

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

MARCH 16, CITY COUNCIL AGENDA

The Portland City Council will hold the Regular City Council Meeting at 5:30 p.m. in City Council Chambers, City Hall. The Honorable Kate Snyder, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the March 2, 2020 Draft City Council Minutes.

APPOINTMENTS:

Order 153-19/20 Appointing Wardens and Ward Clerks - Sponsored by Katherine L. Jones, City Clerk

The following people shall be appointed as Wardens and Ward Clerks from June 1, 2020 to May 31, 2021.

Warden	Ward Clerk	District/Precinct
Denise Shames	Anne Rand	1-1
Carol Morrisette	Frank Spring	1-2
Fred O'Keefe	Kimberly McIssac	1-3
Dennis Martin	Heather Tanguay	2-1
Susan Litchman	Roseanne Graef	2-2
Sarah Crampton	Christine Brown	3-1
Dale Kinney	Robert Smith	3-2
Alishia Grinnell	Melissa Newsome	4-1
John Coyne	Timothy Whitney	4-2
Barbara Harvey	Virginia Fisher	5-1
George Smyth	Edmond Szalajeski	5-2

Five affirmative votes are required for passage after public comment.

Order 154-19/20 Appointing Election Clerks for 2020 to 2022 - Sponsored by Katherine L. Jones, City Clerk

This order appoints the Election Clerks for a term beginning on May 1, 2020 and expiring on April 30, 2022. Please see the order for the list of names.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 155-19/20 Setting Time for Opening of Polls on June 9, 2020 Re: State and Local Elections - Sponsored by Katherine L. Jones, City Clerk

Pursuant to 21-A M.R.S. sec. 626, the hours of poll opening must be set by the municipal officers. This is done for every election. The polls open at 7:00 a.m. and close at 8:00 p.m. Notices are posted in each district and at City Hall.

Order 156-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Justin Antonio Neves - Sponsored by Jon P. Jennings, City Manager

This order authorizes the City Council to approve the transfer of \$675.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Justin Antonio Neves.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

Order 157-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Abdifatah Shariff Ali - Sponsored by Jon P. Jennings, City Manager

This order authorizes the City Council to approve the transfer of \$2,540.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Abdifatah Shariff Ali.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

Order 158-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Rebecca Hassett - Sponsored by Jon P. Jennings, City Manager

This order authorizes the City Council to approve the transfer of \$620.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Rebecca Hassett.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

Order 159-19/20 Declaring July 24 & 25, 2020 the 18th Annual Greater Portland Festival of Nations - Sponsored by Jon P. Jennings, City Manager

The Festival of Nations is expanding for the Bicentennial Summer and will be held Friday and Saturday, July 24 & 25, 2020, at Deering Oaks Park.

Additional details about the event are included in the agenda backup.

Order 160-19/20 Declaring July 16 to September 3, 2020 the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival - Sponsored by Jon P. Jennings, City Manager

This order declares the Friends of Eastern Promenade 2020 Summer Community Concert Series as a weekly festival. The event will be held at Fort Allen Park every Thursday evening from July 16 to September 3, 2020, from 5:00 p.m. to 9:00 p.m.

Additional details about the event are included in the agenda backup.

Order 161-19/20 Declaring July 14, 2020 to August 11, 2020 the LoveLincolnPark Summer Concert Series Festival - Sponsored by Jon P. Jennings, City Manager

This order declares Tuesday evenings, from July 14, 2020 to August 11, 2020, the LoveLincolnPark Summer Concert Series festival, organized by the Friends of Lincoln Park.

Additional details about the event are included in the agenda backup.

Order 162-19/20 Declaring June 28, 2020 the SummerSide Music & Arts Festival - Sponsored by Jon P. Jennings, City Manager

This order declares Sunday, June 28, 2020 the SummerSide Music & Arts Festival, to be held in Deering Oaks Park.

Additional details about the event are included in the agenda backup.

Order 163-19/20 Declaring June 21, 2020 the Make Music Portland Festival Day - Sponsored by Jon P. Jennings, City Manager

This order declares Sunday, June 21, 2020, as Make Music Portland Festival Day, with bands and musicians playing music all over the city, including in Monument Square, Congress Square Park, Deering Oaks Park, Post Office Park, Lobsterman Park, Lincoln Park, Longfellow Square, and Fort Allen Park, among other parks and squares.

Additional details about the event are included in the agenda backup.

Five affirmative votes are required for passage of the Consent Calendar, after public comment.

LICENSES:

Order 164-19/20 Granting Municipal Officers' Approval of J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street - Sponsored by Jon P. Jennings, City Manager

J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Application was filed on 11/25/2019. New City application. Applicant has a pending Class XI FSE license,

Five affirmative votes are required for passage after public comment.

Order 165-19/20 Granting Municipal Officers' Approval of Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street - Sponsored by Jon P. Jennings, City Manager

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Application was filed on 2/19/2020. Applicant currently holds a Class XI FSE license with Entertainment with Dance. Portland City Code Chapter 4, sec. 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

RESOLUTIONS:

Resolution 11-19/20 Calling on the Legislature to Pass LD 433, the Maine Equal Rights Amendment - Sponsored by Mayor Kate Snyder

This resolution calls on the Maine Legislature to pass LD 433, the Maine Equal Rights Amendment, which reads simply, "Equality of rights under the law may not be denied or abridged by the State or any political subdivision of the State based on the sex of an individual. The Legislature has the power to enforce this section by appropriate legislation."

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 148-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Marginal Way Improvements - Sponsored by Jon P. Jennings, City Manager

The Marginal Way improvement project, for paving Marginal Way between 20 Marginal Way near Forest Avenue to Franklin Street, is part of the Municipal Partnership Initiative (MPI) Program. The City administers the project and receives 50% funding from the state Metropolitan Planning Organization (MPO). By signing the partnership agreement, the City is enabled to proceed with the project, obligating its MPO, Portland Area Comprehensive Transportation System (PACTS), to pay for 50% of the estimated project cost, or \$212,752.00. The local share of the cost of this project is funded through the Fiscal Year 2021 Capital Improvement Plan.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

Order 149-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Paving Washington Avenue from Presumpscot to Veranda - Sponsored by Jon P. Jennings, City Manager

The Washington Avenue Improvement Project, which includes paving from Presumpscot to Veranda Streets, is part of the Municipal Partnership Initiative (MPI) Program. The City administers the project and receives funding from the state Metropolitan Planning Organization (MPO). By signing the partnership agreement, the City is enabled to proceed with the project, obligating its MPO, Portland Area Comprehensive Transportation System (PACTS), to pay for for 29% of the estimated project cost, or \$97,248.00, which represent the remaining balance available to PACTS for funding the MPI program in City of Portland. The total City cost of this paving work, estimated to be \$239,672.00, would be paid from a Fiscal Year 2021 Capital Improvement Plan account established for this project.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

Order 150-19/20 Approving the Agreement between Portland and the Maine Department of Transportation Re: Franklin Street Storm Drain at I-295 Exit 7 - Sponsored by Jon P. Jennings, City Manager

This order approves the agreement to replace a large culvert from Back Cove to the intersection of Franklin Street and Marginal Way. The state-funded culvert replacement is part of a larger initiative to design/build the Back Cove South Storage Facility (BCSSF). The culvert will serve as a separated storm drain for future Franklin Street corridor work. This dedicated storm drain will both reduce the volume of water collected in the Combined Sewer Overflow storage facility and reduce flooding in the Marginal Way and Somerset neighborhoods.

This item must be read on two separate days. It was given a first reading March 2, 2020. Five affirmative votes are required for passage after public comment.

Order 151-19/20 Approving the Modification to Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System, and the Maine Department of Transportation and Two-Party Agreement Re: Washington Avenue from Regan to Riverside - Sponsored by Jon P. Jennings, City Manager

This project requires a two-party agreement between The Maine Department of Transportation (MaineDOT) and the City of Portland and also a modification of a three-party agreement between Portland Area Comprehensive Transportation System (PACTS), MaineDOT, and the City of Portland.

Both agreements obligate MaineDOT to mill and fill Washington Avenue, adjust the City's sanitary sewer manhole frames and covers, as necessary, update and/or install new pedestrian curb ramps to meet Americans with Disabilities Act requirements, and all appurtenances when MaineDOT's contractor paves Washington Avenue between Regan Lane and Riverside Street.

The modification increases the total project estimate by \$192,613.00, and the municipal share by approximately \$48,000.00, due to higher bid prices since it was approved by Order 16-17/18 in August 2017, when it was originally estimated, and because of slightly longer paving limits. These agreements obligate the City to pay MaineDOT, through PACTS for 25% of the work as its municipal share, or \$164,094.00, and an additional \$22,500.00 for manhole adjustments from a water resources fund. The project is funded by the Fiscal Year 2021 Capital Improvement Plan.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

Order 152-19/20 Amendment to Portland City Code Chapter 15 Re: Sound Mitigation Review Fee - Sponsored by the Health and Human Services & Public Safety Committee, Councilor Belinda S. Ray, Chair

The Health and Human Services & Public Safety Committee met on February 11, 2020 and voted 3 to 0 to recommend passage to the full Council.

This order would update the sound ordinance to include a \$150 fee to cover the cost of reviewing Sound Mitigation Plans.

This item must be read on two separate days. This item was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

AMENDMENTS:

Order 166-19/20 Amendment to Portland City Code Chapters 10, 11, 15 and 35 Re: Marijuana Business Licenses - Sponsored by the Health and Human Service and Public Safety Committee, Councilor Belinda Ray, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair

The Health and Human Services & Public Safety Committee and the Economic Development Committee met on February 25, 2020 and voted 6-0 to recommend passage to the full Council.

This order adds Chapter 35 Marijuana Licensing to the City Code and amends Chapter 11 to include marijuana food processing establishments and Chapter 15 to include the fees for new licenses. The order also adds sprinkler and gas detection requirements for marijuana extraction facilities to the fire code in Chapter 10.

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

Order 167-19/20 Amendment to Chapter 5 Re: Restricting Off-Leash Dogs in Baxter Woods - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair

The Sustainability and Transportation Committee voted 3-0 in support of the recommendation on February 26, 2020.

The Parks, Recreation, and Facilities Department is recommending that the City Council amend Chapter 5 of the City's Code of Ordinances in order to place new restrictions on the presence of off-leash dogs in Baxter Woods. Currently, Chapter 5 of the City's Code permits dogs to be off-leash in Baxter Woods so long as they are under voice control. The proposal seeks to impose limited restrictions on the presence of off-leash dogs in Baxter Woods in order to better fulfill the City's charge to maintain Baxter Woods as a bird sanctuary and to address public safety concerns.

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

Order 168-19/20 Amendment to Portland City Code Chapter 12 Re: Repeal of Single-use Carry-out Bag Ordinance - Sponsored by the Traffic and Sustainability Committee, Councilor Spencer Thibodeau, Chair

The Sustainability and Transportation Committee met on February 26, 2020 and voted 2-1 to recommend this item for passage by the City Council.

In July, 2019, Governor Janet Mills signed a new state law banning the distribution of plastic shopping bags in Maine. The new law has a provision that preempts local ordinances regulating plastic bags and gives the State of Maine the sole authority to do so. Corporation Counsel recommends the City Council repeal Portland's bag ordinance because the State's action nullifies it.

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

6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

PLEDGE OF ALLEGIANCE:

Minutes are draft until approved by the City Council at the next regular City Council Meeting.

ROLL CALL:

Mayor Snyder called the meeting to order at 5:30 P.M. (All Councilors Present)

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the February 19, 2020 Draft City Council Minutes.

Motion was made by Councilor Ray and seconded by Councilor Ali for approval of the February 19, 2020 City Council Minutes. Passage 9-0.

APPOINTMENTS:

Order 138-19/20 Appointing Constables for the Departments of Parks, Recreation and Facilities and Permitting and Inspections - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 9-0.

CONSENT ITEMS:

Order 139-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Kiko Jones - Sponsored by Jon P. Jennings, City Manager

Order 140-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Obria Turner - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Duson for passage of the Consent Items. Passage 9-0.

LICENSES:

Order 141-19/20 Granting Municipal Officers' Approval of EJJ & Co dba Helm Oyster Bar & Bistro. Application for a Class I FSE with Outdoor Dining on Private

Property at 60 Thames Street - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Duson for passage.
Passage 9-0.

Order 142-19/20 Granting Municipal Officers' Approval of Arabica Coffee Company, Inc. dba Arabica Coffee Company. Application for a Class III & IV FSE at 2 Free Street - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Costa and seconded by Councilor Ray for passage.
Passage 9-0.

Order 143-19/20 Granting Municipal Officers' Approval of Arabica Coffee Company, Inc. dba Arabica Coffee Company. Application for a Class III & IV FSE with Outdoor Dining on Public Property at 9 Commercial Street - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Costa and seconded by Councilor Ray for passage.
Passage 9-0.

Order 144-19/20 Granting Municipal Officers' Approval of Austin Street Brewery LLC dba Austin Street Brewery. Application for a Class A Lounge with Indoor Entertainment and Outdoor Dining on Private Property at 109 Fox Street - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Costa to amend Order 144 by adding "with the condition that the license only allow for the sale of beer and wine". Passage 9-0.

Motion was made by Councilor Ray and seconded by Councilor Costa for passage as amended. Passage 9-0.

UNFINISHED BUSINESS:

6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Order 118-19/20 Granting Municipal Officers' Approval of Miranda Restaurant Group dba Via Vecchia. Application for Indoor Entertainment at 10 Dana Street - Sponsored by Jon P. Jennings, City Manager

Councilor Costa disclosed that he is interested in one of the applicants other venues for his upcoming wedding.

Motion was made by Councilor Mavodones and seconded by Councilor Chong to postpone Order 118 to September 21, 2020. Passage 9-0.

Order 136-19/20 Authorizing General Obligation Bonds to Finance a Portion of the City's Fiscal Year 2021 Capital Improvement Program in an Amount not to Exceed \$18,320,000 - Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair

Motion was made by Councilor Mavodones and seconded by Councilor Ray for passage. Passage 9-0.

Order 137-19/20 Appropriating Bond Proceeds and other Funds in an Amount not to Exceed \$22,392,000 for the City's Fiscal Year 2021 Capital Improvement Program - Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 9-0.

ORDERS:

Order 145-19/20 Accepting the 2019 Land Bank Commission Annual Report - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Thibodeau and seconded by Councilor Costa for passage. Passage 9-0.

Order 146-19/20 Accepting and Adopting the 2020 Housing Trust Fund Annual Plan - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

Motion was made by Councilor Ray and seconded by Councilor Duson for passage. Passage 9-0.

Order 147-19/20 Approving the Renewal of Portland's Participation in the Cumberland County HOME Consortium - Sponsored by the Housing Committee, Councilor Jill Duson, Chair

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

Order 148-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Marginal Way Improvements - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

Order 149-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Paving Washington Avenue from Presumpscot to Veranda - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

Order 150-19/20 Approving the Agreement between Portland and the Maine Department of Transportation Re: Franklin Street Storm Drain at I-295 Exit 7 - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

Order 151-19/20 Approving the Modification to Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System, and the Maine Department of Transportation and Two-Party Agreement Re: Washington Avenue from Regan to Riverside - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

AMENDMENTS:

Order 152-19/20 Amendment to Portland City Code Chapter 15 Re: Sound Mitigation Review Fee - Sponsored by the Health and Human Services & Public Safety Committee, Councilor Belinda S. Ray, Chair

This is a first reading.

Motion was made by Councilor Duson and seconded by Councilor Chong to adjourn. Passage 9-0, at 8:15 P.M.

A TRUE RECORD

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 2, 2020

SUBJECT: Order 153-19/20 Appointing Wardens and Ward Clerks - Sponsored by
Katherine L. Jones, City Clerk

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

The following people shall be appointed as Wardens and Ward Clerks from June 1, 2020 to May 31, 2021.

Warden	Ward Clerk	District/Precinct
Denise Shames	Anne Rand	1-1
Carol Morrisette	Frank Spring	1-2
Fred O'Keefe	Kimberly McIssac	1-3
Dennis Martin	Heather Tanguay	2-1
Susan Litchman	Roseanne Graef	2-2
Sarah Crampton	Christine Brown	3-1
Dale Kinney	Robert Smith	3-2
Alishia Grinnell	Melissa Newsome	4-1
John Coyne	Timothy Whitney	4-2
Barbara Harvey	Virginia Fisher	5-1
George Smyth	Edmond Szalajeski	5-2

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Memo Appointing Wardens & Ward Clerks for 2020 Election Year.
2. Appointing Wardens and Ward Clerks 2020-2021 Election Year 3.16.2020

Prepared by:

Date: 3/2/2020



Office of the City Clerk
Katherine L Jones, CMC

MEMORANDUM

TO: Mayor Snyder and Members of the City Council
FROM: Katherine L. Jones, City Clerk
DATE: March 3, 2020
RE: Wardens and Ward Clerks

The following persons are being recommended as Wardens and Ward Clerks for the 2020-2021 calendar year:

Warden	Ward Clerk	District/Precinct
Denise Shames	Anne Rand	1-1
Carol Morrisette	Frank Spring	1-2
Fred O'Keefe	Kim MacIssac	1-3
Dennis Martin	Betsy Krementz	2-1
Susan Litchman	Roseanne Graef	2-2
Sarah Crampton	Christine Bronw	3-1
Dale Kinney	Robert Smith	3-2
Alisha Grinnell	Melissa Newsome	4-1
John Coyne	Timothy Whitney	4-2
Barbara Harvey	Virginia Fischer	5-1
George Smythe	Edmond Szalajeski	5-2

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPOINTING WARDENS AND WARD CLERKS

ORDERED, that the following persons are hereby appointed as Wardens and Ward Clerks from June 1, 2020 to May 31, 2021:

Warden	Ward Clerk	District/Precinct
Denise Shames	Anne Rand	1-1
Carol Morrisette	Frank Spring	1-2
Fred O'Keefe	Kimberly McIssac	1-3
Dennis Martin	Heather Tanguay	2-1
Susan Litchman	Roseanne Graef	2-2
Sarah Crampton	Christine Brown	3-1
Dale Kinney	Robert Smith	3-2
Alishia Grinnell	Melissa Newsome	4-1
John Coyne	Timothy Whitney	4-2
Barbara Harvey	Virginia Fisher	5-1
George Smyth	Edmond Szalajeski	5-2

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 2, 2020

SUBJECT: Order 154-19/20 Appointing Election Clerks for 2020 to 2022 - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order appoints the Election Clerks for a term beginning on May 1, 2020 and expiring on April 30, 2022. Please see the order for the list of names.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Appointing election clerks May 2020 to April 2022 3.16.2020
2. Memo appointing Election Clerks for 2020-2022.docx

Prepared by:

Date: 3/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPOINTING ELECTION CLERKS FOR 2020 TO 2022

ORDERED, that the persons on the attached list are hereby appointed as Election Clerks for a term beginning on May 1, 2020 and expiring April 30, 2022.

Election Clerks

LAST NAME	FIRST NAME	POLITICAL PARTY
Abercrombie	Susan	Republican
Albert	Linda	Democrat
Allen	Lisa	Democrat
Amabile	Donna	Green Independent
Amoroso	Marilyn	Republican
Anderson	Mary	Democrat
Angelone	Jennifer	Democrat
Ardell	Randall	Democrat
Atkinson	Donald	Democrat
Atkinson	Linda	Democrat
Baker	Harlan	Democrat
Barrieau	Therese	Republican
Benavides	Julie	Democrat
Beote	Amy	Green Independent
Blais	Andrew	Republican
Blais	James	Democrat
Blauvelt	Christine	Democrat
Brockman	Lucille	Green Independent
Brogan	Helene	Republican
Brooks	Sandra	Republican
Brown	Christopher	Democrat
Bunn	Teresa	Democrat
Caiola	Jacqueline	Unenrolled

LAST NAME	FIRST NAME	POLITICAL PARTY
Carlson	James	Democrat
Carter	Rose	Republican
Cartwright	Corinne	Republican
Castle	Paul	Republican
Chandler	Anita	Democrat
Charles	Nora	Democrat
Chasse	Patricia	Democrat
Chesebro	Jane	Republican
Chesebro Jr	Robert	Republican
Clark	Diane	Republican
Clark	Robin	Republican
Coggins	Laurie	Democrat
Colby	Lynn	Republican
Cole	Jack	Democrat
Connolly	Marie	Republican
Conroy	Anne	Democrat
Cook	Meredith	Democrat
Cook	Wanda	Republican
Cote	Amanda	Unenrolled
Coyne	Jo	Democrat
Crabill	John (Harold)	Democrat
Cramton	Sarah	Republican
Croston	Patricia	Democrat
Crute	Catherine	Democrat
Cyr	Elizabeth	Republican
Cyr	Louis	Democrat
Dacey	Beverly	Unenrolled
Dacey	Robert	Republican
Dahl	Claire	Democrat
Danahy	Michael	Democrat
Depoy Warren	Samantha	Republican
Dexter	Marcia	Republican
Diller	Claudia	Democrat
DiPaolo	Timothy	Democrat
Dongo	Geraldine	Democrat
Duddy	Elizabeth	Democrat
Dulac	Josephine	Democrat
Dunn	Mary	Democrat
Dyer Blake	Nanette	Democrat
Edwards	Shirley	Democrat
Elliman	Tom	Republican
Erkkinen	Porter	Republican

LAST NAME	FIRST NAME	POLITICAL PARTY
Esposito	Sally	Democrat
Estas	Judith	Green Independent
Farr	Janet	Green Independent
Farr	Marcia	Republican
Faucher-Eldert	Mercedes	Democrat
Fernald	David	Republican
Fernald	Mary	Republican
Fieldsend	Vondelle	Unenrolled
Fineberg	Abraham	Democrat
Fischer	Virginia	Unenrolled
Foley	Rebecca	Republican
Friedman	Karen	Democrat
Fromkin	Maryellen	Democrat
Gallant	Francis	Republican
Garfield	Susan	Democrat
Getz	William	Democrat
Giles	Amelia	Democrat
Girard	Gabrielle	Republican
Glass	Jane	Democrat
Glass	Joel	Unenrolled
Goodwin	Lynne	Republican
Goss	Pauline	Republican
Gowen	William	Republican
Graef	Rosanne	Unenrolled
Graffam	Robin	Democrat
Green	Katherine	Republican
Greenberg	Valerie	Democrat
Guerin	Penny	Unenrolled
Haley	Connie	Republican
Harding	Alicia	Democrat
Hartley	Kim	Democrat
Harvey	Barbara	Republican
Harvey	Denise	Republican
Hatch	Clifford	Republican
Hayden	Carol	Democrat
Heal	Colleen	Unenrolled
Heal	Mary Jo	Democrat
Healy	Joan	Democrat
Higgins	Cheryl	Unenrolled
Hirsch	Geraldine	Democrat
Hirsch	Alan	Democrat
Hodson	Caroline	Democrat

LAST NAME	FIRST NAME	POLITICAL PARTY
Hogan	Grady	Democrat
Hoglund	Helen	Republican
Holmes	Leslie	Republican
Hoppin	Barbara	Democrat
Hughes	Robert	Republican
Hunter	Leila	Democrat
Iezzi	Cynthia	Republican
Ingraham	Sarah	Democrat
Intharakunha	Panithida	Unenrolled
Johnson	Bessie (Betty)	Republican
Johnstone	Bonnie	
Jones	Donna	Democrat
Jones	Pamela	Republican
Jordan	Allyson	Republican
Jordan	Brenda	Green Independent
Jordan	Deborah	Democrat
Kachmar	James	Republican
Kandolo	Arnold	Unenrolled
Karatsanos	Michael	Republican
Karp	Bobbette	Republican
Katsiaficas	Donna	Republican
Katsiaficas	James	Republican
Kellermann	Solange	Democrat
Kelly	Steven	Democrat
Kenny	Russell	Republican
Keppel	Barbara	Democrat
Kimble	Chris	Republican
King	Phil	Unenrolled
Knight	Joy	Democrat
Koster	Jean	Unenrolled
Krementz	Elizabeth	Republican
Kushner	Joan	Democrat
Lambert	Mary Jane	Democrat
Lamontagne	Marcia	Republican
Large	Suelle	Democrat
LaVallee	Patrick	
Lemieux	Pamela	Democrat
LeVasseur	Ingrid	Republican
Lewis	Marina	Republican
Lheureux	Estelle	Democrat
Littlefield	Patricia	Democrat
Lovley	Pamela	Democrat

LAST NAME	FIRST NAME	POLITICAL PARTY
Lufkin	John	Unenrolled
Lunt	Sarah	Democrat
MacIsaac	Kimberly	Unenrolled
MacIsaac	Phyllis	Republican
Macisso	Joan	Democrat
Mailman	Suzanne	Republican
Makos	Elaine	Green Independent
Malachowski	Rosemary	Democrat
Maloney	Ann	Republican
Manter	Sandra	Democrat
Markushewski	Lisa	Democrat
Marley	Parker	Democrat
Martin	Dennis	Republican
Mcallister	Judith	Democrat
McCarthy		
Marsden	Nancy	Democrat
McCarty	Katherine	Democrat
McCloskey	Susan	Democrat
McGuire	Harvey	Democrat
McKenney	John	Unenrolled
McManamy	Jean	Democrat
Mercier	Richard	Democrat
Michaud Morin	Mary Ann	Democrat
Molloy	Rita	Republican
Moody Roberts	Elise	Democrat
Mooradian	Elizabeth	Republican
Mooradian	William	Democrat
Morin Sr	Gerald	Democrat
Murrell	Garison	Republican
Naqui	Munira	Unenrolled
Nelson	Pris	Democrat
Nelson Jr	Normand (Tom)	Unenrolled
Nicholas	James	Republican
OBrien	Johannah	Democrat
Oleary	Kathleen	Unenrolled
Palmer	Christine	Democrat
Parker	Nancy	Democrat
Pedro	Drusilla	Democrat
Pelletier	Brooke	Democrat
Peloquin	Jodi	Democrat
Perham	Carole	Democrat
Perkins	Lawrence	Republican

LAST NAME	FIRST NAME	POLITICAL PARTY
Perrier	Patricia	Democrat
Perry	Barbara	Democrat
Piteau	John	Green Independent
Porter	Ron	Republican
Poulin	Jeannine	Democrat
Povec	Joseph	Democrat
Powers	Curtis	Green Independent
Powers	Kathleen	Unenrolled
Ramos	Edna	Unenrolled
Rand	Catherine	Green Independent
Reef	Patricia	Democrat
Rich	Kimberly	Democrat
Rich	Penny	Democrat
Richards	Robert	Democrat
Roberts	Jacqueline	Green Independent
Roberts	James	Republican
Robichaud	Richard	Green Independent
Rodney	Dorothy	Democrat
Rogers	Stephen	Green Independent
Rumery	Carolyn	Republican
Russo	Patricia	Republican
Rynning	Virginia	Green Independent
Salvatore	Raia	Republican
Sanborn	Eileen	Democrat
Sargent	Jeffrey	Unenrolled
Savage	Bruce	Republican
Scher	Reid	Democrat
Scott	Aurelia	Democrat
Sellers	Rorick	Democrat
Senore	Jesse	Republican
Sharkey	Lee	Democrat
Sherwood	Paul	Republican
Short	Sarah	Democrat
Smith	Judith	Democrat
Smith	Robert	Democrat
Smyth	Craig	Republican
Somma	Rudolph	Republican
Spring	Elaine	Democrat
Green	Katherine	
Stais	Gladys	Democrat
Stankowicz	Alexander (Dave)	Democrat
Stanley	Gwendlyn (Wendy)	Democrat

LAST NAME	FIRST NAME	POLITICAL PARTY
Stevens	Kathleen	Democrat
Stickney	Holly	Democrat
Stone	Helaine	Democrat
Stuart	Erlene	Republican
Stultz	Patricia	Republican
Stultz	Peter	Republican
Sullivan	Nancy	Democrat
Swan	Deborah	Democrat
Szalajeski	Karen	Democrat
Szalajeski	Pamela	Republican
Talbot	Anita	Democrat
Tanguay	Eugene	Democrat
Toppi	Marion	Republican
Towle	Terri	Democrat
Trautman	Karl	Democrat
Trott	James	Democrat
Tucker	Robyn	Unenrolled
Turner	Corey	Democrat
Twombly	Lisa	Democrat
Valleau	Tom	Democrat
Valleau	Pat	Democrat
Veilleux	Carol	Democrat
Vessy	Mary	Democrat
Vincent	David	Republican
Wadsworth	Susan	Democrat
Walker	Donna	Republican
Washburn	Patricia	Democrat
Waterman	Beverly	Republican
Waters	Elizabeth	Democrat
Webster Querry	Barbara	Democrat
Whynot	Eileen	Democrat
Wise	Amelia	Republican
Wise	Richard	Democrat
Witkowski	Robert	Republican
Witkowski	Samantha	Republican
Yonan	Edith	Democrat
Venno	Nathan	Democrat
Swanton	Jeanne	Democrat
Hartley	Kimberly	Democrat
Haney	Regina	Democrat
Graham	Wendy	Democrat
Brockman	Lucille	Unenrolled

LAST NAME	FIRST NAME	POLITICAL PARTY
Church	Lauren	Democrat
Coyne	Patricia	Democrat
Heal	Colleen	Republican
McConnell	David	Unenrolled
Monaco	Nina	Democrat
Parise	Louise	Democrat
Garnett	Weylin	Democrat
Quinn	Lisa	Unenrolled



Office of the City Clerk
Katherine L. Jones, CCM

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council
FROM: Katherine L. Jones, City Clerk
DATE: March 9, 2020
RE: Appointments of Election Clerks for 2020 – 2022

21-A MRSA § 503 No later than April 1, (even numbers years): all nominations must be submitted to the Municipal Clerks. If a municipal committee of a major party does submit nominations, the municipal officers shall consider them, but are not required to appoint them. If a municipal committee of a major party does not submit nominations, the municipal officers may appoint registered voters enrolled in that party to serve as election clerks. The law does not prohibit nominations from sources other than the municipal party committees.

No later than May 1, st (of the even-numbered years) the municipal officers must appoint the following as election clerks: At least 1 election clerk from each of the major parties (currently Democratic and Republican). Election clerks hold office for 2 years from the date of their appointment.

I am attaching one list in alphabetical order, representing Democrats, Republicans, Green Independents and Un-enrolled voters.

In the most recent Legislative Session, the law was amended to allow us to hire election clerks residing outside the community, but with the county. This is especially important in Portland, where it is difficult to find enough Republicans to meet the balance of party workers required by Statute. Every effort will be made to hire from within the City Limits, but when necessary, those living outside of Portland will be asked to work.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 2, 2020

SUBJECT: Order 155-19/20 Setting Time for Opening of Polls on June 9, 2020 Re: State and Local Elections - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Pursuant to 21-A M.R.S. sec. 626, the hours of poll opening must be set by the municipal officers. This is done for every election. The polls open at 7:00 a.m. and close at 8:00 p.m. Notices are posted in each district and at City Hall.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Opening and Closing the Polls June 9, 2020 3.16.2020
2. Memo Opening and Closing the polls for June 2020.

Prepared by:

Date: 3/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER SETTING THE TIME FOR OPENING
THE POLLS ON JUNE 9, 2020
RE: STATE AND LOCAL ELECTIONS

ORDERED that, pursuant to 21-A M.R.S. §626, the polls shall open at 7:00 a.m. and close at 8:00 p.m. on Tuesday, June 9, 2020 for the State and Local Elections.



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Snyder and Members of the
Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: March 3, 2020

RE: Setting the time for opening the polls on June 9, 2020 for State and Local
Elections Budget Referendum.

Pursuant to 21-A M.R.S.A. §626, the hour of poll opening must be set by the
municipal officers. This is done for every election; the polls open at 7:00 A.M. and
close at 8:00 P.M.

Notices are then posted in each district and at City Hall.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 27, 2020

SUBJECT: Order 156-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Justin Antonio Neves - Sponsored by Jon P. Jennings, City Manager

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: (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 \$675.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Justin Antonio Neves.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Neves, Justin Antonio forfeiture 3.16.2020
2. AF_Neves

Prepared by:

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

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

ORDERED, that the City Council hereby accepts \$675.00 in forfeited assets in the case of State of Maine vs. Justin Antonio Neves 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-18-4344

State of Maine

v.

Justin Antonio Neves,
Defendant

And

\$675.00 U.S. CURRENCY
Defendant In Rem #1

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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 #1*, namely \$675.00 U.S. Currency, 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 portion of the Defendant *In Rem #1*, namely \$675.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on March 16, 2020.

Dated: _____

Mayor

(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



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

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
February 19, 2020

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

Portland Police Department
Chief Frank Clark
109 Middle Street
Portland, ME 04101

RE: State of Maine vs. Justin Antonio Neves
Cumberland County Unified Criminal Court Doc. No. CR-18-4344
Criminal Forfeiture
Required Vote of Municipal Officers/Approval of Transfer of Forfeiture Assets

Dear Chief Clark:

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 cursive script, appearing to read "Johanna Gauvreau for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-18-4344

State of Maine	}	
	}	City of Portland
v.	}	Approval of Transfer
	}	15 M.R.S. §5824(3) and §5826
Justin Antonio Neves	}	
Defendant;	}	
	}	
And	}	
	}	
\$675.00 U.S. Currency	}	
Defendant(s) In Rem	}	

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* namely \$675.00 U.S. Currency, 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* to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 27, 2020

SUBJECT: Order 157-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Abdifatah Shariff Ali - Sponsored by Jon P. Jennings, City Manager

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: (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 \$2,540.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Abdifatah Shariff Ali.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Ali, Abdifatah Shariff forfeiture 3.16.2020
2. AF_Ali

Prepared by:

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING TRANSFER OF FUNDS
UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
RE: ABDIFATAH SHARIFF ALI

ORDERED, that the City Council hereby accepts \$2,540.00 in forfeited assets in the case of State of Maine vs. Abdifatah Shariff Ali 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-19-4867

State of Maine

v.

Abdifatah Shariff Ali,
Defendant

And

\$2,540.00 U.S. CURRENCY
Defendant In Rem #1

One 2011 BMW
VIN# WBAFU7C57BDU54267
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 #1*, namely \$2,540.00.00 U.S. Currency, 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 portion of the Defendant *In Rem #1*, namely \$2,540.00.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on March 16, 2020.

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
January 13, 2020

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

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

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

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

Portland Police Department
Chief Frank Clark
109 Middle Street
Portland, ME 04101

RE: State of Maine vs. Abdifatah Shariff Ali
Cumberland County Unified Criminal Court Doc. No. CR-19-4867
Criminal Forfeiture
Required Vote of Municipal Officers/Approval of Transfer of Forfeiture Assets

Dear Chief Clark:

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 cursive script, appearing to read "Johanna Gauvreau for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-19-4867

State of Maine	}	
	}	City of Portland
v.	}	Approval of Transfer
	}	15 M.R.S. §5824(3) and §5826
Abdifatah Shariff Ali,	}	
Defendant;	}	
	}	
And	}	
	}	
\$2,540.00 U.S. Currency	}	
Defendant(s) In Rem #1	}	
	}	
One 2011 BMW	}	
VIN # WBAFU7C57BDU54267	}	
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 namely \$2,540.00 U.S. Currency, 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 to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 27, 2020

SUBJECT: **Order 158-19/20 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Rebecca Hassett - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: (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 \$620.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Rebecca Hassett.

The money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money 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.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Hassett, Rebecca forfeiture 3.16.2020
2. AF_Hassett

Prepared by:

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

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

ORDERED, that the City Council hereby accepts \$620.00 in forfeited assets in the case of State of Maine vs. Rebecca Hassett 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-19-5662**

State of Maine

v.

**Rebecca Hassett,
Defendant**

And

**\$620.00 U.S. CURRENCY
Defendant In Rem #1**

}
}
}
}
}
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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 #1*, namely \$620.00.00 U.S. Currency, 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 portion of the Defendant *In Rem #1*, namely \$620.00.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on March 16, 2020.

