sidewalk plow equipment, 4X4 with plow (trained to plow roads and parking lots), one-ton pickup truck, walk behind snow blower and skid steer. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise a small crew of workers as required. (Internal)
- Ability to work productively with other team members within division and department.

APPENDIX N (cont'd)

ARBORIST III FORESTRY DIVISION

Absolute Requirements:

- Fulfilled requirements of the Arborist position.
 - Has been an Arborist II for at least 90 working days.
 - Completed Traffic Control Safety Training, Certified MDOT Traffic controller.
 - Possess the physical strength and agility to perform the essential functions of this position.
 - Satisfactorily complete 30-hour 1910 OSHA course.
 - Possesses aptitude to qualify for position by completing 'Master Level' field test or actual 'on-the-job' demonstration consisting of:
 - Climbing demonstration test – consisting of tying knots, climbing with throw ball, rope & saddle and to various targets within a tree, and aerial rescue.
 - Rigging demonstration – rigging tree for removal using various lowering devices, blocks, lines, knots and pulleys.
 - Equipment demonstration – proficient operation and knowledge of safety, maintenance and mechanical systems of the following Forestry equipment:
 - Chainsaw, including troubleshooting, chain sharpening, bar adjustment, operation, safety requirements and standards.
 - Brush Chipper, troubleshooting, knife changing, maintenance, operation, safety requirements and standards.
 - Stump Grinder; review hydraulics, safety features and requirements, maintenance, operation.
 - Log Loader, setup, safety requirements, hydraulics, operation: loading and unloading, boom lift capacities, maintenance, safety requirements and standards.
 - Aerial lift truck, setup for large tree pruning, reaching specific targets within the tree, safety requirements: manufacturers, OSHA and ANSI standards, maintenance of hydraulics, booms and all systems.
- (Note – Internal demonstration and written tests with time restraints.)

Primary Requirements

- Certified Line Clearance Arborist, meeting OSHA 1910.269 requirements, such as National Arborists Association's (NAA) Electrical Hazard Awareness Program (EHAP) or approved equal including climbing and bucket truck aerial rescues within the time requirements. (External)
- Maine Pesticide Applicator's License with categories 3A and 6D, Outdoor Ornamentals and Municipal Right of Way. (External)
- Maine Arborist License. (External)
- Maine Class B Motor Vehicle Operator's License. (External)

APPENDIX N (cont'd)

ARBORIST III

Primary Requirements (cont'd)

- Certified on Arboricultural safety standards for Tree Care Operations, Pruning, Line Clearance Tree Trimming, Nursery Stock, and Forestry Equipment. (Internal)
- International Society of Arboriculture (ISA) Arborist Certification, or attend arboricultural training of 30 hours within a three (3) year period. (External)
- Certified to operate the following winter operations equipment: dump truck with plow and sander, and front end loader. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise small crews and maintain accurate documentation records.
- Ability to work productively with other team members within division and department, and develop good working relationships with contacts outside of the Department.

APPENDIX O

HEALTH INSURANCE RESERVE ACCOUNT

Health plan as proposed by the Health Insurance Advisory Committee referred to in Article 15.2.1.

- Implementation of the new Health Insurance plan (Revised 11/14/2014) would be no sooner than January 1, 2016.
- The wellness programs will be established prior to new Health Insurance Plan being implemented.
- The first year of implementation the proposed Health Insurance plan the deductible will be \$200 for single per year and \$400 for a family per year.
- The second year of implementation of the proposed Health Insurance plan the deductible will increase to \$400 for single per year and \$800 for a family per year.
- Established a reserve account as outline below:

Health Insurance (City of Portland Employee Medical Plan) Reserve Account

Upon implementation of the proposed value-based insurance design that includes wellness components, the City of Portland ("City") agrees to designate \$150,000 from fund balance to establish a reserve account. Thereafter, following the conclusion and audit completion of each fiscal year, the City will determine if the employee medical plan budget was over-funded or under-funded based on the overall medical budget that was set by the City for that fiscal year. If the medical budget is over-funded, then 15% (represents employee contributions) of that amount will be added to the reserve account. Likewise, if the medical budget is under-funded, then 15% of that amount will be deducted from the reserve account.

The purpose of the reserve account is to provide weekly premium relief to those active employees who contribute to the cost of health insurance for themselves and/or family members. When the reserve account has enough monies above the \$150,000 threshold to cover at least one week of employee contributions, then monies will be returned to active employees in the form of a non-payment obligation from each current contributing employee based on their weekly plan rate. The City will arrange for the non-payment obligation to occur in the second quarter of the following fiscal year.

To illustrate how this would work, below are two (2) examples with the assumed \$150,000 designated as funds for the reserve account.

Example 1:

Health Insurance Budget for fiscal year 2015	\$15,500,000
Health Insurance actual cost for fiscal year 2015	\$15,000,000

- Over-funding results in 15% of \$500,000 (difference between budget and actual) = \$75,000. \$75,000 added to \$150,000 so reserve account is \$225,000.

APPENDIX O (cont'd)

- Currently, weekly employee contributions total approximately \$52,000.
- This example would produce premium relief in the form of a non-payment obligation of one (1) week for each current contributing employees based on their weekly plan rate in the second quarter of fiscal year 2016. The reserve account balance would then be \$173,000.

Example 2:

Health Insurance Budget for fiscal year 2015	\$15,500,000
Health Insurance actual cost for fiscal year 2015	\$16,000,000

- Under-funding results in 15% of \$500,000 (difference between actual and budget) = (\$75,000).
- \$75,000 would be deducted from the \$150,000 reserve account, leaving a balance of 75,000.

Human Resources and Finance will be responsible for recordkeeping of the reserve account.

Human Resources will continue to provide Labor/Management Health Insurance Advisory Committee with the quarterly reporting packet that includes timely information regarding actual health insurance expenditures compared to the budgeted amounts.

* Examples are for illustration purposes only.

Formula for New Program Costing on Tax Rate

1) FY22 Valuation:	14,629,000,000	\$14,629,000
2) FY22 Tax Rate (Total City & School): $\text{Levy} / (\text{Valuation}/1000)$		\$12.99
(a) FY22 Tax Rate (City):		\$6.22
(b) FY22 Tax Rate (School):		\$6.77
3) FY22 Value of \$0.01 of Tax Rate (Total City & School):		\$146,290

FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2		Year 3	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$669,105		\$644,227		\$641,396
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$669,105	\$669,105	\$644,227	\$644,227	\$641,396	\$641,396
New Program Impact to the Tax Rate	\$0.0457	\$0.0457	\$0.0440	\$0.0440	\$0.0438	\$0.0438
New Program % Impact on Tax Rate	0.7353%	0.3521%	0.7080%	0.3390%	0.7049%	0.3375%
Tax Rate Including New Program	\$6.27	\$13.04	\$6.26	\$13.03	\$6.26	\$13.03

Note 1: FY23 Tax Rate is not yet available as FY23 Tax Commitment has not yet occurred.

Note 2: The majority of the Year 1 cost items including the COLA were included when building the FY23 budget so the Year 1 cost to the operating budget will be significantly lower than the \$669,105 noted above and will be funded via vacancy savings.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 6, 2022

SUBJECT: Order 59-22/23 Traffic Schedule Amendment Re: Thames Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Reviewed.

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This traffic schedule amendment will introduce new parking restrictions on a portion of Thames Street (from the Ocean Gateway driveway to Freedom Way) proposed for acceptance on September 19, 2022.

The parking regulations include metered, 2-hour parking on the north side of the street, and unmetered, time-restricted parking (one-hour) on the south side. The unmetered time-restricted parking is intended to facilitate an extension of Residential Parking Zone 11, which is used by island residents.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Thames Street Parking Change - Traffic Schedule Amendment 9.1.2022

Prepared by:

Date: 09/06/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO TRAFFIC SCHEDULE
RE: THAMES STREET**

ORDERED, that the City of Portland's Traffic Schedule be and hereby is established as follows:

By Establishing under Thames Street Extension, from the Ocean Gateway driveway to Freedom Way:

North Side:

- **Schedule XXI** - Meter Zone Number 3: 2 Hour Parking

South Side:

- **Schedule XVII** – 1 Hour Parking
- **Schedule XXVIII** – Residential Parking Permit Area

MEMORANDUM
City Council Agenda Item

FROM: Troy Moon, Sustainability Coordinator

DATE: September 6, 2022

SUBJECT: Order 60-22/23 Amendment to Portland City Code Chapter 34 re: Landcare Ordinance - Sponsored by the Sustainability & Transportation Committee, Councilor Andrew Zarro, Chair

SPONSOR: Sustainability and Transportation Committee, Andrew Zarro, Chair. (Committee voted in favor, 3-0 on July 13, 2022)

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action 9/19/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: No

PRESENTATION: Sustainability Director Troy Moon will be in attendance to provide background and answer questions from the City Council.

I. SUMMARY

The amendment changes the title of Chapter 34 of the City Code to Landcare and restricts the use of fertilizers on public and private property in order to improve soil health and prevent run-off of excess nutrients into local waterways.

II. AGENDA DESCRIPTION

On July 13, 2022, the Sustainability & Transportation Committee voted (3-0) to recommend amending Chapter 34 to regulate the use of fertilizers. The amendment would largely prohibit the use of synthetic fertilizers and require property owners to follow best management practices when using organic fertilizers. These measures would improve water quality in local waters by reducing the amount of excess nutrients running off both public and private property. Excess nutrients fuel algal blooms in local water bodies, damaging marine life and increasing acidification of local waters.

The amendment would also change the name of Chapter 34 from Pesticide Ordinance to Landcare Ordinance to reflect the chapter's emphasis on sound land management practices. The name of the Pesticide Management Advisory Committee would similarly be renamed the Landcare Management Advisory Committee.

This item must be read on two separate days. It received its first reading on September 1, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The City first contemplated regulation of fertilizers in 2016 when the City Council empaneled the Pesticide and Fertilizer Task Force with the assignment to recommend policy changes to prevent harm to the environment and public health from both of these products. The Task Force realized that addressing both pesticides and fertilizers was more than they would be able to accomplish in the time they had available and chose to focus their efforts on pesticides. When making that decision, they recommended that a subsequent group take up fertilizers.

During the past year, the Pesticide Management Advisory Committee (PMAC) studied the use of fertilizers and examined the fertilizer ordinance recently adopted in South Portland. In March, the PMAC presented recommendations for the regulation of fertilizers to the Sustainability and Transportation Committee as part of their annual report. Following the presentation, the Sustainability and Transportation Committee asked Staff to develop ordinance language based on the PMAC recommendations with the goals of:

- Protecting water quality: Improperly applied fertilizer – particularly fast release, synthetic fertilizer – is frequently transported by stormwater from the property where it is applied. When it enters local waterways, including Casco Bay, it contributes excessive nutrients into the water which results in algae blooms. It also contributes to acidification of our coastal waters. Both of these seriously impact marine life and threaten the marine ecosystem.
- Preventing soil degradation: Fast-acting synthetic fertilizers strip soil of nutrients by causing the microbes in the soil to consume organic matter faster than plants can replenish them. This leads to soil degradation, which requires further inputs of fertilizers to grow plants.
- Reducing carbon emissions: Production of synthetic fertilizers uses large amounts of natural gas, a fossil fuel. This is incompatible with efforts to mitigate the worst impacts of climate change. Further, reliance on synthetic fertilizers impedes the ability of soils to sequester carbon, thereby contributing to global warming.

In summary, the proposed amendment:

- Prohibits application of fertilizers within 75' of a water body or wetland or other environmentally sensitive area
- Prohibits application of fertilizers on frozen ground, impervious, or saturated surfaces
- Prohibits application of fertilizers when a heavy rain event is forecast or is occurring
- Prohibits fertilizer applications when plants are not taking up nutrients, such as during summer dormancy or when the ground is partially or wholly frozen
- Prohibits applications of phosphorus except when a soil test conducted within the last three years indicates a need for phosphorus, or phosphorus is being used for new development/re-establishment.
- Prohibits the application of fertilizers using prills/pellets on impervious surfaces

The ordinance applies to all types of landscape and turf, including lawns, athletic fields, parks, gardens, and any other land use that relies on healthy soils. The only exceptions are for two properties that are also exempt from the provisions of the pesticide ordinance. These are Hadlock Field and Riverside Golf Course. The golf course, however, must maintain its status as an Audubon Certified Sanctuary in order to maintain its exempt status. The ordinance also exempts the use of fertilizers used for deep root fertilization of trees. This is because urban trees often exist in degraded, compacted, or otherwise poor soils that are difficult to improve.