Dated: _____

Mayor
(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



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

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
February 6, 2020

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

125 PRESUMPCOT 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

Portland Police Department
Chief Frank Clark
109 Middle Street
Portland, ME 04101

RE: State of Maine vs. Rebecca Hassett
Cumberland County Unified Criminal Court Doc. No. CR-19-5662
Criminal Forfeiture
Required Vote of Municipal Officers/Approval of Transfer of Forfeiture Assets

Dear Chief Clark:

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

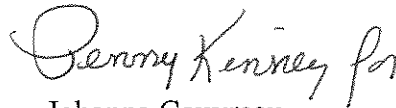
forfeiture is not guaranteed and both the municipal legislative body and the law enforcement agency involved are **cautioned** that they **should not encumber** funds or property until a Final Order granting them lawful title to the property is delivered to them;

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 cursive script that reads "Penny Kenney for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-19-5662

State of Maine	}	
	}	City of Portland
v.	}	Approval of Transfer
	}	15 M.R.S. §5824(3) and §5826
Rebecca Hassett,	}	
Defendant;	}	
	}	
And	}	
	}	
\$620.00 U.S. Currency	}	
Defendant(s) In Rem	}	

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* namely \$620.00 U.S. Currency, 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* to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM: Ted Musgrave
DATE: February 27, 2020
SUBJECT: **Order 159-19/20 Declaring July 24 & 25, 2020 the 18th Annual Greater Portland Festival of Nations - Sponsored by Jon P. Jennings, City Manager**
SPONSOR: 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 3/16/2020

Final Action 3/16/2020

Can action be taken at a later date: Yes

PRESENTATION: None

I. SUMMARY

The Festival of Nations will be held Friday and Saturday, July 24 & 25, 2020, at Deering Oaks Park.

II. AGENDA DESCRIPTION

The Festival of Nations is expanding for the Bicentennial Summer and will be held Friday and Saturday, July 24 & 25, 2020, at Deering Oaks Park.

Additional details about the event are included in the agenda backup.

III. BACKGROUND

This will be the 18th annual Festival of Nations held at Deering Oaks Park and for the Bicentennial summer, organizers are expanding the festival to 2 days (Friday, July 24 and Saturday, July 25); Friday's event will run 3-8pm, Saturday's 11am – 7pm. The festival, organized by Women In Need Industries and Mugadi Foundation, showcases Maine's ethnic diversity. The festival features music, food, cultural exhibits, children's activities, and folk art from America and many nations around the world. 2,000+ people are expected to attend the 2 day event. Admission is FREE. Refreshments, crafts, artwork, and other items will be for sale. Organizers rent additional porta-restrooms for the Oaks. The Festival is held rain or shine.

For the festival held on Saturday, Farmers Market is also held in Deering Oaks Park, and (for just the date of the festival) will be moving their setup to Bowling Green Lane, so that setup for the Festival of Nations can take place at the Bandstand and along Farmers Market Rd. The Friends of Deering Oaks Park has reviewed and endorsed the festival (and Farmers Market have voted to move that day to Bowling Green).

In order to safely hold the festival and to assist in setup, the main roadway into Deering Oaks Park needs to be closed to traffic for both festival days (on Saturday during Farmers Market, the park roadway doesn't close to vehicles until 10am - opens back up to vehicles at 8pm). This park roadway also needs to be posted "No Parking."

The Festival Zone for this event includes: Deering Oaks Park - to include the Bandstand and grass areas surrounding the bandstand, the Ravine Water Play area, the Bowling Green grass area, and park roadways: Tennis Court Rd., Jenny Lane, and Farmers Market Rd.

The Festival area (north side of the pond) will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of the organizer and Mugadi Foundation for the purpose of conducting the Festival, subject to the direction and control of the City Manager.

Vehicles in violation of the “No Parking” signs in the Festival Zone shall be towed at owner’s expense.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Festival Declaration.

V. FINANCIAL IMPACT

Permit Fees for use of Deering Oaks Park are waived, but organizers pay for license fees, and if any city staff are needed on site, organizer covers those costs.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Recommend passage.

VIII. LIST ATTACHMENTS

1. Festival of Nations 2020 3.16.2020
2. Festival of Nations 2020 - Oaks - FRI, July 24 + SAT, July 25 - AP (council)

Prepared by:

Ted Musgrave

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DECLARING JULY 24 & 25, 2020
THE 18TH ANNUAL GREATER PORTLAND
FESTIVAL OF NATIONS**

ORDERED, that Friday and Saturday, July 24 and 25, 2020, is hereby declared to be the 18th Annual Greater Portland Festival of Nations, sponsored by Women in Need Industries (WINI), Inc; and

BE IT FURTHER ORDERED, that the 18th Annual Greater Portland Festival of Nations area shall include the Bandstand and Farmers Market Road inside Deering Oaks Park, the Ravine Water Play Area and park roadways including Tennis Court Road and Jenny Lane; and

BE IT FURTHER ORDERED, that main road into Deering Oaks Park will be closed to traffic from 10:00 a.m. to 8:00 p.m. on July 24 and 25, 2020; 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 18th Annual Greater Portland Festival of Nations area shall be closed to licensed street vendors as provided in §19-17 of the City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Women in Need Industries (WINI), Inc 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. Women in Need Industries (WINI), Inc 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. Women in Need Industries (WINI), Inc 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. The following fees and expenses shall be waived by the City and in-kind contributions shall be made by the City to the Festival:

Public Assembly Facilities Division permit fees for use of grounds, banner fees, “No Parking” sign fees, barricade delivery and single concert license; Public Works Department trash barrels and removal of trash; Business Licensing licensing fees; and

4. No Police, Parking Control, or Emergency Medical Services assistance should be necessary unless the Police Department deems coverage is required due to attendance, traffic concerns, etc., in which case, those fees would need to be paid by Women in Need Industries (WINI), Inc;
5. Conditions for use of grounds and requirements for food service, vending sales, and other items specified in a permit issued from the Public Assembly Facilities Division Office shall be adhered to, and the Organizers shall leave on file security deposits for the use of the park;
6. Women in Need Industries (WINI), Inc shall have sole authority over participating vendors at the festival and may charge a fee to vendors for the opportunity to vend at the 18th Annual Greater Portland Festival of Nations; and
6. Public Assembly Facilities Division concert license conditions shall be complied with and any and all amplified music and public announcements shall be maintained at a reasonable noise level (under A-weighted 85 decibels / C-weighted 95 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; 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.



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (5 pages)
 212 Canco Rd. • Suite A • Portland • ME • 04103 • (207) 808-5400 x0
 Ted Musgrave tvm@portlandmaine.gov

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		August 5, 2019 Revised: 11-1		ORGANIZATION NAME		Women In Need Inc., ESM Global Productions, LLC	
ADDRESS (Street/City/State/Zip)		10A Gleckler Rd. Portland ME 04103					
CONTACT NAME(S)		Shalom Odokara Sue Searle			TITLE(S)		Coordinator Co-coordinator
PHONE		PHONE		PHONE		PHONE	
EMAIL	womini@aol.com	EMAIL	Wards18b@gmail.com	EMAIL		EMAIL	

PARK AREA / PUBLIC SPACE REQUESTED		Deering Oaks Park					
EVENT DAY(S) & DATE(S)		FRI 7-24 & SAT 7-25-2020		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.)		7-24 3pm-8pm 7-25 9am-9pm		EVENT START & END TIME		FRI: 11am 7pm SAT: 11am 7pm	

EVENT NAME	EXPECTED ATTENDANCE
18th Annual Greater Portland Festival of Nations	Approximately 2,000

DESCRIPTION OF EVENT:

Women In Need, Industries is proud to present the 18th Annual Greater Portland Festival of Nations. Event will be held on Friday & Saturday this year. The Festival is a day of music, dance and other performing arts, representing cultural traditions from across America and the world. This event will showcase Maine's ethnic diversity, perpetuate traditions, encourage ethnic understanding, and promote unity. The Festival engenders community cohesion from its volunteers and by attracting thousands of festival-goers each year. We are proud to ally the Festival's philosophy with the City of Portland's mission, vision and objectives. Friday evening's event will mainly involve musical entertainment with invited food trucks in attendance. There will be no children's area for Friday's events.

The event will go before City Council – to be declared a festival.

Music + dance at the stage/bandstand area. Festival booths and canopies positioned on the grass areas and tarred areas. Many booths with food / refreshments available for sale. Clothing, arts & crafts, etc. available for sale. The Ravine and grass area near the Ravine, will be used for the Children's Area. 10x10 Canopies will be set up on grass (one on right side of Farmers Market Road, another set up on side of Bandstand Driveway). The main roadway through the park (Tennis Court Road) will be closed to traffic from approx. 9am – 8pm. PA System set up on stage. Electricity is needed / lights to Bandstand Stage turned on. Water Spigot needs to be turned on. Organizer may rent a couple of Porta-Restrooms for the park.

Flag/Streamers will hang from ropes strung between City Light Poles along State Street Ext. (July 1 – Aug. 1). A large 30' long banner will hang over Congress Street (City Hall location), 2 weeks in July.

On Festival Day, Farmers Market sets up on Bowling Green Pathway (making Farmers Market Roadway available to the Festival).

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT?	NO
--	-----------

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

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

		X-YES	X-NO	X-NOT SURE
*	Are you setting up a canopy(s) ? (10'x10' size or smaller) How many?	X		
*	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.		X	
*	Will you be setting up tables and/or chairs ? How many tables: chairs:	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	
*	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: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. 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		
*	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 ? Y Band ? Y DJ ? Y Boom Box ? N 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		
*	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		
*	Are you planning on bringing a Grill for a Barbecue ? Grilling is subject to weather conditions and possibly Fire Dept. review.	X		
*	Will the event require reserved parking spaces / parking meters ? How many? "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 orange vests, cones & barricades may be borrowed/rented from PAFD Office. Traffic signs may be borrowed/rented from Public Works if needed (874-8493).	X		
*	Will your event require street closures ? (PARK ROAD WAY) Will your event affect METRO BUS ROUTES ? NO	X		
*	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 call Sgt. Nevins (874-8554) or Police Shift Command (874-8855/8556) well in advance to arrange.		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		
*	Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.	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 NEED		
♦ 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 tvm@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). The PAFD Office has cones it can rent to you (see fee schedule below) if needed. To ensure you can have vehicles (illegally parked at signs you've posted) towed, please complete and fax/email/hand deliver to city departments a "No Parking Authorization Form," which you can get from staff when you pick up NP signs. Please make sure signs are removed once the event is complete. ***Under certain conditions, the reserved parking fee may be reduced. Upon review of your application, PAFD will advise if your event qualifies for a reduction. If paying a reduced rate, towing may not be enforceable. PAFD will advise regarding these parameters as well.**

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 a Concert 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 92 decibels. One verbal warning shall be issued if the sound has been found to have exceeded 92 decibels. The warning may be given to the sound board operator or the organizer/organizer's designee. If the 92 decibel limit is found to have been exceeded a second time during the same event, the single event concert permit (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.

CANCELATION 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	SO	DATE	8/5/19
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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	SO	DATE	8/5/19
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FEE SCHEDULE – UPDATED JULY 1, 2018

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 Event with registration or pledges & attendance 25 - 300: \$125/hr Event with registration or pledges & attendance 301+: \$225/hr Film/Photo Shoot: \$100/day Public Space/Park Security Deposit: \$100 - \$1000 Sound Security Deposit: \$100 - \$1,000 Impact/Street Closure Fee (variable based on impact): \$100-\$500 Staff Fee (on site event support): \$37/hour Administrative Fee (event coordination support): \$40/hour or more "No Parking" Signs: \$25 each	Electricity (activation/de-activation) Fee: \$40/flat Porta Restroom User Fee (if attendance is 150+): \$25 Single Concert License: \$50 Barricades: \$5/ea. Rental Fee + \$25/ea. Security Deposit Bike Racks: \$10/ea. Rental Fee + \$25/ea. Security Deposit Flashing Lights: \$10/ea. Rental Fee + \$40/ea. Security Deposit Cones: \$2/ea. Rental Fee + \$15/ea. Security Deposit Safety Vests: \$15/ea. Security Deposit Keys: \$50/ea. Security Deposit Equipment Delivery Fee: \$100 or more Fortification Fee: TBD
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Cancelation Fee: \$75	
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PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND".
Please make out separate checks for security deposit and permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)			
Permit Fee for use of area:	\$ TBD	Single Concert (Amplified Sound) License Fee:	\$ TBD
Number of Hours of Use: Approx.		Equipment Rental Fee:	\$ TBD
Staff Fee (on site event support):	\$ TBD	Public Space / Park / Sound Security Deposit:	\$ TBD
Admin. Fee (event coordination support):	\$ TBD	Borrowed / Rented Equipment Deposit:	\$ TBD
Electricity Fee (activation/de-activation):	\$ TBD	Additional Fees:	\$ TBD
Impact/Street Closure Fee (variable based on impact):	\$ TBD	(Porta-Restroom User Fee, "No Parking" Signs, etc.)	

FOR OFFICE USE ONLY									
DATE APPLICATION RECEIVED: 8-5-19									
APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$ waived..?	SECURITY DEPOSIT:	\$ Need	INSURANCE NEEDED?	YES		
DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:	NEED		
PAYMENT TYPE									
VISA / MC NUMBER:				CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
CREDIT CARD AMOUNT:	\$	CREDIT CARD EXP. DATE:		CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
PLEASE NOTE: A \$3.00 or 2.65% SERVICE FEE (whichever is greater) WILL BE ADDED TO ALL CREDIT CARD TRANSACTIONS.									

MEMORANDUM
City Council Agenda Item

FROM: Ted Musgrave

DATE: February 27, 2020

SUBJECT: **Order 160-19/20 Declaring July 16 to September 3, 2020 the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: 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 3/16/2020 **Final Action 3/16/2020**

Can action be taken at a later date: Yes

PRESENTATION: None

I. SUMMARY

Order Declaring “Friends of Eastern Promenade 2020 Summer Community Concert Series” as a weekly festival event: every Thursday evening, July 16 – September 3, 2020, 5 – 9pm, held at Fort Allen Park.

II. AGENDA DESCRIPTION

This order declares the Friends of Eastern Promenade 2020 Summer Community Concert Series as a weekly festival. The event will be held at Fort Allen Park every Thursday evening from July 16 to September 3, 2020, from 5:00 p.m. to 9:00 p.m.

Additional details about the event are included in the agenda backup.

III. BACKGROUND

For many decades, the city organized and sponsored a weekly, summer concert series at Fort Allen Park, with assistance from the Friends of Eastern Promenade. Since 2017, the Friends of Eastern Promenade have completely taken over the series. For 2020, 8 concerts will be held at the Fort Allen Park Gazebo Bandstand, Thursday evenings (July 16 – September 3, 6:00 – 7:30pm). Styles of music will include: jazz, rock, blues, folk, and marching tunes (Chandler’s Community Band). At each concert, a variety of Food Trucks will be on site to sell refreshments and dinner to spectators. During some of the concerts, the park roadway may need to be closed down to vehicles. A porta-restroom is rented by the Parks, Recreation and Facilities Dept., for the park on concert days.

Funds for running the concert series will come mainly from fundraising efforts by the Friends of Eastern Promenade; the city will fund 2 of the concerts via The Willey Trust and the Betty Winterhalder Trust (city's gift catalog). The city will waive Permit Fees for use of the park, but will require the concert entertainment license fee and any Food Trucks participating will need to be currently licensed by the city's Business Licensing Office.

Attendance at the concerts is usually 500+ people. There is no admission charge to the concerts: concerts are free to the public.

The festival zone for the concert series is all of Fort Allen Park, sidewalks bordering the park, the park roadway, and parking spaces on the Eastern Prom, directly beside and bordering the park.

The Order should include the following items:

Friends of Eastern Promenade 2020 Summer Community Concert Series Festival be authorized for Thursday evenings, July 16 – September 3, 5 – 9pm, at the Eastern Prom, Fort Allen Park area.

This festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the Summer Community Concert Series, subject to the direction and control of the City Manager.

In order to hold the event on city property, some areas of the parking lot at Fort Allen Park and some parking spaces on the Eastern Prom roadway need to be posted “No Parking” on concert days. Vehicles in violation of the “No Parking” signs shall be towed at owner’s expense.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Festival Declaration.

V. FINANCIAL IMPACT

Permit Fees for use of Fort Allen Park are waived, but organizers pay for license fees (entertainment license and Food Truck licenses).

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Recommend passage.

VIII. LIST ATTACHMENTS

1. Eastern Prom Summer Community Concerts 3.16.2020
2. FoEP Concert Series - 2020 - AP (council)

Prepared by:

Ted Musgrave

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DECLARING JULY 16 TO SEPTEMBER 3, 2020
THE FRIENDS OF EASTERN PROMENADE
2020 SUMMER COMMUNITY CONCERT SERIES FESTIVAL**

ORDERED, that every Thursday from July 16 to September 3, 2020 is hereby declared to be the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival, sponsored by the Friends of Eastern Promenade; and

BE IT FURTHER ORDERED, that the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival area shall be all of Fort Allen Park, sidewalks bordering the park, the park roadway, and parking spaces on the Eastern Promenade, directly beside and bordering the park; and

BE IT FURTHER ORDERED, that some areas of the parking lot at Fort Allen Park and some parking spaces on the Eastern Promenade roadway may be posted No Parking on Festival days; and

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

BE IT FURTHER ORDERED, that the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to the Friends of Eastern Promenade under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. The Friends of Eastern Promenade 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. The Friends of Eastern Promenade 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. The Friends of Eastern Promenade shall comply with all Public Assembly Facilities Division 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, but the Public Assembly Facilities Division fees for the use of the park are waived;

4. The Friends of Eastern Promenade shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Friends of Eastern Promenade 2020 Summer Community Concert Series Festival;

5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, and street goods vendors for the Festival to those vendors the Friends of Eastern Promenade has agreed shall participate; and

6. Public Assembly Facilities Division concert license conditions shall be complied with and any and all amplified music and public announcements shall be maintained at a reasonable noise level (under A-weighted 85 decibels / C-weighted 95 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; 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 Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (5 pages)
 212 Canco Rd. • Portland • ME • 04103 • (207) 808-5400 x0
 Ted Musgrave tvm@portlandmaine.gov

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	12/2/19 Revised: 12-13	ORGANIZATION NAME	Friends of the Eastern Promenade		
ADDRESS (Street/City/State/Zip)	P.O.Box 16025 Portland Maine 04112				
CONTACT NAME(S)	Courtney Walker		TITLE(S)	Executive Director	
PHONE		PHONE		PHONE	
EMAIL	courtney@easternpromenade.org		EMAIL		

PARK AREA / PUBLIC SPACE REQUESTED	Fort Allen Park		
EVENT DAY(S) & DATE(S)	THURS 7/16, 7/23, 7/30, 8/6, 8/13, 8/20, 8/27, 9/3 2020	RAIN DAY(S) & DATE(S) (50% added fee)	None
OVERALL EVENT START & END TIME (When setup will begin until cleanup is expected to be complete.)	5 - 8pm	EVENT START & END TIME	6 - 7:30pm

EVENT NAME	EXPECTED ATTENDANCE
Summer Community Concert Series	500
DESCRIPTION OF EVENT: Please be specific regarding area of public space/park and describe EVENT in detail . Please include a detailed MAP of the proposed EVENT AREA, proposed ROUTE (road race) &/or proposed STREET CLOSURE (parade, march, rally, etc.), as these will need to be approved by City Departments. Please provide a link(s) to social media site(s) being used to publicize the event. A weekly summer concert - free to the public (donations accepted). Food Trucks (licensed) will line up along the E Prom Parking Lane directly beside Fort Allen Park (and sell to the public). Bands will play from the bandstand. PA system used. Elec Needed. Reserved Parking needed for Band members and Food Trucks. Some Handicap Reserved Parking also needed. Funding from City Gift Catalog: Willey Trust will fund Chandler's Band Concert / Betty Winterhalder Trust will fund one other FOEP Concert. 2020 will be the last year of funding from the Betty Winterhalder Trust. Organizers will need to borrow 2697 Key to store items underneath the Gazebo. City Parks, Rec. & Facilities Dept. will cover cost of Porta-Restroom rental for each concert.	
IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT? NO	Please check: _____ FEE _____ PLEDGES
IF YES FOR FEES, HOW MUCH?	FEE \$
	STUDENT FEE \$

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN? <i>We'll need handicap parking signs & no parking signs for the band. Attendees are on their own.</i>
--

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (10'x10' size or smaller) How many?		X	

*	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	
*	Will you be setting up tables and/or chairs ? How many tables: chairs:		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	
*	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: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. 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	
*	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		
*	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		
*	Are you planning on bringing a Grill for a Barbecue ? Grilling is subject to weather conditions and possibly Fire Dept. review.		X	
*	Will the event require reserved parking spaces / parking meters ? How many? "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).		X	
*	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 (gfonton@gpmetrobus.com) to discuss.		X	
*	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 call Sgt. Nevins (874-8554) or Police Shift Command (874-8855/8556) well in advance to arrange.		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		
*	Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.		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 NEED		
♦ 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 tvm@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 (\$20 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). The PAFD Office has cones it can rent to you (see fee schedule below) if needed. To ensure you can have vehicles (illegally parked at signs you've posted) towed, please complete and fax/email/hand deliver to city departments a "No Parking Authorization Form," which you can get from staff when you pick up NP signs. Please make sure signs are removed once the event is complete. ***Under certain conditions, the reserved parking fee may be reduced. Upon review of your application, PAFD will advise if your event qualifies for a reduction. If paying a reduced rate, towing may not be enforceable. PAFD will advise regarding these parameters as well.**

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Outdoor events with amplified sound may require a Concert 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 92 decibels. One verbal warning shall be issued if the sound has been found to have exceeded 92 decibels. The warning may be given to the sound board operator or the organizer/organizer's designee. If the 92 decibel limit is found to have been exceeded a second time during the same event, the single event concert permit (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.

CANCELATION 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	CEW	DATE	12/12/19
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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	CEW	DATE	12/12/19
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PLEASE INITIAL & DATE HIGH-LIGHTED YELLOW BOXES ABOVE.

FEE SCHEDULE – UPDATED JULY 1, 2018

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
	Single Concert License: \$38

Event with registration or pledges & attendance 301+: \$225/hr Film/Photo Shoot: \$100/day Public Space/Park Security Deposit: \$100 - \$1000 Sound Security Deposit: \$100 - \$1,000 Impact/Street Closure Fee (variable based on impact): \$100-\$500 Staff Fee (on site event support): \$37/hour Administrative Fee (event coordination support): \$40/hour or more "No Parking" Signs: \$20 each Cancellation Fee: \$75	Barricades: \$5/ea. Rental Fee + \$25/ea. Security Deposit Bike Racks: \$10/ea. Rental Fee + \$25/ea. Security Deposit Flashing Lights: \$10/ea. Rental Fee + \$40/ea. Security Deposit Cones: \$2/ea. Rental Fee + \$15/ea. Security Deposit Safety Vests: \$15/ea. Security Deposit Keys: \$50/ea. Security Deposit Equipment Delivery Fee: \$100 or more
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PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND"	
◆	Please make out security deposit checks separate from permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)			
Permit Fee for use of area:	\$	Single Concert (Amplified Sound) License Fee:	\$
Number of Hours of Use: Approx.		Equipment Rental Fee:	\$
Staff Fee (on site event support):	\$	Public Space / Park / Sound Security Deposit:	\$
Admin. Fee (event coordination support):	\$	Borrowed / Rented Equipment Deposit:	\$
Electricity Fee (activation/de-activation):	\$	Additional Fees:	\$
Impact/Street Closure Fee (variable based on impact):	\$	(Porta-Restroom User Fee, "No Parking" Signs, etc.)	

FOR OFFICE USE ONLY									
DATE APPLICATION RECEIVED: 12-13-2019									
APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$	SECURITY DEPOSIT:	\$	INSURANCE NEEDED?	Y / N		
DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:			
PAYMENT TYPE									
VISA / MC NUMBER:				CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
CREDIT CARD AMOUNT:	\$	CREDIT CARD EXP. DATE:		CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
CREDIT CARD WILL ONLY BE CHARGED FOR SECURITY DEPOSIT(S) AS NEEDED									

PLEASE RETURN FORM (WORD DOC) AT LEAST 30 DAYS IN ADVANCE TO:	
◆	Public Assembly Facilities Div. ~ 212 Canco Rd. ~ Portland ~ ME ~ 04103 EMAIL PREFERRED: tvm@portlandmaine.gov

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER DECLARING JULY 14, 2020 TO AUGUST 11, 2020
THE LOVELINCOLNPARK SUMMER CONCERT SERIES FESTIVAL

ORDERED, that Tuesday evenings from July 14, 2020 to August 11, 2020, from 6 to 7:30 pm, are hereby declared to be the LoveLincolnPark Summer Concert Series Festival, sponsored by the Friends of Lincoln Park; and

BE IT FURTHER ORDERED, that the LoveLincolnPark Summer Concert Series Festival area shall be Lincoln Park and parking spaces along Congress Street, directly beside the park; and

BE IT FURTHER ORDERED, that some parking spaces on Congress Street and on Federal Street, directly beside the park, may be posted No Parking on Festival days; and

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

BE IT FURTHER ORDERED, that the LoveLincolnPark Summer Concert Series Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to the Friends of Lincoln Park under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. The Friends of Lincoln Park 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. The Friends of Lincoln Park 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. The Friends of Lincoln Park shall comply with all Public Assembly Facilities Division 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, but the Public Assembly Facilities Division fees for the use of the park are waived;
4. The Friends of Lincoln Park shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the LoveLincolnPark Summer Concert Series Festival;
5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, and street goods vendors for the Festival to those vendors the Friends of Lincoln Park has agreed shall participate; and
6. Public Assembly Facilities Division concert license conditions shall be complied with and any and all amplified music and public announcements shall be maintained at a reasonable noise level (under A-weighted 85 decibels / C-weighted 95 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; 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 Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (5 pages)
 212 Canco Rd. • Suite A • Portland • ME • 04103 • (207) 808-5400 x0
 Ted Musgrave tvm@portlandmaine.gov

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	JANUARY 23, 2020 REVISED: 1-28, 1-30, 2-27	ORGANIZATION NAME	Friends of Lincoln Park		
ADDRESS (Street/City/State/Zip)	168 York Street, Portland, ME 04101				
CONTACT NAME(S)	Frank or Sharon Reilly		TITLE(S)	President, Secretary/Treasurer	
PHONE		PHONE		PHONE	
EMAIL	fsreilly@aol.com		EMAIL	Jamie: jamieisaacson@mac.com	

PARK AREA / PUBLIC SPACE REQUESTED	Lincoln Park		
EVENT DAY(S) & DATE(S)	Tuesdays: 7/14, 7/21, 7/28, 8/4, 8/11 2020	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.)	4pm – 8pm	EVENT START & END TIME 6-7:30pm	Concerts 6-7:30pm

EVENT NAME		EXPECTED ATTENDANCE
LoveLincolnPark Summer Concerts		75 - 200
DESCRIPTION OF EVENT:		
The Concert series is still 4 concerts (7/21, 7/28, 8/4 8/11) all Tuesday 6-7:30pm. However, we are adding a special concert at the beginning, Tuesday 7/14 6-7 or 7:30pm with Opera Maine, who is co-sponsoring it and will talk about their main production later in July, The Flying Dutchman, which in commemoration of our bicentennial, will be set on the coast of Maine. The only difference with equipment needs is a riser for the opera singers. and we're hoping the City has one we can use (Organizer will need to rent one from Rental Shop.). We will be contacting City licensed food carts and hope to have two at each concert this year. (From whom did we get the list?) Food Carts may be inside the park, positioned on grass or wide sidewalk. The small banner we had last year with photos of the musicians worked well and we'll be producing another two for the fence, as well as posters. PA system used. Electricity needed. Some reserved Parking Spaces needed. Cones need to be borrowed.		
IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT? NO	Please check: _____ FEE _____ PLEDGES	
IF YES FOR FEES, HOW MUCH?	FEE	\$
	STUDENT FEE	\$

WHAT WILL BE THE ANTICIPATED NEED FOR PARKING AND WHAT IS YOUR PARKING PLAN?
We anticipate needing 3-8 parking spaces along Federal at the east end for band members and FOLP volunteers.

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (10'x10' size or smaller) How many?		X	
* 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	
* Will you be setting up tables and/or chairs ? How many tables: 1 chairs:			
* Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:			
* Will there be refreshments at the event? Only food carts 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: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. 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.			
* 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? yes Band? yes 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		
* 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		
* Are you planning on bringing a Grill for a Barbecue ? Grilling is subject to weather conditions and possibly Fire Dept. review.		X	
* Will the event require reserved parking spaces / parking meters ? How many? 3-8 "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 ? Parking cones & signs 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).	X		
* 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 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 call Sgt. Nevins (874-8554) or Police Shift Command (874-8855/8556) well in advance to arrange.		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	
* Do you wish to have a banner over the street to advertise your event? (Banners hung over		X	

Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.			
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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.) on file and will be renewed	X NEED	
♦ 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 tvm@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). The PAFD Office has cones it can rent to you (see fee schedule below) if needed. To ensure you can have vehicles (illegally parked at signs you've posted) towed, please complete and fax/email/hand deliver to city departments a "No Parking Authorization Form," which you can get from staff when you pick up NP signs. Please make sure signs are removed once the event is complete. ***Under certain conditions, the reserved parking fee may be reduced. Upon review of your application, PAFD will advise if your event qualifies for a reduction. If paying a reduced rate, towing may not be enforceable. PAFD will advise regarding these parameters as well.**

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 a Concert 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 single event concert permit (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	SSR/FER	DATE	1/29/20
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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	SSR/FER	DATE	1/29/20
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PLEASE INITIAL & DATE HIGH-LIGHTED YELLOW BOXES ABOVE.

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

Please make out separate checks for security deposit and permit fees.

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

Permit Fee for use of area:	\$ waived	Single Concert (Amplified Sound) License Fee:	\$ 100 due
Number of Hours of Use: Approx.		Equipment Rental Fee:	\$ TBD
Staff Fee (on site event support):	\$ TBD	Public Space / Park / Sound Security Deposit:	\$ waived
Admin. Fee (event coordination support):	\$ TBD	Borrowed / Rented Equipment Deposit:	\$ TBD
Electricity Fee (activation/de-activation):	\$ waived	Additional Fees:	\$ waived
Impact/Street Closure Fee (variable based on impact):	\$ N/A	(Porta-Restroom User Fee, "No Parking" Signs, etc.)	

FOR OFFICE USE ONLY

DATE APPLICATION RECEIVED: 1-29-2020

APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$ waived	SECURITY DEPOSIT:	\$ TBD	INSURANCE NEEDED?	Yes - due
DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:	
PAYMENT TYPE							
VISA / MC NUMBER:				CHECK NUMBER:		CHECK AMOUNT:	\$
CREDIT CARD AMOUNT:	\$	CREDIT CARD EXP. DATE:		CHECK NUMBER:		CHECK AMOUNT:	\$

PLEASE NOTE: A \$3.00 or 2.65% SERVICE FEE (whichever is greater) WILL BE ADDED TO ALL CREDIT CARD TRANSACTIONS.

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

♦ Public Assembly Facilities Div. ~ 212 Canco Rd. ~ Portland ~ ME ~ 04103 **EMAIL PREFERRED:** tvm@portlandmaine.gov

The main roadway into the park may warrant closure to vehicles; Police Officers on site will determine this day of event.

Organizers cover all costs for facilitating the event, to include: Permit Fees, Concert Entertainment License Fee, License Fees for Food Trucks, Vendor Fees, and Staff Fees.

The Order should include the following items:

SummerSide Music and Arts Festival be authorized for Sunday, June 28, 11am – 8pm, at Deering Oaks Park, to include sales and service of alcohol (Beer Garden near Bandstand).

The festival area will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of festival organizers for the purpose of conducting the SummerSide Music and Arts Festival, subject to the direction and control of the City Manager.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Festival Declaration.

V. FINANCIAL IMPACT

Organizer covers all city costs to facilitate the festival, including Permit Fees, License Fees and costs for staff on site.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Recommend passage.

VIII. LIST ATTACHMENTS

1. SummerSide Music and Arts festival in Deering Oaks 3.16.2020
2. SummerSide Music Festival -2020 - Sun June 28 - AP (council)

Prepared by:

Ted Musgrave

Date: 2/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DECLARING JUNE 28, 2020
THE SUMMERSIDE MUSIC & ARTS FESTIVAL**

ORDERED, that June 28, 2020 is hereby declared to be the SummerSide Music & Arts Festival, sponsored by Lucas Roy and Ryan Audy; and

BE IT FURTHER ORDERED, that the SummerSide Music & Arts Festival area shall be Deering Oaks Park; and

BE IT FURTHER ORDERED, that some parking spaces on streets inside the park may be posted No Parking on Festival days; and

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

BE IT FURTHER ORDERED, that the SummerSide Music & Arts Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Lucas Roy and Ryan Audy under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Lucas Roy and Ryan Audy 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. The Friends of Lincoln Park shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance;
2. A 21-years-old and older beer garden shall be hosted by a vendor with a liquor license and staffed by city employees and other security personnel during the Festival within the Festival Area;

3. The Public Assembly Facilities Division fees for the use of the park are waived;
4. Lucas Roy and Ryan Audy shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the SummerSide Music & Arts Festival;
5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, and street goods vendors for the Festival to those vendors approved by Lucas Roy and Ryan Audy; and
6. Public Assembly Facilities Division concert license conditions shall be complied with and any and all amplified music and public announcements shall be maintained at a reasonable noise level (under A-weighted 85 decibels / C-weighted 95 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level; 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 Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (5 pages)
212 Canco Rd. • Suite A • Portland • ME • 04103 • (207) 808-5400 x0
Ted Musgrave tvm@portlandmaine.gov

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	1/31/2020 Revised: 2-5, 2-8, 2-19, 2-20, 2-28	ORGANIZATION NAME	SummerSide Festival		
ADDRESS (Street/City/State/Zip)	P.O. Box 11026, Portland, Maine 04104				
CONTACT NAME(S)	Lucas Roy & Ryan Audy		TITLE(S)	Co-owners	
PHONE		PHONE		PHONE	
EMAIL	Summersidefestival@gmail.com		EMAIL	Summersidefestival@gmail.com	

PARK AREA / PUBLIC SPACE REQUESTED	Deering Oakes Park		
EVENT DAY(S) & DATE(S)	SUN June 28, 2020	RAIN DAY(S) & DATE(S) (50% added fee)	none
OVERALL EVENT START & END TIME (When setup will begin until cleanup is expected to be complete.)	8AM - 10Pm	EVENT START & END TIME	11AM - 8PM

EVENT NAME	EXPECTED ATTENDANCE
SummerSide Music & Arts Festival	1,000+ (400 at any given time)

DESCRIPTION OF EVENT:

SummerSide Music and Arts Festival is annual **music and arts festival** that takes place in Portland, maine. We started the festival three years ago – so this is our third summerside festival. Years prior was held at Urban Farm Fermentory and Rising Tide Brewery.

Ryan & I (lucas) are the owners of Breakwater Studio in South Portland. We organize and sponsor the event, in addition to about 15 other company sponsorships. In a nutshell, SummerSide Music and Arts festival is a free event, open to all ages (**no admission charge**). We have **food trucks** (teaming with Gastro Go-Go, local artisans, and live solo artists/bands performing all day long.
(Folk rock - like Indie Folk – Mallet Bros. / Ghost of Paul Revere)

This year, we're hoping to host it in Deering Oakes Park on the big stage. As stated, we would have artisans and food trucks. We would also like to have a beer garden (hosted by a professional beer/liquor vender, and ID/security by a city employee or other professional).

No street closures necessary, but will need help with parking, and general traffic flow.

Canopies and chairs set up on grass and asphalt. **Possibly a LARGE TENT – needs Park Manager approval (overnight security).** Food Trucks parked on Farmers Market Rd. Radio Station VAN parked on site. Beer Garden area near Stage/Bandstand. Artists and Crafters selling items (organizers selling hats & shirts). PA System (with Bands, DJ..?, solo acts). ELEC needed. Many Reserved Parking Spaces needed. Organizer will rent additional Porta-Restrooms – Beer Garden Area (and use existing 3 units).

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT? Participating Vendors pay a Registration Fee to be on site.	Please check: x FEE _____ PLEDGES	
IF YES FOR FEES, HOW MUCH?	FEE	\$\$30 for Visual Artists
	STUDENT FEE	\$

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

Parking Lots in area and also the street parking around the park. Will be encouraging ubers, carpools, taxi, public transpo, etc.

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

		X-YES	X-NO	X-NOT SURE
*	Are you setting up a canopy(s)? (10'x10' size or smaller) How many?	3 CANOPYS FOR OUR STAFF AND THEN EACH ARTIST WILL LIKELY BRING ONE		
*	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. ***			DEPENDS ON IF WE CAN GET A TENT SPONSOR. WOULD LOVE TO HAVE ONE SO WE DON'T NEED A RAIN DATE.
*	Will you be setting up tables and/or chairs? How many tables: chairs:	YES APPROX 100 CHAIRS NOT MANY TABLES		
*	Are other items or equipment being placed on City property? (i.e. Moon Bounce, Dunk Tank, Radio Station Van, Helium Tank, etc.) Please List:	RADIO STATION VAN, FOOD TRUCKS, AND BEER GARDEN.		
*	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: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. 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.	HOPING TO HAVE FOOD VENDORS (TEAMING UP WITH GASTRO GO-GO) AND HOPING TO SERVE ALCOHOL IN A BEER GARDEN. WILL HOPEFULLY BE ABLE TO PROVIDE BOTTLED WATER.		
*	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:	YES – WE WILL SELL T-SHIRTS AND MAYBE HATS		
*	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.	DEFINITELY. WE'RE THINKING MOSTLY SOLO ARTISTS AND MAYBE 1-3 BANDS. WE'RE HOPING TO RUN		
*	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.	YES.		
*	Are you planning on bringing a Grill for a Barbecue? Grilling is subject to weather conditions and possibly Fire Dept. review.		X	
*	Will the event require reserved parking spaces / parking meters? How many? "No Parking" signs may be purchased at the PAFD Office, 212 Canco Rd.	PROBABLY NEED 2-3 FOR THE ARTISTS		
*	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).	PROBABLY TRAFFIC SIGNS AND MAYBE 2 VESTS		
*	Will your event require street closures? (Please be specific under "Description of Event")		X	

	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 (gfenton@gpmetro.com) to discuss.			
*	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 call Sgt. Nevins (874-8554) or Police Shift Command (874-8855/8556) well in advance to arrange.	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.	RENT FOR BEER GARDEN		X – HOW MANY BATHROOMS ARE THERE CURRENTLY?
*	Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.	YES PLEASE		

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 tvm@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). The PAFD Office has cones it can rent to you (see fee schedule below) if needed. To ensure you can have vehicles (illegally parked at signs you've posted) towed, please complete and fax/email/hand deliver to city departments a "No Parking Authorization Form," which you can get from staff when you pick up NP signs. Please make sure signs are removed once the event is complete. ***Under certain conditions, the reserved parking fee may be reduced. Upon review of your application, PAFD will advise if your event qualifies for a reduction. If paying a reduced rate, towing may not be enforceable. PAFD will advise regarding these parameters as well.**

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.

CANCELATION 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****LR****DATE****1/31/2020****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****LR****DATE****1/31/2020****PLEASE INITIAL & DATE HIGH-LIGHTED YELLOW BOXES ABOVE.****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
"No Parking" Signs: \$25 each	Equipment Delivery Fee: \$100 or more
Cancellation Fee: \$75	Fortification Fee: TBD

PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND".

Please make out separate checks for security deposit and permit fees.

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

Permit Fee for use of area:	\$ TBD	Entertainment License Fee:	\$ 50 due
Number of Hours of Use: Approx. 12 (\$75 hr)		Equipment Rental Fee:	\$ TBD
Staff Fee (on site event support):	\$ TBD	Public Space / Park / Sound Security Deposit:	\$ TBD
Admin. Fee (event coordination support):	\$	Borrowed / Rented Equipment Deposit:	\$ TBD
Electricity Fee (activation/de-activation):	\$ 40 due	Additional Fees:	\$ TBD
Impact/Street Closure Fee (variable based on impact):	\$	(Porta-Restroom User Fee, "No Parking" Signs, etc.)	

FOR OFFICE USE ONLY**DATE APPLICATION RECEIVED: 2-5-2020**

APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$ TBD - Due	SECURITY DEPOSIT:	\$ TBD	INSURANCE NEEDED?	Y - Due		
DATE RECEIVED:	2-11-20 CC	DATE RECEIVED:		DATE RECEIVED:		DATE RECEIVED:			
PAYMENT TYPE									
VISA / MC NUMBER:			5119	CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
CREDIT CARD AMOUNT:	\$ 25.00	CREDIT CARD EXP. DATE:	7/21	CHECK NUMBER:		CHECK AMOUNT:	\$	CASH AMOUNT:	\$

PLEASE NOTE: A \$3.00 or 2.65% SERVICE FEE (whichever is greater) WILL BE ADDED TO ALL CREDIT CARD TRANSACTIONS.

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

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

MEMORANDUM
City Council Agenda Item

FROM: Ted Musgrave
DATE: February 28, 2020
SUBJECT: **Order 163-19/20 Declaring June 21, 2020 the Make Music Portland Festival Day - Sponsored by Jon P. Jennings, City Manager**
SPONSOR: 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 3/16/2020

Final Action 3/16/2020

Can action be taken at a later date: Yes

PRESENTATION: None

I. SUMMARY

Order Declaring Sunday, June 21, 2020, as Make Music Portland Festival Day.

II. AGENDA DESCRIPTION

This order declares Sunday, June 21, 2020, as Make Music Portland Festival Day, with bands and musicians playing music all over the city, including in Monument Square, Congress Square Park, Deering Oaks Park, Post Office Park, Lobsterman Park, Lincoln Park, Longfellow Square, and Fort Allen Park, among other parks and squares.

Additional details about the event are included in the agenda backup.

Five affirmative votes are required for passage of the Consent Calendar, after public comment.

III. BACKGROUND

For the past seven years (this is the eighth year), Make Music Portland has organized and presented concerts in many of Portland's parks and squares on the longest day of the year (June 21). The goal of the event is to make Portland come alive with music on that day. Each year, more bands participate and more spectators attend shows. This year's attendance (over the course of the day) should reach 2000 people.

Logistics for this year's Make Music Portland are as follows:

Many of the city's parks and squares, including: Monument Square, Congress Square Park, Deering Oaks Park, Post Office Park, Lobsterman Park, Lincoln Park, Longfellow Square, and Fort Allen Park among others, will be utilized for concerts. Many styles of music will be presented; with multiple performances taking place at each venue throughout the day, 11am – 8pm (concerts typically last 30 minutes). A PA system will be used at some of the locations (the parks and squares mentioned above) from 11am – 8pm. Event organizer will obtain

the required Entertainment License from Public Assembly Facilities Div.

Event organizer will supply volunteers to staff all of the parks' and squares' musical stages.

The Festival area (Monument Square, Congress Square Park, Deering Oaks Park, Post Office Park, Lobsterman Park, Lincoln Park, Longfellow Square, and Fort Allen Park – and abutting sidewalks) will be closed to street vendors pursuant to Section 19 -17 of the Portland City Code and is reserved for the use of Make Music Portland organizers for the purpose of permitting vendors for the event, subject to the direction and control of the City Manager.

The above Festival Areas (adjacent parking spaces) may be posted "No Parking" at the discretion of event organizers. Vehicles in violation of the "No Parking" signs shall be towed at owner's expense.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Festival Declaration.

V. FINANCIAL IMPACT

Organizer cover costs to facilitate the event (including Permit Fees for use of parks and square, and License Fees).

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Recommend passage.

VIII. LIST ATTACHMENTS

1. Make Music Portland 2020
2. Make Music Portland 2020 - AP (council)

Prepared by:

Ted Musgrave

Date: 2/28/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DECLARING JUNE 21, 2020
THE MAKE MUSIC PORTLAND FESTIVAL**

ORDERED, that June 21, 2020 is hereby declared to be the Make Music Portland Festival, sponsored by Make Music Portland, a Maine non-profit corporation; and

BE IT FURTHER ORDERED, that the Make Music Portland Festival area shall be Monument Square, Post Office Park, Lobsterman Park, Bell Buoy Park, Fort Allen Park (at the gazebo), Standpipe Park (Fort Sumner Park), Longfellow Square, Congress Square Park, Harbor View Memorial Park, Lincoln Park, Deering Oaks, Taylor Street Park, and city sidewalks; and

BE IT FURTHER ORDERED, that the Make Music Portland Festival Area shall be closed to licensed street vendors as provided in §19-17 and §19-22 of the Portland City Code; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit to Make Music Portland under §§25-26—25-28 of the Portland City Code to conduct said Festival, subject to the direction and control of the City Manager and to the following specific conditions:

1. Make Music Portland 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. Make Music Portland 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. Make Music Portland shall comply with all Public Assembly Facilities Division 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; and

4. Make Music Portland shall have sole authority over participating vendors at the Festival and may charge a fee to vendors for the opportunity to vend at the Make Music Portland Festival;
5. In addition, the Business Licensing Office shall charge the usual fees for licensing food vendors, and street goods vendors for the Festival to those vendors Make Music Portland has agreed shall participate; and
6. Make Music Portland shall be responsible for paying associated city costs, such as Public Assembly Facilities Division Permit fees; and
7. Public Assembly Facilities Division concert license conditions shall be complied with and any and all amplified music and public announcements shall be maintained at a reasonable noise level (under 92 decibels) and be configured by the event organizer to focus volume away from residential housing and neighboring business, limiting any impact in the area by the sound level;

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 Portland City Code, provided that all other applicable Code requirements for the operation of the Festival have been met.



CITY OF PORTLAND, PUBLIC ASSEMBLY FACILITIES DIVISION
PUBLIC PARK & SPACE APPLICATION (5 pages)
 212 Canco Rd. • Suite A • Portland • ME • 04103 • (207) 808-5400 x0
 Ted Musgrave tvm@portlandmaine.gov

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		01/27/2020 Revised: 1-30, 2-27		ORGANIZATION NAME		Make Music Portland	
ADDRESS (Street/City/State/Zip)		1 Forest Ave – Suite 3B, Portland, ME 04101					
CONTACT NAME(S)		Catherine Tanous Max Mogensen		TITLE(S)		Event Producer Marketing Manager	
PHONE				PHONE			
EMAIL		ctanous@gmail.com		EMAIL		Max.a.mogensen@gmail.com	
				EMAIL		max@mainecreative.co	

PARK AREA / PUBLIC SPACE REQUESTED		Post Office Park, Lincoln Park, Longfellow Square, Fort Allen park, Harbor View Memorial Park, Monument Square, Deering Oaks, Lobsterman Park, Bell Buoy Park, Congress Square Park, Fort Allen Park, Tommy's Park and Lincoln Park and city side walks	
EVENT DAY(S) & DATE(S)		SUN, June 21, 2020	
		RAIN DAY(S) & DATE(S) (50% added fee)	
		none	
OVERALL EVENT START & END TIME (When setup will begin until cleanup is expected to be complete.)		9am - 10pm	
		EVENT START & END TIME	
		11am - 8pm	

EVENT NAME	EXPECTED ATTENDANCE
Make Music Portland	500 - 2000 passerby

DESCRIPTION OF EVENT:

Make Music Portland is an all-day free music event throughout the city - part of an international movement. The idea is that the city of Portland will become alive with music. Performances will take place on city sidewalks, in parks, on patios, and even on your own porch. Musicians and venues are encouraged to pre-register to be part of the event. There will be individual musician performances as well as, play-a-long events for the public to participate in. There will be play-a-long events including harmonica lessons, ukulele lessons, drumming circles, instrument building, etc. Live music and free music lessons will take place in Post Office Park, Lincoln Park, Longfellow Square, Fort Allen Park, Harbor View Memorial Park, Monument Square, Deering Oaks, Lobsterman Park, Bell Buoy Park, Congress Square Park, Fort Allen Park, Tommy's Park and Lincoln Park.

Canopies and tables set up. Some chairs as well.

There will be a clawfoot tub in Lobsterman Park for singing in the shower. PA system (and amplified music) in some of the parks.

(2-27-20: PR&F has approved day long amplification in all parks and squares)

Elec. needed. Some reserved parking spaces needed.

Musicians will be selling cds and other band merchandise.

Social Media sites: makemusicportland.org Facebook: @makemusicportland Instagram: @makemusicportland

IS THERE A REGISTRATION FEE/PLEDGES COLLECTED FOR THIS EVENT? NO		Please check: _____ FEE _____ PLEDGES	
IF YES FOR FEES, HOW MUCH?		FEE	\$
		STUDENT FEE	\$

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

We anticipate purchasing no parking signs to be placed at 2-3 meters per park. This will allow performers to park during their performance and volunteers to park while working.

PLEASE CHECK OFF AND ANSWER:

PLEASE SEE ATTACHED FEE SCHEDULE / DEPT. INFORMATION IF YOU ANSWER YES

	X-YES	X-NO	X-NOT SURE
* Are you setting up a canopy(s) ? (10'x10' size or smaller) How many? 3-5	X		
* 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	
* Will you be setting up tables and/or chairs ? How many tables: 2 chairs: 4	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: Clawfoot Tub	X		
* 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: 1. Food Vendors have a current City of Portland Food License 2. Just pre-packaged refreshments, or food & drink items are purchased or donated from a licensed establishment 3. 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	
* 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: CDs, t-shirts, musician merchandise	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		
* 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		
* Are you planning on bringing a Grill for a Barbecue ? Grilling is subject to weather conditions and possibly Fire Dept. review.		X	
* Will the event require reserved parking spaces / parking meters ? How many? 20 "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).		X	
* 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 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 call Sgt. Nevins (874-8554) or Police Shift Command (874-8855/8556) well in advance to arrange.		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	
* Do you wish to have a banner over the street to advertise your event? (Banners hung over Congress St. or Baxter Blvd). Banner inquiries directed to PAFD: 808-5400 x0.		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 NEED		
♦ 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 tvm@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). The PAFD Office has cones it can rent to you (see fee schedule below) if needed. To ensure you can have vehicles (illegally parked at signs you've posted) towed, please complete and fax/email/hand deliver to city departments a "No Parking Authorization Form," which you can get from staff when you pick up NP signs. Please make sure signs are removed once the event is complete. ***Under certain conditions, the reserved parking fee may be reduced. Upon review of your application, PAFD will advise if your event qualifies for a reduction. If paying a reduced rate, towing may not be enforceable. PAFD will advise regarding these parameters as well.**

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 a Concert 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 single event concert permit (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. **PR&F has approved day long amplification in all parks and squares**

CANCELATION 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****CT****DATE****1/27/2020****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****CT****DATE****1/27/2020****PLEASE INITIAL & DATE HIGH-LIGHTED YELLOW BOXES ABOVE.****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 Event with registration or pledges & attendance 25 - 300: \$125/hr Event with registration or pledges & attendance 301+: \$225/hr Film/Photo Shoot: \$150/day Public Space/Park Security Deposit: \$100 - \$1000 Sound Security Deposit: \$100 - \$1,000 Impact/Street Closure Fee (variable based on impact): \$100-\$500 Staff Fee (on site event support): \$37/hour Administrative Fee (event coordination support): \$40/hour or more "No Parking" Signs: \$25 each Cancellation Fee: \$75	Electricity (activation/de-activation) Fee: \$40/flat Porta Restroom User Fee (if attendance is 150+): \$25 Single Concert License: \$50 Barricades: \$5/ea. Rental Fee + \$25/ea. Security Deposit Bike Racks: \$10/ea. Rental Fee + \$25/ea. Security Deposit Flashing Lights: \$10/ea. Rental Fee + \$40/ea. Security Deposit Cones: \$2/ea. Rental Fee + \$15/ea. Security Deposit Safety Vests: \$15/ea. Security Deposit Keys: \$50/ea. Security Deposit Equipment Delivery Fee: \$100 or more Fortification Fee: TBD
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PLEASE MAKE CHECKS PAYABLE TO "CITY OF PORTLAND".
Please make out separate checks for security deposit and permit fees.

TOTAL AMOUNT(S) DUE TO PUBLIC ASSEMBLY FACILITIES DIVISION (Please make all security deposit checks out separately)			
Permit Fee for use of area:	\$ 750 due	Single Concert (Amplified Sound) License Fee:	\$ 50 due
Number of Hours of Use: Approx. 10 hours		Equipment Rental Fee:	\$ TBD
Staff Fee (on site event support):	\$ TBD	Public Space / Park / Sound Security Deposit:	\$ 250 due
Admin. Fee (event coordination support):	\$	Borrowed / Rented Equipment Deposit:	\$ TBD
Electricity Fee (activation/de-activation):	\$ 80 due	Additional Fees:	\$ TBD
Impact/Street Closure Fee (variable based on impact):	\$	(Porta-Restroom User Fee, "No Parking" Signs, etc.)	

FOR OFFICE USE ONLY							
DATE APPLICATION RECEIVED: 1-30-2020							
APPLICATION FEE:	\$ 25.00	PERMIT FEE:	\$ need	SECURITY DEPOSIT:	\$ need	INSURANCE NEEDED?	Yes - due
DATE RECEIVE		DATE RECEIVED		DATE RECEIVED		DATE RECEIVED	
PAYMENT TYPE							
VISA / MC NUMBER:		CHECK NUMBER		CHECK AMOUNT:	\$	CASH AMOUNT:	\$
CREDIT CARD AMOUNT:	\$	CREDIT CARD EXP. DATE:		CHECK NUMBER		CHECK AMOUNT:	\$
PLEASE NOTE: A \$3.00 or 2.65% SERVICE FEE (whichever is greater) WILL BE ADDED TO ALL CREDIT CARD TRANSACTIONS.							

PLEASE RETURN FORM (WORD DOC) AT LEAST 30 DAYS IN ADVANCE TO:
♦ Public Assembly Facilities Div. ~ 212 Canco Rd. ~ Portland ~ ME ~ 04103 EMAIL PREFERRED: tvm@portlandmaine.gov

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 25, 2020

SUBJECT: Order 164-19/20 Granting Municipal Officers' Approval of J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street - Sponsored by Jon P. Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Application was filed on 11/25/2019. New City application. Applicant has a pending Class XI FSE license,

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Andy-Entertainment

2. 20200302094225436

Prepared by:

Date: 2/25/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor
Entertainment at 94 Commercial Street.**



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00	☐ Outdoor Entertainment \$700.00	☐ Combined Entertainment \$800.00
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Business Information			
Business Name (d/b/a):	ANDY'S OLD PORT PUB		Phone: 207-874-2639
Location Address:	94 COMMERCIAL STREET, PORTLAND, ME		Zip: 04101
Owner Name:	J&TL, INC.		Phone: Same as above
Owner Email:	Same as contact email		
Contact Person responsible for Entertainment:	JOHN LOWELL		Phone: 207-874-2639
Contact Person Email:	JLOWELL@ROADRUNNER.COM		
Manager of Establishment:	JOHN LOWELL		Phone: 207-874-2639
Manager Email:	JLOWELL@ROADRUNNER.COM		

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:
 ANDY'S OLD PORT PUB HAS BECOME A MAINSTAY OF THE PORTLAND WATERFRONT OVER THE PAST 12 YEARS. IT IS OUR WISH TO CONTINUE OPERATIONS AS A BRIGHT, CLEAN, RELAXING PUB WITH EXCELLENT PUB FOOD AND PLEASANT MUSIC. 7 NIGHTS/WEEK PLAYED AT A VOLUME THAT CONTINUES TO ALLOW DINNER CONVERSATION. WHILE THE OCCASIONAL PERFORMER IS FROM AWAY, THE MAJORITY OF PERFORMERS ARE LOCAL SINGER/SONGWRITERS.

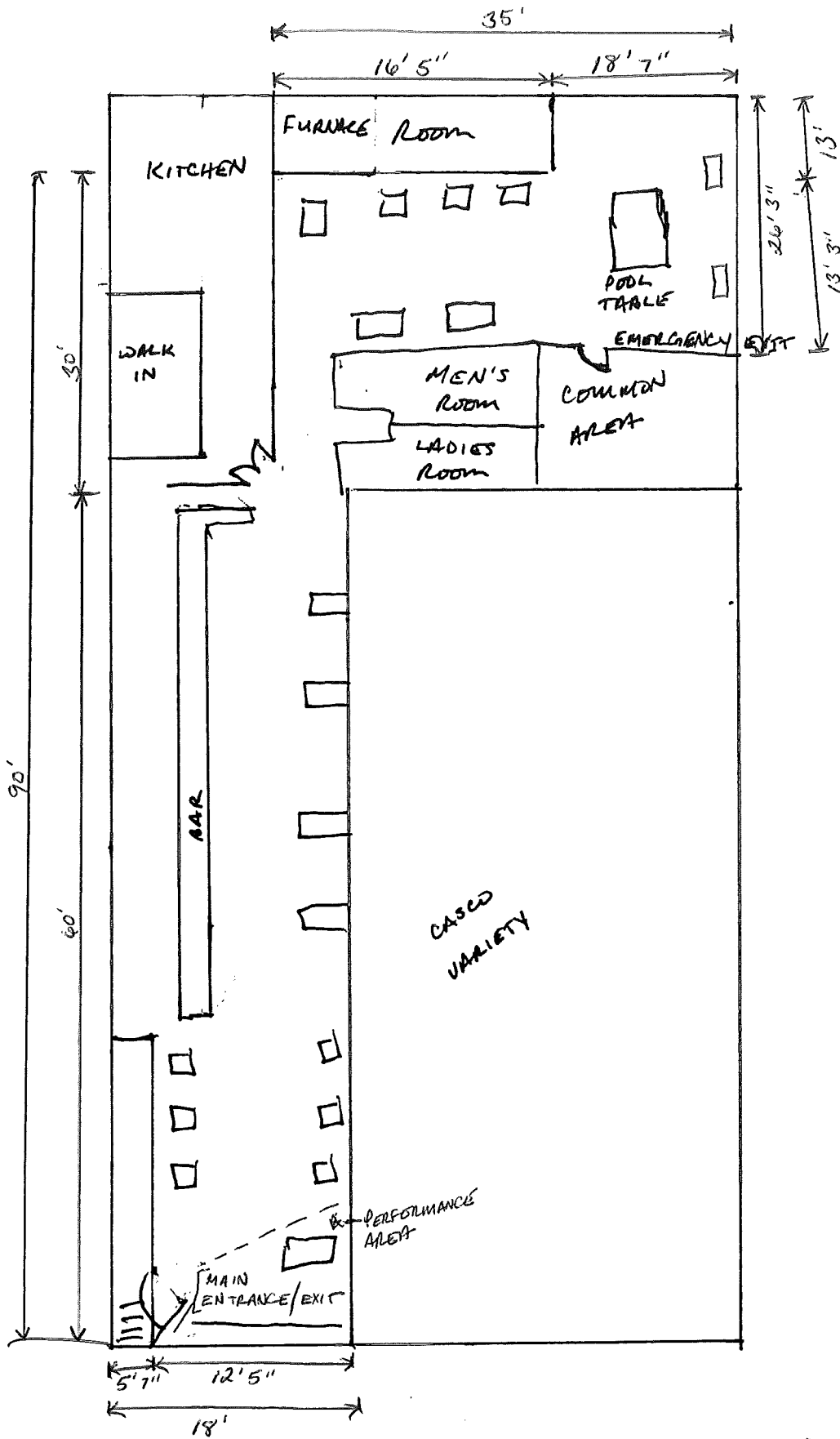
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts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

Signature John W. Lowell Title President Date 11/21/2019

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

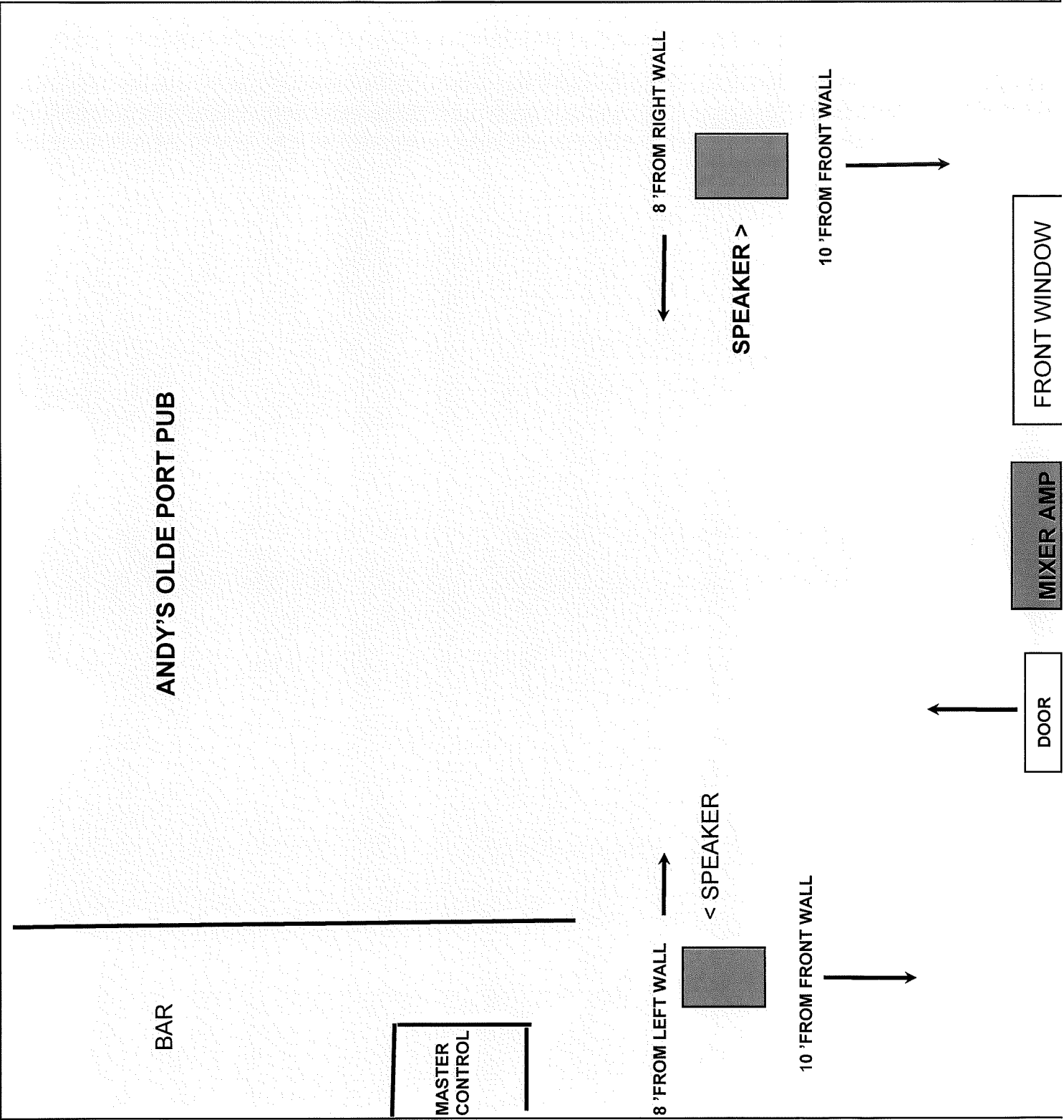
Paid 2-11-20

Gilbert's



COMMERCIAL STREET

RECEIVED
JAN 28 2020
Liquor licensing
& Enforcement





New England Mobile Audio
15 Elkins Rd
Kingston, NH 03848
www.nemobileaudio.com
603-347-1810 – office

February 2, 2020

John Lowell
Andy's Olde Port Pub
94 Commercial St #4738
Portland, ME 04101

Sound Mitigation Plan

Prepared for Andy's Olde Port Pub

New England Mobile Audio
Is a fully insured Audio Installation Company
Located in
Kingston, NH

Sound System Details

Installation consists of a Yamaha 6 Channel 300 watt Sound System, which will include:

2 Yamaha 15 + Horn 300 watt Speakers with a built in Sound Compressor.]

All Speakers are located 8 – 10 ft from walls, floors and ceiling, with 0 to 10% downward slope for sound control.

The Original Sound System was installed per and authorized by the original tenant's landlord and the Portland City Officials in the year of 2014.

Sound Levels

Sound Levels will be controlled to be under 85 Decibels per the National Institute for Occupational Safety and Health (NIOSH)

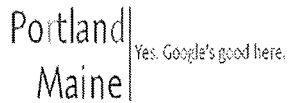
For further questions or concerns, please call:

John Sobczak
New England Mobile Audio
603-339-7881 cell
603-347-1810 office
john@nemobileaudio.com

Merrill Auditorium

Sound Mitigation Review

Date: 2/28/2020							
Business	Andy's Old Port Pub						
Applicant	John Lowell						
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							
This should have little to no impact outside of this venue							
Is the speaker outside the door needs to have it's own volume control							
Approved						Yes	
DIRECT ALL INQUIRIES TO:							
Kevin Schneck							
(207) 756-8433							
kschneck@portlandmaine.gov							



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Andys Old Port Pub

Dan Hondo <danh@portlandmaine.gov>

Thu, Feb 20, 2020 at 11:09 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

No issues on PD side

On Fri, Feb 14, 2020 at 1:37 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached application for an Entertainment License for an Indoor Entertainment License. This will go before council on 3/16/2020. Please advise. Jessica

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--
Lt. Dan Hondo
Portland Maine Police Dept.
Patrol Team B3/B4
(207)874-8513



CITY OF PORTLAND
Permitting and Inspections Department

February 14, 2020

J & TL Inc
110 Marginal Way #285
Portland ME 04101

Re: J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Dear John Lowell

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday March 16, 2020 at 5:30 p.m.**, for the review of application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on March 16, 2020 at 5:30 P.M., in City Council Chambers, 389 Congress St., J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street. Sponsored by Jon P. Jennings, City Manager.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: February 25, 2020

SUBJECT: Order 165-19/20 Granting Municipal Officers' Approval of Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street - Sponsored by Jon P. Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Application was filed on 2/19/2020. Applicant currently holds a Class XI FSE license with Entertainment with Dance. Portland City Code Chapter 4, sec. 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Amigos
2. 20200302094144741

Prepared by:

Date: 2/25/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.



CITY OF PORTLAND
Permitting and Inspections Department
Renewal Application for an Entertainment License

Must Include:

- ☐ 8 1/2" x 11" diagram showing layout of the premises to include dimensions, locations of dancing, seating, toilet rooms and means of egress.
- ☐ Sound Mitigation Plan (**not required if renewal application for indoor only entertainment)
 - o Prepared and Certified by a Professional Sound Engineer
 - o Details of methods used to minimize the impact on entertainment on the surrounding uses
 - o Speaker Locations and directions
 - o Sound System details and controls
 - o Stage and site layout and direction
 - o Noise cancelling or mitigating measures proposed
 - o Anticipated Sound readings
 - Indoors Entertainment-8 feet from any outer wall
 - Outdoor/Combined Entertainment-Property line and closest residence
 - o On-Site monitor when attendees are expected to exceed 250

Business Information			
Business Name (d/b/a):	Amigo's Mexican Restaurant		Phone: 207 772 0772
Location Address:	9 Dana St. Portland Me		Zip: 04101
Owner Name:	Bruce A Mills	Phone: 207	450-4266
Owner Email:	bamills29@yahoo.com		
Contact Person responsible for Entertainment:	Asher Knutson Shryock	Phone: 207	615-1172
Contact Person Email:	amigasasher@gmail.com		
Manager of Establishment:	Asher Shryock	Phone: 207	615-1172
Manager Email:	amigasasher@gmail.com		

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment: Restaurant and lounge with outdoor seating with live bands Thurs-Fri-Sat. nights from Memorial Day to Columbus Day

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 Bruce A Mills Title owner Date 2/16/2020

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

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

bl@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department
389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Renewal for Food Service Establishment with Alcoholic Beverages License

Business Information			
Business Name (d/b/a):	<i>Amigos Mexican Restaurant</i>	Phone:	<i>207 772-0772</i>
Location Address:	<i>9 Dana St Portland Me</i>	Zip:	<i>04101</i>
Mailing Address:	<i>9 Dana St Portland Me</i>	Zip:	<i>04101</i>
Contact Person:	<i>Bruce Mills</i>	Phone:	<i>207 450-4266</i>
Contact Person Email:	<i>bamills29@yahoo.com</i>		

Owner Name	Corporate Mailing Address
<i>Bruce Mills</i>	<i>9 Dana St Portland Me 04101</i>

About Your Establishment

Class of Liquor License:	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor
Hours & days of operation:	<i>Mon-Wed 3PM-1AM Thuk-Sun 11:30AM-1AM</i>

QUESTIONS	Y/N
Will you have entertainment on the premises?	☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	☒ Y ☐ N
Will you have outside dining? If yes, will the outside dining be on PUBLIC or PRIVATE property? (circle one)	☒ Y ☐ N
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y ☐ N
If yes, please list: # of pinball machines: <u>2</u> # of amusements: <u>2</u> # of pool tables:	

I Bruce Mills 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.

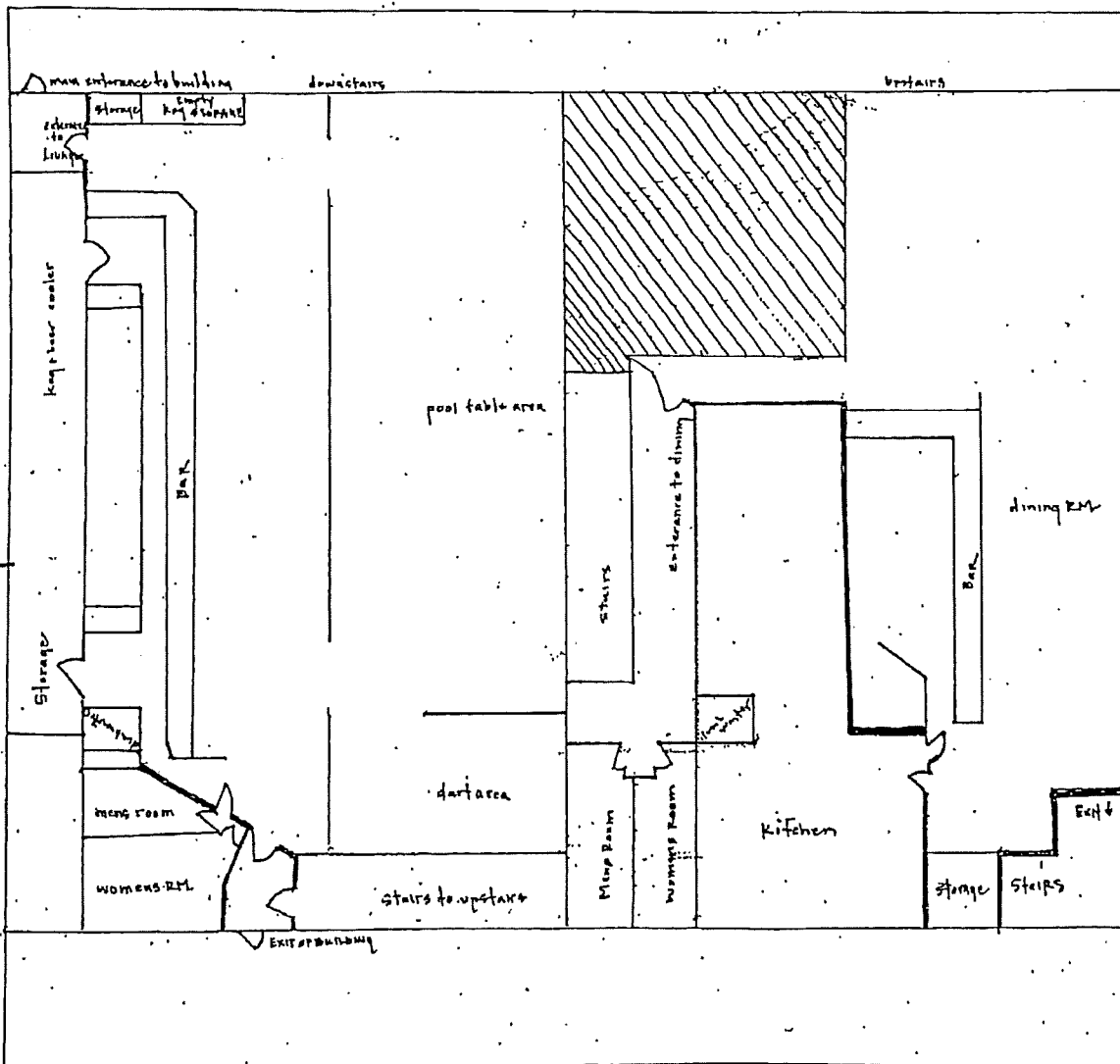
Signature Bruce Mills Title Owner Date 2/16/2020



SUPPLEMENTAL APPLICATION FORM ON-PREMISE DIAGRAM

In an effort to clearly define your licensed premise and the areas that consumption and storage of liquor is allowed, The Bureau of Liquor Enforcement is requiring all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, decks and all areas that you are requesting approval from the Bureau for liquor consumption.