Application of fertilizers directly to the roots is often required to maintain their health, thereby preserving the many benefits they provide, including carbon sequestration, storm water absorption, habitat for wildlife, and mitigating the urban heat island effect.

The ordinance recognizes that athletic fields and high performance turf require more fertilizer treatment than other types of landscapes because of their intense use. It provides standards to ensure that fertilizer applications on such turf use only the amount of fertilizer the soil can readily incorporate, so as to minimize harmful nutrient runoff. The ordinance also provides for a waiver process for application of fertilizers on high performance turf under extenuating circumstances, such as when it is important to grow turf grass quickly to

ensure safety and playability, particularly early in the growing season.

Finally, the draft ordinance renames Chapter 34 as “Landcare” to reflect that it governs pesticides, fertilizers, and promotes organic landcare practices. It also renames the PMAC as the Landcare Management Advisory Committee (LMAC) and adds responsibility for overseeing the use of fertilizers as well as pesticides.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The ordinance aligns with the City's longstanding efforts to prevent stormwater pollution and supports our efforts to protect the water quality in our urban impaired streams and in Casco Bay.

V. FINANCIAL IMPACT

No significant costs to City operations.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Staff recommends adoption of the amendment.

VIII. LIST ATTACHMENTS

1. Ch. 34 Landcare Ordinance 9.1.2022

Prepared by:

Troy Moon, Sustainability Coordinator

Date: 09/06/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
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MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 34 (PESTICIDES)
RE: LANDCARE ORDINANCE**

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

- 1. That Chapter 34, Sections 34-1 to 34-13 of the Portland City Code is hereby amended to read as follows:*

Chapter 34

**~~PESTICIDE-USE~~
LANDCARE**

Sec. 34-1. Title.

This chapter shall be known as the City of Portland ~~Pesticide-Use~~Landcare Ordinance (hereinafter, the "Ordinance").

Sec. 34-2. Purpose.

The purpose of this ordinance is to safeguard the health, safety and welfare of the residents of the City and to conserve and protect the City's waterways and natural resources by curtailing the use of pesticides and fertilizers for turf, landscape and outdoor pest management.

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Aggrieved party means an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

Broadcast application means the spreading of pesticides over an entire area.

Commercial Agriculture means the production of crops for sale, including crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

Compost means soil amendment made from decomposing organic matter used to improve soil structure and nutrient holding capacity. For the purposes of this ordinance, compost is not considered a fertilizer.

Emergency means a serious, unexpected, and often dangerous situation requiring immediate action.

Environmentally sensitive areas means areas that are particularly vulnerable to fertilizer nutrient loss and/or where direct transmission of fertilizer nutrients to surface water or ground water is likely. This includes coastal and freshwater wetlands, beaches and sand dunes, streams and tributary streams

EPA means the United States Environmental Protection Agency.

Fertilizer means a substance containing one or more plant nutrients and used for its plant nutrient content. State law requires that all fertilizer products be registered with its department of agriculture prior to distribution.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

Golf course means an area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf and disc golf courses are not considered golf courses.

Heavy rain event means a rain event producing 0.5 inch or more of precipitation in a one hour period.

High Use Athletic Facilities means the following playing fields located in the following parks as listed in Chapter 18, section 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park; Back Cove Park; and Payson A Field

in Payson Park. It shall also include Presumpscot Field at Deering High School.

Hydro-seeding means the process of seeding by pumping seed in a mixture of water through a nozzle that sprays the mixture onto a seedbed. The water mixture may also contain add-ins such as fertilizer and certain mulches.

Landcare means a land management approach intended to prevent soil degradation and responsibly manage land resources, and cultivate environmental health.

Landcare Management Advisory Committee (LMAC) means the Landcare Management Advisory Committee as described in this Chapter.

New development means any alteration of land for the purposes of construction or reconstruction redevelopment that results in soil disturbance and/or compaction, vegetation removal, and/or regrading.

Organic fertilizer means a fertilizer derived from either plant or animal products that contain nutrients for plant growth. It is acceptable for the materials in these fertilizers to have been subjected to biological degradation processes under normal conditions of aging, rainfall, suncuring, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. In order to qualify as organic fertilizer, the materials in these fertilizers may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting in order to qualify as organic fertilizer. Organic fertilizers are broken down by, and feed, the microbial life in the soil.

Organic landcare means a landcare management technique that integrates cultural, biological, and mechanical practices to build soil health, including practices such as mowing at higher levels, aeration, top dressing with compost, over-seeding, and watering deeply but infrequently, and without the use of toxic pesticides and synthetic fertilizers.

Organic material means the organic matter component of soil, consisting of plant and animal detritus at various stages of decomposition, cells and tissues of soil microbes, and substances that soil microbes synthesize.

Over-seeding means the application of additional turfgrass seeding to existing turf.

Penetrometer means an instrument used to give a quantitative measurement of the consistency or hardness of a substance by measuring the depth or rate of penetration of a rod or cone-shaped into it.

Performance turf means grounds devoted to athletic fields and golf courses.

Prills means a small aggregate or globule of a material, most often a dry sphere or pellet. Fertilizers and some detergent powders are commonly manufactured as prills.

Repellant means a substance that deters insects or other pests from approaching or settling.

Invasive Species means a plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

Natural, organic or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Organic pest management means the act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or non-synthetic substances.

Person means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Pest shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Pests of significant public health importance means the pests listed by the EPA, in conjunction with the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

Preemptive application means the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure.

Public utility means any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

Re-establishment means a procedure involving complete turf removal and seeding or laying sod to establish new turf.

Restricted Entry Interval, also known as the re-entry interval or re-entry time, means the minimum amount of time that must pass after a pesticide is applied to an area before people or pets can safely go into that area. The labels on pesticides provide information about an individual pesticide's REI.

Slope means the ratio of elevation change to horizontal distance, expressed as a percentage. Slope is computed by dividing the vertical distance by the horizontal distance, and multiplying the ratio by 100. For purposes of this Chapter, a slope shall include only those areas with a horizontal distance of at least 50 feet.

Soil means the outer, weathered layer of the Earth's crust which can potentially support plant life and made up of inorganic particles, organic matter, organisms, water and air.

Soil amendment means a soil amendment is material added to soil to improve its physical properties, including, but not limited to, the substances listed on the National List of Allowed and Prohibited Substances, 7 C.F.R § 205.601, as the same may be amended from time to time. For the purposes of this ordinance, a soil amendment is not considered fertilizer.

Soil microbes means living organisms in soil (such as bacteria and fungi), which feed on organic matter and decompose rapidly.

Soil test means a test designed to analyze soil acidity, organic matter, and essential nutrients available for plant growth. A "standard soil test" indicates soil pH, levels of essential nutrients such as potassium, phosphorus, calcium, magnesium, and sulfur, level of organic matter, whether there is lead contamination, and it will provide recommendations for corrective amendments to address deficiencies. A "comprehensive soil test" includes all the elements of a standard soil test, plus an analysis of soil microbial mass.

Starter fertilizer means a fertilizer formulated for a one-time application at planting or near that time to encourage root growth and to enhance the initial establishment of turf. This is typically a water-soluble product that contains high levels of phosphorus to allow for robust root growth.

Steep topography means slope lengths exceeding 50 feet (horizontal distance) on slopes greater than 15%.

Summer dormancy means the period during mid-summer most commonly observed in un-irrigated lawns when turf growth ceases. Dormancy is characterized by brittle texture and a loss of green color.

Synthetic means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Synthetic fertilizer means any fertilizer manufactured from one or more synthetic materials and may or may not contain

animal parts, animal byproducts, manures or renderings. Synthetic fertilizer bypasses the microbial life in the soil and is taken up by the plant directly.

Total nitrogen means the sum of all fertilizer nitrogen species, including water soluble nitrogen forms, slow release nitrogen forms, and water insoluble nitrogen forms. The percentage of total nitrogen appears as the leftmost number of the grade on fertilizer labels.

Turf means a community of herbaceous plants that can be mowed, including grass and sod; a surface layer of the earth with grass growing on it, usually mowed, including lawns, grass covered medians, athletic fields, golf courses, outdoor event spaces, and the like.

Waiver Committee means the Waiver Committee as described in this Chapter.

Water body means any great pond, river, stream or tidal area as those terms are defined in Chapter 14 of the Portland Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 14 of the Code of Ordinances.

Sec. 34-4. Applicability

The following provisions shall apply to all outdoor pest management activities and use of fertilizer conducted within the boundaries of the City of Portland (hereinafter, the "City"), on both public and private land, excluding the exemptions provided in this Chapter.

Sec. 34-5 Permitted, prohibited, and exempt pesticidesapplications

(a) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all outdoor pest management activities in the City.

~~(a)~~ 1. Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:

i. ~~1.~~ Organic Pest Management, except as provided in (b)2 below;

ii. ~~2.~~ Use or application of Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or

iii. ~~3.~~ Use or application of Pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.

~~(b)~~2. Prohibited Pest Management Activities and/or Materials:

i. ~~1.~~ Use or application of Synthetic substances other than those described in (a)(2) above;

ii. ~~2.~~ Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or

iii. ~~3.~~ The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.

~~(c)~~3. Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):

i. ~~1.~~ Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;

ii. ~~2.~~ Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;

iii. ~~3.~~ Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;

iv. ~~4.~~ Insect repellents when used in the manner specified by the manufacturer;

v. ~~5.~~ Rat and rodent control supplies when used in the manner specified by the manufacturer;

vi. ~~6.~~Swimming pool supplies when used in the manner specified by the manufacturer; and/or

vii. ~~7.~~General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.

~~(d)~~4. Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):

i. ~~1.~~Specific health and safety applications.

Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy, pests of significant health importance such as ticks and mosquitoes, and animals or insects that may cause damage to a structure, such as carpenter ants or termites;

ii. ~~2.~~Golf course applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;

iii. ~~3.~~Hadlock Field applications;

iv. ~~4.~~Treatments for Heritage Elms;

v. ~~5.~~Applications on fields at High Use Athletic facilities (until January, 2023, unless this date is extended by the City Council);

vi. ~~6.~~Prohibited pesticides may be used to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service;

vii. ~~7.~~Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or

viii. ~~8.~~Invasive plant applications on city property. Applications to control plants categorized as *currently considered invasive in Maine* by the Maine Department of Agriculture, Conservation, and Forestry.

5. Disclosures. For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.

~~(e)~~6. Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):

- i. ~~1.~~ Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state or federal board or agency.

(b) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all fertilizer applications in the City.

1. Prohibited Fertilizer Applications. The following prohibitions apply for all fertilizer applications on all turf types:

- i. Applications within 75 feet of a water body or wetland or other environmentally sensitive area are prohibited.
- ii. Applications on frozen ground or saturated surfaces are prohibited.
- iii. Applications when a heavy rain event is occurring is prohibited.
- iv. Applications during summer dormancy or when the ground is partially or wholly frozen are prohibited.
- v. Applications on impervious surfaces are prohibited; if spills occur on impervious surfaces, they must be swept up immediately.
- vi. Applications with phosphorus are prohibited except where a soil test conducted within the last three years indicates a need for phosphorus, or phosphorous is being used for new development/re-establishment, as specified in subsection (B) below.
- vii. Applications of synthetic fertilizer are prohibited except where a waiver has been granted pursuant to Sec. 34-7 below.
- viii. Application of compost or fertilizers derived from wastewater treatment sludge or from organic residuals remaining after industrial processes (such as paper making) is prohibited within the boundaries of the City of Portland.

- ix. Applications of organic fertilizer not in compliance with subsection (2) below are prohibited.

2. Permitted Fertilizer Applications. The following applications of organic fertilizer are allowed within the limits for the specific application as set forth below:

- i. Except as specified in subsections (ii), (iii), and (iv) below, applications of organic fertilizer, including residential lawns, are allowed only when a comprehensive soil test conducted within the same calendar year indicates a need for nitrogen. Applications of organic fertilizer may not contain nutrients in excess of the amount recommended by the completed soil test. Only phosphorus-free, organic fertilizer is allowed for these applications, unless the soil test indicates a need for phosphorus.
- ii. Applications of organic fertilizer on performance turf are allowed as necessary provided that total nitrogen does not exceed 4 lbs per 1,000 square feet per year.
- iii. Applications of organic starter fertilizer for new development may contain phosphorus without a soil test. The fertilizer must be incorporated into top soil 2-3 inches deep. Two fertilizer applications are permitted for one calendar year from the date of first application only. For each application, total nitrogen and phosphorus may not exceed 1 lb. per 1,000 square feet
- iv. Applications of organic fertilizer for re-establishment of turf may contain phosphorus without a soil test. Unless the application is through hydro-seeding or overseeding, the organic fertilizer must be incorporated into the soil 2-3 inches deep. Fertilizer applications may not exceed 1 lb. of nitrogen and phosphorus per 1,000 square feet per application. Total nitrogen and phosphorus may not exceed 2 lbs. per 1,000 square feet per calendar year from the date of last application.

3. Exempt Fertilizer Applications. Notwithstanding any other provision in this Chapter, the following applications of fertilizer are exempt from the provisions of this ordinance (and therefore allowed without restriction):

- i. Golf course applications. Fertilizers may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
- ii. Hadlock Field applications.
- iii. Liquid deep root feeding of trees.

Sec. 34-6. ~~Pest~~Landcare Management Advisory Committee.

(a) The ~~Pest~~Landcare Management Advisory Committee ("~~PMAC~~LMAC") is hereby established. The ~~PMAC~~LMAC shall consist of seven (7) members as follows:

- ~~1. One (1) member of city staff, designated by the City Manager, who shall be accredited by the Northeast Organic Farming Association in Organic Land Care or shall receive such accreditation within a reasonable time frame;~~
- 1. The City's Sustainability Director or a City employee appointed by the City Manager;;
- 2. One (1) practicing agronomist appointed by the City Council;
- 3. Two (2) Maine Board of Pesticides Control-licensed landscape professionals, at least one (1) of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
- 4. Three resident or taxpayer representatives appointed by the City Council at least one of whom has experience in organic land care management.

(b) The terms of office of the six (6) ~~PMAC~~LMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the ~~PMAC~~LMAC shall be such that the terms of office of no more than two (2) members shall expire in any single year. The term of office for the City employee ~~PMAC~~LMAC member shall be for as

long as the employee holds said employment position.

(c) The ~~PMAC~~LMAC shall advise the City Council and the City's Sustainability Coordinator with respect to the following:

1. Advising the Sustainability and Transportation Committee and the City's Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
2. Reviewing and acting upon waiver applications when applicable;
3. Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
4. Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
5. Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the ~~PMAC~~LMAC;
6. Reviewing annual data and issuing a summary report annually by March 31 to the Sustainability and Transportation Committee, or whatever committee is assigned an oversight role by the City Council, which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this chapter; the number of waivers granted in the past year; and comprehensive data taken from the written documents provided by Applicators and/or Licensed Applicators about the use of pesticides and fertilizers within the City of Portland including, but not limited to:
 - ~~a.~~ i. The amount of pesticides and fertilizers used on privately or publicly owned land in the City of Portland;
 - ~~b.~~ ii. The reasoning for such use of pesticides and fertilizers; and

~~e.~~ iii. The specific pesticides and fertilizers that were used.

7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(d) ~~PMAC~~LMAC Officers, meetings and records.

1. The members shall annually elect a chair and a secretary from their membership;
2. All meetings of the ~~PMAC~~LMAC shall be noticed and open to the public in accordance with the City's notice policies and Maine's Freedom of Access Act;
3. A quorum shall consist of four members;
4. The ~~PMAC~~LMAC shall meet at least five (5) times annually;
5. Minutes shall be kept of all meetings and posted on the City web page; and
6. An annual report of the ~~PMAC's~~LMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.

(e) LMAC may adopt procedural rules for the conduct of its business not inconsistent with this article. Such rules shall be filed with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

~~(e)~~ (f) Waiver Subcommittee:

1. A subcommittee of the ~~PMAC~~LMAC shall be established annually and consist of the designated City staff member and one (1) other member of the ~~PMAC~~LMAC designated by the Chair;
2. This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7; and
3. The ~~PMAC~~LMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

Sec. 34-7. Waivers.

(a) In situations that are an emergency, threaten the public health, safety or welfare, or for the control of invasive species that pose a threat to the environment, persons shall apply to the ~~PMAC~~LMAC Waiver Committee for a waiver from the provisions of this ordinance prior to the use/application of a prohibited fertilizer or pesticide or prior to the conduct of a prohibited application.

(b) In addition, Persons may apply to the Waiver Committee for a waiver in order to use a synthetic fertilizer on performance turf or for new development, prior to the actual use of the synthetic fertilizer, if one or more the following conditions exists:

1. The soil temperature is less than 55 degrees Fahrenheit and reasonable grounds exist to justify fertilizer use at that location and at that time;
2. The turf is experiencing high stress due to high use and must be ready for high performance play when the sports season(s) begin; or
3. A suitable organic product that meets the nutrient needs of the soil as specified in a soil test is unavailable.

~~(b)~~ (c) The waiver application shall be filed with the ~~PMAC~~LMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; and a pest identification and threshold report. In order to approve a waiver application, the ~~PMAC~~LMAC Waiver Committee must find that all of the following criteria are met:

1. A situation exists that: is an emergency; threatens the public health, safety and/or welfare; involves an invasive species; ~~that poses a threat to the environment;~~ or requires a non-permitted pest

management activity and/or material to protect buildings or structures from damage;

2. The applicant has carefully evaluated all alternative methods and materials including, but not limited to, non-pesticide management tactics, minimum risk pesticides, non-synthetic pesticides, and is choosing to use the minimum amount of the least toxic, most effective pesticide necessary;
3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
4. To the maximum extent possible the grant of the waiver will not be detrimental to the public's health, safety or welfare.

~~(e)~~(d) The Waiver Committee shall conduct a hearing on all complete waiver applications received within ten (10) business days of receipt of the complete application and shall seek to issue a written decision on the application within three (3) business days of reviewing an application.

~~(d)~~(e) In approving any waiver application, the Waiver Committee may also prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The waiver decision of the Waiver Committee shall be in writing, with copies provided to the applicant, the ~~PMAC~~LMAC, and the Sustainability Coordinator, and the City Clerk.

~~(e)~~(f) An Aggrieved Party may appeal a written decision of the ~~PMAC~~LMAC Waiver Committee to the City Manager or ~~his or her~~—designee within five (5) business days of the issuance of the committee's decision. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or ~~his or her~~—designee (who shall not be a member of the ~~PMAC~~LMAC) shall act upon the appeal within five (5) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the aggrieved party, the ~~PMAC~~LMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or ~~his or her~~—designee shall be final.

Sec. 34-8. Reporting by State of Maine Licensed Applicators.

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements as outlined in 01-026 C.M.R. Ch. 50, as amended from time to time, all State of Maine licensed applicators are required to submit to the ~~PMAC~~LMAC an annual summary report on or before February 1st of each calendar year relating to the preceding calendar year. This report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticides Control.

Sec. 34-9. Management plan and annual reporting for publicly owned parks and open spaces.

The City shall maintain a management plan for public open spaces that shall be posted on the City website. The City Manager or ~~his or her~~ designee shall provide an annual report to the ~~PMAC~~LMAC describing efforts to reduce the use of synthetic pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticide usage.

34-10. Public Notification.

Any person shall comply with the following posting requirements.

(a) For all prohibited pesticide uses or applications:

1. A warning sign shall be posted on the privately or publicly owned land. These signs must be posted before application activities commence on the land and be left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval indicated by the pesticide label, whichever is longer;

~~(b)~~2. All signs shall be at least five (5) inches high and four (4) inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of

rigid, weather resistant material substantial enough to be easily read for the duration of the placement;

~~(e)~~ 3. All signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible;

~~(d)~~ 4. The sign must include the following:

- i. ~~1.~~ The word "CAUTION" in 72-point type;
- ii. ~~2.~~ The words "PESTICIDE APPLICATION" in 30-point type or larger;
- iii. ~~3.~~ The Maine Board of Pesticides Control designated symbol;
- iv. ~~4.~~ Any reentry precautions from the pesticide labeling;
- v. ~~5.~~ The name and telephone number of the entity making the pesticide application;
- vi. ~~6.~~ The date and time of the application;
- vii. ~~7.~~ A date and/or time to remove the sign;
- viii. ~~8.~~ the chemical and trade name of the pesticide; and
- ix. ~~9.~~ the length of time to remain off the treated area as indicated by the pesticide label; and

~~(f)~~ 5. For licensed applicators, the requirements above are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules, as may be amended from time to time, regarding public notification.

(b) All retailers selling pesticides or fertilizers subject to the provisions of this chapter shall post a sign at the point of sale that contains the following verbiage:

1. Application of synthetic pesticides and fertilizers within the City of Portland must comply with Chapter 34 of the City Code.

Sec. 34-11. Outreach and Education.

(a) The Sustainability Coordinator or ~~his or her~~ designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption and shall attempt to

provide information about it to identified retailers and lawn, garden, and tree-care providers serving the City of Portland, as well as to churches, schools, and other institutions in Portland.

(b) The ~~PMAC~~LMAC shall prepare and publish materials designed to educate the community about the role of pesticides and fertilizers in the local environment and the benefits of organic fertilizers and pest management. This outreach may include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through Portland internet and web-based resources; public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and/or any additional methods deemed appropriate by the ~~PMAC~~LMAC.

(c) The ~~PMAC~~LMAC shall also develop a program to work directly with retailers that sell pesticides and fertilizers in the City of Portland to:

1. Provide educational training for all retail store employees who recommend and sell pesticides or fertilizers for use in the home and garden, highlighting the following:
 - i. federal, state, and local pesticide and fertilizer regulations;
 - ii. principles of organic landcare, including pest management and use of fertilizers;
 - iii. pesticide and fertilizer toxicity and health and environmental concerns;
 - iv. proper pesticide display and storage; and
 - v. the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills; and
2. Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores

to help consumers understand this ordinance and alternatives to prohibited pesticides and fertilizers.

Sec. 34-12. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or ~~his or her~~ designee issued hereunder shall be subject to enforcement action as provided in §34-13.

Sec. 34-13. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or ~~his or her~~ designee;

(b) The City Manager or ~~his or her~~ designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance; ~~and~~

(e)(c) The Permitting Department is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article; and

(d) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam
DATE: August 22, 2022
SUBJECT: Order 69-22/23 Laying Out a Town Way/City Street Pursuant to 23 M.R.S.A. § 3022 Re: Thames Street Extension - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Danielle P. West, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 9/19/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: Reviewed and approved by the Office of Corporation Counsel.

PRESENTATION:

I. SUMMARY

City Council is being asked to accept a portion of Thames Street as an extension of the existing City Street. Public Works has approved the description of the Street, inspected all infrastructure in accordance with City Standards and recommends the street be accepted.

II. AGENDA DESCRIPTION

This item would lay out an additional section of Thames Street (currently known as Thames Street Extension, from the end of Thames Street as it was accepted in 2008 to the boundary line of 58 Fore Street) as a city street requiring regular public maintenance and allowing the City to regulate parking on it.

Order 59-22/23, on this agenda for a second read under Unfinished Business, would establish certain parking regulations on this street and includes a portion of this street in Residential Parking Zone 11.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Thames Street is built on land already owned by the City. This is an extension of an existing public street. Construction was completed this spring.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to own the street as a public way, accept and maintain all infrastructure and provide City services such as winter maintenance and solid waste collection.

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

The Public Works Department has inspected all infrastructure and the developer has fixed all outstanding items.

VII. RECOMMENDATION

The Public Works Department recommends acceptance of Thames Street as a City Street.

VIII. LIST ATTACHMENTS

1. Accepting Thames Street Extension as a Public Way 9.19.2022
2. Thames St Acceptance Exhibit A 2022
3. Thames_St_ACCEPTANCE_2022_Exhibit B
4. GIS Sketch for Thames St Acceptance

Prepared by:

Melissa Graffam

Date: 08/22/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER LAYING OUT A TOWN WAY/CITY STREET
PURSUANT TO 23 M.R.S.A. § 3022
RE: THE THAMES STREET EXTENSION**

ORDERED, that a town way/city street currently known as the Thames Street Extension is hereby laid out as Thames Street pursuant to 23 M.R.S.A. § 3022 and as described in the deed attached hereto as Exhibit A and as depicted on the attached Exhibit B.