OFFICES LOCATED AT: 397 WATER STREET GARDINER, MAINE 03345

(207) 624-8745 (Voice)

(207) 624-4478 (TDD)

(207) 624-8767 (Fax)

Amigos Mexican Restaurant
9 Dana Street Portland, ME 04101

Sound Mitigation Plan

Sound mitigation plan regarding outdoor entertainment for 9 Dana Street:

- Speakers are placed facing the building to ensure the sound will not travel farther outside of the area it is being directed to.
- Built a wooden stage to absorb sound from reverberating from the direction intended to reduce the effects of bass and centralize sound toward the patio and my business.
- Wooden fence and patio cover further ensure and encapsulate sound to keep it to a minimum.
- Design of the fence is such that the slats are staggered on the inside and outside which contributes to the buffering of sound.
- The speakers will not exceed the height of the fence by more than 1 foot to make best use of the buffering of the fence.
- Additionally, speakers are facing the patio overhang connected to the building to further contain sound.
- Ensure volumes are within the standards set by the city and that bands are adhering to this.
- Each band is expected to ensure sound levels and outputs are within city standards and are encouraged to keep bass levels low.
- Bookings are to adhere to guidelines of when to setup and breakdown as to not affect neighboring businesses and residents.
- Noise levels are to be strictly adhered to or bands will be admonished and will not be used again if they fail to do so.
- Each night that we have entertainment either the outside bartender or head of security will have a sound monitor and will check it at regular intervals.
- Each band we have booked has been informed of the changes in the sound ordinance guidelines and will be reminded upon arrival before they set up to play.
- Each band will be required to review this document and sign off before performing.
- Most importantly, listen to the concerns of businesses around me and continue to be a good neighbor.

Wharf Street

Gate

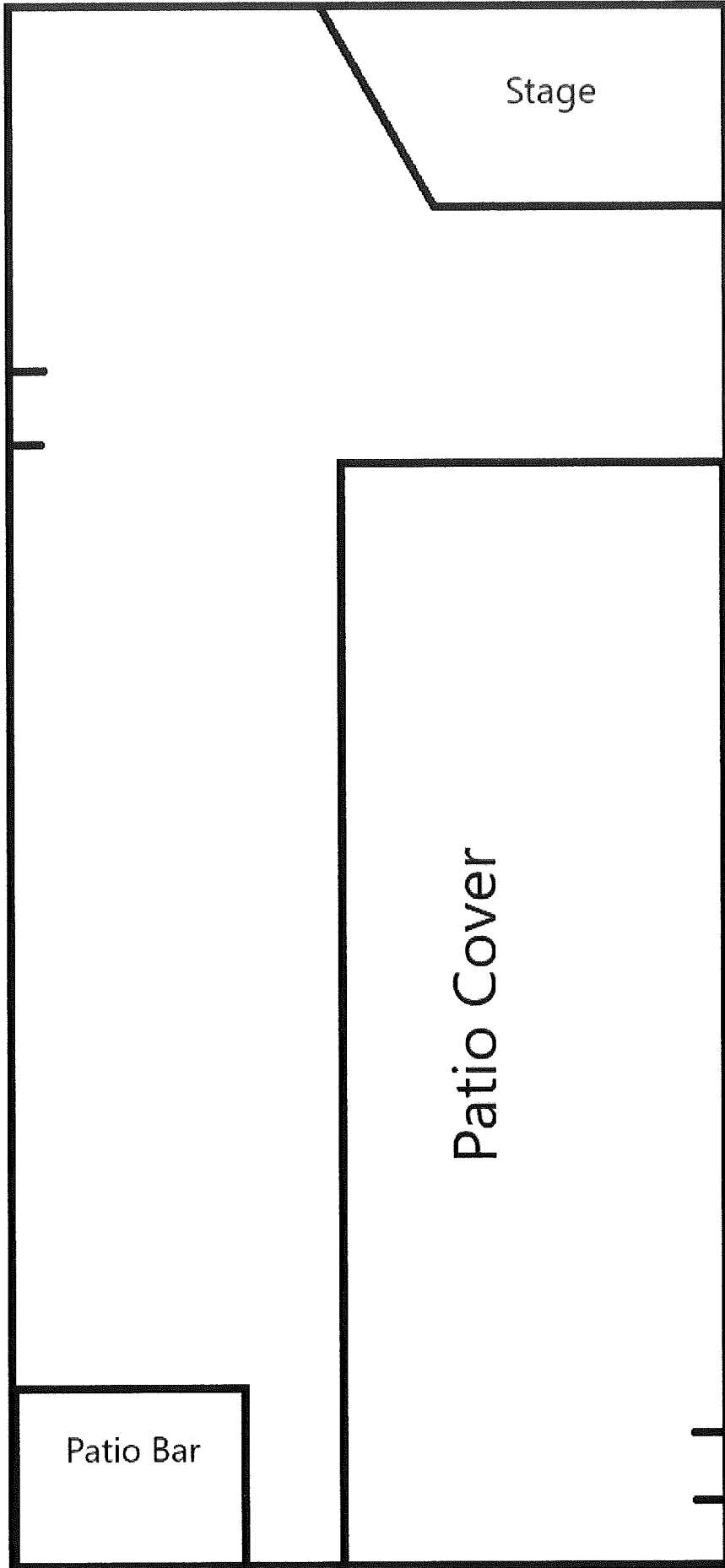
Stage

Patio Cover

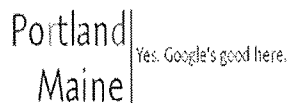
Patio Bar

Gate

9 Dana Street



Staggered Slats for added bottom



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Amigos

Jessica Hanscombe <jhanscombe@portlandmaine.gov>
To: Jess Work <jhanscombe@portlandmaine.gov>

Tue, Feb 25, 2020 at 4:40 PM

On Tue, Feb 25, 2020 at 4:34 PM Glen McGary <glenm@portlandmaine.gov> wrote:

Approved Portland PD

Glen

On Mon, Feb 24, 2020 at 5:20 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:
Good Afternoon

Please see the attached renewal for a Combined Entertainment License. This will go before Council on 3/16/2020. Please advise. Jess

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--

Lieutenant Glen McGary
Portland Police Department
109 Middle Street
Portland, Maine 04101
Office (207) 756-8294
Fax (207) 874-8580



CITY OF PORTLAND
Permitting and Inspections Department

February 25, 2020

Amigos Mexican Restaurant
9 Dana Street
Portland ME 04101

Re: The Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Dear Bruce Mills

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday March 16, 2020 at 5:30 p.m.**, for the review of application for a Combined Entertainment License at 9 Dana Street. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on March 16, 2020 at 5:30 P.M., in City Council Chambers, 389 Congress St., Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street. Sponsored by Jon P. Jennings, City Manager.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 3, 2020

SUBJECT: Resolution 11-19/20 Calling on the Legislature to Pass LD 433, the Maine Equal Rights Amendment - Sponsored by Mayor Kate Snyder

SPONSOR: Mayor Kate Snyder

(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 3/16/2020

Can action be taken at a later date: No

PRESENTATION:

I. SUMMARY

II. AGENDA DESCRIPTION

This resolution calls on the Maine Legislature to pass LD 433, the Maine Equal Rights Amendment, which reads simply, "Equality of rights under the law may not be denied or abridged by the State or any political subdivision of the State based on the sex of an individual. The Legislature has the power to enforce this section by appropriate legislation."

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Maine ERA Resolution 3.10.2020

Prepared by:

Date: 3/3/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**RESOLUTION CALLING ON THE LEGISLATURE
TO PASS LD 433, THE MAINE EQUAL RIGHTS AMENDMENT**

WHEREAS, at the State of Maine's founding women were not recognized as citizens under the new Constitution and were unable to vote; and

WHEREAS, it was not until one hundred years after Maine became a state that women earned the right to vote upon the ratification of the 19th Amendment; and

WHEREAS, in 1924 many Native Americans were granted citizenship, without which they could not exercise the right to vote, but despite that Native American women were denied the exercise of that right for many years; and

WHEREAS, it would not be until 1964 when the Civil Rights Act was approved that many women of color were able to vote, despite the constitutional amendment that gave them that right; and

WHEREAS, the right to vote remains women's only constitutionally protected right, in Maine and nationally; and

WHEREAS, all other rights that women have won have come as a result of legislation, legal decisions, or regulation, and those rights are more easily reversed; and

WHEREAS, Maine's legislature ratified the federal Equal Rights Amendment in a bipartisan vote in 1974; and

WHEREAS, there exists no language in Maine's Constitution prohibiting discrimination on the basis of sex; and

WHEREAS, the final decision of whether to amend Maine's Constitution is not in the hands of the legislature, but of the voters; and

WHEREAS, an amendment passed in this session can be on the ballot on November 3, 2020;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Portland City Council, recognizing Maine's bicentennial year and the centennial of woman suffrage, call on the Maine State Legislature to pass LD 433, the Maine Equal Rights Amendment to the Maine Constitution, which reads simply, "Equality of rights under the law may not be denied or abridged by the State or any political subdivision of the State based on the sex of an individual. The Legislature has the power to enforce this section by appropriate legislation."

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: March 3, 2020

SUBJECT: **Order 148-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Marginal Way Improvements - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No This agreement must be approved by City Council and signed by the City Manager as soon as possible to allow for an early as possible bid date. We are hoping with an earlier bid date bid pricing will be improved.

PRESENTATION:

I. SUMMARY

City Council is being asked to approve the attached Portland Area Comprehensive Transportation System (PACTS) Municipal Partnership Agreement and authorize the City Manager to sign the agreement, which would allow the City to move ahead with its plans to pave Marginal Way between Bangor Savings Bank and Franklin Street.

II. AGENDA DESCRIPTION

The Marginal Way improvement project, for paving Marginal Way between 20 Marginal Way near Forest Avenue to Franklin Street, is part of the Municipal Partnership Initiative (MPI) Program. The City administers the project and receives 50% funding from the state Metropolitan Planning Organization (MPO). By signing the partnership agreement, the City is enabled to proceed with the project, obligating its MPO, Portland Area Comprehensive Transportation System (PACTS), to pay for 50% of the estimated project cost, or \$212,752.00. The local share of the cost of this project is funded through the Fiscal Year 2021 Capital Improvement Plan.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Marginal Way paving project is part of MaineDOT's 2018-2020 work plan. The scope of the MPI project work includes a 1 1/2" mill and fill and re-striping after final paving. Curb work, ADA upgrades, and minor signal work are outside of the paving scope but will be done as part of this project with City funds.

Construction work on this project is scheduled to begin after April 15, 2020 and be completed in Fall 2020.

This project is classified as a pavement preservation project and is part of the MPI Program. The City will be responsible for 50% of the paving cost and 100% of any overages to the original estimate.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Marginal Way paving project will improve the pavement surface and ride quality on a regionally important minor arterial. It will also improve the striping pattern to meet some of the Bayside Master Plan. PACTS will pay for 50% of the paving costs.

V. FINANCIAL IMPACT

The City is obligated to pay 50% of the estimated paving cost, or \$212,752.00 and 100% of any overages due to added scope in the project area. The total City cost of this paving work, estimated to be \$212,752.00, would be paid from a FY21 CIP account established for this project. Please see the attached fiscal impact note for additional information.

VI. STAFF ANALYSIS AND BACKGROUND

This is a Minor Arterial in the City of Portland with very high Annual Average Daily Traffic. Marginal Way was ranked with a low Pavement Condition Indices (the pavement is in bad shape) when it was last evaluated and work has been done recently in the area that has caused more damage to the street. Without this project, the road will continue to deteriorate.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow the city to pave Marginal Way from 20 Marginal Way to Franklin Street in 2020.

VIII. LIST ATTACHMENTS

1. Three-party MDOT, PACTS and Portland re Paving Marginal Way 3.2.2020
2. Marginal Way - Fiscal Impact Note
3. Marginal Way - PACTS Muni Partnership Agreement
4. Marginal Way - Location Map (1)

Prepared by:

Melissa Graffam

Date: 3/3/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE THREE-PARTY AGREEMENT BETWEEN PORTLAND,
THE PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: MARGINAL WAY IMPROVEMENTS**

ORDERED, that the three-party Municipal Partnership Initiative Program Agreement between the Maine Department of Transportation, the Portland Area Comprehensive Transportation System and the City of Portland for Marginal Way Improvements is hereby approved in substantially the form attached hereto; and

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

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
<u>Example:</u>						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$0		\$15,956		\$15,956
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$15,956	\$15,956	\$15,956	\$15,956
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0020	\$0.0020	\$0.0020	\$0.0020
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0178%	0.0090%	0.0178%	0.0090%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3420	\$22.4820	\$11.3420	\$22.4820

Notes: The CIP impact will begin in 2021 and remain for the 20 year life of the bond.



MaineDOT use only
TEDOCS #: Enter TEDOCS #
CTM #: Enter CTM #
CSN #: Enter CSN #
PROGRAM: Bureau of Planning

State of Maine
DEPARTMENT OF TRANSPORTATION
Portland Area Comprehensive Transportation System
Municipal Partnership Initiative Agreement
Proposed Improvements to Marginal Way
(Payable to Municipality)

MaineDOT Use Only

Project Location: <u>Portland</u>	Estimated Project Amount: <u>\$425,504.00</u>
State WIN: <u>(To be issued after WIN Activation)</u>	MPO Share: <u>\$212,752.00</u>
PACTS ID#: <u>PACTS</u>	Municipal Share: <u>\$212,752.00</u>
Municipality Id#: <u>VC1000073472</u>	Agreement Begin Date: <u>Upon MaineDOT Signature</u>
	Agreement End Date: <u>5 years from date last signed below</u>

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS), and Greater Portland Council of Governments (GPCOG), a fiduciary agent for PACTS. (MaineDOT, the Municipality, PACTS, and GPCOG) are collectively referred to as the “Parties”).

RECITALS

- A. MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- B. PACTS has created and administers a Municipal Partnership Initiative program (the “PACTS MPI Program”), the purpose of which is to participate in the funding of approved collector and/or arterial roadway projects (the “MPI Project(s)”) with the intention of restoring substandard State and State Aid highways to MaineDOT and PACTS minimum standards.

- C. MPI Projects are administered by the municipality in which the project is being constructed. PACTS' participation in an MPI Project is accomplished through its acceptance of the Project into the PACTS MPI Program, and the contribution of state funds allocated to PACTS and disbursed by MaineDOT to the administering municipality on PACTS' behalf (the "PACTS Share"). MPI Project costs not paid by the PACTS Share are paid by the administering municipality.
- D. The work that is the subject of this Agreement consists of a 1-1/2 inch overlay and new pavement marking for lane delineation to include a designated bike lane on Marginal Way, beginning at Forest Avenue and extending north 0.46 of a mile to Franklin Street (the "Project"), and is generally outlined in **Appendix A**, made a part herewith.
- E. PACTS has selected the Project for inclusion in the 2018-2019-2020 MaineDOT Work Plan, using state capital improvement funding allocated by MaineDOT.
- F. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and is prepared to administer and fund the Project in accordance with the terms of this Agreement.
- G. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- H. This Agreement is intended to cover the roles and responsibilities of the Parties through full Project development and construction, and to establish the financial obligations of each Party.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- ☒ Appendix A - PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project
- ☐ Check if no appendices attached

2. Project Cost Sharing and Payment Schedule:

a. Financial Obligations:

i. Total Project Costs.

- 1. PACTS and the Municipality agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise negotiated by mutual agreement of the Parties.

- a. **PACTS Share** (provided through PACTS' state allocation and disbursed by MaineDOT) - 50% of eligible Project costs, up to a maximum of \$212,752.00.
- b. **Municipal Share** (provided through the Municipality's obligation of funds) - 50% of eligible Project costs, plus 100% of any and all remaining Project Costs once the PACTS Share has been exhausted (the "Overage").

2. The estimated Total Project Costs are \$425,504.00 (the "Estimated Total Project Costs") and are allocated in the table below. If the Estimated Total Project Costs are adjusted to reflect updated costs, the Municipality will consult with PACTS before such adjustments are approved and implemented.

Total Project Costs	PACTS Share (State MPO Funds) 50% (Max. \$212,752.00)	Municipality's Share 50% + Overage	Estimated Total Cost
Estimated Total Project Costs: <u>\$ 425,504.00</u>			
Estimated Allocated Shares	\$212,752.00	\$212,752.00 +\$0.00	\$425,504.00
Total Party Share of Estimated Total Project Costs	\$212,752.00	\$212,752.00	\$425,504.00

- b. **Payment Schedule:** The Municipality shall be the sole administrator of the Project contract(s) and shall pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified above.
 - i. The Municipality may begin invoicing PACTS for the PACTS Share of eligible Project costs upon 1/3 Project completion. Invoices shall be submitted no more than monthly with a maximum number of invoice submittals not to exceed five (5) invoices for the total Project.
 - ii. The Municipality shall submit to PACTS for reimbursement detailed invoice(s) documenting actual amounts incurred for Project related costs, together with evidence of such invoices having been paid by the Municipality, and identifying PACTS' share of each invoice submitted.
 - iii. Each invoice shall include the Municipality's certification that all amounts claimed are correct, and not previously claimed.
 - iv. PACTS shall review each such invoice and, upon approval, shall forward each invoice to MaineDOT for payment to the Municipality out of PACTS'

allocated state MPO funds. MaineDOT shall reimburse the Municipality accordingly within thirty (30) days of its receipt of such approved invoice(s) in an aggregate amount not to exceed the total PACTS Share.

3. Project Milestones: The Municipality agrees to share information about the Project with PACTS and MaineDOT at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

4. Project Design, Construction Plans and Specifications:

- a. The Municipality shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents for the Project within the scope of work identified above, using a standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- b. The Municipality shall retain a Professional Engineer licensed in the State of Maine to oversee all Project activities (the "Project Engineer").
- c. The Project must be designed by a Professional Engineer licensed in the State of Maine (the "Design Engineer") and in compliance with MaineDOT's design standards (the "Design Standards").
 - i. The Design Engineer shall provide certification to the Parties that, in his/her professional opinion, the Project will provide a smooth ride and not reduce the safety, mobility or structural quality of the affected State and/or State Aid Highway.
 - ii. All design documents must be stamped and signed by the Design Engineer in accordance with the provisions of this Section.
- d. MaineDOT reserves the right to review and comment on all plans and specifications with the focus on ensuring that the Project will achieve the anticipated benefits and will not degrade safety.
- e. The Municipality, through its Project Engineer, shall obtain written approval from MaineDOT for any exceptions to the "Design Standards". Submitted documentation shall compare the proposed design to the existing conditions for each proposed exception. Any and all exceptions shall be listed on the cover sheet accompanying the Project plans and submitted to MaineDOT, accompanied by a request for acceptance

of the Project's design exceptions. All such requests must include the signature and professional stamp of the Professional Engineer responsible for the design of the Project.

- f. In developing the Project, the Municipality shall ensure that the following elements are satisfied:
 - i. The Project improvements must have a minimum useful life of ten (10) years;
 - ii. The safety of the corridor and the life of the resulting structural and design elements shall be equal to or better than the existing conditions and design;
 - iii. The structures, roadways and design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - iv. The Project shall not introduce any unanticipated safety hazards to the traveling public;
 - v. The Project shall retain the same level or an improved level of mobility of travel within the corridor;
 - vi. The Project shall not in any manner decrease the life expectancy of the affected component(s) of Maine's transportation system;
 - vii. The Project shall meet the most recent Americans with Disabilities Act of 1990 (ADA) design requirements;
 - viii. Traffic control and the safety of pedestrians, bicyclists and the traveling public shall be provided for at all times.
- g. The Municipality shall coordinate with affected utilities to identify existing utility locations and/or any utility relocation impacts that may be created by the development of the Project.
- h. It is expected that the Project can be constructed within the existing right-of-way limits. If that is not the case, the Municipality must provide MaineDOT with a detailed explanation of the property rights required for the Project and shall acquire any such property rights in accordance with all applicable state and federal laws. The PACTS Share may only be applied to costs associated with the acquisition of property rights required for the implementation of the Project.
- i. The Municipality shall perform all necessary federal, state and local permitting activities required in connection with the Project.
- j. Project construction must commence within twelve (12) months and must be certified as complete within twenty-four (24) months of the date of execution of this Agreement. If this timeline is not met, and the Municipality cannot show that it has made a good faith effort to meet this timeline, PACTS retains the right to withdraw any unpaid

portion of the PACTS Share and reallocate its remaining funding to other eligible projects in its service area.

- k. Upon completion of Project construction, the Municipality shall provide certification to MaineDOT from the Project Engineer stating that the Project is complete and has been constructed in accordance with the plans and specifications.

5. Public Involvement:

The Municipality shall be responsible for implementing and leading any and all required public involvement processes and activities, including those required by Maine's Sensible Transportation Policy Act, and any necessary media coordination associated with the any phases of the Project covered by this Agreement.

6. Changes to Project Scope:

The Municipality will consult with MaineDOT and PACTS before implementing any adjustments to the Project scope.

7. Termination:

- a. In the event the Municipality decides to terminate the Project for any reason prior to the award of a contract to construct the Project and that termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for covering all Project costs incurred up to the time of termination.
- b. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- c. In no event, shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- d. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

8. Miscellaneous Provisions:

- a. Quality of Work. PACTS reserves the right to require the Municipality to refund all reimbursements made and to repay PACTS fully for all Projects costs incurred if the work is found to be unsatisfactory.
- b. Reprogramming of Remaining PACTS Funds. Any state MPO funds allocated to the Project that remain unspent following payment of the final invoice and reconciliation of the Project shall be made available to PACTS for reprogramming once the Project is closed out.

- c. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- d. Assumption of Responsibility. The Municipality hereby assumes responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of the Municipality, its employees, agents or representatives, and shall ensure that its contractor(s) assume the same responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of its own employees, agents or representatives. This assumption of responsibility shall also include damage to vehicles passing through the Project limits.
- e. Obligation of State Funds. Notwithstanding anything herein to the contrary, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- f. Performance. The Parties will avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- g. Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs set out herein.
- h. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
- i. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of the Parties.

- j. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
- k. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- l. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.
- m. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: Darryl Belz, PE, MPO Engineer
 Email: darryl.belz@maine.gov

Municipality: City of Portland
 Department of Public Works
 250 Canco Road
 Portland, ME 04103
 Attn.: Christopher Branch, Public Works Director
 Email: cbranch@portlandmaine.gov

PACTS: Portland Area Comprehensive Transportation System
 970 Baxter Boulevard, Suite 201
 Portland, ME 04103
 Attn.: Sara Zografos, Transportation Director
 Email: szografos@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.



Date 6/13/19
Kristina Egan, Executive Director *
Greater Portland Council of Governments and
For Portland Area Comprehensive Transportation System
Duly authorized

Date _____
Jon Jennings, City Manager *
Municipality of Portland
Duly authorized

Date _____
Andrew T. Bickmore, Acting Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*

APPENDIX A

PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project

Portland Area Comprehensive Transportation System

Darryl Belz, P.E.
Safety/MPO Engineer
Bureau of Planning
Maine Department of Transportation
16 State House Station
Child Street
Augusta, Maine 04433-0016

May 3, 2019

PACTS 2020 Municipal Partnership Initiative Project: Portland, Marginal Way Pavement Rehabilitation

Darryl,

The following is a request to develop a Municipal Partnership Initiative (MPI) agreement for the above project for the 2020 PACTS MPI program.

On April 25th, 2019 the PACTS Policy Committee approved programming \$212,752 of PACTS' CY2020 state funding allocation for the following project:

Portland, Marginal Way Pavement Rehabilitation

Bangor Savings Bank to AT&T/Planet Dog by 1.5-inch surface overlay and new pavement marking to delineate vehicle lanes and an on-road bike lane.

The Route Log Miles are from 0.04 miles to 0.50 miles for a total project length of 0.46 miles.

The scope consists of 1.5-inch surface overlay and new pavement marking for lane delineation (to include a designated bike lane). The city will soon accept proposals for an adjacent project that will install ADA standard curb ramps, repair sidewalks, reinstall a traffic signal at Chestnut Street, and relocate a crosswalk/RRFB. The total cost estimate for the pavement rehabilitation is \$425,504.

Construction complete year is scheduled to be 2020.

The funding is 50%/50% at \$212,752 state and \$212,752 local.

PACTS is requesting a WIN for the project and a three-party agreement to follow.

The municipal contact is Chris Branch. He is aware of contract documents needed such as, a scope of work, unit prices and complete specifications. These documents will be similar or the same as a MaineDOT "Book Project", including a set of plans as necessary to be outlined in the pending agreement.

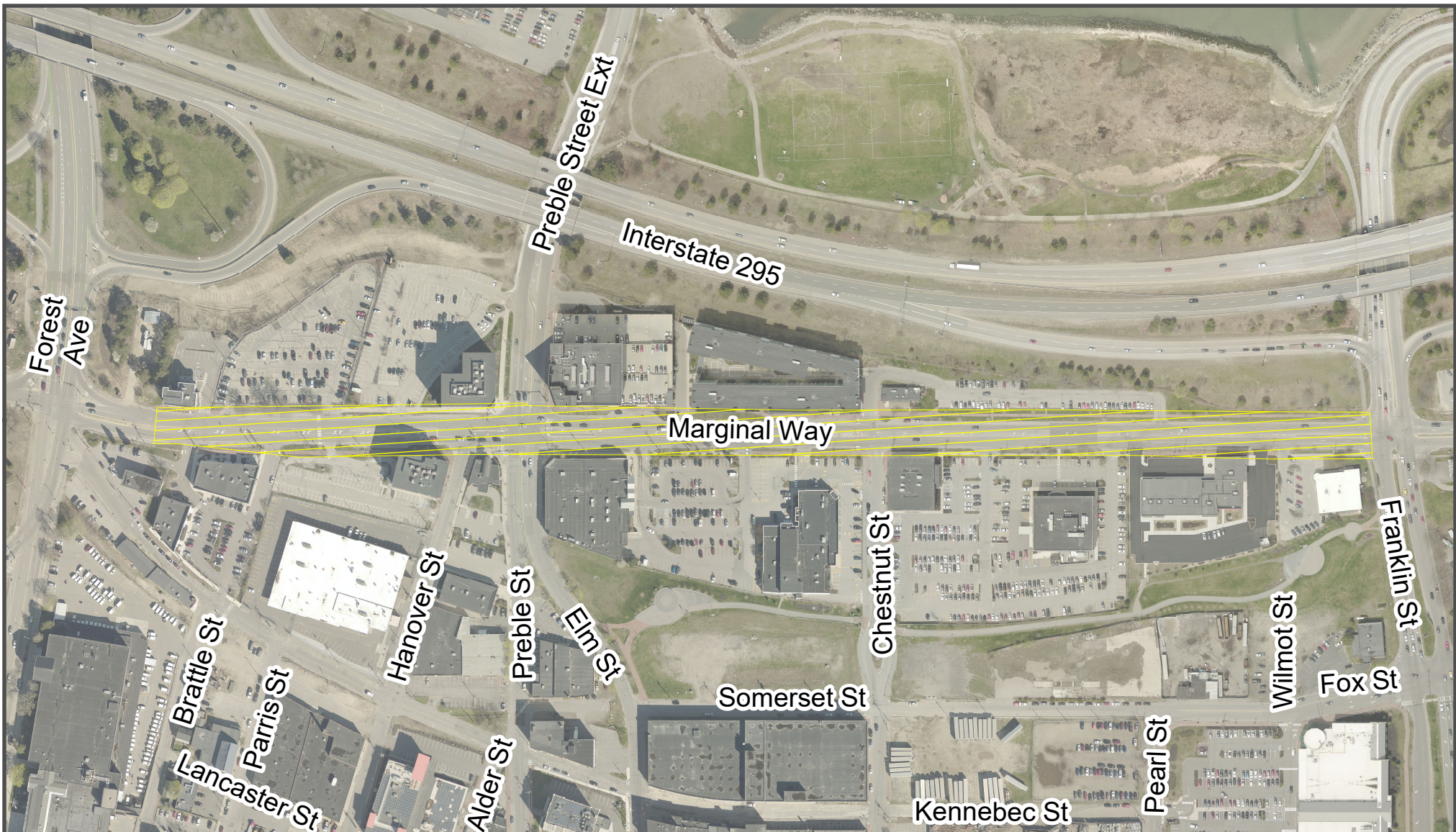
Thank you for your attention to this matter. If you have any questions, please call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sara Zografos", followed by a long horizontal flourish.

Sara Zografos
PACTS

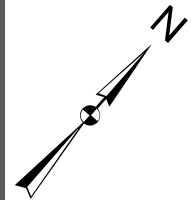
cc: Chris Branch, City of Portland
Harold Spetla, GPCOG



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD STE B
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Marginal Way

20 Marginal Way to Franklin St



February 2020

DRAWN BY: TSY

0 125 250
Feet

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: March 2, 2020

SUBJECT: **Order 149-19/20 Approving the Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System and the Maine Department of Transportation Re: Paving Washington Avenue from Presumpscot to Veranda - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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 **Final Action**

Can action be taken at a later date: Yes This agreement must be approved by City Council and signed by the City Manager as soon as possible to allow for an early as possible bid date. We are hoping with an earlier bid date bid pricing will be improved.

PRESENTATION:

I. SUMMARY

City Council is being asked to approve the attached Portland Area Comprehensive Transportation System (PACTS) Municipal Partnership Agreement and authorize the City Manager to sign the agreement, which would allow the City to move ahead with its plans to pave Washington Avenue between Presumpscot Street and Veranda Street.

II. AGENDA DESCRIPTION

The Washington Avenue Improvement Project, which includes paving from Presumpscot to Veranda Streets, is part of the Municipal Partnership Initiative (MPI) Program. The City administers the project and receives funding from the state Metropolitan Planning Organization (MPO). By signing the partnership agreement, the City is enabled to proceed with the project, obligating its MPO, Portland Area Comprehensive Transportation System (PACTS), to pay for for 29% of the estimated project cost, or \$97,248.00, which represent the remaining balance available to PACTS for funding the MPI program in City of Portland. The total City cost of this paving work, estimated to be \$239,672.00, would be paid from a Fiscal Year 2021 Capital Improvement Plan account established for this project.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Washington Avenue paving project is part of MaineDOT's 2018-2020 work plan. The scope of the MPI

project work includes a 1 ½” mill and fill, re-striping after final paving, ADA upgrades, and some minor sidewalk work. Construction work on this project is scheduled to begin after April 15, 2020 and be completed in Fall 2020. This project is classified as a pavement preservation project and is part of the MPI Program. The City will be responsible for 71% of the estimated cost and 100% of any overages to the original estimate.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Washington Avenue paving project will improve the pavement surface and ride quality on a regionally important principal arterial. It will also upgrade the ramps within the project area to meet ADA requirements and fix areas of sidewalk that are unsafe; this will improve pedestrian access to this area. PACTS will pay for 29% of the estimated project costs.

V. FINANCIAL IMPACT

The City is obligated to pay 71% of the estimated paving cost, or \$239,672.00 and 100% of any overages in the project area. The total City cost of this paving work, estimated to be \$239,672.00, would be paid from a FY21 CIP account established for this project. Please see the attached fiscal impact note for additional information.

VI. STAFF ANALYSIS AND BACKGROUND

This is a Principal Arterial in the City of Portland with a very high AADT. This area of Washington Avenue was ranked an extremely low PCI when it was last evaluated and is in need of repair. This is one of the last portions of Washington Avenue that needs work so that it is a fully upgraded corridor. Without this project, the road will continue to deteriorate.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow the city to pave Washington Avenue from Presumpscot Street to Veranda Street in 2020.

VIII. LIST ATTACHMENTS

1. Three-party MDOT, PACTS and Portland re Paving Washington Avenue Presumpscot to Veranda 3.2.2020
2. Wash Ave - Presump to Veranda -PACTS Muni Partnership Agreement
3. Washington (Presump to Veranda) - Fiscal Impact Note
4. Wash Ave - Presump to Veranda - Location map

Prepared by:

Melissa Graffam

Date: 3/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE THREE-PARTY AGREEMENT BETWEEN PORTLAND,
THE PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: PAVING WASHINGTON AVENUE FROM PRESUMPCOT TO VERANDA**

ORDERED, that the three-party Municipal Partnership Initiative Program Agreement between the Maine Department of Transportation, the Portland Area Comprehensive Transportation System and the City of Portland for Washington Avenue Improvements is hereby approved in substantially the form attached hereto; and

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



MaineDOT use only
TEDOCS #: Enter TEDOCS #
CTM #: Enter CTM #
CSN #: Enter CSN #
PROGRAM: Bureau of Planning

State of Maine
DEPARTMENT OF TRANSPORTATION
Portland Area Comprehensive Transportation System
Municipal Partnership Initiative Agreement
Proposed Improvements to Washington Avenue (Route 26)
(Payable to Municipality)

<i>MaineDOT Use Only</i>	
Project Location: <u>Portland</u>	Estimated Project Amount: <u>\$336,920.00</u>
State WIN: <u>(To be issued after WIN Activation)</u>	MPO Share: <u>\$97,248.00</u>
PACTS ID#: <u>PACTS</u>	Municipal Share: <u>\$239,672.00</u>
Municipality Id#: <u>VC1000073472</u>	Agreement Begin Date: <u>Upon MaineDOT Signature</u>
	Agreement End Date: <u>5 years from date last signed below</u>

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS), and Greater Portland Council of Governments (GPCOG), a fiduciary agent for PACTS. (MaineDOT, the Municipality, PACTS, and GPCOG) are collectively referred to as the “Parties”).

RECITALS

- A. MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- B. PACTS has created and administers a Municipal Partnership Initiative program (the “PACTS MPI Program”), the purpose of which is to participate in the funding of approved collector and/or arterial roadway projects (the “MPI Project(s)”) with the intention of restoring substandard State and State Aid highways to MaineDOT and PACTS minimum standards.

- C. MPI Projects are administered by the municipality in which the project is being constructed. PACTS' participation in an MPI Project is accomplished through its acceptance of the Project into the PACTS MPI Program, and the contribution of state funds allocated to PACTS and disbursed by MaineDOT to the administering municipality on PACTS' behalf (the "PACTS Share"). MPI Project costs not paid by the PACTS Share are paid by the administering municipality.
- D. The work that is the subject of this Agreement consists of a 1-1/2 inch overlay and new pavement marking for lane delineation to include a designated bike lane, sidewalk replacements, curb resets, and ADA ramp improvements on Washington Avenue (Route 26), beginning at Veranda Street and extending west 0.20 of a mile to Presumpscot Street (the "Project"), and is generally outlined in **Appendix A**, made a part herewith.
- E. PACTS has selected the Project for inclusion in the 2018-2019-2020 MaineDOT Work Plan, using state capital improvement funding allocated by MaineDOT.
- F. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and is prepared to administer and fund the Project in accordance with the terms of this Agreement.
- G. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- H. This Agreement is intended to cover the roles and responsibilities of the Parties through full Project development and construction, and to establish the financial obligations of each Party.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- ☒ Appendix A - PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project
- ☐ Check if no appendices attached

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a. Financial Obligations:

i. Total Project Costs.

- 1. PACTS and the Municipality agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise negotiated by mutual agreement of the Parties.

- a. **PACTS Share** (provided through PACTS' state allocation and disbursed by MaineDOT) - 29% of eligible Project costs, up to a maximum of \$97,248.00.
- b. **Municipal Share** (provided by the Municipality through the Municipality's obligation of funds) - 71% of eligible Project costs, plus 100% of any and all remaining Project Costs once the PACTS Share has been exhausted (the "Overage").

2. The estimated Total Project Costs are \$336,920.00 (the "Estimated Total Project Costs") and are allocated in the table below. If the Estimated Total Project Costs are adjusted to reflect updated costs, the Municipality will consult with PACTS before such adjustments are approved and implemented.