EXHIBIT A

PROPOSED THAMES ST.ACCEPTANCE 16,961 SF ±

A certain lot or parcel of land situated on the northeasterly end of the 2008 accepted portion of Thames Street in the City of Portland, County of Cumberland and State of Maine, as shown on the Exhibit B attached hereto, bounded and described as follows:

BEGINNING at the most northerly corner of Thames Street as accepted on January 23, 2008 by the City of Portland's Council and as recorded in the City Clerk's Office as Order 126-07/08;

THENCE, N47°28'43"E a distance of 188.32 feet through land now or formerly of the City of Portland as described in a deed signed on August 30, 1993 and recorded in Deed Book 10924, page 84 to an angle point in the proposed location of the southerly street line of Freedom Way;

THENCE, N41° 26' 32"E a distance of 67.52 feet continuing through said land now or formerly of the City of Portland and along the southeasterly line of the said proposed location of Freedom Way to the southwesterly line of land now or formerly of PF One Devco, LLC as described in a deed signed on November 4, 2020 and recorded in Deed Book 37397, Page 73;

THENCE, S52°05'24"E a distance of 60.66 feet along the southwesterly line of land now or formerly of said PF Land LLC and along the southwesterly line of land now or formerly of PF Land LLC as described in a deed signed on November 4, 2020 and recorded in Deed Book 37397, Page 78 to the northwesterly line of the relocated Maine Department of Transportation Corridor as described in a deed signed on September 13, 2004 and recorded in Deed Book 21867, Page 343;

THENCE, S41° 26' 32" W a distance of 145.34 feet along land now or formerly of said Maine Department of Transportation to a point;

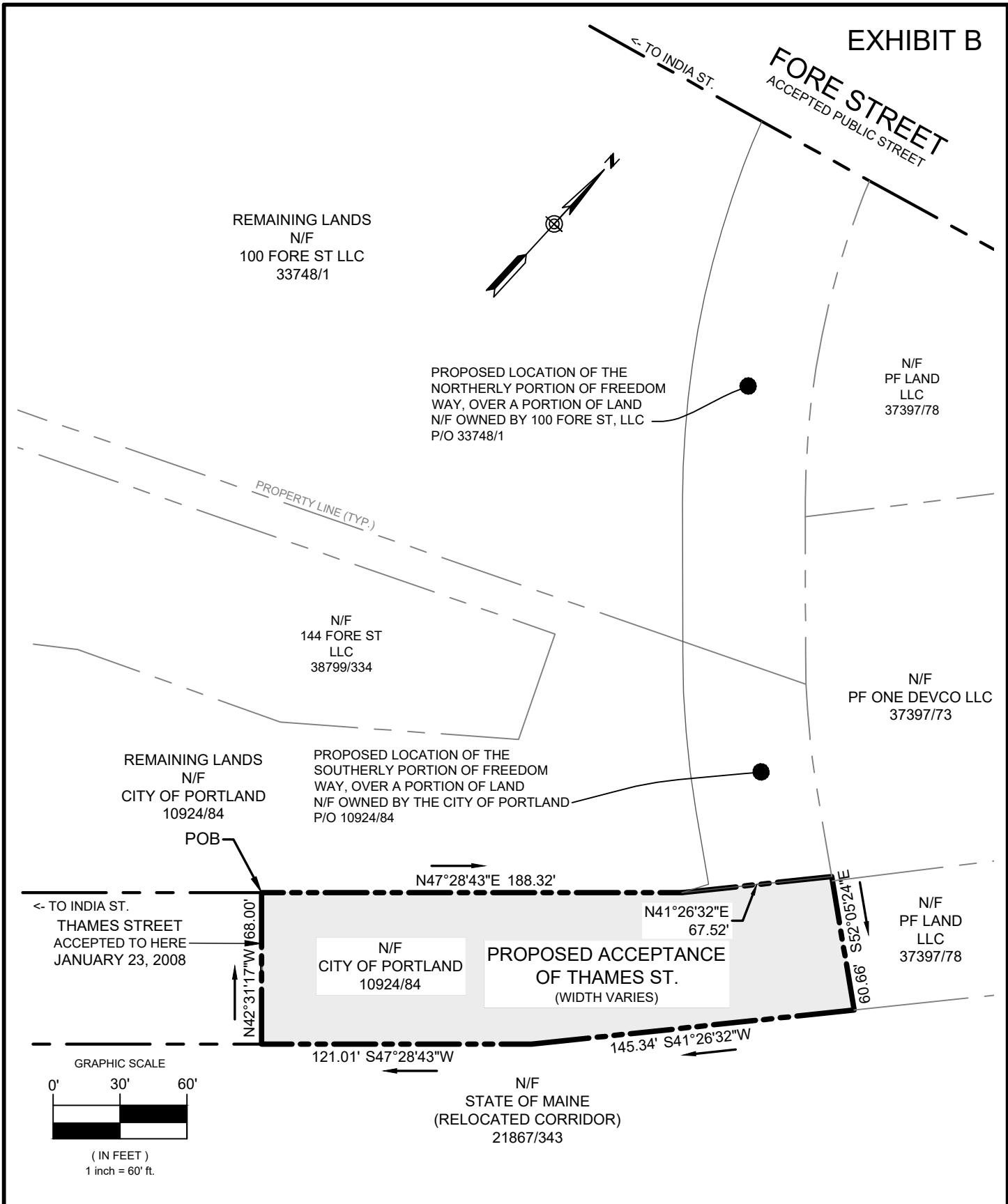
THENCE, S47°28'43"W a distance of 121.01 feet continuing along land now or formerly of said Maine Department of Transportation to the most easterly corner of the end of the said 2008 accepted portion of Thames Street;

THENCE, N42° 31'17"W a distance of 68.00 feet along the northeasterly end of the said 2008 accepted portion of Thames Street to **THE POINT OF BEGINNING**.

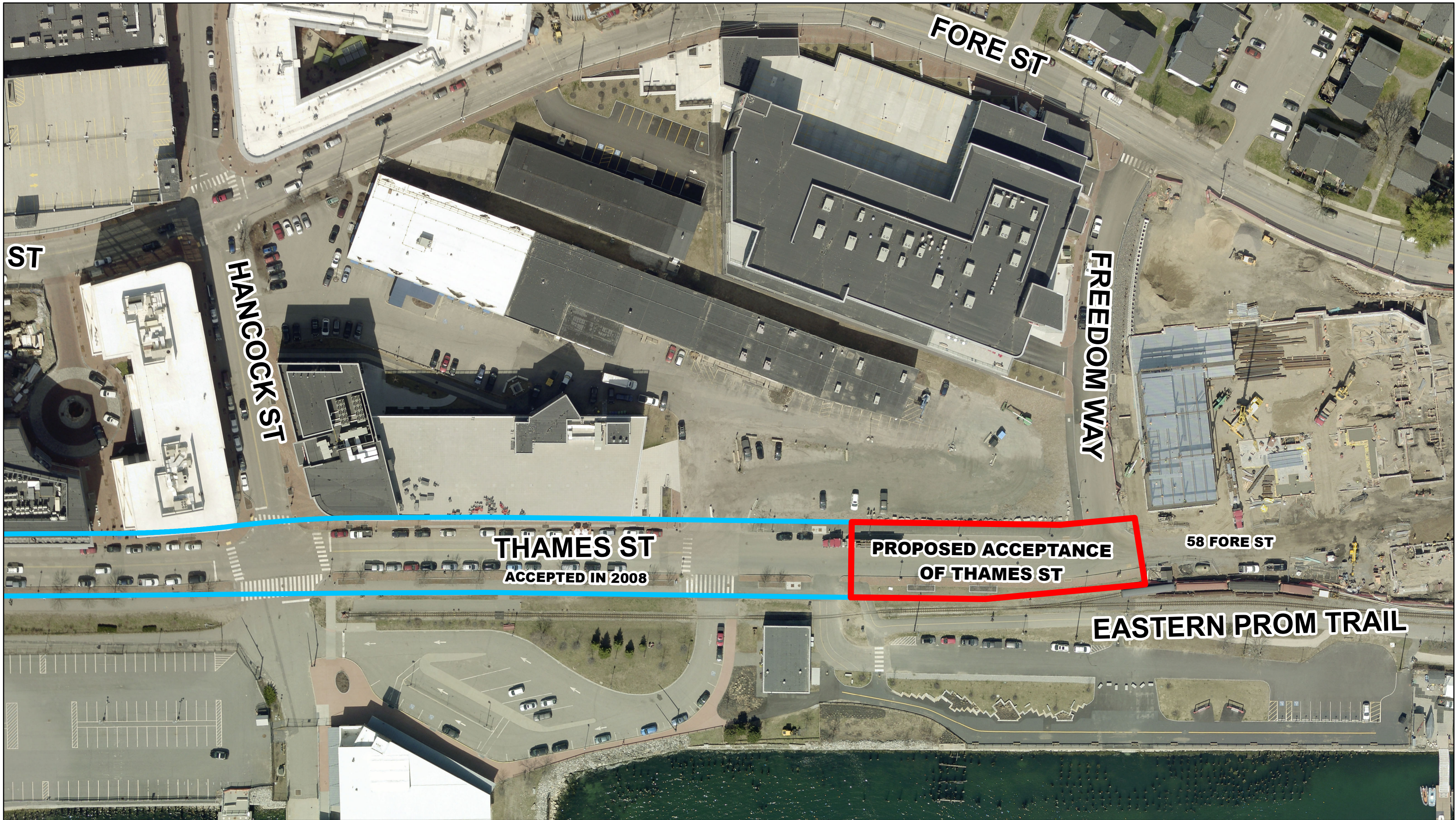
Bearings are based on Maine State Plane Coordinate System West Zone NAD 83.

Meaning and intending to describe a portion of the premises conveyed to the City of Portland by virtue of a quitclaim deed granted by the Canadian National Railway Company, signed August 30, 1993 and recorded in the Cumberland County Registry in Deed Book 10924, Page 84.

EXHIBIT B



	CITY OF PORTLAND PUBLIC WORKS ENGINEERING DIVISION	PROPOSED ACCEPTANCE OF THAMES STREET	SCALE: 1" = 60'
		DRAWING: Thames_St_Freedom_Way_ACCEPTANCE_ExBs_2022.DWG	DATE: 08/18/2022



PROPOSED ACCEPTANCE OF THAMES ST
September 8, 2022 1" = 80'



0 40 80 160 240 320 Feet
Page 350

CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 Canco Rd Suite B PORTLAND, MAINE 04101
PHONE (207) 874-8846 FAX (207) 874-8852



MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 22, 2022

SUBJECT: Order 70-22/23 Approving Residential Parking Permit Re: Islander Parking -
Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or
up to three (3) members of the Council shall sponsor any orders or other items. If
sponsored by a Council Committee, please include the date the committee met and
the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: no

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order will expand the Residential Parking Zone 11 to a portion of Thames Street, providing eight (8) additional mainland parking spaces for Portland residents who live on Peaks, Cliff, Cushing, Great Diamond, and Little Diamond islands.

This number does not include all unrestricted parking spaces on Thames Street, as staff recommend maintaining the remainder to allow for more frequent turnover in support of existing and anticipated economic activity.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Islander parking 9.19.2022

Prepared by:

Date: 08/22/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING RESIDENTIAL PARKING PERMIT EXTENSION
RE: ISLANDER PARKING**

ORDERED, that Traffic Schedule XXVIII, Residential Parking Permit Area, District IR established pursuant to Order 306-07/08 passed on June 16, 2008 and amended by Order 278-08/09 on June 1, 2009, Order 246-09/10 on June 7, 2010, Order 270-10/11 on June 20, 2011, Order 217-11/12 on June 18, 2012, Order 235-12/13 on June 3, 2013, Order 265-13/14 on June 16, 2014, Order 289-14/15 on June 15, 2015, Order 262-16/17 on May 16, 2016, Order 254-16/17 on June 19, 2017, Order 230-17/18 on June 4, 2018, Order 260-18/19 on June 3, 2019, Order 189-19/20 on June 1, 2020, by Order 263-20/21 on June 7, 2021 and by Order 265-21/22 on June 6, 2022, is hereby amended, as follows:

By extending the one-year period that expires as of June 30, 2022 to June 30, 2023 and by extending the Schedule XXVIII, Residential Parking Permit Area, District IR to include forty-two (42) parking spaces on the north side of Marginal Way between the Park & Ride Lot and Cove Street, 10 parking spaces on the westerly side of Hancock Street between Fore and Thames streets and 12 on-street parking spaces on the north side of Thames Street between India and Hancock Street and by adding eight (8) spaces on the south side (water side) of Thames Street Extension.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 6, 2022

SUBJECT: Order 71-22/23 Accepting a Riverside Street Sidewalk Easement from Waste Management of Maine, Inc. - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: The easement language was reviewed by Corporation Counsel.