Total Project Costs	PACTS Share (State MPO Funds) 29% (Max. \$97,248.00)	Municipality's Share 71% + Overage	Estimated Total Cost
Estimated Total Project Costs: <u>\$ 336,920.00</u>			
Estimated Allocated Shares	\$97,248.00	\$239,672.00 +\$0.00	\$336,920.00
Total Party Share of Estimated Total Project Costs	\$97,248.00	\$239,672.00	\$336,920.00

- b. **Payment Schedule:** The Municipality shall be the sole administrator of the Project contract(s) and shall pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified above.
 - i. The Municipality may begin invoicing PACTS for the PACTS Share of eligible Project costs upon 1/3 Project completion. Invoices shall be submitted no more than monthly with a maximum number of invoice submittals not to exceed five (5) invoices for the total Project.
 - ii. The Municipality shall submit to PACTS for reimbursement detailed invoice(s) documenting actual amounts incurred for Project related costs, together with evidence of such invoices having been paid by the Municipality, and identifying PACTS' share of each invoice submitted.
 - iii. Each invoice shall include the Municipality's certification that all amounts claimed are correct, and not previously claimed.
 - iv. PACTS shall review each such invoice and, upon approval, shall forward each invoice to MaineDOT for payment to the Municipality out of PACTS'

allocated state MPO funds. MaineDOT shall reimburse the Municipality accordingly within thirty (30) days of its receipt of such approved invoice(s) in an aggregate amount not to exceed the total PACTS Share.

3. Project Milestones: The Municipality agrees to share information about the Project with PACTS and MaineDOT at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

4. Project Design, Construction Plans and Specifications:

- a. The Municipality shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents for the Project within the scope of work identified above, using a standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- b. The Municipality shall retain a Professional Engineer licensed in the State of Maine to oversee all Project activities (the "Project Engineer").
- c. The Project must be designed by a Professional Engineer licensed in the State of Maine (the "Design Engineer") and in compliance with MaineDOT's design standards (the "Design Standards").
 - i. The Design Engineer shall provide certification to the Parties that, in his/her professional opinion, the Project will provide a smooth ride and not reduce the safety, mobility or structural quality of the affected State and/or State Aid Highway.
 - ii. All design documents must be stamped and signed by the Design Engineer in accordance with the provisions of this Section.
- d. MaineDOT reserves the right to review and comment on all plans and specifications with the focus on ensuring that the Project will achieve the anticipated benefits and will not degrade safety.
- e. The Municipality, through its Project Engineer, shall obtain written approval from MaineDOT for any exceptions to the "Design Standards". Submitted documentation shall compare the proposed design to the existing conditions for each proposed exception. Any and all exceptions shall be listed on the cover sheet accompanying the Project plans and submitted to MaineDOT, accompanied by a request for acceptance

of the Project's design exceptions. All such requests must include the signature and professional stamp of the Professional Engineer responsible for the design of the Project.

- f. In developing the Project, the Municipality shall ensure that the following elements are satisfied:
 - i. The Project improvements must have a minimum useful life of ten (10) years;
 - ii. The safety of the corridor and the life of the resulting structural and design elements shall be equal to or better than the existing conditions and design;
 - iii. The structures, roadways and design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - iv. The Project shall not introduce any unanticipated safety hazards to the traveling public;
 - v. The Project shall retain the same level or an improved level of mobility of travel within the corridor;
 - vi. The Project shall not in any manner decrease the life expectancy of the affected component(s) of Maine's transportation system;
 - vii. The Project shall meet the most recent Americans with Disabilities Act of 1990 (ADA) design requirements;
 - viii. Traffic control and the safety of pedestrians, bicyclists and the traveling public shall be provided for at all times.
- g. The Municipality shall coordinate with affected utilities to identify existing utility locations and/or any utility relocation impacts that may be created by the development of the Project.
- h. It is expected that the Project can be constructed within the existing right-of-way limits. If that is not the case, the Municipality must provide MaineDOT with a detailed explanation of the property rights required for the Project and shall acquire any such property rights in accordance with all applicable state and federal laws. The PACTS Share may only be applied to costs associated with the acquisition of property rights required for the implementation of the Project.
- i. The Municipality shall perform all necessary federal, state and local permitting activities required in connection with the Project.
- j. Project construction must commence within twelve (12) months and must be certified as complete within twenty-four (24) months of the date of execution of this Agreement. If this timeline is not met, and the Municipality cannot show that it has made a good faith effort to meet this timeline, PACTS retains the right to withdraw any unpaid

portion of the PACTS Share and reallocate its remaining funding to other eligible projects in its service area.

- k. Upon completion of Project construction, the Municipality shall provide certification to MaineDOT from the Project Engineer stating that the Project is complete and has been constructed in accordance with the plans and specifications.

5. Public Involvement:

The Municipality shall be responsible for implementing and leading any and all required public involvement processes and activities, including those required by Maine's Sensible Transportation Policy Act, and any necessary media coordination associated with the any phases of the Project covered by this Agreement.

6. Changes to Project Scope:

The Municipality will consult with MaineDOT and PACTS before implementing any adjustments to the Project scope.

7. Termination:

- a. In the event the Municipality decides to terminate the Project for any reason prior to the award of a contract to construct the Project and that termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for covering all Project costs incurred up to the time of termination.
- b. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- c. In no event, shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- d. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

8. Miscellaneous Provisions:

- a. Quality of Work. PACTS reserves the right to require the Municipality to refund all reimbursements made and to repay PACTS fully for all Projects costs incurred if the work is found to be unsatisfactory.
- b. Reprogramming of Remaining PACTS Funds. Any state MPO funds allocated to the Project that remain unspent following payment of the final invoice and reconciliation of the Project shall be made available to PACTS for reprogramming once the Project is closed out.

- c. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- d. Assumption of Responsibility. The Municipality hereby assumes responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of the Municipality, its employees, agents or representatives, and shall ensure that its contractor(s) assume the same responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of its own employees, agents or representatives. This assumption of responsibility shall also include damage to vehicles passing through the Project limits.
- e. Obligation of State Funds. Notwithstanding anything herein to the contrary, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- f. Performance. The Parties will avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- g. Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs set out herein.
- h. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
- i. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of the Parties.

- j. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
- k. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- l. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.
- m. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: Darryl Belz, PE, MPO Engineer
 Email: darryl.belz@maine.gov

Municipality: City of Portland
 Department of Public Works
 250 Canco Road
 Portland, ME 04103
 Attn.: Christopher Branch, Public Works Director
 Email: cbranch@portlandmaine.gov

PACTS: Portland Area Comprehensive Transportation System
 970 Baxter Boulevard, Suite 201
 Portland, ME 04103
 Attn.: Sara Zografos, Transportation Director
 Email: szografos@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.



Date 6/13/19

Kristina Egan, Executive Director *
Greater Portland Council of Governments and
For Portland Area Comprehensive Transportation System
Duly authorized

Date _____

Jon Jennings, City Manager *
Municipality of Portland
Duly authorized

Date _____

Andrew T. Bickmore, Acting Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*

APPENDIX A

PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project

Portland Area Comprehensive Transportation System

Darryl Belz, P.E.
Safety/MPO Engineer
Bureau of Planning
Maine Department of Transportation
16 State House Station
Child Street
Augusta, Maine 04433-0016

May 3, 2019

PACTS 2020 Municipal Partnership Initiative Project: Portland, Washington Ave Pavement Rehabilitation

Darryl,

The following is a request to develop a Municipal Partnership Initiative (MPI) agreement for the above project for the 2020 PACTS MPI program.

On April 25th, 2019 the PACTS Policy Committee approved programming \$97,248 of PACTS' CY2020 state funding allocation for the following project:

Portland, Washington Ave Pavement Rehabilitation

Presumpscot Street to Veranda Street 1.5-inch surface overlay and new pavement marking to delineate vehicle lanes and an on-road bike lane.

The Route Log Miles are from 1.21 miles to 1.41 miles for a total project length of 0.20 miles.

The scope consists of 1.5-inch surface overlay and new pavement marking for lane delineation (to include a designated bike lane). The city has recently completed improvements and paving at a nearby section of Washington Ave. This project will also include sidewalk replacements, curb resets, and ADA ramp improvements. The total cost estimate is \$336,920.

Construction complete year is scheduled to be 2020.

The funding is 29%/71% at \$97,248 state and \$239,672 local.

PACTS is requesting a WIN for the project and a three-party agreement to follow.

The municipal contact is Chris Branch. He is aware of contract documents needed such as, a scope of work, unit prices and complete specifications. These documents will be similar or the same as a MaineDOT "Book Project", including a set of plans as necessary to be outlined in the pending agreement.

The Metropolitan Planning Organization for the Portland Urbanized Area

970 Baxter Blvd • Portland, Maine 04103

Telephone: (207) 774-9891 • Fax: (207) 774-7149 • www.pactsplan.org

Thank you for your attention to this matter. If you have any questions, please call.

Sincerely,

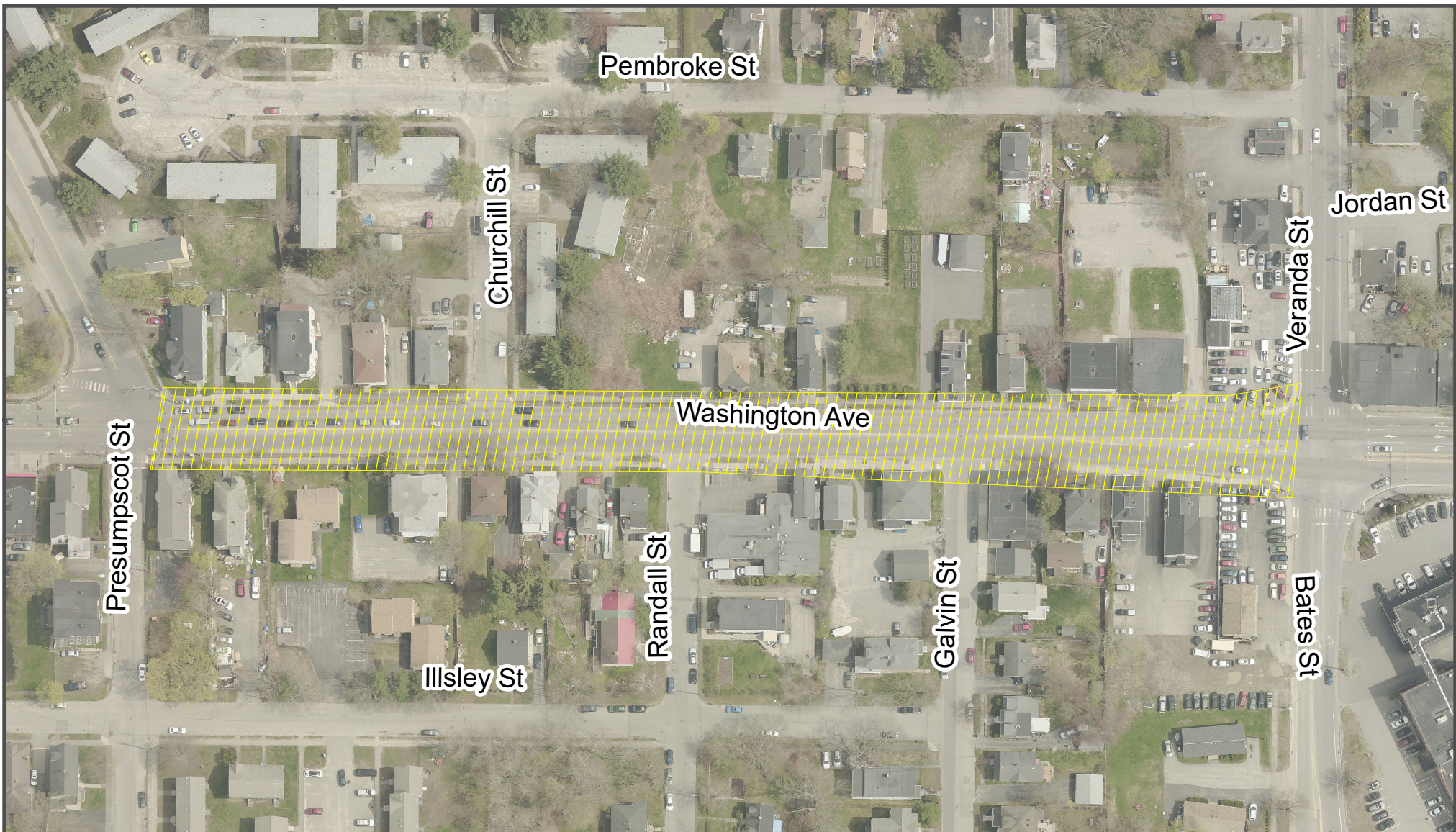
A handwritten signature in cursive script, appearing to read "Sara Zografos", followed by a long horizontal flourish.

Sara Zografos
PACTS

cc: Chris Branch, City of Portland
Harold Spetla, GPCOG

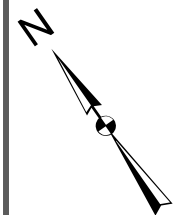
FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2		Year 3	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$0		\$17,977		\$17,977
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$17,977	\$17,977	\$17,977	\$17,977
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0023	\$0.0023	\$0.0023	\$0.0023
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0201%	0.0101%	0.0201%	0.0101%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3423	\$22.4823	\$11.3423	\$22.4823

Notes: The CIP impact will begin in 2021 and remain for the 20 year life of the bond.



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD STE B
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Washington Ave Presumpscot St to Veranda St



February 2020 DRAWN BY: TSY

0 75 150
Feet

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 2, 2020

SUBJECT: **Order 150-19/20 Approving the Agreement between Portland and the Maine Department of Transportation Re: Franklin Street Storm Drain at I-295 Exit 7 - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION:

I. SUMMARY

This Agreement shall apply to the replacement of a large culvert from Back Cove to the intersection of Franklin Street and Marginal Way.

II. AGENDA DESCRIPTION

This order approves the agreement to replace a large culvert from Back Cove to the intersection of Franklin Street and Marginal Way. The state-funded culvert replacement is part of a larger initiative to design/build the Back Cove South Storage Facility (BCSSF). The culvert will serve as a separated storm drain for future Franklin Street corridor work. This dedicated storm drain will both reduce the volume of water collected in the Combined Sewer Overflow storage facility and reduce flooding in the Marginal Way and Somerset neighborhoods.

This item must be read on two separate days. It was given a first reading March 2, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Franklin Street combined sewer overflow pipe was installed in the 1960's as part of the I-295 development. It has been identified that this pipe has a severe sag which would require replacement. As part of the BCSSF construction, this single culvert will be replaced with a dedicated CSO and storm drain pipe. The MaineDOT has agreed to contribute to the replacement.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Authorization for the City Manager to approve the agreement.

V. FINANCIAL IMPACT

The MaineDOT has agreed to contribute \$500,000 to the replacement of the pipe as part of the larger BCSSF project. As it is part of the larger project there is no Local Match requirement.

Not applicable - This agenda item has no fiscal impact on the general fund. The work is being funded via the Sewer and Stormwater enterprise funds. The additional funding will reduce annual enterprise fund debt service expense by approximately \$35,000 per year.

VI. STAFF ANALYSIS AND BACKGROUND

The MaineDOT recognizes the need for the replacement of the pipe and agrees that the timing to incorporate the construction into the BCSSF project serves everyone's best interests.

VII. RECOMMENDATION

The recommendation is to approve the Agreement.

VIII. LIST ATTACHMENTS

1. Order re Franklin Storm Drain Agreement w MaineDOT 3.2.2020
2. BCSSF MDOT Franklin Map (1)
3. BCSSF MDOT Agreement WIN 024369.00 Portland Large Culvert, Rev. 04.22.19

Prepared by:

Date: 3/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: FRANKLIN STREET STORM DRAIN AT I-295 EXIT 7**

ORDERED, that the agreement between the Maine Department of Transportation and the City of Portland to construct the Franklin Street Storm Drain with State Work Identification Number 024369.00 is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said documents and this Order.



City of Portland, DPS



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
55 PORTLAND ST, PORTLAND, MAINE 04101
PHONE (207) 874-8846 FAX (207) 874-8852

FRANKLIN STREET INFRASTRUCTURE IMPROVEMENT PROJECT

in association with the
BACK COVE SOUTH
STORAGE FACILITY



1
FIGURE

July 30, 2018

DESIGN BY: BR DRAWN BY: BR CHECK BY: BR

0 0.0125 0.025 0.05
Miles



MaineDOT use only	
AMS ID:	_____
CSN:	_____
TEDOCS #:	_____
PROGRAM:	_____

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a State-Funded Locally Administered Project
With the
City of Portland
Regarding
Replacement of Large Culvert at I-295 Exit 7
(Payable)

MaineDOT Use Only	
Agreement Amount: \$500,000.00	MaineDOT WIN: 024369.00
State Share: \$500,000.00	WIN Activation Date: 02/28/19
Local Share: \$0.00	Municipality's Vendor ID: VC1000073476
Agreement Begin Date: Upon MaineDOT's Signature	Agreement End Date: 11/30/2021

This Agreement for a state-funded project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 16 Child Street in Augusta, Maine, and the City of Portland (the **Municipality**) with its principal administrative offices at 389 Congress Street in Portland, Maine, which jointly shall be referred to as the **Parties**.

RECITALS

1. This Agreement shall apply to replacement of a large culvert (#46957) in the Back Cove section of Portland, starting at I-295 Exit 7 and continuing 0.09 mile to Franklin Street (the **Project**); and
2. The state-funded culvert replacement **Project** is part of a larger municipal design-build initiative to develop the Back Cove South Storage Facility, a combined sewer overflow abatement project; and
3. The Municipality shall manage the state-funded **Project** as a Locally Administered Project, subject to MaineDOT oversight to ensure that all state requirements are met.

AGREEMENT

NOW, in consideration of the foregoing statements, the Parties agree to the following:

APPENDIX

- ☒ Design and Construction Requirements, Design-Build Back Cove South Storage Facility.

ROLES AND RESPONSIBILITIES

1. **ROLE OF MUNICIPALITY**. The Municipality shall designate a municipal Project Coordinator with appropriate qualifications to manage the **Project** and carry out its responsibilities under this Agreement. This Project Coordinator shall abide by applicable sections of the latest edition of MaineDOT's Local Project Administration Manual & Resource Guide (LPA Manual).
 - ☐ Project Coordinator: Bradley A. Roland, P.E., Senior Project Engineer
Email: brad@portlandmaine.gov
Phone: 207-874-8440

2. **ROLE OF MAINEDOT.** MaineDOT will assign a Project Manager to carry out the State of Maine's responsibilities. This person will have the authority to request design changes to meet applicable laws, regulations and design standards; accept and reject invoices; review construction activities to assure compliance with contract documents; and take all other action to assure proper performance of this Agreement.

☐ MaineDOT Project Manager: Jerry Dostie
Email: Gerald.P.Dostie@maine.gov
Phone: (207) 624-3457

FINANCIAL OBLIGATIONS

1. **AUTHORIZATION.** MaineDOT's financial participation in the **Project** will begin after:
- A. MaineDOT has executed this Agreement; and
 - B. MaineDOT has issued the Municipality a written notice to proceed.
2. **PROJECT COST.** The estimated cost of the **Project** is \$500,000.00 (Project Cost), as shown below.

Local Match		State Share		Estimated Project Cost
0%	\$0.00	100%	\$500,000.00	\$500,000.00

- A. **MAINEDOT SHARE.** MaineDOT, using state funds, will participate in all **Project** costs eligible for such funding at the rate of 100 percent, up to a maximum of **\$500,000.00**.
- B. **LOCAL MATCH.** The Municipality shall have no local share in the Project Cost but may be responsible for the following:
- i. Expenditures exceeding the Project Cost, unless otherwise agreed upon through an executed modification to this Agreement;
 - ii. Costs incurred before the effective date of this Agreement;
 - iii. Costs deemed ineligible for state funding.
3. **REIMBURSEMENT.** MaineDOT will reimburse the Municipality for eligible **Project** costs incurred at the rate in Section 2A above.
- A. The Municipality shall invoice MaineDOT for participating **Project** costs using the format provided in *Communication 4* from the LPA Manual, on the following schedule:
 - i. Participating preliminary engineering costs – upon Construction Begin;
 - ii. Participating construction costs – at Construction Complete;
 - iii. All remaining costs – at Final Billing.
 - B. Each invoice shall include a progress report for the service period of the invoice.
 - C. Each invoice shall document the charges incurred and proof of payment made in sufficient detail to satisfy the MaineDOT Project Manager.
 - D. Each invoice shall show MaineDOT's and the Municipality's portions of **Project** costs, including a running total of costs incurred to date.
 - E. The Municipality must certify that amounts claimed are correct and not claimed previously.

- F. Upon completion of the work and payment of all remaining invoices for the **Project**, the Municipality shall submit to MaineDOT a request for final reimbursement modeled after *Communication 20* from the LPA Manual. MaineDOT's payment of this final invoice shall be contingent upon a passing inspection of the **Project** by MaineDOT or its designee.
4. **MAINEDOT COSTS.** MaineDOT may charge to the **Project** costs incurred for work on the **Project**.
 5. **TERM.** The Municipality shall complete the **Project** and submit a final invoice to MaineDOT by the Expiration Date of this Agreement. The Municipality shall submit any request for a date extension to MaineDOT in writing before the end of the original period of performance.
 6. **REPAYMENT.** If the Municipality withdraws from the **Project**, causing cancellation of the **Project**, the Municipality shall refund all payments from MaineDOT toward the Project.
 7. **STATE OF MAINE'S RIGHT OF SET-OFF.** MaineDOT shall have all of its common-law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for purposes of set-off money due to the Municipality under this Agreement up to any amount due to the State with regard to this Agreement or any other agreement with MaineDOT; any other agreement with any state agency, including any agreement for a term commencing before the term of this Agreement; and any amount due to the State for any other reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT will exercise its rights of set-off in accordance with standard state practices including, in cases of set-off pursuant to an audit, finalization of the audit by MaineDOT or the State Controller.
 8. **NON-APPROPRIATION.** The Municipality acknowledges and agrees that if MaineDOT receives insufficient funding to support this Project, if funds programmed for this Project are de-appropriated, or if MaineDOT fails to receive the legal authority to spend money otherwise programmed for this **Project**, MaineDOT shall be released from its obligation to make payment under this Agreement.

PROJECT DEVELOPMENT

1. **KICKOFF.** The Parties on April 4, 2019, held a project kickoff at Portland Public Works to go over the scope of work, Project Cost, schedule, and legal requirements for the **Project**.
2. **PROGRESS REPORTS.** The Municipality shall provide progress reports at intervals established by MaineDOT's Project Manager.
3. **CONSULTANT WORK.** The Municipality shall use a competitive solicitation and follow MaineDOT's procedures to procure the services of a design-build team to design and construct the **Project**. Upon conclusion of negotiations, the Municipality shall provide a draft contract for the **Project** to the MaineDOT Project Manager for review and comment before it is executed. Work performed before the execution date of this Agreement shall be ineligible for reimbursement.
4. **DESIGN.** The Municipality, in coordination with its contracted design-build team, shall be responsible for preparing all design plans, specifications, estimates and contract documents for the culvert-replacement Project. The design of the culvert replacement shall meet the applicable standards set out in MaineDOT's Engineering Practices and Procedures, Standard Specifications and Standard Details. Additionally:

- A. The document labeled, “Design and Construction Requirements, Design-Build Back Cove South Storage Facility,” and attached to this Agreement as Appendix A, shall govern the design and construction process on the **Project**.
 - B. The Municipality shall submit the following **Project** documents to the MaineDOT Project Manager for review and comment:
 - i. Design plans at 30 percent, 60 percent, 90 percent and 100 percent complete;
 - ii. A preliminary design report; and
 - iii. Final plans, specifications and estimate package (PS&E).
 - C. MaineDOT shall carry out the Traffic Analysis Management and Evaluation (TAME) process for the Project and issue a TAME certification for the **Project** before construction may begin. The Municipality shall assure that the design-build team abides by all traffic-related work restrictions that MaineDOT stipulates for the **Project**.
 - D. If the **Project** will require MaineDOT staff to use electronic design files prepared by or for the Municipality, such files shall be organized in accordance with MaineDOT’s policy on electronic exchange of CADD data: <http://www.maine.gov/mdot/caddsupport/>
 - E. MaineDOT will enforce all laws, regulations, construction standards and specifications that apply to the Project and will require changes if they are not met.
 - F. The Municipality, in coordination with its contracted design-build team, shall meet all engineering standards and regulations that apply to the culvert-replacement **Project**.
- 5. **PUBLIC PROCESS**. The Municipality shall give abutters and the public timely notice about the **Project** and an opportunity to comment on the **Project**. Upon completion of this public process, the Municipality shall submit to MaineDOT a signed public process certification modeled after *Communication 10* from the LPA Manual, with the final PS&E package for the **Project**.
 - 6. **PERMITS**. The Municipality shall obtain all approvals, permits and licenses for the **Project**. The Municipality shall provide MaineDOT with a signed environmental certification modeled after *Communication 12* from the LPA Manual, with the final PS&E package for the **Project**.
 - 7. **UTILITIES**. The Municipality shall coordinate the **Project** with affected utilities, if applicable. The Municipality shall provide MaineDOT with a signed utility certification modeled after *Communication 13* from the LPA Manual, with the final PS&E package for the **Project**.
 - 8. **RIGHT-OF-WAY**. If applicable, MaineDOT will carry out the right-of-way process for the **Project**. The Municipality shall dedicate permanently to the Project, for public use, any municipal property needed for the **Project**, if applicable.
 - 9. **ADVERTISE**. The Municipality shall use a competitive design-build solicitation to hire a contractor to construct the **Project**, as covered under section 3 above, “Consultant Work.”
 - 10. **CONSTRUCTION**. During construction of the **Project**, the Municipality shall:
 - A. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method; and

- B. Hold a pre-construction meeting with notice of at least 5 working days involving MaineDOT, the design-build contractor, utilities and other parties involved in or affected by the work; and
 - C. Coordinate materials testing necessary to meet the Minimum Testing Requirements that MaineDOT establishes for the **Project**; and
 - D. Submit contract modifications for the **Project** to MaineDOT for review and concurrence before executing them, acknowledging that MaineDOT may not reimburse the Municipality for work performed under any modification executed without such prior review; and
 - E. Provide MaineDOT with as-build plans for its files upon completion of the **Project**.
11. INSPECTION. MaineDOT will inspect the completed **Project** for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT may not reimburse the Municipality for work on the **Project** that is out of such compliance.

OPERATION AND MAINTENANCE

Upon completion, the Municipality shall maintain the **Project** for the duration of its useful design life as determined by accepted engineering standards. Maintenance shall consist of general upkeep and repairs necessary to preserve the intended function of the replacement culvert. ***This section shall survive the expiration of this Agreement.***

RECORDS AND AUDITS

- 1. Project Records, whether printed or electronic, shall include all plans, specifications, contracts, reports, notes, or other documents prepared by or for the Municipality (Project Records). The Municipality shall retain all Project Records for at least **3 years** from the date of MaineDOT's acceptance of the final invoice for the Project or the termination of this Agreement, whichever is sooner. If any litigation, claim, negotiation, or audit has begun before the end of this retention period, all Project Records shall be kept at least until all related issues are resolved.
- 2. The Municipality and any contracted party working on its behalf shall allow representatives of the State of Maine to inspect and audit Project Records. Copies shall be furnished at no cost to the agencies requesting them.
- 3. Audits shall be performed in accordance with generally accepted government auditing standards.
- 4. ***This Records and Audits section shall survive the termination or expiration of this Agreement.***

MISCELLANEOUS PROVISIONS

- 1. GOVERNING LAW. The Parties agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances.
- 2. INDEMNIFICATION. To the extent allowed by law, the Municipality shall indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. ***This indemnification section shall survive the termination or expiration of this Agreement.***

3. CONFIDENTIALITY. The Municipality shall protect the confidentiality of engineering estimates of the construction cost to the extent required by 23 M.R.S. §63, "Confidentiality of Records."
4. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement:
 - A. The Municipality shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to an actual occupational qualification. The Municipality shall take affirmative action to assure that applicants are employed and employees are treated during their employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The Municipality agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 - B. The Municipality – in all solicitations or advertising for employees placed by or on behalf of the Municipality relating to this Agreement – shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
 - C. The Municipality shall cause the foregoing provisions to be inserted into any contract for work covered by this Agreement so that the provisions are binding upon each contractor, except for contracts or subcontracts for standard commercial supplies or raw materials.
5. INDEPENDENT CAPACITY. The Municipality, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
6. FLOW DOWN. Contracts between the Municipality and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
7. BINDING EFFECT. The Parties shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
8. ENTIRE AGREEMENT. This document represents the entire Agreement between the Parties. Neither MaineDOT nor the Municipality shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

CONFLICT OF INTEREST

1. No official or employee of the Municipality with a direct or indirect financial or other personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
2. No engineer, attorney, appraiser, inspector or other person performing services for the Municipality in connection with the Project shall have a direct or indirect financial or other personal interest in any contract or subcontract for the Project, other than the person's employment or retention by the Municipality. No officer or employee of any such person retained by the Municipality to perform services in connection with the Project shall have a direct or indirect financial or other personal interest in any real property acquired for the Project unless such interest is openly disclosed in the public record and such officer or employee has not participated in such acquisition for and on behalf of the Municipality.

3. No person or entity entering into a contract for services for the Project shall have a direct or indirect financial or other interest in the Project or in its outcome, other than the performance of the contract. This prohibition covers the following:
 - A. Any agreement with, or other interest involving, third parties having an interest in the outcome of the Project that is the subject to the contract; and
 - B. Any agreement providing incentives or guarantees of future work on the Project or related matters; and
 - C. Any interest in real property acquired for the Project unless such real property interest is openly disclosed to the Municipality before the person or entity enters into the contract.

DEBARMENT

1. By signing this Agreement, the Municipality certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the Municipality cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the Municipality shall notify MaineDOT promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
2. The Municipality shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
3. If the Municipality contracts with any third party pursuant to this Agreement, the Municipality shall require that party and its principals to certify that they:
 - A. Have not within a 3-year period preceding the date of any contract for work on the Project been convicted of a crime or had a civil judgment rendered against them for any of the following:
 - i. Obtaining, attempting to obtain, or performing a federal, state or, local public transaction or contract under a public transaction;
 - ii. Violating federal or state antitrust statutes;
 - iii. Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - B. Are not under indictment for or otherwise criminally or civilly charged by a federal, state, or local agency with commission of any offense enumerated in paragraph 3A above; and
 - C. Have not within a 3-year period preceding this Agreement had one or more federal, state, or local public transactions terminated for cause or default.

DEFAULT AND TERMINATION

1. DEFAULT. MaineDOT will send the Municipality a written Notice of Default if the Municipality commits any of the following:
 - A. Fails to complete the Project by the expiration date of this Agreement without a written extension from MaineDOT;
 - B. Takes any action that renders the Project ineligible for state funding;
 - C. Uses Project funds for a purpose not authorized by this Agreement;

- D. Misrepresents or falsifies any claim for reimbursement;
- E. Fails to meet the standards of performance outlined in this Agreement.

2. **TERMINATION FOR CAUSE.** MaineDOT will have just cause to terminate this Agreement in the event of default by the Municipality, as defined above. MaineDOT will afford the Municipality a cure period of 14 calendar days, effective on the Municipality's receipt of Notice of Default. If the Municipality fails to address all defaults within this cure period or such longer period as MaineDOT may authorize, MaineDOT may terminate this Agreement for cause, with these conditions:
 - A. MaineDOT will recover from the Municipality all reimbursements made to the Municipality and all of MaineDOT's internal costs incurred for work on the terminated Project, if applicable.
 - B. The Municipality shall forfeit all state funds remaining in the terminated Project.
3. **TERMINATION FOR CONVENIENCE.** The Parties may terminate this Agreement for convenience by mutual consent for any reason not defined as "default." MaineDOT will reimburse the Municipality for eligible work performed until the effective date of termination for convenience.

AGREEMENT APPROVAL

The Municipality's undersigned representative assures that the Municipality's official legislative body has approved the Municipality's entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

The Parties have executed this Agreement on the date last signed below.

City of Portland

Maine Department of Transportation

By: _____
Jon P. Jennings, City Manager*

By: _____
Richard J. Crawford, P.E., Director *
Bureau of Project Development

Date: _____

Date: _____

** I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.*

MEMORANDUM
City Council Agenda Item

FROM:

DATE: March 2, 2020

SUBJECT: **Order 151-19/20 Approving the Modification to Three-Party Agreement between Portland, the Portland Area Comprehensive Transportation System, and the Maine Department of Transportation and Two-Party Agreement Re: Washington Avenue from Regan to Riverside - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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

Final Action

Can action be taken at a later date: No This agreement must be approved by City Council and signed by the City Manager as soon as possible to allow Maine Department of Transportation (MaineDOT) to meet its target bid date and target construction start date for this project. We are hoping with an earlier bid date bid pricing will be improved.

PRESENTATION:

I. SUMMARY

City Council is being asked to approve the attached Two-Party Municipal/State Agreement and Modification #1 to Three-Party Agreement and authorize the City Manager to sign both agreements, which would allow MaineDOT to move ahead with its plans to pave Washington Avenue between Regan Lane and Riverside Street. The original 3-party agreement was approved and signed in 2017.

II. AGENDA DESCRIPTION

This project requires a two-party agreement between The Maine Department of Transportation (MaineDOT) and the City of Portland and also a modification of a three-party agreement between Portland Area Comprehensive Transportation System (PACTS), MaineDOT, and the City of Portland.

Both agreements obligate MaineDOT to mill and fill Washington Avenue, adjust the City's sanitary sewer manhole frames and covers, as necessary, update and/or install new pedestrian curb ramps to meet Americans with Disabilities Act requirements, and all appurtenances when MaineDOT's contractor paves Washington Avenue between Regan Lane and Riverside Street.

The modification increases the total project estimate by \$192,613.00, and the municipal share by approximately \$48,000.00, due to higher bid prices since it was approved by Order 16-17/18 in August 2017, when it was originally estimated, and because of slightly longer paving limits. These agreements obligate the City to pay MaineDOT, through PACTS for 25% of the work as its municipal share, or \$164,094.00, and an additional \$22,500.00 for manhole adjustments from a water resources fund. The project is funded by the Fiscal Year 2021 Capital Improvement Plan.

This item must be read on two separate days. It was given a first reading on March 2, 2020. Five affirmative

votes are required for passage after public comment.

III. BACKGROUND

The Washington Avenue paving project is part of MaineDOT's 2017-2019 work plan. The scope of work includes a mill and fill, ADA upgrades to ramps in the project area, and re-striping after final paving. Construction work on this project is scheduled to begin after April 15, 2020 and be completed in 2020. This project is classified as a pavement preservation project on an urban collector street. As such, PACTS will pay 75% of the cost of paving as part of its Collector Paving Program. The City will be responsible for 25% of the paving cost and 100% of the cost of making adjustments to its sanitary sewer facilities in the project area.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Washington Avenue paving project will improve the pavement surface and ride quality on a regionally important major urban collector street. PACTS funds will pay for 75% of the paving costs.

V. FINANCIAL IMPACT

The City is obligated to pay 25% of the total construction cost and 100% of the cost of adjusting sanitary sewer manhole frames and covers in the project area. The total City cost of this work, estimated to be \$164,094.00, would be paid from a FY21 CIP account established for this project and \$22,500.00 from a water resources account. Please see the attached fiscal impact note for additional information.

VI. STAFF ANALYSIS AND BACKGROUND

Urban collector paving projects such as this one, where MPO pays 75% of the paving costs, are one of the best alternatives for the City in terms of getting the most street paving done for the least expense of City funds.

This is a major collector road in the City of Portland and is in need of repair due to its high AADT; without this work, Washington Avenue will continue to deteriorate. In addition, work has been completed throughout Washington Avenue, and this is one major piece that will be brought up to date to create safer corridor.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow MaineDOT to pave approximately 0.75 miles of Washington Avenue (from Regan Lane to Riverside Street) in 2020.