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

By this order, the City Council would accept the fourth permanent sidewalk easement on Riverside Street to accommodate a new sidewalk proposed from the Forest Avenue intersection to the new Homeless Services Center at 654 Riverside Street. Three other easements were accepted for this project on September 1, 2022. The Department of Public Works has designed a sidewalk that is both compliant with the Americans with Disabilities Act standards as well as conscientious of existing conditions on Riverside Street. The proposed designed sidewalk avoids going over the Public Right of Way line wherever possible, although some permanent easements are needed.

Five affirmative votes are required for passage after public comment. Due to the proposed construction schedule for this project, staff is recommending that this item be passed as an emergency so that it can take effect immediately. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Not applicable.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Accepting Riverside Street Easement from Waste Management 9.19.2022
2. Riverside Sidewalk Easement Waste Management

Prepared by:

Date: 09/06/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ACCEPTING A RIVERSIDE STREET SIDEWALK EASEMENT FROM
WASTE MANAGEMENT OF MAINE, INC.**

ORDERED, that an easement to allow construction of a sidewalk and other improvements along Riverside Street in connection with the construction of the Homeless Services Center at 654 Riverside Street from Waste Management of Maine, Inc. is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or designee to record said documents in the Cumberland County Registry of Deeds; and

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective and allow construction to proceed immediately.

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Waste Management of Maine, Inc. (Formerly known as SCA Services of Maine, Inc.), a Maine Corporation with a place of business in Portland, Maine and mailing address 2000 Forest Avenue, Portland, ME, 04103 (the "Grantor"), FOR CONSIDERATION PAID, hereby GRANTS to the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Grantee" or the "City"), an easement for the purpose described below, over portions of Grantor's Land on the northwesterly side of Riverside Street in Portland, Maine, more particularly described in Exhibit A attached hereto and as depicted in the drawing attached hereto as Exhibit B and made a part hereof (the "Easement Area").

The purpose of the easement granted herein is to grant public pedestrian access in, on, under, and over the Easement Area which shall function as an ADA compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian uses subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Grantor shall comply with all applicable laws, rules, regulations, and ordinances governing the removal of snow and ice within the Easement Area. Grantee shall have the right but not the obligation to repair or maintain the Easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public use and enjoyment or to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

TO HAVE AND TO HOLD the aforegranted and bargained easement, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, Waste Management of Maine, Inc., the Grantor has caused this instrument to be executed by Jeff Taylor, its Manager thereunto duly authorized, this ____ day of _____, 2022.

WITNESS: Waste Management of Maine, Inc., Grantor

By: Jeff Taylor
Its Manager

STATE OF MAINE CUMBERLAND, ss.

_____, 2022

Personally appeared the above named Jeff Taylor, Manager of Waste Management of Maine, Inc., as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Waste Management of Maine, Inc.

Before me,

Attorney-at-Law/Notary Public

Printed Name:_____

Commission expires:_____

SEEN AND AGREED TO:

CITY OF PORTLAND

By:_____

Brendan O'Connell, Finance Director

Exhibit A

Public Sidewalk and Pedestrian Easement:

A public sidewalk and pedestrian easement through lands situated on the northwesterly side of Riverside Street in the City of Portland, Cumberland County, State of Maine, said easement described as follows and as shown on Exhibit B attached hereto:

BEGINNING on the northwesterly sideline of Riverside Street at the first angle point in said Riverside Street southwesterly of Forest Avenue, said angle point described in a deed from Howard S. Brenner, et al. to the City of Portland, dated December 2, 1988 and recorded in Deed Book 9548, Page 333;

THENCE, S29°48'11"W two hundred eighteen and twenty-one hundredths feet (218.21') along the northwesterly sideline of said Riverside Street to a point, said Riverside Street described in the following deeds and shown on the following plans,

-Certificate of Taking by the City Portland, dated August 16, 1971 and recorded in Deed Book 3191, Page 123 and as shown on the City of Portland Property Acquisition Plan, undated, recorded in the City of Portland Engineering Archives Vault as Plan 741/5.

-Notice of Layout and Taking by the State of Maine Department of Transportation, dated April 14, 1999 and recorded in Deed Book 14925, Page 41 and as shown on Department of Transportation Right of Way Map, State Highway Plan No. 18, Dated December, 1998 and recorded in Plan Book 202, Pages 175 to 184 and Plan Book 202, Page 221;

THENCE, S35°16'18"W twenty-three and fifty-six hundredths feet (23.56') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of four thousand nine hundred forty-nine and seventy-four hundredths feet (4949.74') for a length of two hundred sixty-four and forty-three hundredths (264.43') to a point, said curve has chord bearing of S29°07'45"W and a chord length of two hundred sixty-four and forty hundredths feet (264.40');

THENCE, S62°53'52"E one and seventy-four hundredths feet (1.74') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of two thousand nine hundred and four hundredths feet (2900.04') for a length of one hundred thirteen and seventy hundredths feet (113.70'), said curve has a chord bearing of S26°15'04"W and a chord length of one hundred thirteen and seventy hundredths feet (113.70') to a point;

THENCE, S25°07'41"W three hundred seventy-three and seven hundredths feet more or less (373.07'±) along the northwesterly sideline of said Riverside Street to the most easterly corner of land now or formerly of Payem Yazdanpanah as described in a deed dated February 24, 2021 and recorded in Deed Book 37861, Page 247;

THENCE, N47°46'03"W one and seventy-one hundredths feet (1.71') along the northeasterly line of land now or formerly of said Yazdanpanah to a point;

THENCE, N24°50'12"E one hundred sixty-one and sixty-six hundredths feet (161.66') through land now or formerly of Waste Management of Maine, Inc. (Formerly Known as SCA Services of Maine, Inc.) as described in the following two deeds,

- Deed dated January 7, 1982 and recorded in Deed Book 4912, Page 73 and
- Deed dated February 4, 1993 and recorded in Deed Book 10545, Page 154 to a point;

THENCE, N24°27'08"E forty-seven and sixty-two hundredths feet (47.62') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N23°52'00"E two hundred eight and seventy-two hundredths feet (208.72') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N25°37'47"E one hundred thirty-five and eighty-two hundredths feet (135.82') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N33°28'52"E thirty-nine and eighty-nine hundredths feet (39.89') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N30°25'04"E one hundred twenty-two and twenty-nine hundredths feet (122.29') continuing through land now or formerly of said Waste Management of Maine, Inc. and through land now or formerly of Intentionally Left Blank, LLC as described in a deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 to a point;

THENCE, N29°51'39"E one hundred seventy-four and sixty-four hundredths feet (174.64') through land now or formerly of said Intentionally Left Blank, LLC, and through land now or formerly of Northern Utilities, Inc. as described in a deed dated August 9, 1971 and recorded in Deed Book 3184, Page 875 and through land now or formerly of 172 Pleasant Street, LLC as described in a deed dated January 28, 2022 and recorded in Deed Book 39135, Page 303 to a point;

THENCE, N29°33'01"E one hundred three and fifty-six hundredths feet (103.56') through land now or formerly of said 172 Pleasant Street, LLC to a point;

THENCE, N18°16'18"E ten and one hundredths feet (10.01') through land now or formerly of said 172 Pleasant Street, LLC to a point in the northwesterly sideline of said Riverside Street;

THENCE, S13°01'04"E fourteen and sixty-one hundredths feet (14.61') along the northwesterly sideline of said Riverside Street to an angle point in Riverside Street and **THE POINT OF BEGINNING.**

Meaning and intending to describe a public sidewalk and pedestrian easement, a portion of which travels through land now or formerly of Waste Management of Maine, Inc. as described in the following two deeds:

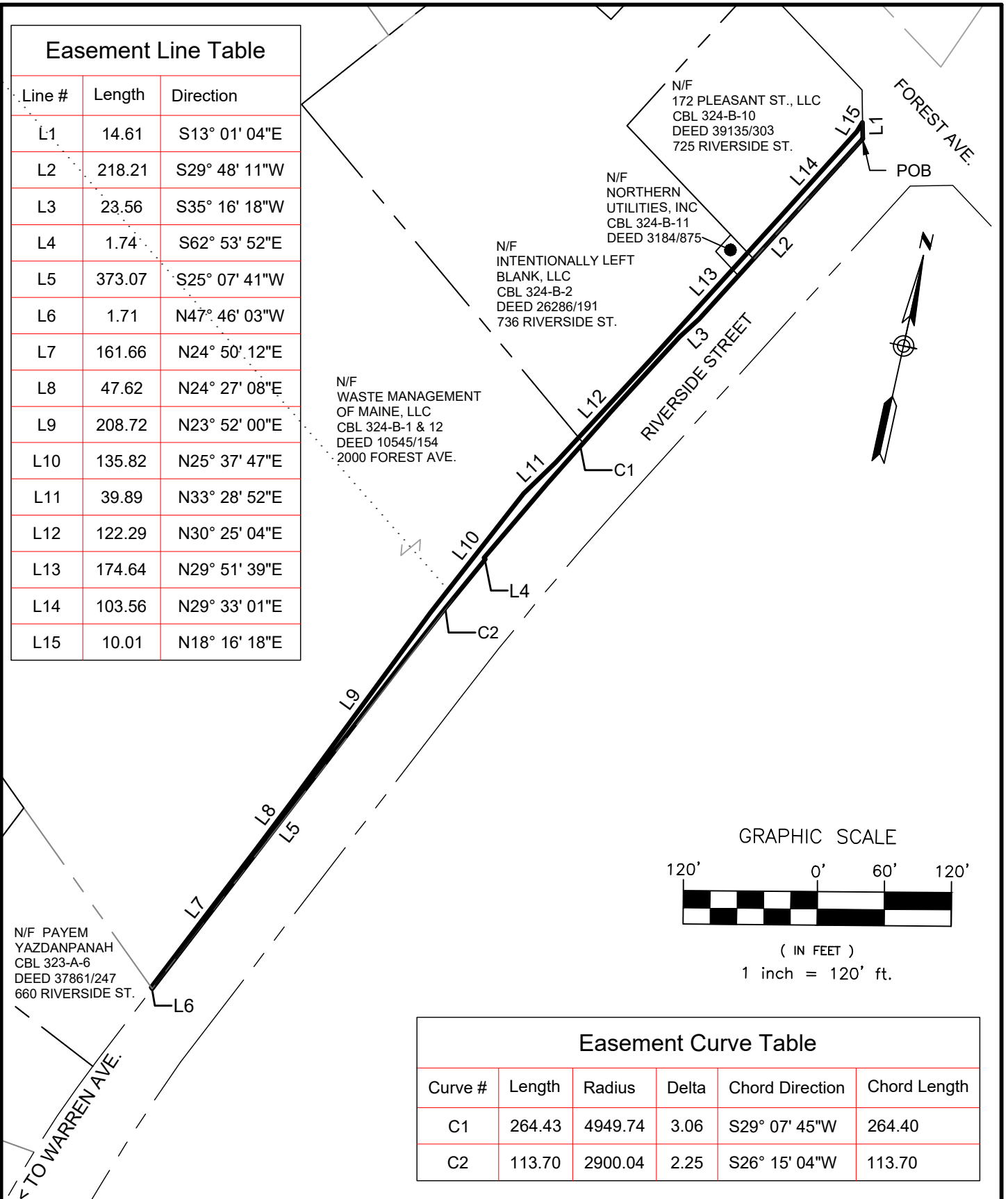
- Deed dated February 4, 1993 and recorded in Deed Book 10545, Page 154 (CCRD) and

- Deed dated January 7, 1982 and recorded in Deed Book 4912, Page 73 (CCRD).