VIII. LIST ATTACHMENTS

1. Three-party Mod 1 Two-Party MDOT, PACTS and Portland re Washington Avenue Regan to Riverside 3.2.2020
2. 3-Party Mod 1 - Wash - Regan to Riverside
3. Washington (Regan to Riverside) Fiscal Impact Note
4. 3-Party Agreement - All Signed - Wash Ave - Regan to Riverside 2017
5. Wash Ave - Regan to Riverside - Location map
6. Wash - Regan to Riverside - 2-Party Agreement 22452.00

Prepared by:

Date: 3/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE MODIFICATION TO THREE-PARTY AGREEMENT
BETWEEN PORTLAND, THE
PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM
AND THE MAINE DEPARTMENT OF TRANSPORTATION
AND TWO-PARTY AGREEMENT
RE: WASHINGTON AVENUE FROM REGAN TO RIVERSIDE**

ORDERED, that the modification to the three-party Municipal Partnership Initiative Program Agreement between the Maine Department of Transportation, the Portland Area Comprehensive Transportation System and the City of Portland for Washington Avenue Improvements from Regan to Riverside streets, first approved by Order 16-17/18, with Work Identification Number 022452.00, is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland for Washington Avenue Improvements from Regan to Riverside streets with State Work Identification Number 022452.00 is hereby approved in substantially the form attached hereto; and

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



Internal Use Only

TEDOCS # _____

AMS Advantage #: **DOT0917-38019 PACTS**
DOT0917-38020 Portland

CSN#: **38019 PACTS & 38020 Portland**

MAINE DEPARTMENT OF TRANSPORTATION
MODIFICATION # 1 TO THREE-PARTY PARTNERSHIP AGREEMENT

Project Location: **Portland**
State W.I.N. #: **022452.00**
Federal W.I.N. #: **22452000**
N/M MPO ID#: **PACTS**
Municipality ID#: **PORTLAND**

Original Agreement Maximum Amount: **\$463,763.00**
Current Agreement Maximum Amount: **\$463,763.00**
Modified Agreement Maximum Amount: **\$656,376.00**
Current Agreement Expiration Date: **09/01/2020**
Modified Agreement Expiration Date: _____ ☒ N/A

This Modification hereby amends a Three-Party Partnership Agreement that was executed by MaineDOT on **09/01/2017**, with the **Portland Area Comprehensive Transportation System (PACTS)** and the Municipality of **Portland**, hereinafter the "Parties" for **Washington Avenue Pavement Preservation (Project)** as follows:

☒ **Increased Agreement Maximum Amount.** The maximum amount of the Agreement shall be increased by: **\$192,613.00** from **\$463,763.00** to **\$656,376.00**. Reason: **The increase is attributed to high bid prices.**

☐ **Expiration Date.** The Expiration Date of the Agreement shall be extended from _____ to _____. Reason: _____

The following attachments are hereby incorporated into this Modification:

☒ **Appendix A – Section A. Financial Provisions**

All other terms and conditions of the original Agreement shall remain in effect. This Modification hereby becomes part of the Agreement. The Parties, by their duly authorized representatives, have executed this modification to said original Agreement, which shall become effective on the date last signed below.

**PORTLAND AREA COMPREHENSIVE
TRANSPORTATION SYSTEM**

By: _____ *

Kristina Egan, Executive Director
Greater Portland Council of Governments
For Portland Area Comprehensive Transportation System

12/11/2019

Date

MAINE DEPARTMENT OF TRANSPORTATION

By: _____ *

Andrew T. Bickmore, Acting Director
Bureau of Planning

Date

MUNICIPALITY OF PORTLAND

By: _____ *

Jon Jennings, City Manager

Date

*I certify that the foregoing signature is true and accurate, and if electronic, I further certify that it (a) is intended to have the same force as a manual signature, (b) is unique to myself, (c) is capable of verification, (d) is under the sole control of myself, and (e) is linked to data in such a manner that it is invalidated if the data are changed. 10 M.R.S.A. §9502, et seq.

**APPENDIX A
(WIN 022452.00)**

Update Description of the Project on Page 1:

Whereas, the work that is the subject of this Agreement consists of a mill and fill on Washington Avenue beginning at Regan Lane and extending northwest 0.75 miles to Riverside Street (the “**Project**”); and

Replace Section A. Financial Provisions on Page 2:

1. The total estimated cost of the Project through all phases is \$656,376.00 (the “**Project Estimate**”), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

Work Phase	Estimated PACTS Federal Share		Estimated PACTS State Share		Estimated Municipality's Share		Estimated Total Cost
	%	\$	%	%	%	\$	\$
Preliminary Engineering	75%	\$18,750.00	0%	\$ -	25%	\$6,250.00	\$25,000.00
Right of Way	75%	\$0.00	0%	\$ -	25%	\$0.00	\$0.00
Construction	75%	\$438,750.00	0%	\$ -	25%	\$146,250.00	\$585,000.00
Construction Engineering	75%	\$34,782.00	0%	\$ -	25%	\$11,594.00	\$46,376.00
TOTALS:		\$492,282.00		\$ -		\$164,094.00	\$656,376.00

2. Estimated allocations are further identified as follows:

- a. **Federal share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of \$492,282.00.
- b. **State share** (provided through PACTS State Allocation) - 0% of federally participating costs, up to a maximum of \$0.00.
- c. **Municipal share** (provided through the Municipality's obligation of funds) - 25% federally participating costs, which is estimated at \$164,094.00, plus 100% of any additional costs incurred in accordance with Section A.3.

3. The Municipality shall be fully responsible for any and all Project costs exceeding \$656,376.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
4. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
5. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.

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		\$0		\$13,995		\$13,995
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$13,995	\$13,995	\$13,995	\$13,995
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0018	\$0.0018	\$0.0018	\$0.0018
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0156%	0.0079%	0.0156%	0.0079%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3418	\$22.4818	\$11.3418	\$22.4818

Notes: The CIP impact will begin in 2021 and remain for the 20 year life of the bond.



<i>MaineDOT use only</i>	
TEDOCS #:	_____
CTM #:	<u>DOT0917-38019 PACTS</u> <u>DOT0917-38020 Portland</u>
CSN #:	<u>38019 PACTS & 38020 Portland</u>
PROGRAM:	<u>Bureau of Planning</u>

State of Maine
DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT

Portland, Maine
Washington Avenue Pavement Preservation

<i>MaineDOT Use Only</i>	
WIN #: <u>022452.00</u>	Agreement Maximum Amount: <u>\$463,763.00</u>
N/M MPO Id#: <u>PACTS</u>	Agreement Begin Date: <u>09/01/2017</u> (<i>Office Use Only</i>)
Municipality Id#: <u>PORTLAND</u>	Agreement End Date: <u>09/01/2020</u>

This Cooperative Agreement ("Agreement") is entered into by and between the Maine Department of Transportation ("MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, the City of Portland ("Municipality"), a municipality in the State of Maine with offices located at 389 Congress Street, Portland, Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area ("PACTS"), with its offices located at 970 Baxter Boulevard, Portland, Maine, hereinafter referred to as (the "Parties.")

Whereas, the work that is the subject of this Agreement consists of a mill and fill on Washington Avenue beginning at Greenwood Lane and extending northwest 0.61 of a mile to Riverside Street (the "Project"); and

Whereas, PACTS has programmed the Project for inclusion in the 2017-2018-2019 MaineDOT Work Plan, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, the purpose of this Agreement is to identify the Parties' individual responsibilities during the design, permitting and right-of-way phases of the Project through completion of final Plans, Specifications and Estimate ("PS&E"), and to identify the intended financial allocations between the Parties through all phases of the Project if and when the parties formally approve and commit financial resources for the Project; and

Whereas, following the preparation of the project PS&E, a separate Municipal/State Agreement will be executed by MaineDOT and the Municipality.

Now therefore, in consideration of the forgoing, the Parties hereby establish and agree to the following terms and conditions:

A. Financial Provisions:

1. The total estimated cost of the Project through all phases is \$463,763.00 (the “**Project Estimate**”), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

Work Phase	Estimated Federal Share	Estimated State Share	Estimated Municipal Share	Estimated Total Cost
Preliminary Engineering	\$ 17,391.10	\$ -	\$ 5,797.05	\$ 23,188.15
Right of Way	\$ 375.00	\$ -	\$ 125.00	\$ 500.00
Construction	\$ 295,273.90	\$ -	\$ 98,424.65	\$ 393,698.55
Construction Engineering	\$ 34,782.23	\$ -	\$ 11,594.07	\$ 46,376.30
Total Project Share	\$ 347,822.23	\$ -	\$ 115,940.77	\$ 463,763.00

2. Estimated allocations are further identified as follows:
 - a. **Federal share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of \$347,822.23 *25.23*
 - b. **State share** (provided through PACTS State Allocation) - 0% of federally participating costs, up to a maximum of \$0.00.
 - c. **Municipal share** (provided through the Municipality’s obligation of funds) - 25% federally participating costs, which is estimated at \$115,940.77, plus 100% of any additional costs incurred in accordance with Section A.3.
3. The Municipality shall be fully responsible for any and all Project costs exceeding \$463,763.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
4. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
5. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.

B. MaineDOT Agrees:

1. To prepare, or cause to be prepared, construction plans and specifications for the Project within the scope described above, using MaineDOT’s standard project development process to ensure adherence to federal and state regulations.
2. To share information about the status of the Project with staff from PACTS and the Municipality at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact.
- Horizontal/Vertical Alignment Complete (“HVAC”).
- Preliminary public meeting.
- Preliminary Design Report (“PDR”) complete.
- Formal public meeting.
- Plan Impacts Complete (“PIC”).
- PS&E complete.
- Changes in the Project Schedule or Engineer’s Estimate.

C. Miscellaneous Provisions:

1. After the final PS&E package is prepared, MaineDOT and the Municipality will execute a Municipal/State Project Agreement covering Project advertisement, award, construction and construction engineering. Said Municipal/State Agreement will carry the financial terms outlined in the Financial Provisions section of this Agreement, as well as a schedule for collection of the Municipality’s share of Project costs.
2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
3. The Parties will participate as partners in any public meetings held to discuss the Project.
4. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.
5. If the Municipality withdraws its financial support for the Project as described in the Financial Provisions section of this Agreement, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.
6. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
7. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality’s entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality’s participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality’s behalf.

8. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off monies due the Municipality under a specific Project Contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other Agreement/Contract, any other Agreement/Contract with any State Department or Agency, including any Agreement/Contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
9. To the extent permitted by law, the Municipality and PACTS shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. ***This provision shall survive any termination or expiration of this Agreement.***
10. With the exceptions of the provisions so noted, all provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

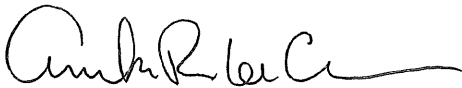
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

John Duncan

Date 6/14/17

John Duncan, Director
Portland Area Comprehensive Transportation System

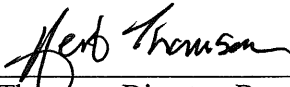
I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.



Date 8/31/17

for Jon Jennings, City Manager
Municipality of Portland

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.



Date 9/1/17

Herb Thomson, Director, Bureau of Planning
Maine Department of Transportation

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Order 16-17/18

Passage: 8-0 (Ray absent) on 8/21/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

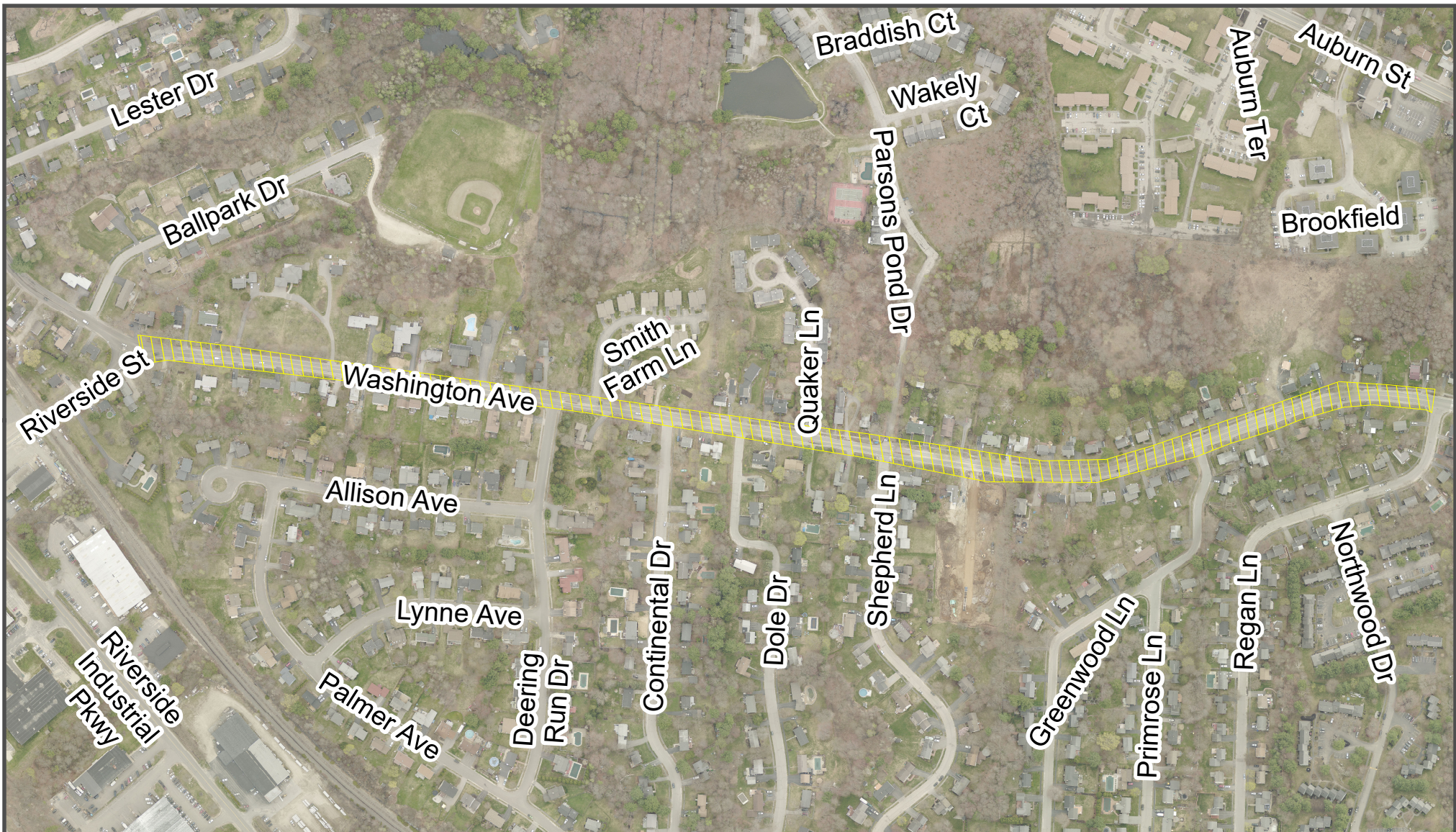
Effective 8/31/2017

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

**ORDER APPROVING AGREEMENT BETWEEN PORTLAND, PORTLAND AREA
COMPREHENSIVE TRANSPORTATION SYSTEM
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: WASHINGTON AVENUE PAVEMENT PRESERVATION**

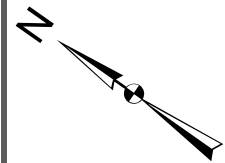
ORDERED, that the three-party agreement between the Maine Department of Transportation (MDOT), the Portland Area Comprehensive Transportation System and the City of Portland, for pavement preservation on Washington Avenue between Greenwich Lane and 0.61 miles northwest of Riverside Street, with the MDOT identification number of 022452.00, is hereby approved in substantially the form attached hereto; and

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



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD STE B
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Washington Ave Regan Ln to Riverside St



February 2020 DRAWN BY: TSY

0 250 500
Feet



MaineDOT use only	
TEDOCS #:	_____
CTM #:	_____
CSN #:	_____
PROGRAM:	_____

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO WASHINGTON AVENUE

<i>(MaineDOT Use Only)</i>	
Project Location: <u>Portland</u>	Estimated Municipal Share: <u>\$186,594.00</u>
State WIN #: <u>22452.00</u>	Vendor Customer #: <u>17A12144</u>
Federal Aid Project #: <u>2245200</u>	Agreement Begin Date: _____
	Agreement End Date: <u>(5 years from the date last signed below)</u>

This Agreement is entered into between the Maine Department of Transportation (hereafter the MaineDOT) and the Municipality of Portland, a municipal corporation located in the County of Cumberland (hereafter the “Municipality”) (collectively hereinafter the “Parties”).

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Washington Avenue, beginning at Reagan Lane and extending northwest 0.75 miles to Riverside Street, in Portland, Maine, (hereafter the “Project”).
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project’s Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

- D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:
 - ☒ Appendix A – Project scope, cost sharing, and payment schedule (*not required for non-monetary agreements.*)
 - ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - ☐ Appendix B – Perpetual Drainage Maintenance
 - ☐ Appendix B – Perpetual Landscape Maintenance
 - ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance

- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☒ Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

4. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

5. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).
 - ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.

- iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.
- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities:

- 6. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- 7. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- 8. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

- 9. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- 10. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

- 11. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for all Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the

time of such termination. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.

12. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
13. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.
14. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
15. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
16. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

17. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
18. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those ***provisions that by their very nature are intended to survive.***

L. Miscellaneous Provisions:

19. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

20. All provisions of this Agreement, ***except those that by their very nature are intended to survive***, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
21. **State of Maine's Rights of Set-Off.** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
22. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
23. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
24. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 24 Child Street
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: LaRay L. Hamilton
 Email: laray.hamilton@maine.gov

Municipality: City of Portland
 389 Congress Street
 Portland, ME 04101
 Attn.: Jon Jennings
 Email: citymanager@portlandmaine.gov

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Jon Jennings, City Manager

By: _____
Richard Crawford
Director, Bureau of Project Development

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WASHINGTON AVENUE

FEDERAL AID PROJECT NO. 2245200

STATE PROJECT IDENTIFICATION NUMBER (WIN) 22452.00

Project Scope:

Mill & Fill on Washington Avenue, beginning at Regan Lane and extending northwest 0.75 miles to Riverside Street.

Funding Outline:

The Total Project Estimated Cost is \$ 678,876.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	25.0%	\$ 6,250.00	75.0%	\$ 18,750.00	0.0%	\$ -	\$ 25,000.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction	25.0%	\$ 146,250.00	75.0%	\$ 438,750.00	0.0%	\$ -	\$ 585,000.00
Construction Engineering	25.0%	\$ 11,594.00	75.0%	\$ 34,782.00	0.0%	\$ -	\$ 46,376.00
PROJECT SHARES		\$ 164,094.00		\$ 492,282.00		\$ -	\$ 656,376.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 22,500.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 186,594.00					

(Check if applicable)

☒ **Additional Work as outlined in Appendix C to this Agreement.**

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work		Cost: 100% Municipal Share	
Sewer Manhole Adjustments - 15 @ \$1,500 ea		\$	22,500.00
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	22,500.00

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
City of Portland	\$107,672.00	5/1/2020
City of Portland	\$78,922.00	8/1/2020
City of Portland	Balance	9/1/2020
Total Receivable Amount:	\$186,594.00	

Project Information

Municipality Name: Portland

Federal Aid Project #: 2245200

WIN: 22452.00

APPENDIX C

ADDITIONAL WORK

MAINE DEPARTMENT OF TRANSPORTATION

Transportation Improvement Project

1. Description of Work Being Added to Project by the Municipality:

Adjust 15 sewer manholes to grade.

2. The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project; No ☒ - Disregard this Section, or Yes ☐ - as follows:

- a) All plans and specifications shall conform to the standards used by MaineDOT as set forth in the latest version of its *"Highway Design Guide"* and *"Standard Details"* and comply with MaineDOT's Utility Accommodation Rules.
- b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.
- c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in MaineDOT's proposal book.
- d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to MaineDOT and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.
- e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.
- f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay MaineDOT's schedule for soliciting bids to construct the Project.
- g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by MaineDOT. A copy of MaineDOT's specifications can be found on its website under Business and CADD support. It is the responsibility of the Municipality to translate this data into other formats required for use in their design software.

3. Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality:

- a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying MaineDOT in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of MaineDOT.
- b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay MaineDOT, an amount equal to the Municipality's share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, MaineDOT agrees to award a contract to construct the Project including the additional work.
- c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless MaineDOT determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE CHAPTER 15
RE: SOUND MITIGATION REVIEW FEE

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

1. That Section 15-12 of Chapter 15 of the Portland City Code
is hereby amended to read as follows:

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for
licenses issued pursuant to this Code and the expiration date of
each license shall be as follows:

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. II	Bottle clubs (must obtain FSE and entertainment if applicable)	\$940.00	June 30

...

Ch. 4, Art. III	Entertainment:		
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...

	<u>Sound Mitigation Review Fee</u>	<u>\$150</u>	<u>Per sound mitigation plan</u>
Ch. 4, Art. IV	Gaming:		
	Beano	\$104.00	December 31



CITY OF PORTLAND
Permitting and Inspections Department

Memorandum

To: Health & Human Services Committee
From: Jessica B. Hanscombe, Licensing and Housing Safety Manager
Date: February 4, 2020
RE: Review of Sound Mitigation Plan

The City of Portland amended Chapter 4 on July 15, 2019. Part of the ordinance was requiring the applicant to provide the City with a sound mitigation plan. Staff is requesting a fee be set to cover the cost of the review.

Ordinance Amendments:

Staff is recommending a few amendments to the ordinance. Attached is ordinance with the requested changes.

- Sound Mitigation Review- \$150.00

Review

Licensing and Registration worked with staff at Public Assembly Facilities to review the plans submitted since the ordinance went into effect on August 15, 2019. We tracked the staff time it took to review the plan. We also contacted a private company to discuss what the fee would be to review. The cost is \$75.00 an hour with an average of 2 hours per review. The review includes a site visit, assess the submitted plan and propose any changes if necessary.

Thank you,

Jessica B. Hanscombe
Licensing and Housing Safety Manager

Chapter 15 LICENSES AND PERMITS*

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. II	Bottle clubs (must obtain FSE and entertainment if applicable)	\$940.00	June 30
Ch. 3, Art. III	Brewery, Winery and On-Premises Consumption Distillery License (must obtain FSE and/or entertainment if applicable)	\$525.00	Concurrent with state liquor license
Ch. 3, Art. III	Small Brewery, Winery and Distillery Manufacturing License	\$250.00	Effective November 1, 2019; Concurrent with state liquor license

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. III	Large Brewery, Winery and Distillery Manufacturing License	\$2,000	Effective November 1, 2019; Concurrent with state liquor license
	Amusement devices (other than pinball and adult amusements), per device	\$153.00	Twelve months or concurrent with state liquor license or with any city license
	Pinball machines, per device	\$153.00	Twelve months or concurrent with state liquor license or with any city license
	Adult amusement devices, per location	\$978.00	Twelve months or concurrent with state liquor license or with any city license
Ch. 4, Art. III	Entertainment:		

Location in Code	Description	Fee	Expiration Date
	Single Entertainment Event - Private Property	\$50	Per event
	Single Entertainment Event - Public Property	\$50	Per event
	Indoor Entertainment	\$500	12 months or concurrent with state liquor license or any city license
	Outdoor Entertainment	\$700	12 months or concurrent with state liquor license or any city license
	Combined Entertainment	\$800	12 months or concurrent with state liquor license or any city license
	Expanded Entertainment Addendum	\$100	Per event
	<u>Sound Mitigation Review Fee</u>	<u>\$150</u>	<u>Per sound mitigation plan</u>
Ch. 4, Art. IV	Gaming:		
	Beano	\$104.00	December 31

Location in Code	Description	Fee	Expiration Date
	Games of chance (application fee pursuant to section 15-6 only)		
Ch. 4, Art. V	Nudity in licensed businesses	\$1,474.00	June 30
Ch. 11, Art. II	Food service establishments (FSE):		
	Temporary FSE:		
	a. Unopened prepackaged food	\$93.00	Three months
	b. Opened or nonprepackaged food	\$93.00	Per event not to exceed two weeks
	Mobile FSE (Chapter 19) a. pushcarts	\$322.00	March 31
	b. Food Trucks	\$546.00	March 31
	Street vendor cooler storage space - maximum of 7 sq. ft.	\$38.00 per 3.5 sq. ft. of space	March 31
	FSE-No food preparation on premises	\$181.00	January 31

Location in Code	Description	Fee	Expiration Date
	FSE-With preparation limited to hot beverages only	\$142.00	January 31
	FSE-With beer and wine take out	\$415.00	January 31
	FSE/Commissary - Food preparation on premises	\$459.00	January 31
	FSE's with liquor:		
	FSE-Class A lounge (Class X)	\$2,774.00	Concurrent with state liquor license
	FSE-Class A restaurant (Class I)	\$1,873.00	Concurrent with state liquor license
	FSE-Hotel (Class IA)		
	FSE-Class A restaurant/lounge (Class XI)	\$2,326.00	Concurrent with state liquor license
	FSE-Qualified catering service (Class I)	\$1,873.00	Concurrent with state liquor license

Location in Code	Description	Fee	Expiration Date
	Innholder-15 rooms or less	\$1,436.00	Concurrent with state liquor license
	Innholder-16 to 40 rooms	\$1,928.00	Concurrent with state liquor license
	Innholder-more than 40 rooms	\$2,239.00	Concurrent with state liquor license
	FSE-Spirituious license (Class II)	\$611.00	Concurrent with state liquor license
	FSE-Vinous license (Class III)	\$410.00	Concurrent with state liquor license
	FSE-Malt license (Class IV)	\$824.00	Concurrent with state liquor license
	FSE-Malt and vinous license (Classes III and IV combined)	\$906.00	Concurrent with state liquor license

Location in Code	Description	Fee	Expiration Date
	FSE-Nonprofit club (Class IV with catering or Class V without catering)	\$737.00	Concurrent with state liquor license
	FSE-Liquor catering	\$33.00	Per event
	FSE-Temporary (bona fide nonprofit organization) with any spirituous, vinous or malt license and special entertainment	\$65.00	Per 2-day period
	FSE-Auditorium	\$584.00	Concurrent with State Liquor License
	FSE-Civic Auditorium	\$1,851.00	Concurrent with State Liquor License
Ch. 12, Art. VII	Operation of rendering facilities	263.00	September 30
Ch. 16	Massage establishment	\$65.00	September 30
	Combined massage establishment/massage therapist	\$55.00	
	Massage therapist	\$38.00	
	Conditional massage therapist	\$38.00	

Location in Code	Description	Fee	Expiration Date
Ch. 19, Art. II	Night Street Vendor (must also obtain FSE and street vendor)	\$218.00	
Ch. 19, Art. III	Transient sellers	\$109.00	December 31
Ch. 21	Farmers' Markets on private property	\$26 per vendor	March 31
Ch. 23, Art. II	Flea market seller	\$22.00	Last day of February
	Flea market Operator	\$55.00 \$246.00	Per day Annual/March 1st
	Secondhand dealer, junk dealer, pawnbroker ¹ (including used cars)	\$153.00	December 31
	Junk collector	\$26.00	December 31
Ch. 28, Art. IV	Wreckers and vehicle towing	\$278.00	June 30
Ch. 28, Art. VII	Valet Parking	\$ 2 7 3 . 0 0 p e r l o c a t i o n	Twelve months
	Valet Parking Special Event Permit	\$64.00	
Ch. 28, Art. VIII	Licensing of Booting of Motor Vehicles	\$105.00	October 31
Ch. 30, Art. II	Taxicabs and liveries:		

¹ Reflects city practice for junk dealers and pawnbrokers.

Location in Code	Description	Fee	Expiration Date
	Taxicab business license	315.00	April 30
	Livery business license	315.00	April 30
	Taxicab driver's license	79.00	April 30
	Taxi Replacement license	11.00	
	Livery driver's license	21.00	April 30
	Livery replacement license	11.00	
Ch. 30, Art. III	Horse-drawn cabs	210.00, plus 21.00 per driver	April 30
Ch. 30, Art. IV	Bicycle cabs	105.00, plus 21.00 per driver	April 30
Ch.30, Art. V	Tour companies	315.00, plus 32.00 per vehicle/operator operator	April 30

(b) Fees for licenses to be established by the city pursuant to state law shall be as follows:

Description	Fee	Expiration Date

Description	Fee	Expiration Date
Amusements, including images; pageantry; sleight of hand tricks; puppet shows; feats of balancing; wire dancing; personal agility; or dexterity	\$22.00	Per day
Billiards or pool, per table	\$33.00	Twelve months or concurrent with state liquor license or with any city license
Bowling alley, per establishment	\$92.00	April 30
Circus	\$181.00	Per day
Circus (bona fide nonprofit organization)	\$27.00	Per day
Going-out-of-business sale	\$104.00	--
Menageries	\$22.00	Per day
Motion picture theatres (other than open-air drive-in) operating more than six (6) months:		
Seating capacity 999 or less, per screen	\$295.00	June 30
Seating capacity 1,000 or more, per screen	\$486.00	June 30
Temporary--One (1) week or less	\$33.00	One week

Description	Fee	Expiration Date
Temporary--More than one (1) week but less than two (2) months	\$49.00	Two months
Temporary--More than two (2) months but less than six (6) months	\$77.00	Six months
Roller skating rink	\$164.00	June 30

(Code 1968, §§ 302.6, 414.1, 414.5, 712.2, 714.6, 714.7, 901.12; Ord. No. 391-72, 7-5-72; Ord. No. 201-74, 4-17-74; Ord. No. 645a-75, 11-17-75; Ord. No. 231-80, 12-22-80; Ord. No. 553-81, § 1, 3-2-81; Ord. No. 554-81, 3-2-81; Ord. No. 576-81, § 2, 3-16-81; Ord. No. 694-81, 5-18-81; Ord. No. 82-81, § 1, 7-6-81; Ord. No. 392-82, 2-1-82; Ord. No. 564-82, 5-17-82; Ord. No. 565-82, 5-17-82; Ord. No. 566-82, 5-17-82; Ord. No. 510-84, § 1, 4-2-84; Ord. No. 591, 5-21-84; Ord. No. 658-84, 5-30-84; Ord. No. 431-85, § 3, 2-20-85; Ord. No. 554-85, 5-14-85; Ord. No. 212-85, §§ 1, 2, 10-21-85; Ord. No. 116-86, § 1, 3-3-86; Ord. No. 551-86, 5-12-86; Ord. No. 189-87, § 2, 12-7-87; Ord. No. 386-88, 5-16-88; Ord. No. 425-89, 5-15-89; Ord. No. 29-89, 6-19-89; Ord. No. 258-90, 2-21-90; Ord. No. 351-90, 5-21-90; Ord. No. 264-91, 3-4-91; Ord. No. 358-91, 5-20-91; Ord. No. 183-91, 12-2-91; Ord. No. 175-92, 3-16-92; Ord. No. 245-93, 3-22-93; Ord. No. 83-93, § 1, 9-8-93; Ord. No. 94-93, 9-20-93; Ord. No. 221-94, § 2, 2-23-94; Ord. No. 314-94, 5-16-94; Ord. No. 229-95, 4-3-95; Ord. No. 34-95, 7-5-95; Ord. No. 264-96, § 1, 5-20-96; Ord. No. 128-98, 10-19-98; Ord. No. 282-99, §2, 5-17-99; Ord. No. 228-00, §1, 5-15-00; Ord. No. 276-01, 5-21-01; Ord. No. 277-01, 5-21-01; Ord. No. 119-01/02, § 6, 12-3-01; Ord. No. 258-01/02, 5-20-02; Ord. No. 260-01/02, 5-20-02; Ord. No. 246-02/03, 5-19-03; Ord. No. 248-02/03, 5-19-03; Ord. No. 180-03/04, 4-7-04; Ord. No. 217-03/04, 5-17-04; Ord. No. 68-04/05, 10-4-04; Ord. No. 247-04/05, 5-16-05; Ord. No. 245-05/06, 5-15-06; Ord. No. 227-06/07, 5-21-07; Ord. No. 196-07/08, 4-28-08; Ord. No. 246, 07-08, 5-19-08; Ord. No. 224-09/10, 5-17-10; Ord. No. 229-12/13, 5-20-13; Ord. No. 159-12/13, 4-22-13; Ord. 52-14/15, 9-15-2014;)Ord. 246-14/15, 6-24-2015; Ord. 109-15/16, 11-16-2015; Ord. 181-15/16, 3-21-2016; Ord. 180-15/16, 3-21-2016; Ord. 18-17/18, 8-21-2017; Ord. No. 111-17/18, 11-20-2017; Ord. No. 218-17/18, 5-21-2018; Ord. No. 244, 5-20-2019; Ord. No. 285-19/20, 7-15-2019; Ord. No. 25-19/20, 8-12-2019)

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTERS 10, 11, 15 AND 35
RE: MARIJUANA BUSINESS LICENSES**

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

*1. That Section 10-18 of Chapter 10 of the Portland City Code
is hereby amended to read as follows:*

Sec. 10-18. Amendments.

The Fire Prevention Code adopted by section 10-16 is amended,
modified and deleted in the following respects:

(a) The following provisions shall be added to the Fire Code
as unnumbered sections, and shall amend any provisions of the Fire
Code to the contrary:

...

(u) Annex E, Fire Fighter Safety Building Marking System is
adopted.

(v) Section 38.3.1 shall be added as follows:

For other than CO2 and nonhazardous extraction processes, any
facility conducting marijuana extraction shall be protected
throughout with a NFPA 13 sprinkler system.

(w) Section 38.6.2.4.4 shall be added as follows:

In addition to the continuous gas detection system required
by 38.6.2.4.1, at least one gas detection monitor, supervised by
a monitored fire alarm system, shall be installed outside of an
extraction room. The gas detection monitor shall be installed in
accordance with NFPA 72.

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

Sec. 11-4. Amendments.

The Maine State Food Code 2013: Food Code adopted by section 11-1 is amended and modified in the following respects.

(a) Section 1.201.10.B shall be amended as follows:

...

(b) Section 1.201.10.B shall be amended to add the following:

Base station shall mean a location used by a mobile food service establishment for the disposal of liquid/solid waste, re-filling of water tanks and the storage of food, supplies, and equipment. A base station is permissible for one or more of these purposes. However, the *preparation of food or ware washing* is not permissible unless it is a licensed commercial kitchen.

...

Marijuana food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged for sale to retail outlets or directly to consumers.

...

Sec. 11-22. License Required.

No person shall operate any food service establishment or marijuana food processing establishment within the city unless licensed to do so by the city. Applications for licenses for a food service establishment, other than a temporary food service establishment, must be submitted at least thirty (30) calendar days before operations are planned to commence. Applications for licenses for a temporary food service establishment must be submitted at least seven (7) business days before operations are planned to commence.

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

Sec. 15-6. Fees.

(a) *Application fees.* Except as expressly provided, all applications for original licenses or for the consent of the city council, other than a flea market seller, temporary FSE or auction license, shall be accompanied by an administrative fee of forty-five dollars (\$45.00) to defray the cost of processing the application. All applications for renewal of licenses shall be accompanied by the fees for issuance and an administrative fee of thirty-five dollars (\$35.00), except for a flea market seller to defray the cost of processing the application. In any case where notice by publication or mail is required, the applicant shall pay the cost of publication and postage in advance. Application fees shall not be refundable.

(i) Applications for any original licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of five hundred dollars (\$500.00). Applications for renewal of licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of two hundred and fifty dollars (\$250.00).

(ii) Applications for original Small Scale Caregiver Licenses shall be accompanied by an administrative fee of fifty dollars (\$50.00). Applications for renewal of Small Scale Caregiver Licenses shall be accompanied by an administrative fee of forty dollars (\$40.00).

...

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. II	Bottle clubs (must obtain FSE and entertainment if applicable)	\$940.00	June 30

...

Ch. 11, Art. II	Food service establishments (FSE):		

	FSE/Commissary - Food preparation on premises	\$459.00	January 31
	<u>Marijuana Food Processing Establishment</u>	<u>\$459.00</u>	<u>Concurrent with marijuana license</u>

...

Ch.30, Art. V	Tour companies	315.00, plus 32.00 per vehicle/operator operator	April 30
<u>Ch. 35</u>	<u>Marijuana Cultivation - Tier 1</u>	<u>500.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Marijuana Cultivation - Tier 2</u>	<u>5,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Marijuana Cultivation - Tier 3</u>	<u>10,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Manufacturing - manual</u>	<u>2,500.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Manufacturing - high hazard</u>	<u>5,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Retail Marijuana - medical</u>	<u>5,000.00</u>	<u>Twelve months</u>
	<u>Retail Marijuana - adult use</u>	<u>10,000</u>	<u>Twelve months/concurrent with state license</u>
	<u>Small Scale Marijuana Caregiver</u>	<u>250.00</u>	<u>Twelve months</u>
	<u>Marijuana Testing</u>	<u>1,000.00</u>	<u>Twelve months/concurrent with state license</u>

...

4. That the Portland City Code is hereby amended by adding sections to be numbered Chapter 35, Articles I to II, Sections 35-1 to 35-45, which said sections read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

35-1. Definitions.