Bearings are based on Maine State Plane Coordinate System (2 zone projection), West Zone, NAD 83 (HARN)

Easement Line Table

Line #	Length	Direction
L1	14.61	S13° 01' 04"E
L2	218.21	S29° 48' 11"W
L3	23.56	S35° 16' 18"W
L4	1.74	S62° 53' 52"E
L5	373.07	S25° 07' 41"W
L6	1.71	N47° 46' 03"W
L7	161.66	N24° 50' 12"E
L8	47.62	N24° 27' 08"E
L9	208.72	N23° 52' 00"E
L10	135.82	N25° 37' 47"E
L11	39.89	N33° 28' 52"E
L12	122.29	N30° 25' 04"E
L13	174.64	N29° 51' 39"E
L14	103.56	N29° 33' 01"E
L15	10.01	N18° 16' 18"E



Easement Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	264.43	4949.74	3.06	S29° 07' 45"W	264.40
C2	113.70	2900.04	2.25	S26° 15' 04"W	113.70



CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED PEDESTRIAN SIDEWALK EASEMENT
FOR RIVERSIDE STREET SHELTER

CIVIL 3D PROJECT: RIVERSIDE_SHELTER_SWLK_2022_DB
DRAWING: RIVERSIDESW_DESIGN.DWG.dwg

SCALE:
1" = 120'

DATE:
06/28/2022

MEMORANDUM
City Council Agenda Item

FROM: Keith Gautreau

DATE: August 29, 2022

SUBJECT: Order 72-22/23 Accepting and Appropriating a \$200,409.09 Federal Emergency Management Agency Assistance to Firefighters Grant and Appropriating \$21,040.91 as the Local Match - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 9/19/2022

Can action be taken at a later date: No Can action be taken at a later date: No. It is recommended that the City accept this award as the City has not been granted an extension for acceptance beyond the original 30 day cutoff.

Does this item involve a new contract with the City: no

PRESENTATION: Fire Chief Keith Gautreau will be presenting and Principal Financial Officer, Benjamin Bettez, will be available to answer questions.

I. SUMMARY

The City Council is asked to accept \$200,409.09 in Federal funds and appropriate a local match from the building and training general fund of \$20,040.91.

II. AGENDA DESCRIPTION

This item would accept and appropriate a \$200,409.09 Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG) program, and appropriate local match funding in the amount of \$20,040.91. This award will be used to install sprinkler systems at the Riverton and Munjoy Hill Fire Stations, a much needed investment in these buildings that would not otherwise would be funded in the current fiscal year. These funds would also be used towards a peer support training program which would enhance the newly created Mental Health Program for the Fire Department.

This item must be read on two separate days. Staff is requesting that the second reading be waived in order to meet the September 25, 2022 acceptance cutoff date, which requires seven affirmative votes. Staff also requests that this item be passed as an emergency. Seven votes are required for passage as an emergency following public comment.

III. BACKGROUND

The Fire Chief is requesting emergency passage and the second reading be waived in order to accept the funds as an extension has not been granted.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

This addresses 2022 Council Goal #4 "Seek to address the high property tax burden in Portland through passing an affordable combined school/city budget and by pursuing other revenue sources."

V. FINANCIAL IMPACT

TBD

VI. STAFF ANALYSIS AND BACKGROUND

Funds will be used to the local match, to outfit Riverton and Munjoy Hill with proper sprinkler systems. This is a shovel ready project with pre-existing water lines at both stations. Funds will be used to support our first responders / employees at the mental health level. Both benefit the city.

VII. RECOMMENDATION

Recommend emergency passage as the funds are required to be formally accepted within 30 days of receiving the award on August 22, 2022. (award letter as an attachment)

VIII. LIST ATTACHMENTS

1. FEMA Firefighters Grant Acceptance and Appropriation 9.19.2022
2. EMW-2021-FG-03292 - Award Package

Prepared by:

Keith Gautreau

Date: 08/29/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ACCEPTING AND APPROPRIATING A \$200,904 FEDERAL EMERGENCY
MANAGEMENT AGENCY ASSISTANCE TO FIREFIGHTERS GRANT AND
APPROPRIATING \$21,040.91 AS THE LOCAL MATCH**

ORDERED, that a grant in the amount of \$ \$200,409.09 from the United States Federal Emergency Management Agency (FEMA) is hereby accepted and that amount appropriated for the installation of sprinkler systems at the Riverton and Munjoy Hill Fire Stations, as well as for peer support training for the Portland firefighters, as set forth in the grant agreement attached hereto; and

BE IT FURTHER ORDERED, that \$ 20,040.91 is hereby appropriated from the Portland Fire Department operating budget over the next three fiscal years as the 10 percent in City of Portland funds match required for acceptance of the FEMA Grant; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Grant Agreement in substantially the form attached hereto and whatever other documents are necessary to effect the intent and purpose of this order; and

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and meet the FEMA acceptance deadline.

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 08/22/2022



Benjamin Bettez
PORTLAND, CITY OF
389 CONGRESS STREET
PORTLAND, ME 04101

EMW-2021-FG-03292

Dear Benjamin Bettez,

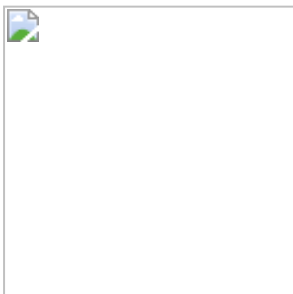
Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2021 Assistance to Firefighters Grant (AFG) Grant funding opportunity has been approved in the amount of \$200,409.09 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 10.0% of the Federal funds awarded, or \$20,040.91 for a total approved budget of \$220,450.00. Please see the FY 2021 AFG Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2021 AFG Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,



PAMELA WILLIAMS
Assistant Administrator, Grant Programs

Summary Award Memo

Program: Fiscal Year 2021 Assistance to Firefighters Grant

Recipient: PORTLAND, CITY OF

UEI-EFT: LZKCFAJXBAC8

DUNS number: 071747802

Award number: EMW-2021-FG-03292

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for Fiscal Year (FY) 2021 Assistance to Firefighters Grants funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	\$0.00
Fringe benefits	\$0.00
Travel	\$0.00
Equipment	\$0.00
Supplies	\$0.00
Contractual	\$220,450.00
Construction	\$0.00
Other	\$0.00
Indirect charges	\$0.00
Federal	\$200,409.09
Non-federal	\$20,040.91
Total	\$220,450.00
Program Income	\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2021 AFG NOFO.

Approved request details:

Wellness and fitness programs

Behavioral Health NFPA 1500 or equivalent

DESCRIPTION

Peer Support and Critical Incident Stress Management Training. Flat rate for 15 members

QUANTITY	UNIT PRICE	TOTAL
1	\$20,450.00	\$20,450.00

BUDGET CLASS

Contractual

Modify facilities

Sprinkler System(s)

DESCRIPTION

Sprinkler System Installation in a 16,000 square foot station

QUANTITY	UNIT PRICE	TOTAL
1	\$100,000.00	\$100,000.00

BUDGET CLASS

Contractual

CHANGE FROM APPLICATION

Budget class from **Construction** to **Contractual**

JUSTIFICATION

The award reflects budget line item change from Construction to Contractual.

Sprinkler System(s)

DESCRIPTION

The proposed project is the installation of the sprinkler system that would serve the entire 5,200 square foot building

QUANTITY	UNIT PRICE	TOTAL
1	\$100,000.00	\$100,000.00

BUDGET CLASS

Contractual

CHANGE FROM APPLICATION

Budget class from **Construction** to **Contractual**

JUSTIFICATION

The award reflects budget line item change from Construction to Contractual.

Equipment

Automatic Chest Compression Device (CPR)

DESCRIPTION

Lucas 3 Chest Compression devices

	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	0	\$0.00	\$0.00	Equipment

CHANGE FROM APPLICATION

Quantity from **2** to **0**
Price from **\$22,500.00** to **\$0.00**

JUSTIFICATION

This reduction is due to the score your project received at panels relative to other projects.

Personal Protective Equipment (PPE)

SCBA Spare Cylinders				
DESCRIPTION 60 minutes cylinders for HAZ- MAT				
	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	0	\$0.00	\$0.00	Equipment
CHANGE FROM APPLICATION Quantity from 20 to 0 Price from \$1,433.00 to \$0.00				
JUSTIFICATION This reduction is due to the score your project received at panels relative to other projects.				

SCBA: SCBA Unit includes: Harness/Backpack, Face Piece and 2 cylinders				
DESCRIPTION Package of SCBA, Face piece, and cylinder; Pack Tracker, Receiver and Charger , RIT Pack and SKA-Pak Plus built into price.				
	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	0	\$0.00	\$0.00	Equipment
CHANGE FROM APPLICATION Quantity from 145 to 0 Price from \$8,319.83 to \$0.00				
JUSTIFICATION This reduction is due to the score your project received at panels relative to other projects.				

Additional funding

DESCRIPTION

compressor/bottle fill station

	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	0	\$0.00	\$0.00	Equipment

CHANGE FROM APPLICATION

Quantity from 1 to 0

Price from \$101,633.00 to \$0.00

JUSTIFICATION

This reduction is due to the score your project received at panels relative to other projects.

Agreement Articles

Program: Fiscal Year 2021 Assistance to Firefighters Grant

Recipient: PORTLAND, CITY OF

UEI-EFT: LZKCFAJXBAC8

DUNS number: 071747802

Award number: EMW-2021-FG-03292

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Article 1**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency. II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002. III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

Article 2**General Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance. V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article 3	Acknowledgement of Federal Funding from DHS Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
Article 4	Activities Conducted Abroad Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
Article 5	Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.
Article 6	Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
Article 7	Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.
Article 8	Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article 9	Civil Rights Act of 1968 Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)
Article 10	Copyright Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.
Article 11	Debarment and Suspension Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
Article 12	Drug-Free Workplace Regulations Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
Article 13	Duplication of Benefits Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article 14	Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.
Article 15	Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
Article 16	False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)
Article 17	Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)
Article 18	Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.
Article 19	Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article 20	Hotel and Motel Fire Safety Act of 1990 Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a
Article 21	John S. McCain National Defense Authorization Act of Fiscal Year 2019 Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons
Article 22	Limited English Proficiency (Civil Rights Act of 1964, Title VI) Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited and additional resources on http://www.lep.gov .
Article 23	Lobbying Prohibitions Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.
Article 24	National Environmental Policy Act Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans

Article 25	Nondiscrimination in Matters Pertaining to Faith-Based Organizations It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
Article 26	Non-Supplanting Requirement Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.
Article 27	Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.
Article 28	Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
Article 29	Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
Article 30	Rehabilitation Act of 1973 Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 31	Reporting of Matters Related to Recipient Integrity and Performance General Reporting Requirements: If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.
Article 32	Reporting Subawards and Executive Compensation Reporting of first tier subawards. Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.
Article 33	Required Use of American Iron, Steel, Manufactured Products, and Construction Materials Recipients and subrecipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act §§ 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure. Recipients and subrecipients of federal financial assistance programs for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or

permanently affixed to the infrastructure project. When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. (a) When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the OMB Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described. For awards by the Federal Emergency Management Agency (FEMA), existing waivers are available and the waiver process is described at 'Buy America' Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. For awards by other DHS components, please contact the applicable DHS FAO. To see whether a particular DHS federal financial assistance program is considered an infrastructure program and thus required to include a Buy America preference, please either contact the applicable DHS FAO, or for FEMA awards, please see Programs and Definitions: Build America, Buy America Act | FEMA.gov.

Article 34 SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article 35 Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article 36 Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons. Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

Article 37	Universal Identifier and System of Award Management Requirements for System for Award Management and Unique Entity Identifier Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.
Article 38	USA PATRIOT Act of 2001 Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
Article 39	Use of DHS Seal, Logo and Flags Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
Article 40	Whistleblower Protection Act Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.
Article 41	Environmental Planning and Historic Preservation (EHP) Review DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 42**Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

Article 43**Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@fema.dhs.gov if you have any questions.