Except as otherwise specified, the definitions in Chapter 14 shall apply to this Chapter.

Disqualifying conviction shall mean any of the following: (1) any felony conviction where the conviction or completion of any sentence, whichever is more recent, has been completed within the last ten years; or (2) any conviction for a drug related crime other than a felony, but not including convictions for marijuana related crimes, where the conviction or completion of any sentence, whichever is more recent, has been completed within the last five years.

Disqualifying violation shall mean, within the previous five years, the non-payment or late payment greater than 30 days of any tax or fee; any citation for licensing, land use, life safety, building, fire, health, or similar violation that was not corrected within the timeframe required by the City; any suspension, revocation, or denial of any license or permit; any false statement on a City form or application; and any other significant failure to comply with City ordinances. Disqualifying violations shall not include parking tickets.

Manual processing shall include the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

Marijuana means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include hemp as defined in 7 M.R.S. §2231(1), or a marijuana product.

Marijuana business shall mean any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the City.

This shall include registered dispensaries, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.

35-2. Enforcement.

a. This Chapter shall be enforced by the City Manager and his/her designee(s).

b. Each day that a violation of this Chapter exists shall be a civil violation subject to the following:

1. Civil penalties. Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the violation has existed. However, the maximum amount of civil penalties may be increased where:

(a) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or

(b) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

2. Posting against occupancy. In addition to any other remedies provided by this Code, the City may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for any of the following violations:

(a) Operating a marijuana business without a valid City and state license;

(b) Failure to allow entrance and inspection to any City official on official business after a reasonable request;

(c) Allowing the use or consumption of marijuana or marijuana products on the premises of the marijuana business; and

(d) Any other violation that the City determines has the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

c. The City Manager or his/her designee is authorized to 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 Chapter.

d. If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

35-3. Appeals.

Appeals of decisions made pursuant to this Chapter shall be as follows:

a. An appeal from a decision to issue, issue with conditions, deny, or revoke a license pursuant to Article 2 may be appealed to Superior Court pursuant to M.R. Civ. P. 80B by a party with standing.

b. An appeal from any notice of violation, suspension, revocation, or similar enforcement action under this Chapter may be appealed to the City Manager or his/her designee by a party with standing within ten business days of the written decision taking such action. An appeal from any decision of the City Manager may be appealed to Superior Court pursuant to M.R. Civ. P. 80B.

35-4. Reserved.

35-5. Reserved.

35-6. Reserved.

ARTICLE II. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-7. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-8. Reserved.

35-9. Reserved.

35-10. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-11. Licensing Requirements.

- a. Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.
- b. Operating without a license prohibited. No individual or entity may operate a marijuana business within the City without first obtaining a license from the City.
- c. Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.
- d. Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.
- e. No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating a marijuana business is a privilege and not a right in the City.
- f. Licenses not transferable. Licenses issued pursuant to this Article are not transferable. However, retail and dispensary licenses shall be transferable in accordance with Sec. 35-42 until the effective date of federal legislation allowing federally regulated financial institutions to serve marijuana businesses, or the removal of the cap on marijuana retail stores and dispensaries in Sec. 35-42(i).
- g. Multiple licenses. An individual or entity may hold multiple licenses under this Article, except that an individual or entity may not hold more than one retail and/or dispensary license, or have an interest in an entity that holds more than one retail and/or dispensary license, until after January 1, 2025.

35-12. License Types.

The City has established the following license types for marijuana businesses:

- a. Cultivation - Tier 1. A tier 1 marijuana cultivation license shall allow the license holder to cultivate up to 500 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- b. Cultivation - Tier 2. A tier 2 marijuana cultivation license shall allow the license holder to cultivate up to 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- c. Cultivation - Tier 3. A tier 3 marijuana cultivation license shall allow the license holder to cultivate more than 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- d. Dispensary. A dispensary license shall allow a registered dispensary to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statute.
- e. Manufacturing - Manual. A manual manufacturing license shall allow the license holder to manufacture marijuana using manual processing only.
- f. Manufacturing - High Hazard. A high hazard manufacturing license shall allow the license holder to manufacture marijuana using chemicals and solvents in addition to manual processing methods.
- g. Retail - Medical. A medical marijuana retail license shall allow a registered caregiver to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statutes.
- h. Retail - Adult Use. An adult use marijuana retail license shall allow the license holder to sell adult use marijuana in accordance with Title 28-B of the Maine Revised Statutes.
- i. Small Scale Caregiver. A small scale caregiver license shall allow a registered caregiver to engage in the business of a small scale caregiver, as defined in Chapter 14, including cultivation, manual processing, and limited sales to patients, as defined.

- j. Testing. A marijuana testing license shall allow the license holder to engage in the business of testing medical and/or adult use marijuana for third parties.

35-13. Licensing Procedure.

- a. Applications submission. All applications for licenses under this Article shall be submitted to the Business Licensing Office on forms provided by the City, and shall include all required information, attachments, and fees. No application will be considered unless and until it is complete, as determined by the Business Licensing Office.
- b. Review and recommendation by City departments. The following City departments shall review all applications and recommend whether to issue, issue with conditions, or deny the permits applied for.
 - 1. The Permitting and Inspections Department shall review all applications for compliance with this Article, Chapters 6, 14, 10, and 15 of this Code, as applicable, and all other matters within its purview.
 - 2. The Police Department shall review the security plans submitted by each applicant, as well as any disqualifying convictions of the applicant and associated individuals, and all other matters within its purview.
 - 3. The Fire Department shall review all applications as to compliance with Chapter 10 of this Code, other fire and life safety concerns, and all other matters within its purview.
 - 4. Other City staff or departments shall review and provide recommendations on applications as necessary to adequately evaluate the applications.
- c. Hiring of third party professionals. Where the City determines that it is necessary for an applicant to hire a third party professional to complete any portion of the application, the City may require an applicant to hire a professional with qualifications sufficient to satisfy the City.
- d. City consultation with third party experts. Where the City determines that it is necessary for the City to consult with a third party expert on an application or portion of an application, it may do so and charge the costs of that third

party expert consultation to the applicant. Before doing so, however, the City shall give notice to the applicant of its determination of need, including the basis for that determination; the third-party that the City proposes to engage; and the estimated fee for the third-party consultation. The applicant shall have the opportunity to provide feedback to the City on its determination before the City engages the third party.

e. Licensing decisions. Applications for any license shall be granted, granted with conditions, or denied by the City Manager or his/her designee. Conditions may be imposed on any license issued pursuant to this Article, as necessary to protect the health, safety, and welfare of the public.

f. Allocation of retail licenses. Retail licenses shall be considered as follows:

1. The City Manager may establish multiple rounds of licensing as necessary to manage the workload of staff necessary to license all prospective retail stores, and the anticipated market demand.

2. The City Manager shall establish an opening date and a closing date for applications for any given round of licensing.

3. Upon submission of an application for a given round of licensing, the City will perform a completeness review and establish that the applicant has a complete application and meets the minimum qualifications.

i. If the application is complete and the applicant meets the minimum qualifications, the City will assign the application a numerical score based on the criteria outlined in subsection (f)(4) below.

ii. If the application is incomplete, the applicant will be notified of the incompleteness and given one week to correct any incompleteness. If the application is still incomplete after that time, the City will reject the application. The applicant may reapply, but any second or subsequent application will be treated as a new application.

4. Each application shall be awarded points based on the following matrix. Except where otherwise stated, a particular qualification must be held by at least 26% of

the individuals owning the entity to qualify for any points.

<u>At least 51% owned by socially and economically disadvantaged individual(s), as defined further by regulations to be promulgated by the City Manager based off of the Small Business Association Section 8(a) regulations.</u>	<u>6</u>
<u>At least 51% owned by individual(s) who have been a Maine resident for at least five years.</u>	<u>5</u>
<u>Owned by individual(s) with experience running a business in a highly regulated industry, such as marijuana, liquor, banking, etc. with no history of violations or license suspensions or revocations.</u>	<u>6</u>
<u>Owned by individual(s) who have previously been licensed by the State of Maine or a Maine municipality for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years</u>	<u>4</u>
<u>Owned by individual(s) who have been a registered caregiver in the State of Maine for at least two years.</u>	<u>3</u>
<u>Ownership of proposed retail location by applicant; or at least five year lease for proposed retail location.</u>	<u>4</u>
<u>Evidence of at least \$150,000 in liquid assets</u>	<u>2</u>
<u>Business plan committing to social and economic development, by including three or more of the following:</u> 1. <u>Create at least full-time jobs paying a minimum of \$15/hr;</u>	<u>4</u>

2. <u>Provide PTO (or vacation/sick time) and health benefits to employees;</u> 3. <u>Provide at least one annual training around diversity, cultural awareness, sexual harassment, or workplace violence. Training must be in addition to any required by the State or City;</u> 4. <u>Annual contribution of 1% net profits as a restricted donation to the City for youth education on substance use education and prevention.</u>	
--	--

5. Applicants with the highest point totals shall be chosen first for tentative approval for a license.

Where two or more applicants have the same number of points, some or all of the applicants cannot be awarded tentative approval due to either the 250' dispersal requirement, the cap imposed by Sec. 35-42, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

6. If the application is tentatively approved, the applicant will have one year from tentative approval to open the retail business, including obtaining all final state and local approvals, building permits and approvals, certificates of occupancy, and any other criteria. If the applicant fails to meet the one-year deadline, it forfeits its tentative approval. The applicant may reapply, but any second or subsequent application will be treated as a new application.
7. Any applicant with a complete application, but who is not awarded tentative approval, may choose to be placed on a wait list for a period of up to one year.
8. A licensee who has its license revoked, or who fails to timely renew its license, shall forfeit its right to renew its retail license. The licensee may reapply, but any second or subsequent application will be treated as a new application.
9. Except for licenses issued pursuant to Sec. 35-42(i)(1), licensees who have a medical marijuana retail license may convert to an adult use retail license, so long as they meet the requirements for such license and pay the

licensing fees. An applicant who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement.

35-14. License Application.

Applications for all licenses under this Article shall be on forms provided by the City. In addition to any other information deemed necessary by the City, applicants shall provide the following information:

a. General application.

1. The name, mailing address, physical address, and phone number of the business, as well as any other available contact information, including email address, fax number, website, etc.
2. The name, mailing address, phone number, and email address of the following:
 - (a) The individual or corporate owner of the marijuana business;
 - (b) A community relations liaison, as described in Sec. 35-32;
 - (c) A person with a physical address in the City who is authorized to accept service of process on behalf of the marijuana business; and
 - (d) An emergency contact, as described in Sec. 35-32.
2. A general description of the business, including hours of operation, type of business, etc.
3. The license being applied for.

b. Corporate entity supplement. Where the marijuana business is a corporate entity, the applicant must disclose the name, mailing address, phone number, and email address of each and every individual or corporate owner, officers, directors, managers, general partners, shareholders, and/or other parties responsible for the marijuana business.

c. Background check information and consent. Where a background check of any kind is required by this Code, the applicant

must provide all relevant information sufficient to conduct the background check, as well as any necessary consents.

- d. Landlord permission. Notarized, written permission from the owner of the property where the marijuana business proposes to operate for the applicant to operate the marijuana business for which the applicant is applying, or a copy of a fully executed lease agreement specifically allowing the use of the leased space to be used as they type of marijuana business applied for.
- e. State authorizations. Applicants must provide evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.
- f. Security plan. A security plan, which shall be kept confidential, and which shall be sufficient to prevent the diversion of marijuana and marijuana products, and to protect the health and safety of owner, patrons, City officials, and the public.
 - 1. The security plan shall, at a minimum, address all of the security requirements included in Sec. 35-35.
 - 2. The City may require any reasonable modifications to the security plan that it deems necessary to prevent diversion and protect the public safety.
 - 3. A copy of the approved security plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the security plan before or after licensing must be reviewed by the Police Department.
- g. Waste disposal plan. A waste disposal plan, which shall be sufficient to prevent diversion of marijuana or marijuana product, and shall be sufficient to prevent contamination of land, water, and sewer; and
 - 1. The waste disposal plan shall, at a minimum, address all of the waste disposal requirements included in Sec. 35-38, and all waste disposal requirements otherwise included in this Code, including, but not limited to, Chapters 24 and 32.
 - 2. The City may require any reasonable modifications to the waste disposal plan that it deems necessary.

3. A copy of the approved waste disposal plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the waste disposal plan before or after licensing must be reviewed and approved by the City.
- h. Odor mitigation plan. An odor mitigation plan, which shall be sufficient to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer.
 1. The odor mitigation plan shall at a minimum, address all of the odor mitigation requirements included in Sec. 35-39.
 2. The City may require any reasonable modifications to the odor mitigation plan that it deems necessary, including requiring that the plan be designed by a qualified, licensed professional engineer.
 3. A copy of the approved odor mitigation plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the odor mitigation plan before or after licensing must be reviewed and approved by the City.
- i. License specific requirements. A licensee must provide the additional information specific to the license being applied for, as described in Sec. 35-23 through 35-27.
- j. Any other information that the City Manager decides is necessary to evaluate an application under this Article.

35-15. Performance Guarantee Required.

- a. For all marijuana businesses, other than small scale caregivers and marijuana testing facilities, a performance guarantee shall be required in the amount of the cost of winding down the marijuana business, including proper disposal of all marijuana, marijuana plants, and marijuana product; disposal of chemicals and solvents; disposal of specialized equipment; and resolution of any outstanding compliance issues.

- b. The performance guarantee shall be supplied before the issuance of the final license.
- c. This requirement may be satisfied by surety bond, letter of credit, escrow account, or by evidence, acceptable to the City, of the financial and technical ability and commitment of the applicant or its agents to wind down the business in full compliance with all federal, state, and local requirements.
- d. At the sole discretion of the City Manager or his/her designee, the marijuana business may be released from its obligation to maintain the performance guarantee after three years of successful and responsible operation of the marijuana business in a manner acceptable to the City.

35-16. Fees and Costs.

- a. The initial application fee, annual licensing fee, and expiration date for licenses issued under this Article shall be as listed in Chapter 15 of this Code. Application fees shall be due only for the initial application, or any time that the applicant makes substantial changes to the licensed business and requires re-approval.
- b. Applicants shall also be responsible for paying the City's reasonable expenses associated with the review of an application, including:
 - 1. Any required criminal background checks;
 - 2. Any costs of notification; and
 - 3. The cost of any independent, third-party review, where the City determines it is necessary to effectively evaluate an application.
- c. Application fees and any expenses charged pursuant to this section shall be non-refundable.
- d. Upon request of the applicant, the annual licensing fee may be refunded if the applicant 1) withdraws its application prior to the granting of the license; 2) is denied a marijuana business license; or 3) notifies the City that it is abandoning its license prior to opening the marijuana business. Refunds must be requested within 60 days of withdrawal, denial, or abandonment.

35-17. Minimum Qualifications for Individual Applicants.

All natural persons who apply for a license under this Article shall meet all of the following requirements:

- a. Be at least 21 years of age;
- b. Not have any disqualifying convictions or currently be subject to prosecution for any disqualifying conviction;
- c. Not have any disqualifying violations;
- d. Not have been an owner, officer, director, manager, general partner, shareholder, or other responsible party in any corporate entity with disqualifying violations within the past two years;
- e. Not have any revocation or suspension of a marijuana-related license, permit, certificate, or registration;
- f. Not be employed by any state agency or City department with regulatory authority over the marijuana business, including the City Executive Department, Police Department, Permitting and Inspections Department, Planning Department, Fire Department, and Corporation Counsel's Office; and
- g. Not be a law enforcement officer.

35-18. Minimum Qualifications for Corporate Applicants.

All corporate or other entities who apply for a license under this Article shall meet all of the following requirements:

- a. Be formed or organized under the laws of the State of Maine;
- b. Be in good standing with the Maine Secretary of State;
- c. Not have any disqualifying violations within the past two years; and
- d. Have all officers, directors, managers, and general partners be natural persons who meet the minimum requirements for an individual applicant in 35-17 above.

35-19. Suspension and Revocation.

- a. Grounds for suspension. In addition to the grounds for suspension enumerated in Chapter 15, the following shall be grounds for suspension of a license pursuant to this Article:
 1. Any event or condition that would have disqualified an applicant from obtaining an original license, until that disqualification is resolved to the satisfaction of the City;
 2. The licensee has failed to timely supplement its license information, as required;
 3. The licensee has failed to file any required reports or furnish any information, as required; and
 4. The licensee has knowingly permitted, encouraged, failed to prevent, or failed to remedy a violation of this Article.
- b. Length of suspension. Any first suspension pursuant to this Article may not exceed six months after the resolution of the condition that formed the grounds for suspension. Any second and subsequent suspensions may not exceed one year after the resolution of the condition that formed the grounds for suspension.
- c. Grounds for revocation. In addition to the grounds for revocation enumerated in Chapter 15, the following shall be grounds for revocation of a license pursuant to this Article:
 1. Failing to timely remedy any condition in (a) above;
 2. Repeated significant violations of this Article; and
 3. Any event that would have disqualified the license from initially obtaining a license.
- d. Length of revocation. Any license revocation shall prohibit the licensee from being an owner, officer, director, manager, general partner, shareholder, and/or otherwise responsible for any marijuana business for one year after the resolution of the condition that formed the grounds for revocation.
- e. Procedures for suspension or revocation. Suspension or revocation proceedings shall be conducted by the Permitting and Inspections Department pursuant to the following procedures:

1. Prior to suspension or revocation, a licensee shall be given notice of the reasons that the City is considering the action and an opportunity to be heard.
2. Where the reason for suspension or revocation could reasonably threaten health, safety, and/or welfare, a license may be suspended without notice and hearing, so long as notice and an opportunity to be heard is provided as soon as practicable.
3. Suspensions or revocations will be issued in writing.

35-20. Reserved.

35-21. Reserved.

35-22. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-23. Cultivation Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for any tier of cultivation license must also provide the following:

- a. The amount of plant canopy to be grown;
- b. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- c. Operations plan, including growing and fertilizing methodology, inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the marijuana being cultivated;
- e. Disclosure of chemicals, fertilizer, pesticides, and similar substances - whether organic or synthetic - to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;

- f. Written certification by a qualified engineer that the cultivation facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code; and
- g. Written certification by a Maine certified Master Electrician that the cultivation facility and operation meets all electrical standards adopted by the State of Maine and/or the City.

35-24. Manufacturing Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a manufacturing license must also provide the following:

- a. Description of manufacturing processes to be used, including extraction methods;
- b. Floor plans, including the location of processing equipment, storage areas for marijuana, chemicals and solvents, and other items; office areas, etc.;
- c. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured;
- e. Disclosure of chemicals, solvents, and similar substances to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;
- f. Written certification by a certified professional engineer, licensed by the State of Maine, that the manufacturing facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code;
- g. Written certification by a Maine certified Master Electrician that the manufacturing facility and operation meets all electrical standards adopted by the State of Maine and/or the City; and

- h. Where a licensee will manufacture food or food products, the licensee must also provide proof of licensing pursuant to the Maine Food Code and Chapter 11 of this Code.

35-25. Retail and Dispensary Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage of the facility under the control of the applicant and dedicated to the retail facility or dispensary and ancillary activities;
- b. Floor plans, including the location of retail space, storage areas for marijuana products, areas dedicated to the sale of non-marijuana products, office areas, etc.;
- c. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors, and similar information; and
- d. Documentation that the marijuana retail facility or dispensary meets the dispersal requirements of Sec. 35-42.

35-26. Small Scale Caregiver License.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage dedicated to the small scale caregiver use;
- b. Total plant canopy;
- c. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured; and
- e. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors and to ensure that the small scale caregiver

operation does not exceed the five patients in one calendar month, and similar information.

35-27. Marijuana Testing License

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Floor plans, including the location of testing equipment; storage areas for marijuana samples, chemicals and solvents, and other items; office areas, etc.;
- b. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information; and
- c. Disclosure of chemicals, solvents, and similar substances to be used in the testing process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation.

35-28. Reserved.

35-29. Reserved.

35-30. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-31. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-32. Cooperation with municipal officials.

- a. The City Manager's designees shall be permitted to enter any marijuana business during regular business hours for the

purpose of making inspections, and examining and copying records.

- b. Each and every person responsible for the management or control of the marijuana business must afford free access to every part of such establishment and to render all aid and assistance necessary to enable the City to make a full, thorough and complete examination thereof to determine compliance with this Article.
- c. Each marijuana business shall designate a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.
- d. Each marijuana business shall designate an emergency contact who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

35-33. Record retention Requirements.

In addition to those records required to be kept and maintained by the State of Maine, all marijuana business licensee shall also keep the following records:

- a. Invoices of all purchases for the previous two years demonstrating the source of those purchases;
- b. Receipts of all sales for the previous two years;
- c. Testing results, if any, for the previous two years;
- d. A copy of all current state and local licenses; and
- e. Information about each concern addressed to the community relations liaison, including the date and time of the contact; the substance of the concern raised; the contact information of the originator of that contact; the date and time of the licensee's response; and the substance of the response.

35-34. Compliance with Approvals.

All licensees under this Article shall comply with their approved plans, including security plans, waste disposal plans, operating plans, odor mitigation plans, and any other plans that are submitted to and approved by the City.

35-35. Security Requirements.

All marijuana businesses must implement the following minimum security requirements, which shall also be incorporated into a security plan.

a. Building security. All fixed locations for a marijuana business shall have the following:

1. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance but not disturb neighbors.
2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are connected to a new or existing AES system, and are professionally monitored and maintained in good working condition.
3. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
4. Exterior electronic monitoring and video cameras. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
5. Consistent and systematic prevention of loitering.
6. Facilities approved by the Police Department or its third party designee for securing cash and all marijuana product packaged for sale as further detailed in regulations to be promulgated by the City Manager. Regulations shall require facilities sufficient to provide for the safety of employees and the public, and to prevent employee and third party theft and diversion.
7. Any other security features that the Police Department deems necessary to ensure public safety and prevent theft and illegal transfer of marijuana.

b. Mobile security. All mobile operations of a marijuana business, including pick-ups and deliveries of samples for testing, wholesale products, deliveries by small scale

caregivers, and similar functions shall have the following security:

1. The vehicle may not have identifying marks associating the vehicle with a marijuana business;
2. The vehicle must have video cameras showing the interior of the vehicle, as well as the exterior of the vehicle, and recordings must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request; and
3. For mobile operations of a marijuana retail store, marijuana manufacturing and marijuana cultivation, the vehicle must have at least two individuals present in the vehicle.

35-36. Responsibility for Employees, Guests, and Customers.

- a. A marijuana business shall be responsible for all individuals on their premises.
- b. A marijuana business shall not sell any marijuana product to, or allow an individual to enter or to remain on their premises, who is
 1. Disorderly;
 2. Intoxicated;
 3. A threat to safety; or
 4. Has consumed or attempted to consume marijuana on the premises.

35-37. Information disclosure requirements.

- a. A copy of the business license issued pursuant to this Article must be prominently displayed at each location of the marijuana business.
- b. The business license number issued to each marijuana business must be clearly disclosed in all written advertising, marketing, and promotional materials.

- c. Each marijuana business must disclose the telephone number of its community relations liaison, after the statement, "For questions or concerns contact [number]" in all written advertising, marketing, and promotional materials; and must be prominently displayed at each location of the marijuana business.
- d. A sign, prominently displayed near the entrance to the marijuana business stating the minimum age to enter the business and, if a retail store, the minimum age to purchase products from the retail store.

35-38. Waste Disposal Requirements.

- 1. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers.
- 2. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be disposed of unless and until it has been modified such that it is not useable.
- 3. All waste and wastewater from any marijuana facility must be treated such that it will not create excessive odors, contamination, or pollution.
- 4. No waste from a marijuana business may be disposed of in residential trash.

35-39. Odor Mitigation Requirements.

The smell of marijuana shall not be detectable at the property boundary and/or at any adjoining use of the same property. A marijuana business licensee is responsible for taking any and all measures necessary to ensure that this standard is met.

35-40. Labeling.

Any marijuana business that sells marijuana or marijuana products at retail, must label all products as follows:

- a. All marijuana must be in labeled containers meeting the requirements of this section.

- b. All required statements must be in a font and size that is readily legible to the average person.
- c. Where applicable, the label must contain the following:
 - 1. A statement that the marijuana or marijuana product contains THC;
 - 2. If the marijuana or marijuana product has been tested for quality, purity, or potency, and any such representations are made about the marijuana or marijuana product, the following must be disclosed in close proximity to that representation:
 - i. The name, location, and license number of the testing facility
 - 3. If the marijuana or marijuana product has not been tested for quality, purity, and/or potency by an independent third party, a statement that the product has not been tested for quality, purity, and/or potency.

35-41. Limitations on the Production and Sale of Marijuana Food Products.

The following limitations apply to the manufacture and sale at wholesale or retail of food or beverage products containing marijuana:

- a. Marijuana products may not be manufactured or sold in a shape or design that is intended to appeal to minors;
- b. Marijuana or marijuana derivatives may not be added to commercially available products that do not otherwise contain marijuana; and
- c. Marijuana food and beverage products may not be manufactured, processed, or packaged in the same kitchen or room, or using the same equipment, as non-marijuana food and beverage products.

35-42. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

- a. Hours of operation. Marijuana retail stores and dispensaries may only be open to the public between the hours of 7:00 a.m. and 10:00 p.m. daily, and no sale or other distribution of marijuana may occur on the premises outside of those hours.
- b. Age restrictions.
 - 1. A medical marijuana retail store may not allow any individual under the age of 18 to enter their premises, including as an employee.
 - 2. An adult use marijuana retail store may not allow any individual under the age of 21 to enter their premises, including as an employee.
- c. On-premises consumption of any marijuana products is not permitted.
- d. Other uses prohibited. Marijuana retail stores and dispensaries may not have uses other than marijuana retail or other retail on the premises, including entertainment or restaurant uses, except that the sale of pre-packaged, ready-to-eat foods that are not prepared on site and non-alcoholic beverages shall be allowed provided the applicant has an appropriate food service license.
- e. Education requirements.
 - 1. Marijuana retail stores and dispensaries must have a sign, prominently displayed by the point of sale, informing customers of:
 - i. The dangers of over consumption;
 - ii. The impact that marijuana has on brain development;
 - iii. That consumption of marijuana is illegal at the federal level and that consuming marijuana could impact employment, immigration status, the right to own firearms, the right to a commercial driver's license, and other rights;
 - iv. That consumption of marijuana and marijuana products in public is illegal; and
 - v. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 2. The City shall draft acceptable language for the signs required by this subsection. Any marijuana retail store or dispensary wishing to use alternative language must

receive prior approval from the City's Department of Health and Human Services.

f. Fixed location sales only.

1. A marijuana retail store, small scale caregiver, and/or dispensary may only sell marijuana and marijuana products in person, directly to the purchaser, and out of a fixed and licensed location.
2. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.
3. Mail order, telephone, internet or similar remote sales are specifically prohibited.
4. Notwithstanding the provisions of this section, a small scale caregiver, medical marijuana retail store, and/or dispensary may make deliveries of marijuana products to a qualifying patient with whom that small scale caregiver, medical marijuana retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of marijuana the small scale caregiver, medical marijuana retail store, and/or dispensary has previously verified in person.

g. Drive through windows. A marijuana retail store or dispensary may not use a drive through window, or any other outdoor space to sell marijuana or marijuana products.

h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' of any other marijuana retail facility or marijuana dispensary, as measured along or across public ways, in a straight line, from any entrance that is accessible to the public.

This distance restriction shall not apply to one adult use and one medical marijuana retail facility or dispensary that 1) share the same or immediately adjoining space; 2) have common ownership; 3) have consistent naming and branding; and 4) are permitted by the state to share such space.

The distance restriction shall also not apply to an existing dispensary or medical marijuana retail store that qualifies pursuant to Sec. 35-42(i)(1).

i. Cap on retail stores. The number of retail stores and dispensaries in the City combined shall be capped at 20.

1. However, this cap shall not apply to any dispensary or medical marijuana retail store operating with a City business license, a change of use permit, certificate of occupancy, and/or a site plan approval prior to September 1, 2019, so long as that dispensary or medical marijuana retail store does not apply to convert to an adult use retail store.
 2. If an existing dispensary or medical marijuana retail store applies to convert to an adult use retail store, the facility will become subject to the cap in this section and the allocation procedures of Sec. 35-13.
- j. Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary must attend a City-approved training within ninety days of beginning in that position and then annually thereafter. Employing a manager or front line staff that does not have the required training may be grounds for suspension. If the training program is provided by the Department of Health and Human Services, the Department shall charge a fee for the cost of this class.
1. Retail stores must submit a list of employees annually with their license renewal, along with verification that they have successfully completed a City-approved training program.
- k. Transfer of retail and dispensary licenses. The ownership of a retail or dispensary licensee may only be transferred subject to the following limitations:
1. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
 2. Any transfers of interest in a retail or dispensary license occurring before January 1, 2025 must not impact any of the licensee's points calculated under Sec. 35-13(f)(4).
 3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

35-43. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, marijuana businesses shall also be subject to the

following restrictions on all signs that are visible from the exterior of the building:

Signs shall not contain the image of a marijuana leaf, plant, or readily identifiable marijuana product;

Signs may not be animated or have variable messages;

Signs may not have cartoons or similar images that are likely to appeal to minors; and

Marijuana businesses may not advertise by leaflets or flyers placed or posted outside of the business premises.

35-44. Other Prohibitions.

- a. On-premises consumption. Consumption of marijuana on the premises of any marijuana business is prohibited.
- b. Outdoor growing. Marijuana plants may not be grown outdoors and may only be grown within a fully enclosed and secured structure.
- c. Indoor air quality. A marijuana business may not use any chemical, process, or methodology that would result in compromised indoor air quality, including the use of technology such as sulfur pots.
- d. Giveaways and samples prohibited. Marijuana businesses may not distribute marijuana or marijuana products free of charge.

35-45. Insurance and Indemnification.

- a. Each marijuana business, other than a small scale caregiver, shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$1,000,000.00 per occurrence for bodily injury, death, and property damage.
- b. Each small scale caregiver shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000.00 per occurrence for bodily injury, death, and property damage.

- c. Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the City prior to obtaining the final license. Certificates shall guarantee ten days notice to the City of termination of insurance from the insurance provider or agent. The City's acceptance or lack of acceptance of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this article.
- d. By accepting a license from the City for a marijuana business, the licensee knowingly and voluntarily waives, releases and discharges the City from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the City, or any of its officers, agents, employees, representatives, insurers, successors and assigns for 1) any injuries, damages, or liabilities resulting from the arrest, prosecution, or other consequence of the marijuana business or its parties of control for a violation of local, state, or federal laws, rules, or regulations; and 2) any claim by a third party against the marijuana business.
- e. To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of, resulting from, or relating to the performance of any license issued to licensee under this Article or the operation of the licensee's marijuana business. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall survive termination of any license issued to a licensee under this Article and shall not be limited by the provision for insurance in this Article.
- f. This article shall not be construed as imposing upon the City or any official, agent, or employee of the City, any liability or responsibility for damages to any person resulting from or in relation to the performance of this license, nor shall the City or any official, agent or employee of the City be deemed to have assumed any such liability or responsibility by reason of inspections authorized herein, or the issuance of any license.

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

35-1. Definitions.

Except as otherwise specified, the definitions in Chapter 14 shall apply to this Chapter.

Disqualifying conviction shall mean any of the following: (1) any felony conviction where the conviction or completion of any sentence, whichever is more recent, has been completed within the last ten years; or (2) any conviction for a drug related crime other than a felony, but not including convictions for marijuana related crimes, where the conviction or completion of any sentence, whichever is more recent, has been completed within the last five years.

Disqualifying violation shall mean, within the previous five years, the non-payment or late payment greater than 30 days of any tax or fee; any citation for licensing, land use, life safety, building, fire, health, or similar violation that was not corrected within the timeframe required by the City; any suspension, revocation, or denial of any license or permit; any false statement on a City form or application; and any other significant failure to comply with City ordinances. Disqualifying violations shall not include parking tickets.

Manual processing shall include the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

Marijuana means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include hemp as defined in 7 M.R.S. §2231(1), or a marijuana product.

Marijuana business shall mean any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the City. This shall include registered dispensaries, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.

35-2. Enforcement.

- a. This Chapter shall be enforced by the City Manager and his/her designee(s).
- b. Each day that a violation of this Chapter exists shall be a civil violation subject to the following:
 1. *Civil penalties.* Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the

violation has existed. However, the maximum amount of civil penalties may be increased where:

- (a) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or
- (b) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

2. *Posting against occupancy.* In addition to any other remedies provided by this Code, the City may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for any of the following violations:

- (a) Operating a marijuana business without a valid City and state license;
- (b) Failure to allow entrance and inspection to any City official on official business after a reasonable request;
- (c) Allowing the use or consumption of marijuana or marijuana products on the premises of the marijuana business; and
- (d) Any other violation that the City determines has the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

c. The City Manager or his/her designee is authorized to 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 Chapter.

d. If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

35-3. Appeals.

Appeals of decisions made pursuant to this Chapter shall be as follows:

a. An appeal from a decision to issue, issue with conditions, deny, or revoke a license pursuant to Article 2 may be appealed to Superior Court pursuant to M.R. Civ. P. 80B by a party with standing.

b. An appeal from any notice of violation, suspension, revocation, or similar enforcement action under this Chapter may be appealed to the City Manager or his/her designee by a party with standing within ten business days of the written decision taking such action. An appeal from any decision of the City Manager may be appealed to Superior Court pursuant to M.R. Civ. P. 80B.

35-4. Reserved.

35-5. Reserved.

35-6. Reserved.

ARTICLE 2. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-7. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-8. Reserved.

35-9. Reserved.

35-10. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-11. Licensing Requirements.

- a. Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.
- b. Operating without a license prohibited. No individual or entity may operate a marijuana business within the City without first obtaining a license from the City.
- c. Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.

- d. Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.
- e. No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating a marijuana business is a privilege and not a right in the City.
- f. Licenses not transferable. Licenses issued pursuant to this Article are not transferable. However, retail and dispensary licenses shall be transferable in accordance with Sec. 35-42 until the effective date of federal legislation allowing federally regulated financial institutions to serve marijuana businesses, or the removal of the cap on marijuana retail stores and dispensaries in Sec. 35-42(i).
- g. Multiple licenses. An individual or entity may hold multiple licenses under this Article, except that an individual or entity may not hold more than one retail and/or dispensary license, or have an interest in an entity that holds more than one retail and/or dispensary license, until after January 1, 2025.

35-12. License Types.

The City has established the following license types for marijuana businesses:

- a. Cultivation – Tier 1. A tier 1 marijuana cultivation license shall allow the license holder to cultivate up to 500 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- b. Cultivation – Tier 2. A tier 2 marijuana cultivation license shall allow the license holder to cultivate up to 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- c. Cultivation – Tier 3. A tier 3 marijuana cultivation license shall allow the license holder to cultivate more than 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- d. Dispensary. A dispensary license shall allow a registered dispensary to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statute.
- e. Manufacturing – Manual. A manual manufacturing license shall allow the license holder to manufacture marijuana using manual processing only.
- f. Manufacturing – High Hazard. A high hazard manufacturing license shall allow the license holder to manufacture marijuana using chemicals and solvents in addition to manual processing methods.
- g. Retail – Medical. A medical marijuana retail license shall allow a registered caregiver to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statutes.

- h. Retail – Adult Use. An adult use marijuana retail license shall allow the license holder to sell adult use marijuana in accordance with Title 28-B of the Maine Revised Statutes.
- i. Small Scale Caregiver. A small scale caregiver license shall allow a registered caregiver to engage in the business of a small scale caregiver, as defined in Chapter 14, including cultivation, manual processing, and limited sales to patients, as defined.
- j. Testing. A marijuana testing license shall allow the license holder to engage in the business of testing medical and/or adult use marijuana for third parties.

35-13. Licensing Procedure.