Article 44**Disposition of Equipment Acquired Under the Federal Award**

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

Article 45**Prior Approval for Modification of Approved Budget**

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h)(5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 46**Indirect Cost Rate**

2 C.F.R. section 200.210(a)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Article 47**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Article 48 EHP Compliance Review Required

Under the Modification to a Facility, Equipment, or a component in the Wellness and Fitness Activity, this award includes work, such as ground disturbance, that triggers an EHP compliance review. The recipient is prohibited from committing, obligating, expending, or drawing down FY21 Assistance to Firefighters Grant funds in support of the Modification to Facility, Equipment or a component in the Wellness and Fitness Activity that requires the EHP compliance review, with a limited exception for any approved costs associated with the preparation, conducting, and completion of required EHP reviews. See the FY21 Assistance to Firefighters Grant NOFO for further information on EHP requirements and other applicable program guidance, including FEMA Information Bulletin No. 404. The recipient is required to obtain the required DHS/FEMA EHP compliance approval for this project pursuant to the FY21 Assistance to Firefighters Grant NOFO prior to commencing work for this project. DHS/FEMA will notify you when the EHP compliance review is complete, and work may begin. If the recipient requests a payment for one of the activities requiring EHP compliance review, FEMA may not make a payment for that work while the EHP compliance review is still pending. If FEMA discovers that work has been commenced under one of those activities prematurely, FEMA may disallow costs incurred prior to completion of the EHP compliance review and the receipt of DHS/FEMA approval to begin the work. Please contact your DHS/FEMA AFG Help Desk at 1-866-274-0960 or FireGrants@fema.dhs.gov to receive specific guidance regarding EHP compliance. If you have questions about this term and condition or believe it was placed in error, please contact the relevant Preparedness Officer.

Obligating document

1. Agreement No. EMW-2021-FG-03292	2. Amendment No. N/A	3. Recipient No. 016000032	4. Type of Action AWARD	5. Control No. WX00671N2022T		
6. Recipient Name and Address PORTLAND, CITY OF 389 CONGRESS ST PORTLAND, ME 04101		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Benjamin Bettez		9a. Phone No. 2078748400	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 08/22/2022	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 08/29/2022 to 08/28/2024 Budget Period 08/29/2022 to 08/28/2024		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2022-F1-GB01 - P410-xxxx-4101-D	\$0.00	\$200,409.09	\$200,409.09	\$20,040.91
Totals			\$0.00	\$200,409.09	\$200,409.09	\$20,040.91
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE
PAMELA WILLIAMS, Assistant Administrator, Grant Programs	08/22/2022

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: August 29, 2022

SUBJECT: Order 73-22/23 Accepting and Appropriating a \$3,000,000 Grant from the United States Environmental Protection Agency for the City's Brownfield Revolving Loan Program - Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/19/2022

Final Action 10/3/2022

Can action be taken at a later date: No The USEPA would like the City to start using these grant funds when they become available on October 1, 2022.

Does this item involve a new contract with the City: Yes; Corporation Counsel has reviewed and approved the standard USEPA Agreement.

PRESENTATION: Mary Davis will be present to answer questions.

I. SUMMARY

The City has been approved for a \$3,000,000 grant from the EPA for Brownfields cleanup to recapitalize Portland's Brownfields Revolving Loan Fund (RLF).

II. AGENDA DESCRIPTION

This would accept and appropriate \$3,000,000 in U.S. Environmental Protection Agency (EPA) Brownfields Revolving Loan Fund (RLF) grant funds. These grant funds will be used to recapitalize the City's Brownfields RLF, allowing the provision of greater assistance for remediation of both public and privately-owned Brownfields sites in Portland. According to the EPA, "A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

The City of Portland submitted a Brownfield Grant application to the EPA on March 17, 2022, seeking \$3,850,000 in Brownfields Supplemental Funding to recapitalize the City's Brownfields RLF. The City received official notice from the EPA on July 21, 2022, that it was successful with the EPA awarding a \$3,000,000 Brownfield grant. Use of the grant funds can begin in early October.

Since the original Brownfields RLF grant of \$800,000 was awarded to the City in 2016, Portland has applied for and received another \$500,000 grant award, followed by another \$480,850 grant award. With the \$3,000,000 in additional grant funds award, this brings the total to date as \$4,780,850. To date, these funds have been awarded through Portland Development Corporation approved loans and subgrants to the following projects: Children's Odyssey School redevelopment of the former Reed School, Children's Museum & Theatre of Maine, Thompson's Point Redevelopment, Boyd Street Housing/PHA, Front Street Housing/PHA, and, most recently, Youth & Family Outreach/PHA development at 337 Cumberland Avenue.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is that more Portland projects needing Brownfields cleanup funds for property redevelopment will be able apply for assistance via loans to for-profits and loans and grants to non-profits.

V. FINANCIAL IMPACT

There will be no direct financial impact on the City. An indirect and positive financial impact will be contaminated sites being remediated, redeveloped, and put back on the tax rolls, providing increased revenue and new jobs in the City.

VI. STAFF ANALYSIS AND BACKGROUND

There are brownfields sites throughout the Portland Peninsula and elsewhere in the City. The benefit to having available Brownfields RLF cleanup funds is to help mitigate the additional cost of redeveloping contaminated sites. Clean sites will yield redevelopment and new revenue for the City, as well as jobs.

VII. RECOMMENDATION

The Housing and Economic Development staff recommends that the City Council approve and appropriate the \$3,000,000 grant from EPA for recapitalizing the City's Brownfields Revolving Loan Fund.

VIII. LIST ATTACHMENTS

1. 7-21-2022 USEPA Notice of Award of \$3 Million

Prepared by:

Mary Davis, Division Director

Date: 08/29/2022

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		GRANT NUMBER (FAIN): 00A00903 MODIFICATION NUMBER: 0 PROGRAM CODE: 4B		DATE OF AWARD 07/21/2022
			TYPE OF ACTION New		MAILING DATE 07/26/2022
			PAYMENT METHOD: ASAP		ACH# 10061
RECIPIENT TYPE: Municipal			Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov		
RECIPIENT: Portland City of 389 Congress Street Portland, ME 04101 EIN: 01-6000032			PAYEE: City of Portland 389 Congress Street Portland, ME 04101		
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST	
Charles Springer 6 Ashley Drive Scarborough, ME 04074 Email: cspringer@trccompanies.com Phone: 207-274-2615		James Byrne 5 Post Office Square Boston, MA 02109 Email: Byrne.James@epa.gov Phone: 617-918-1389		Diane Culhane Grants Management Branch , MGM 05-5 5 Post Office Square Boston, MA 02109 Email: Culhane.Diane@epa.gov Phone: 617-918-1975	
PROJECT TITLE AND DESCRIPTION City of Portland's Brownfields RLF Program See Attachment 1 for project description.					
BUDGET PERIOD 10/01/2022 - 09/30/2027		PROJECT PERIOD 10/01/2022 - 09/30/2027		TOTAL BUDGET PERIOD COST \$3,000,000.00	
				TOTAL PROJECT PERIOD COST \$3,000,000.00	
NOTICE OF AWARD Based on your Application dated 07/08/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$3,000,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$3,000,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS		
U.S. EPA, Region 1 , EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912			U.S. EPA, Region 1, EPA New England R1 - Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY					
Digitally signed and applied by EPA Award Official Arthur Johnson - Director of MSD Fred Weeks - Deputy Director Mission Support Division					DATE 07/21/2022

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$3,000,000	\$3,000,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$3,000,000	\$3,000,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii) & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	22010CG004	22	E4SD	0120AG7	000D79X89	4114	-	-	\$3,000,000
									\$3,000,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$5,000
4. Equipment	\$0
5. Supplies	\$500
6. Contractual	\$120,000
7. Construction	\$0
8. Other	\$2,874,500
9. Total Direct Charges	\$3,000,000
10. Indirect Costs: 0.00 % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$3,000,000
12. Total Approved Assistance Amount	\$3,000,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$3,000,000
15. Total EPA Amount Awarded To Date	\$3,000,000

Attachment 1 - Project Description

Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This agreement will provide funding under the Infrastructure Investment and Jobs Act for the City of Portland, Maine to re-capitalize a revolving loan fund as authorized by CERCLA 104(k)(5)(A)(ii) in Portland, Maine. This agreement will provide funding for the recipient to re-capitalize a revolving loan fund from which to make loans and subgrants to clean up brownfield site(s) and conduct other necessary activities to prudently manage the RLF. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to oversee the environmental site activities and will create a community involvement plan and administrative record for each site that is remediated. The recipient will report on program income, interim progress, and final accomplishments by completing and submitting relevant portions of the Property Profile Form and Brownfields RLF Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). The recipient will issue approximately 4 loans and 4 subgrants to remediate 8 brownfield site(s); anticipates holding 8 community meetings, finalizing approximately 8 Analysis of Brownfield Cleanup Alternatives, and submitting 20 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in the City of Portland, Maine. Site-specific and non-site-specific activities included: Non-site-specific tasks include, marketing the program to cities, towns, developers, and non-profits, conducting public outreach, and preparing outreach materials relevant to the City of Portland's RLF Program. Site-specific tasks include verifying site and borrower/subgrant eligibility, sub-grant agreements, conducting site-specific public relations activities, and consulting with and enrolling sites in the Maine Department of Environmental Protection's voluntary cleanup program. The City of Portland will oversee completion of site remediation and preparation of cleanup completion documentation, including implementation of institutional controls.

Administrative Conditions

NATIONAL ADMINISTRATIVE TERMS AND CONDITIONS

The General Terms and Conditions of this agreement are updated in accordance with the link below. However, these updated conditions apply solely to the funds added with this amendment and any previously awarded funds not yet disbursed by the recipient as of the award date of this amendment. The General Terms and Conditions cited in the original award or prior funded amendments remain in effect for funds disbursed by the recipient prior to the award date of this amendment.

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2021-or-later>.

These terms and conditions are binding for disbursements and are in addition to or modify the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov
- MBE/WBE reports (EPA Form 5700-52A): r1_mbewbereport@epa.gov
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Culhane.Diane@epa.gov, Byrne.James@epa.gov
- Workplan revisions, equipment lists, programmatic reports and deliverables: Byrne.James@epa.gov

Programmatic Conditions

FY22 Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions

Infrastructure Investment and Jobs Act Funds

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k), agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14.

I. GENERAL FEDERAL REQUIREMENTS

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are *Subawards* as that term is defined at 2 CFR § 200.1. The term subaward also encompasses “grants” made by the RLF recipient under CERCLA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to “loans” to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by “borrowers”. The T&Cs refer to “subgrants” to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization (“subgrantees”) under terms that do not require repayment.

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR). These T&Cs are effective for activities occurring after the date of award of this cooperative agreement.
2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.

If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the EPA Project Officer to ensure the protectiveness of human health and the environment.

4. A term and condition or other legally binding provision shall be included in all loan and subgrant agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.

6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.

7. Refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917).

8. This is an interim term and condition for management of funding provided under the IIJA. EPA's Award Official or Grants Management Officer may amend this agreement to specify additional requirements applicable to IIJA funding as information becomes available. In the interim, the recipient agrees to have financial management and

programmatic management systems in place to:

- a. Track and report on expenditures of IIJA funds.
- b. Track and report outputs and outcomes achieved with IIJA funds.

9. RLF supplemental funding is generally awarded on an annual basis to high-performing CARs who meet specific criteria. The CAR can find additional information on the timing and procedures for supplemental funding requests on the EPA Brownfields Program website (<https://www.epa.gov/brownfields/brownfields-revolving-loan-fund-rlf-grants>).

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. All brownfield sites that will be addressed using RLF funds (EPA funds and/or program income) must be located within the geographic area described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, or has defenses to CERCLA liability.

2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

i. the State determines there is "no viable responsible party" for the site;

ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and

iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. the identity of the State program official contacted;

ii. the State official's telephone number;

iii. the date of the contact; and

iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated

brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations.

B. Borrower and Subgrantee Eligibility

1. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.
2. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantees include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant. The subgrantee must consult with the CAR, who in turn must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site during the period of performance of the subgrant. Once the subgrant ends, the statutory ownership requirement is extinguished. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.
4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 50%, provided that the total amount of the

principal forgiven for that loan shall not exceed \$500,000 of total award funds (EPA funds). Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site. The discounted amount in a discounted loan shall apply towards subgrants in the loan to subgrant ratio described in [Section IV.B.3.](#) (i.e., the discounted amount cannot apply towards the 50% of EPA funds that must be spent on loans and associated eligible programmatic expenses). The CAR may request a waiver of the discounted amount, discounted percentage, or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process.

6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. In addition, the borrower or subgrantee may not be affiliated with a potentially liable person as described in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii). The CAR may rely on its own investigation which can include an opinion from the borrower's or subgrantee's counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.

7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.

9. A borrower or subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.

10. An entity that is currently suspended, debarred, or otherwise declared ineligible

cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subgrant must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

- a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.
- b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

- c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).
- d. Taking “reasonable steps” with respect to hazardous substance releases by

stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.

e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.

f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.

g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).

h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient

Progress Conditions in the General Terms and Conditions. EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 2 years from the date of award and on an annual basis thereafter. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress at 2 years and annually thereafter is indicated by the CAR having made a loan(s) and/or grant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

2. Partial termination can occur if a CAR fails to complete the initial round of lending in the time schedule provided in the cooperative agreement. In this situation, as provided at 2 CFR §§ 200.340(a)(1) and (5) or 2 CFR § 200.340(a)(3), as appropriate, the agreement may be partially terminated and the following actions may occur:

- a. Unused cooperative agreement funds will be deobligated by EPA;
- b. The cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement;
- c. EPA may determine whether sufficient funds remain to permit effective RLF operation; or
- d. EPA may terminate the agreement and recover the federal share of its assets if it determines that the purpose of the cooperative agreement cannot be met.

B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.

- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.
- f. Monitoring the use of program income after the cooperative agreement project period ends.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- a. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
 - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
 - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.
 - iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)
 - iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.
- b. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.

- c. Reviewing the qualifications of key personnel (EPA does not have the authority to select employees or contractors, including consultants, employed by the award CAR or subrecipients receiving pass-through awards).
- d. Reviewing all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – f. in Section III.B.1 in writing.

2. Effects of EPA's substantial involvement include:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.
- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.
- c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

- 1. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to provide oversight on site cleanup activities vs. community engagement) and to allow the ability for work be performed concurrently in multiple target areas and/or at sites.
- 2. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.

3. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff, to provide technical assistance, advice, and expertise to the CAR while the borrower or subgrantee and their cleanup contractor direct the cleanup at a given site.

4. The CAR shall act as or appoint a qualified “fund manager” to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and [EPA’s Subaward Policy](#). Additional information is available in EPA’s [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

5. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.

6. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.

7. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.331 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA’s National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.

8. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA’s National Term and Condition for Subawards.
 - a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.332\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.332(a)(4). EPA has developed an optional template for subaward agreements

that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.

b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.

c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.332\(a\)\(1\)](#). The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*System for Award Management and Universal Identifier Requirements*."

d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*Reporting Subawards and Executive Compensation*."

e. In addition to other prudent lending practices described, in [Section VI](#), below, pass-through entities (CARs) must comply with EPA's General T&Cs (Establishing and Managing Subawards).

9. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.332\(d\)](#), including the following information as part of the CAR's quarterly performance reporting:

- a. Summaries of results of reviews of financial and programmatic reports;
- b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;
- c. Environmental results the borrower or subgrantee achieved;

- d. Summaries of audit findings and related pass-through entity management decisions, if any; and
- e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.332\(e\)](#), [2 CFR § 200.208](#), [Specific conditions](#), and the [2 CFR § 200.339, Remedies for Noncompliance](#).

10. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable state cybersecurity requirements.

- a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service

Agreement between the subrecipient and EPA.

11. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

2. The CAR must submit progress reports on a quarterly basis in ACRES. Quarterly progress reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting

quarter that may affect the project schedule.

- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
- d. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A list of the loans and/or subgrants during the reporting quarter.
- f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.
- g. For local governments that are using RLF funding for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see [Section III.E.](#) below).

3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:

- a. Summaries of results of reviews of borrower financial and programmatic reports.
- b. Environmental results achieved by the borrower.

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. ACRES Data Submission

1. Property Profile Form: The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES.

2. Brownfields RLF Form: Additionally, the CAR must also report program income details on the Brownfields RLF Form, which is located on the CAR's RLF cooperative agreement homepage in ACRES.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329 *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email, unless the EPA Project Officer agrees to accept a paper copy of the report. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

- a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
- b. reasons why anticipated outputs/outcomes were not met; and
- c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V](#) of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
- d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- e. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan (previously known as a Community Relations Plan) which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
- f. Establishing an Administrative Record for each site.
- g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial

Assistance available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

- h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. [The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV](#), *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees*.]
 - k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
 - l. Borrower and subgrantee progress reporting to the CAR.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.
3. At least 50% of the total award amount (i.e., funds EPA awards directly to the CAR) must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. Note: cleanup subgrants are limited to \$500,000 of total award funds (EPA funds) per site. The CAR may request a waiver of the \$500,000 subgrant limit or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process. However, a waiver is not required for either requirement when only program income is used, since subgrants that are funded with 100% program income are not limited in amount and do not contribute to this 50% limitation. A waiver is also not required for the discounted amount of a loan if the loan is funded with 100% program income.

4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(C):

- a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
- b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
- c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
- d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

5. **Local Governments Only.** If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

6. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

7. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the direct EPA funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR

under this agreement is **\$150,000**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Note that additional administrative costs may be allowed when using program income received under this cooperative agreement (see Section IV.D.2.). Subgrantees and borrowers may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]

The term “administrative costs” does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. Design and performance of a response action; or
- c. Monitoring of a natural resource.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
 - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
 - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
 - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
 - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
 - v. Financial reporting under 2 CFR § 200.328;
 - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
 - vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient’s final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative

costs.

- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.
- c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:
 - i. Salaries, benefits, and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel), but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
- d. Eligible direct costs for loan administration include expenses for:
 - i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - ii. Maintaining and operating financial management and personnel systems;
 - iii. Preparing payment requests and handling payments; and
 - iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.
- e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:

- a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
- c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);
- d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
- e. To pay for a penalty or fine;
- f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
- g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant or loan is potentially liable under CERCLA § 107;
- h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
- i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

1. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.8, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g., [Section IV.B.3](#) regarding use of 50% of the funds for loans). Accordingly, program income may be used for administrative costs, including any applicable indirect costs, provided that the total amount of funds used for administrative costs does not exceed 5% of the sum of direct EPA funding and program income the CAR generates. CARs that intend to use program income for cost share for other Brownfield Grants under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share for other Brownfield Grants. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

3. In accordance with 2 CFR § 1500.8(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.

4. In accordance with Section § 104(d)(3)(D), when a CAR transitions to a §104(k) cooperative agreement, any program income (e.g., fees, interest or principal repayments) generated prior to transition will be added to the §104(k) agreement and must be used in a manner consistent with Section § 104(k)(3) and with the Terms and Conditions, contained herein.

5. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source

documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by EPA's Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.

6. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.

7. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in [Section VII.A., Methods of Disbursement](#)) and program income (as defined earlier) in an interest-bearing account unique to this cooperative agreement [i.e., separate from post-closeout program income governed under a Closeout Agreement (COA) since separate reporting of funds is required under a COA].

2. Advances of EPA funds (and other Federal funds as well) must also be placed in interest bearing accounts as provided in 2 CFR § 200.305(b)(8) for CARs other than states which are subject to applicable Treasury regulations. Advances of EPA funds must be maintained in an account that is separate from the program income in the RLF. While interest earned by CARs on advances of EPA funds should be minimal given the regulatory and T&C requirements for prompt disbursement of drawn down funds, any interest the CAR does earn on advanced Federal funds is subject to 2 CFR § 200.305(b)(9). This regulation generally requires that interest on advanced Federal funds in excess of \$500 must be transmitted annually to the U.S. Department of Health and Human Services.

3. Interest earned on program income is considered additional program income.

F. Closeout Agreement and Use of Post Cooperative Agreement (i.e., Post-Closeout) Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the cooperative agreement, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the cooperative agreement period of performance (post-closeout program income) in accordance with terms of a COA. At the end of the cooperative agreement period of performance, the CAR shall comply with the attached COA. This award is contingent upon the CAR signing and returning the attached COA to the EPA Project Officer no later than 30 days of award. The COA goes into effect for this assistance agreement number the day after the cooperative agreement period of performance ends unless otherwise designated by EPA's Award Official or Grants Management Officer. The period of performance is identified as the project period in the Notice of Award.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with EPA's Project Officer to update to the latest COA template. Otherwise, the Project Officer and CAR will negotiate a mutually acceptable disposition of unused program income, and an Authorized EPA Official (e.g., Award Official or Grants Management Officer) will modify the COA accordingly.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR, or borrower/subgrantee with CAR concurrence, shall prepare an ABCA, or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts

caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis and documented in a decision document upon completion of the public comment period. The CAR, or borrower/subgrantee with CAR concurrence, must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

All QAPPs being submitted for review shall be emailed to R1QAPPs@epa.gov and the EPA Project Officer (see page 1 of the assistance agreement).

The QAPP should be prepared in accordance with [EPA QAR-5: EPA Requirements for Quality Assurance Project Plans](#). No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

2. Competency of Organizations Generating Environmental Measurement Data: In

accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Public Involvement and Community Outreach in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Involvement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.

2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If a sign is developed as part of a project funded by this cooperative

agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.

3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the

accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

5. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

D. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the CAR's COA.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subgrantee is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet longterm brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements sufficient to recover, as a minimum, the principal amount of the loan less any repayment discounts; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible costs until an RLF cooperative agreement has been submitted to and approved by the EPA Project Officer or program manager. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

- a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.
- b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
- c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
- e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents

1. All loans and subgrants must include the information required by 2 CFR § 200.332(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.

2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
 - a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See [Section I.A.2.](#) and [Section II.](#))
 - b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrantees shall document how funds are used.
 - d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.334](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records, so that the CAR can maintain the records, if necessary, for complying with the CAR's obligations under [2 CFR § 200.334](#). CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in the attached COA, records related to the COA must be retained by the CAR for the duration of the COA and retained for a period of three (3) years following termination or discontinuation of the COA.
 - e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental noncompliance at the site subject to the loan or subgrant.
 - f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.
 - g. Borrowers or subgrantees shall conduct cleanup activities as required by the

CAR.

- h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.327, as applicable.
- i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.
- k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](http://www.epa.gov/grants) at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

- 1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for:
 - a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and
 - b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subaward to a subaward recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- a. The affected party,
- b. Any member of his immediate family,
- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subrecipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply:
 "payment" is

EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into an agreement with a borrower or a subgrantee; "disbursement" is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in [2 CFR § 200.305\(b\)\(1\)](#). "Closeout" refers to the process EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed and to establish a COA to govern the use of program income.

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's or subgrantee's incurred costs.

- a. An 'actual expense' disbursement approach requires the borrower or subgrantee to submit documentation of the borrower's or subgrantee's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
- b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee's payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.
- c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:

- a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and
- b. Completion of all cleanup activities funded completely, or in part, by direct EPA funding from the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities

funded by the cooperative agreement are complete.

3. The CAR must follow the attached COA for any retained and future program income generated after closeout. Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in the attached COA.

C. Compliance with Closeout Schedule

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

D. Final Requirements

1. The CAR must submit the following documentation:

- a. The Final Technical Cooperative Agreement Report as described in [Section III.F.](#) of these Terms and Conditions.
- b. Administrative and Financial Reports as described in the General Terms and Conditions of this agreement.

2. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.339 through 200.342

and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:

a. The CAR shall:

- i. Document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
- ii. Maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
- iii. Ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k), CERCLA § 104(g) relating to compliance with the Davis-Bacon Act, and applicable federal and state laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower. (See [Section VII.A., Methods of Disbursement](#)). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the cooperative agreement as required by 2 CFR § 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR § 200.305.

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

- i. The recipient does not retain the funds;
- ii. The recipient does not have access to the escrow funds on demand;

iii. The funds remain in escrow unless there is a default of a guaranteed loan;

iv. The organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and

v. There must be an agreement with the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.

d. Federal Obligation to the Loan Guarantee Program - Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrantee.

e. Repayment of Guaranteed Loans - Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:

i. Guarantee additional loans under the terms and conditions of the agreement; or

ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites' related activities authorized by the terms of the cooperative agreement or, if applicable, a COA.