- a. Applications submission. All applications for licenses under this Article shall be submitted to the Business Licensing Office on forms provided by the City, and shall include all required information, attachments, and fees. No application will be considered unless and until it is complete, as determined by the Business Licensing Office.
- b. Review and recommendation by City departments. The following City departments shall review all applications and recommend whether to issue, issue with conditions, or deny the permits applied for.
 - 1. The Permitting and Inspections Department shall review all applications for compliance with this Article, Chapters 6, 14, 10, and 15 of this Code, as applicable, and all other matters within its purview.
 - 2. The Police Department shall review the security plans submitted by each applicant, as well as any disqualifying convictions of the applicant and associated individuals, and all other matters within its purview.
 - 3. The Fire Department shall review all applications as to compliance with Chapter 10 of this Code, other fire and life safety concerns, and all other matters within its purview.
 - 4. Other City staff or departments shall review and provide recommendations on applications as necessary to adequately evaluate the applications.
- c. Hiring of third party professionals. Where the City determines that it is necessary for an applicant to hire a third party professional to complete any portion of the application, the City may require an applicant to hire a professional with qualifications sufficient to satisfy the City.
- d. City consultation with third party experts. Where the City determines that it is necessary for the City to consult with a third party expert on an application or portion of an application, it may do so and charge the costs of that third party expert consultation to the applicant. Before doing so, however, the City shall give notice to the applicant of its determination of need, including the basis for that determination; the third-party that the

City proposes to engage; and the estimated fee for the third-party consultation. The applicant shall have the opportunity to provide feedback to the City on its determination before the City engages the third party.

- e. Licensing decisions. Applications for any license shall be granted, granted with conditions, or denied by the City Manager or his/her designee. Conditions may be imposed on any license issued pursuant to this Article, as necessary to protect the health, safety, and welfare of the public.
- f. Allocation of retail licenses. Retail licenses shall be considered as follows:
 1. The City Manager may establish multiple rounds of licensing as necessary to manage the workload of staff necessary to license all prospective retail stores, and the anticipated market demand.
 2. The City Manager shall establish an opening date and a closing date for applications for any given round of licensing.
 3. Upon submission of an application for a given round of licensing, the City will perform a completeness review and establish that the applicant has a complete application and meets the minimum qualifications.
 - i. If the application is complete and the applicant meets the minimum qualifications, the City will assign the application a numerical score based on the criteria outlined in subsection (f)(4) below.
 - ii. If the application is incomplete, the applicant will be notified of the incompleteness and given one week to correct any incompleteness. If the application is still incomplete after that time, the City will reject the application. The applicant may reapply, but any second or subsequent application will be treated as a new application.
 4. Each application shall be awarded points based on the following matrix. Except where otherwise stated, a particular qualification must be held by at least 26% of the individuals owning the entity to qualify for any points.

At least 51% owned by socially and economically disadvantaged individual(s), as defined further by regulations to be promulgated by the City Manager based off of the Small Business Association Section 8(a) regulations.	6
At least 51% owned by individual(s) who have been a Maine resident for at least five years.	5
Owned by individual(s) with experience running a business in a highly regulated industry, such as marijuana, liquor, banking, etc. with no history of violations or license suspensions or revocations.	6

Owned by individual(s) who have previously been licensed by the State of Maine or a Maine municipality for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years	4
Owned by individual(s) who have been a registered caregiver in the State of Maine for at least two years.	3
Ownership of proposed retail location by applicant; or at least five year lease for proposed retail location.	4
Evidence of at least \$150,000 in liquid assets	2
Business plan committing to social and economic development, by including three or more of the following: 1. Create at least full-time jobs paying a minimum of \$15/hr; 2. Provide PTO (or vacation/sick time) and health benefits to employees; 3. Provide at least one annual training around diversity, cultural awareness, sexual harassment, or workplace violence. Training must be in addition to any required by the State or City; 4. Annual contribution of 1% net profits as a restricted donation to the City for youth education on substance use education and prevention.	4

5. Applicants with the highest point totals shall be chosen first for tentative approval for a license.

Where two or more applicants have the same number of points, some or all of the applicants cannot be awarded tentative approval due to either the 250' dispersal requirement, the cap imposed by Sec. 35-42, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

6. If the application is tentatively approved, the applicant will have one year from tentative approval to open the retail business, including obtaining all final state and local approvals, building permits and approvals, certificates of occupancy, and any other criteria. If the applicant fails to meet the one-year deadline, it forfeits its

tentative approval. The applicant may reapply, but any second or subsequent application will be treated as a new application.

7. Any applicant with a complete application, but who is not awarded tentative approval, may choose to be placed on a wait list for a period of up to one year.
8. A licensee who has its license revoked, or who fails to timely renew its license, shall forfeit its right to renew its retail license. The licensee may reapply, but any second or subsequent application will be treated as a new application.
9. Except for licenses issued pursuant to Sec. 35-42(i)(1), licensees who have a medical marijuana retail license may convert to an adult use retail license, so long as they meet the requirements for such license and pay the licensing fees. An applicant who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement.

35-14. License Application.

Applications for all licenses under this Article shall be on forms provided by the City. In addition to any other information deemed necessary by the City, applicants shall provide the following information:

a. *General application.*

1. The name, mailing address, physical address, and phone number of the business, as well as any other available contact information, including email address, fax number, website, etc.
2. The name, mailing address, phone number, and email address of the following:
 - (a) The individual or corporate owner of the marijuana business;
 - (b) A community relations liaison, as described in Sec. 35-32;
 - (c) A person with a physical address in the City who is authorized to accept service of process on behalf of the marijuana business; and
 - (d) An emergency contact, as described in Sec. 35-32.
2. A general description of the business, including hours of operation, type of business, etc.
3. The license being applied for.

b. *Corporate entity supplement.* Where the marijuana business is a corporate entity, the applicant must disclose the name, mailing address, phone number, and email address of

each and every individual or corporate owner, officers, directors, managers, general partners, shareholders, and/or other parties responsible for the marijuana business.

- c. *Background check information and consent.* Where a background check of any kind is required by this Code, the applicant must provide all relevant information sufficient to conduct the background check, as well as any necessary consents.
- d. *Landlord permission.* Notarized, written permission from the owner of the property where the marijuana business proposes to operate for the applicant to operate the marijuana business for which the applicant is applying, or a copy of a fully executed lease agreement specifically allowing the use of the leased space to be used as they type of marijuana business applied for.
- e. *State authorizations.* Applicants must provide evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.
- f. *Security plan.* A security plan, which shall be kept confidential, and which shall be sufficient to prevent the diversion of marijuana and marijuana products, and to protect the health and safety of owner, patrons, City officials, and the public.
 - 1. The security plan shall, at a minimum, address all of the security requirements included in Sec. 35-35.
 - 2. The City may require any reasonable modifications to the security plan that it deems necessary to prevent diversion and protect the public safety.
 - 3. A copy of the approved security plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the security plan before or after licensing must be reviewed by the Police Department.
- g. *Waste disposal plan.* A waste disposal plan, which shall be sufficient to prevent diversion of marijuana or marijuana product, and shall be sufficient to prevent contamination of land, water, and sewer; and
 - 1. The waste disposal plan shall, at a minimum, address all of the waste disposal requirements included in Sec. 35-38, and all waste disposal requirements otherwise included in this Code, including, but not limited to, Chapters 24 and 32.
 - 2. The City may require any reasonable modifications to the waste disposal plan that it deems necessary.
 - 3. A copy of the approved waste disposal plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the waste disposal plan before or after licensing must be reviewed and approved by the City.

- h. *Odor mitigation plan.* An odor mitigation plan, which shall be sufficient to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer.
 - 1. The odor mitigation plan shall at a minimum, address all of the odor mitigation requirements included in Sec. 35-39.
 - 2. The City may require any reasonable modifications to the odor mitigation plan that it deems necessary, including requiring that the plan be designed by a qualified, licensed professional engineer.
 - 3. A copy of the approved odor mitigation plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the odor mitigation plan before or after licensing must be reviewed and approved by the City.
- i. *License specific requirements.* A licensee must provide the additional information specific to the license being applied for, as described in Sec. 35-23 through 35-27.
- j. Any other information that the City Manager decides is necessary to evaluate an application under this Article.

35-15. Performance Guarantee Required.

- a. For all marijuana businesses, other than small scale caregivers and marijuana testing facilities, a performance guarantee shall be required in the amount of the cost of winding down the marijuana business, including proper disposal of all marijuana, marijuana plants, and marijuana product; disposal of chemicals and solvents; disposal of specialized equipment; and resolution of any outstanding compliance issues.
- b. The performance guarantee shall be supplied before the issuance of the final license.
- c. This requirement may be satisfied by surety bond, letter of credit, escrow account, or by evidence, acceptable to the City, of the financial and technical ability and commitment of the applicant or its agents to wind down the business in full compliance with all federal, state, and local requirements.
- d. At the sole discretion of the City Manager or his/her designee, the marijuana business may be released from its obligation to maintain the performance guarantee after three years of successful and responsible operation of the marijuana business in a manner acceptable to the City.

35-16. Fees and Costs.

- a. The initial application fee, annual licensing fee, and expiration date for licenses issued under this Article shall be as listed in Chapter 15 of this Code. Application fees shall be due only for the initial application, or any time that the applicant makes substantial changes to the licensed business and requires re-approval.
- b. Applicants shall also be responsible for paying the City's reasonable expenses associated with the review of an application, including:
 1. Any required criminal background checks;
 2. Any costs of notification; and
 3. The cost of any independent, third-party review, where the City determines it is necessary to effectively evaluate an application.
- c. Application fees and any expenses charged pursuant to this section shall be non-refundable.
- d. Upon request of the applicant, the annual licensing fee may be refunded if the applicant 1) withdraws its application prior to the granting of the license; 2) is denied a marijuana business license; or 3) notifies the City that it is abandoning its license prior to opening the marijuana business. Refunds must be requested within 60 days of withdrawal, denial, or abandonment.

35-17. Minimum Qualifications for Individual Applicants.

All natural persons who apply for a license under this Article shall meet all of the following requirements:

- a. Be at least 21 years of age;
- b. Not have any disqualifying convictions or currently be subject to prosecution for any disqualifying conviction;
- c. Not have any disqualifying violations;
- d. Not have been an owner, officer, director, manager, general partner, shareholder, or other responsible party in any corporate entity with disqualifying violations within the past two years;
- e. Not have any revocation or suspension of a marijuana-related license, permit, certificate, or registration;
- f. Not be employed by any state agency or City department with regulatory authority over the marijuana business, including the City Executive Department, Police Department, Permitting and Inspections Department, Planning Department, Fire Department, and Corporation Counsel's Office; and

- g. Not be a law enforcement officer.

35-18. Minimum Qualifications for Corporate Applicants.

All corporate or other entities who apply for a license under this Article shall meet all of the following requirements:

- a. Be formed or organized under the laws of the State of Maine;
- b. Be in good standing with the Maine Secretary of State;
- c. Not have any disqualifying violations within the past two years; and
- d. Have all officers, directors, managers, and general partners be natural persons who meet the minimum requirements for an individual applicant in 35-17 above.

35-19. Suspension and Revocation.

- a. Grounds for suspension. In addition to the grounds for suspension enumerated in Chapter 15, the following shall be grounds for suspension of a license pursuant to this Article:
 - 1. Any event or condition that would have disqualified an applicant from obtaining an original license, until that disqualification is resolved to the satisfaction of the City;
 - 2. The licensee has failed to timely supplement its license information, as required;
 - 3. The licensee has failed to file any required reports or furnish any information, as required; and
 - 4. The licensee has knowingly permitted, encouraged, failed to prevent, or failed to remedy a violation of this Article.
- b. Length of suspension. Any first suspension pursuant to this Article may not exceed six months after the resolution of the condition that formed the grounds for suspension. Any second and subsequent suspensions may not exceed one year after the resolution of the condition that formed the grounds for suspension.
- c. Grounds for revocation. In addition to the grounds for revocation enumerated in Chapter 15, the following shall be grounds for revocation of a license pursuant to this Article:
 - 1. Failing to timely remedy any condition in (a) above;
 - 2. Repeated significant violations of this Article; and

3. Any event that would have disqualified the license from initially obtaining a license.
- d. Length of revocation. Any license revocation shall prohibit the licensee from being an owner, officer, director, manager, general partner, shareholder, and/or otherwise responsible for any marijuana business for one year after the resolution of the condition that formed the grounds for revocation.
- e. Procedures for suspension or revocation. Suspension or revocation proceedings shall be conducted by the Permitting and Inspections Department pursuant to the following procedures:
 1. Prior to suspension or revocation, a licensee shall be given notice of the reasons that the City is considering the action and an opportunity to be heard.
 2. Where the reason for suspension or revocation could reasonably threaten health, safety, and/or welfare, a license may be suspended without notice and hearing, so long as notice and an opportunity to be heard is provided as soon as practicable.
 3. Suspensions or revocations will be issued in writing.

35-20. Reserved.

35-21. Reserved.

35-22. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-23. Cultivation Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for any tier of cultivation license must also provide the following:

- a. The amount of plant canopy to be grown;
- b. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- c. Operations plan, including growing and fertilizing methodology, inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the marijuana being cultivated;

- e. Disclosure of chemicals, fertilizer, pesticides, and similar substances - whether organic or synthetic - to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;
- f. Written certification by a qualified engineer that the cultivation facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code; and
- g. Written certification by a Maine certified Master Electrician that the cultivation facility and operation meets all electrical standards adopted by the State of Maine and/or the City.

35-24. Manufacturing Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a manufacturing license must also provide the following:

- a. Description of manufacturing processes to be used, including extraction methods;
- b. Floor plans, including the location of processing equipment, storage areas for marijuana, chemicals and solvents, and other items; office areas, etc.;
- c. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured;
- e. Disclosure of chemicals, solvents, and similar substances to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;
- f. Written certification by a certified professional engineer, licensed by the State of Maine, that the manufacturing facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code;
- g. Written certification by a Maine certified Master Electrician that the manufacturing facility and operation meets all electrical standards adopted by the State of Maine and/or the City; and
- h. Where a licensee will manufacture food or food products, the licensee must also provide proof of licensing pursuant to the Maine Food Code and Chapter 11 of this Code.

35-25. Retail and Dispensary Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage of the facility under the control of the applicant and dedicated to the retail facility or dispensary and ancillary activities;
- b. Floor plans, including the location of retail space, storage areas for marijuana products, areas dedicated to the sale of non-marijuana products, office areas, etc.;
- c. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors, and similar information; and
- d. Documentation that the marijuana retail facility or dispensary meets the dispersal requirements of Sec. 35-42.

35-26. Small Scale Caregiver License.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage dedicated to the small scale caregiver use;
- b. Total plant canopy;
- c. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured; and
- e. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors and to ensure that the small scale caregiver operation does not exceed the five patients in one calendar month, and similar information.

35-27. Marijuana Testing License

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Floor plans, including the location of testing equipment; storage areas for marijuana samples, chemicals and solvents, and other items; office areas, etc.;
- b. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information; and

- c. Disclosure of chemicals, solvents, and similar substances to be used in the testing process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation.

35-28. Reserved.

35-29. Reserved.

35-30. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-31. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-32. Cooperation with municipal officials.

- a. The City Manager's designees shall be permitted to enter any marijuana business during regular business hours for the purpose of making inspections, and examining and copying records.
- b. Each and every person responsible for the management or control of the marijuana business must afford free access to every part of such establishment and to render all aid and assistance necessary to enable the City to make a full, thorough and complete examination thereof to determine compliance with this Article.
- c. Each marijuana business shall designate a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.
- d. Each marijuana business shall designate an emergency contact who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

35-33. Record retention Requirements.

In addition to those records required to be kept and maintained by the State of Maine, all marijuana business licensee shall also keep the following records:

- a. Invoices of all purchases for the previous two years demonstrating the source of those purchases;
- b. Receipts of all sales for the previous two years;
- c. Testing results, if any, for the previous two years;
- d. A copy of all current state and local licenses; and
- e. Information about each concern addressed to the community relations liaison, including the date and time of the contact; the substance of the concern raised; the contact information of the originator of that contact; the date and time of the licensee's response; and the substance of the response.

35-34. Compliance with Approvals.

All licensees under this Article shall comply with their approved plans, including security plans, waste disposal plans, operating plans, odor mitigation plans, and any other plans that are submitted to and approved by the City.

35-35. Security Requirements.

All marijuana businesses must implement the following minimum security requirements, which shall also be incorporated into a security plan.

- a. Building security. All fixed locations for a marijuana business shall have the following:
 1. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance but not disturb neighbors.
 2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are connected to a new or existing AES system, and are professionally monitored and maintained in good working condition.
 3. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
 4. Exterior electronic monitoring and video cameras. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.

5. Consistent and systematic prevention of loitering.
 6. Facilities approved by the Police Department or its third party designee for securing cash and all marijuana product packaged for sale as further detailed in regulations to be promulgated by the City Manager. Regulations shall require facilities sufficient to provide for the safety of employees and the public, and to prevent employee and third party theft and diversion.
 7. Any other security features that the Police Department deems necessary to ensure public safety and prevent theft and illegal transfer of marijuana.
- b. Mobile security. All mobile operations of a marijuana business, including pick-ups and deliveries of samples for testing, wholesale products, deliveries by small scale caregivers, and similar functions shall have the following security:
1. The vehicle may not have identifying marks associating the vehicle with a marijuana business;
 2. The vehicle must have video cameras showing the interior of the vehicle, as well as the exterior of the vehicle, and recordings must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request; and
 3. For mobile operations of a marijuana retail store, marijuana manufacturing and marijuana cultivation, the vehicle must have at least two individuals present in the vehicle.

35-36. Responsibility for Employees, Guests, and Customers.

- a. A marijuana business shall be responsible for all individuals on their premises.
- b. A marijuana business shall not sell any marijuana product to, or allow an individual to enter or to remain on their premises, who is
 1. Disorderly;
 2. Intoxicated;
 3. A threat to safety; or
 4. Has consumed or attempted to consume marijuana on the premises.

35-37. Information disclosure requirements.

- a. A copy of the business license issued pursuant to this Article must be prominently displayed at each location of the marijuana business.
- b. The business license number issued to each marijuana business must be clearly disclosed in all written advertising, marketing, and promotional materials.
- c. Each marijuana business must disclose the telephone number of its community relations liaison, after the statement, “For questions or concerns contact [number]” in all written advertising, marketing, and promotional materials; and must be prominently displayed at each location of the marijuana business.
- d. A sign, prominently displayed near the entrance to the marijuana business stating the minimum age to enter the business and, if a retail store, the minimum age to purchase products from the retail store.

35-38. Waste Disposal Requirements.

1. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers.
2. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be disposed of unless and until it has been modified such that it is not useable.
3. All waste and wastewater from any marijuana facility must be treated such that it will not create excessive odors, contamination, or pollution.
4. No waste from a marijuana business may be disposed of in residential trash.

35-39. Odor Mitigation Requirements.

The smell of marijuana shall not be detectable at the property boundary and/or at any adjoining use of the same property. A marijuana business licensee is responsible for taking any and all measures necessary to ensure that this standard is met.

35-40. Labeling.

Any marijuana business that sells marijuana or marijuana products at retail, must label all products as follows:

- a. All marijuana must be in labeled containers meeting the requirements of this section.
- b. All required statements must be in a font and size that is readily legible to the average person.

- c. Where applicable, the label must contain the following:
 - 1. A statement that the marijuana or marijuana product contains THC;
 - 2. If the marijuana or marijuana product has been tested for quality, purity, or potency, and any such representations are made about the marijuana or marijuana product, the following must be disclosed in close proximity to that representation:
 - i. The name, location, and license number of the testing facility
 - 3. If the marijuana or marijuana product has not been tested for quality, purity, and/or potency by an independent third party, a statement that the product has not been tested for quality, purity, and/or potency.

35-41. Limitations on the Production and Sale of Marijuana Food Products.

The following limitations apply to the manufacture and sale at wholesale or retail of food or beverage products containing marijuana:

- a. Marijuana products may not be manufactured or sold in a shape or design that is intended to appeal to minors;
- b. Marijuana or marijuana derivatives may not be added to commercially available products that do not otherwise contain marijuana; and
- c. Marijuana food and beverage products may not be manufactured, processed, or packaged in the same kitchen or room, or using the same equipment, as non-marijuana food and beverage products.

35-42. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

- a. Hours of operation. Marijuana retail stores and dispensaries may only be open to the public between the hours of 7:00 a.m. and 10:00 p.m. daily, and no sale or other distribution of marijuana may occur on the premises outside of those hours.
- b. Age restrictions.
 - 1. A medical marijuana retail store may not allow any individual under the age of 18 to enter their premises, including as an employee.
 - 2. An adult use marijuana retail store may not allow any individual under the age of 21 to enter their premises, including as an employee.
- c. On-premises consumption of any marijuana products is not permitted.

- d. Other uses prohibited. Marijuana retail stores and dispensaries may not have uses other than marijuana retail or other retail on the premises, including entertainment or restaurant uses, except that the sale of pre-packaged, ready-to-eat foods that are not prepared on site and non-alcoholic beverages shall be allowed provided the applicant has an appropriate food service license.
- e. Education requirements.
 - 1. Marijuana retail stores and dispensaries must have a sign, prominently displayed by the point of sale, informing customers of:
 - i. The dangers of over consumption;
 - ii. The impact that marijuana has on brain development;
 - iii. That consumption of marijuana is illegal at the federal level and that consuming marijuana could impact employment, immigration status, the right to own firearms, the right to a commercial driver's license, and other rights;
 - iv. That consumption of marijuana and marijuana products in public is illegal; and
 - v. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 2. The City shall draft acceptable language for the signs required by this subsection. Any marijuana retail store or dispensary wishing to use alternative language must receive prior approval from the City's Department of Health and Human Services.
- f. Fixed location sales only.
 - 1. A marijuana retail store, small scale caregiver, and/or dispensary may only sell marijuana and marijuana products in person, directly to the purchaser, and out of a fixed and licensed location.
 - 2. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.
 - 3. Mail order, telephone, internet or similar remote sales are specifically prohibited.
 - 4. Notwithstanding the provisions of this section, a small scale caregiver, medical marijuana retail store, and/or dispensary may make deliveries of marijuana products to a qualifying patient with whom that small scale caregiver, medical marijuana retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of marijuana the small scale caregiver, medical marijuana retail store, and/or dispensary has previously verified in person.

- g. Drive through windows. A marijuana retail store or dispensary may not use a drive through window, or any other outdoor space to sell marijuana or marijuana products.
- h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' of any other marijuana retail facility or marijuana dispensary, as measured along or across public ways, in a straight line, from any entrance that is accessible to the public.

This distance restriction shall not apply to one adult use and one medical marijuana retail facility or dispensary that 1) share the same or immediately adjoining space; 2) have common ownership; 3) have consistent naming and branding; and 4) are permitted by the state to share such space.

The distance restriction shall also not apply to an existing dispensary or medical marijuana retail store that qualifies pursuant to Sec. 35-42(i)(1).

- i. Cap on retail stores. The number of retail stores and dispensaries in the City combined shall be capped at 20.
 - 1. However, this cap shall not apply to any dispensary or medical marijuana retail store operating with a City business license, a change of use permit, certificate of occupancy, and/or a site plan approval prior to September 1, 2019, so long as that dispensary or medical marijuana retail store does not apply to convert to an adult use retail store.
 - 2. If an existing dispensary or medical marijuana retail store applies to convert to an adult use retail store, the facility will become subject to the cap in this section and the allocation procedures of Sec. 35-13.
- j. Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary must attend a City-approved training within ninety days of beginning in that position and then annually thereafter. Employing a manager or front line staff that does not have the required training may be grounds for suspension. If the training program is provided by the Department of Health and Human Services, the Department shall charge a fee for the cost of this class.
 - 1. Retail stores must submit a list of employees annually with their license renewal, along with verification that they have successfully completed a City-approved training program.
- k. Transfer of retail and dispensary licenses. The ownership of a retail or dispensary licensee may only be transferred subject to the following limitations:
 - 1. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
 - 2. Any transfers of interest in a retail or dispensary license occurring before January 1, 2025 must not impact any of the licensee's points calculated under Sec. 35-13(f)(4).

3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

35-43. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, marijuana businesses shall also be subject to the following restrictions on all signs that are visible from the exterior of the building:

Signs shall not contain the image of a marijuana leaf, plant, or readily identifiable marijuana product;

Signs may not be animated or have variable messages;

Signs may not have cartoons or similar images that are likely to appeal to minors; and

Marijuana businesses may not advertise by leaflets or flyers placed or posted outside of the business premises.

35-44. Other Prohibitions.

- a. On-premises consumption. Consumption of marijuana on the premises of any marijuana business is prohibited.
- b. Outdoor growing. Marijuana plants may not be grown outdoors and may only be grown within a fully enclosed and secured structure.
- c. Indoor air quality. A marijuana business may not use any chemical, process, or methodology that would result in compromised indoor air quality, including the use of technology such as sulfur pots.
- d. Giveaways and samples prohibited. Marijuana businesses may not distribute marijuana or marijuana products free of charge.

35-45. Insurance and Indemnification.

- a. Each marijuana business, other than a small scale caregiver, shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$1,000,000.00 per occurrence for bodily injury, death, and property damage.
- b. Each small scale caregiver shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000.00 per occurrence for bodily injury, death, and property damage.

- c. Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the City prior to obtaining the final license. Certificates shall guarantee ten days notice to the City of termination of insurance from the insurance provider or agent. The City's acceptance or lack of acceptance of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this article.
- d. By accepting a license from the City for a marijuana business, the licensee knowingly and voluntarily waives, releases and discharges the City from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the City, or any of its officers, agents, employees, representatives, insurers, successors and assigns for 1) any injuries, damages, or liabilities resulting from the arrest, prosecution, or other consequence of the marijuana business or its parties of control for a violation of local, state, or federal laws, rules, or regulations; and 2) any claim by a third party against the marijuana business.
- e. To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of, resulting from, or relating to the performance of any license issued to licensee under this Article or the operation of the licensee's marijuana business. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall survive termination of any license issued to a licensee under this Article and shall not be limited by the provision for insurance in this Article.
- f. This article shall not be construed as imposing upon the City or any official, agent, or employee of the City, any liability or responsibility for damages to any person resulting from or in relation to the performance of this license, nor shall the City or any official, agent or employee of the City be deemed to have assumed any such liability or responsibility by reason of inspections authorized herein, or the issuance of any license.

Chapter 11 FOOD AND FOOD HANDLERS*

ARTICLE II. FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 11-4. Amendments.

The Maine State Food Code 2013: Food Code adopted by section 11-1 is amended and modified in the following respects.

- (a) Section 1.201.10.B shall be amended as follows:

Approved shall mean acceptable to the city health inspector as meeting the requirements of this article and conforming to good public health practices.

Food service establishment shall include any permanent, temporary or mobile establishment including any restaurant; caterer; innholder; buffet; lunchroom; grill room; lunch counter; tavern; dining room of a hotel; coffee shop; cafeteria; sandwich shop; soda fountain; in plant feeding establishment; private club; church feeding facility; school feeding facility; institutional feeding establishment; tea room; theater refreshment stand; grocery store; meat market; retail bakery store; delicatessen; bottle club; commissary; shelter; food pantry; or any other establishment where food or drink is prepared, served, kept, or stored for retail sale on-site. This definition shall not include as food service establishments private homes with permanent guests.

Imminent health hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on: (a) The number of potential injuries, and (b) The nature, severity, and duration of the anticipated injury. Imminent Health Hazard includes, but is not limited to, the following: (1) an extended loss of water supply, (2) an extended

power outage, (3) flood water or sewer back-up into the establishment, (4) fire, (5) a lack of hot water (minimum temperature of 100F for handwashing and 110F for warewashing) or (6) any other violation(s) that has/have the potential to pose an imminent threat to public health. Maine Food Code October 2013 Page 11
Failure to include other violations in this definition shall not be construed as a determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard.

Temporary food service establishment shall mean any food service establishment which operates for a temporary period of time in connection with a fair, carnival, circus, public exhibition or similar transitory gathering. There shall be two (2) types of temporary food service establishment licenses: one (1) shall be for those establishments that sell unopened prepackaged food, with a license period not to exceed three (3) months, and the other license shall be for establishments that sell or serve either food that is not prepackaged or prepackaged food that is opened prior to its sale, including the opening of one (1) or more prepackaged items for the purpose of providing free samples, with a license period not to exceed fourteen (14) days per transitory gathering.

(b) Section 1.201.10.B shall be amended to add the following:

Base station shall mean a location used by a mobile food service establishment for the disposal of liquid/solid waste, re-filling of water tanks and the storage of food, supplies, and equipment. A base station is permissible for one or more of these purposes. However, the *preparation of food or ware washing* is not permissible unless it is a licensed commercial kitchen.

Food pantries shall mean an organization or entity that acquires, stores and distributes food to the needy in their community. Food pantries are typically supported by community food drives, umbrella organizations, as well as grocery stores, local agriculture, food manufacturers and other distributors. All items are pre-packaged, properly labeled, and no food preparation occurs. If bulk food packages are divided, they shall

be in properly labeled, food safe containers.

Food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged only for sale to food service establishments and other retail outlets.

Ice cream truck shall mean a motorized vehicle utilized for the sale of prewrapped or prepackaged ice cream or frozen yogurt or ice cream or frozen yogurt products or novelties.

Innholder shall mean and include any person offering to the public, generally, lodgings and food as the occasion requires where the person rents out four (4) or more rooms or cottages.

Marijuana food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged for sale to retail outlets or directly to consumers.

Mobile food service establishment shall mean and include only a food service establishment on wheels that transports and sells food;; and is moved to a different location no less than once every twelve (12) hours.. For purposes of this ordinance, mobile food service establishments include pushcarts, food vending trucks/trailers and ice cream trucks. These establishments shall meet the rules and regulations specific to their type.

Shelters shall mean an establishment providing temporary housing and meals for those in difficult domestic situations, as well as for homeless families and individuals. In addition many shelters provide referrals to other social service agencies. Shelters are often considered agencies of larger food banks or food share operations.

Stationary food vending unit shall mean any vending unit from which food products are sold and which is licensed for one (1) location on private property and conducts all of its sales from that one (1) location.

- (c) Section 1.201.10.B shall be amended to delete the following definitions:

Adulterated, Easily cleanable, Employee, Equipment, Food, Food-contact surface, Kitchenware, Poisonous or toxic materials, Potentially hazardous food, Sealed, Molluscan shellfish, Single-service articles, Tableware, and Utensil.

(d) Section 3-603.11.B shall be amended as follows:

(B) Disclosure shall include:

(1) A description of the animal-derived Foods, such as "oysters on the halfshell (raw oysters)," "raw-Egg Caesar salad," and "hamburgers (can be cooked to order)" with an asterisk to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients; or

(2) Identification of the animal-derived Foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

(C) A reminder shall include asterisking the animal-derived Foods requiring Disclosure to a footnote that states:

(2) Consuming raw or undercooked Meats, Poultry, seafood, shellfish, or Eggs may increase your Risk of foodborne illness.

(Ord. No. 94-12/13, 11-19-12, Ord. 208-14/15, 4-27-2015; Ord. No. 304-15/16, 7-20-2016; Ord. 18-17/18, 8-21-2017)

DIVISION 2. LICENSE*

*Cross reference(s) --Licenses and permits generally, Ch. 15.

Sec. 11-22. License Required.

No person shall operate any food service establishment or marijuana food processing establishment within the city unless

licensed to do so by the city. Applications for licenses for a food service establishment, other than a temporary food service establishment, must be submitted at least thirty (30) calendar days before operations are planned to commence. Applications for licenses for a temporary food service establishment must be submitted at least seven (7) business days before operations are planned to commence.

(Ord. No. 94-12/13, 11-19-12; Ord. 18-17/18, 8-21-2017)

Chapter 15 LICENSES AND PERMITS*

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. II	Bottle clubs (must obtain FSE and entertainment if applicable)	\$940.00	June 30
Ch. 3, Art. III	Brewery, Winery and On-Premises Consumption Distillery License (must obtain FSE and/or entertainment if applicable)	\$525.00	Concurrent with state liquor license
Ch. 3, Art. III	Small Brewery, Winery and Distillery Manufacturing License	\$250.00	Effective November 1, 2019; Concurrent with state liquor license
Ch. 3, Art. III	Large Brewery, Winery and Distillery Manufacturing License	\$2,000	Effective November 1, 2019; Concurrent with state liquor license

Location in Code	Description	Fee	Expiration Date
	Amusement devices (other than pinball and adult amusements), per device	\$153.00	Twelve months or concurrent with state liquor license or with any city license
	Pinball machines, per device	\$153.00	Twelve months or concurrent with state liquor license or with any city license
	Adult amusement devices, per location	\$978.00	Twelve months or concurrent with state liquor license or with any city license
Ch. 4, Art. III	Entertainment:		
	Single Entertainment Event - Private Property	\$50	Per event
	Single Entertainment Event - Public Property	\$50	Per event
	Indoor Entertainment	\$500	12 months or concurrent with state liquor license or any city license
	Outdoor Entertainment	\$700	12 months or concurrent with state liquor license or any city license

Location in Code	Description	Fee	Expiration Date
	Combined Entertainment	\$800	12 months or concurrent with state liquor license or any city license
	Expanded Entertainment Addendum	\$100	Per event
Ch. 4, Art. IV	Gaming:		
	Beano	\$104.00	December 31
	Games of chance (application fee pursuant to section 15-6 only)		
Ch. 4, Art. V	Nudity in licensed businesses	\$1,474.00	June 30
Ch. 11, Art. II	Food service establishments (FSE):		
	Temporary FSE:		
	a. Unopened prepackaged food	\$93.00	Three months
	b. Opened or nonprepackaged food	\$93.00	Per event not to exceed two weeks
	Mobile FSE (Chapter 19) a. pushcarts	\$322.00	March 31

Location in Code	Description	Fee	Expiration Date
	b. Food Trucks	\$546.00	March 31
	Street vendor cooler storage space - maximum of 7 sq. ft.	\$38.00 per 3.5 sq. ft. of space	March 31
	FSE-No food preparation on premises	\$181.00	January 31
	FSE-With preparation limited to hot beverages only	\$142.00	January 31
	FSE-With beer and wine take out	\$415.00	January 31
	FSE/Commissary - Food preparation on premises	\$459.00	January 31
	<u>Marijuana Food Processing Establishment</u>	<u>\$459.00</u>	<u>Concurrent with marijuana license</u>
	FSE's with liquor:		
	FSE-Class A lounge (Class X)	\$2,774.00	Concurrent with state liquor license
	FSE-Class A restaurant (Class I)	\$1,873.00	Concurrent with state liquor license
	FSE-Hotel (Class IA)		

Location in Code	Description	Fee	Expiration Date
	FSE-Class A restaurant/lounge (Class XI)	\$2,326.00	Concurrent with state liquor license
	FSE-Qualified catering service (Class I)	\$1,873.00	Concurrent with state liquor license
	Innholder-15 rooms or less	\$1,436.00	Concurrent with state liquor license
	Innholder-16 to 40 rooms	\$1,928.00	Concurrent with state liquor license
	Innholder-more than 40 rooms	\$2,239.00	Concurrent with state liquor license
	FSE-Spirituious license (Class II)	\$611.00	Concurrent with state liquor license
	FSE-Vinous license (Class III)	\$410.00	Concurrent with state liquor license
	FSE-Malt license (Class IV)	\$824.00	Concurrent with state liquor license
	FSE-Malt and vinous license (Classes III and IV combined)	\$906.00	Concurrent with state liquor license

Location in Code	Description	Fee	Expiration Date
	FSE-Nonprofit club (Class IV with catering or Class V without catering)	\$737.00	Concurrent with state liquor license
	FSE-Liquor catering	\$33.00	Per event
	FSE-Temporary (bona fide nonprofit organization) with any spirituous, vinous or malt license and special entertainment	\$65.00	Per 2-day period
	FSE-Auditorium	\$584.00	Concurrent with State Liquor License
	FSE-Civic Auditorium	\$1,851.00	Concurrent with State Liquor License
Ch. 12, Art. VII	Operation of rendering facilities	263.00	September 30
Ch. 16	Massage establishment	\$65.00	September 30
	Combined massage establishment/massage therapist	\$55.00	
	Massage therapist	\$38.00	
	Conditional massage therapist	\$38.00	
Ch. 19, Art. II	Night Street Vendor (must also obtain FSE and street vendor)	\$218.00	

Location in Code	Description	Fee	Expiration Date
Ch. 19, Art. III	Transient sellers	\$109.00	December 31
Ch. 21	Farmers' Markets on private property	\$26 per vendor	March 31
Ch. 23, Art. II	Flea market seller	\$22.00	Last day of February
	Flea market Operator	\$55.00 \$246.00	Per day Annual/March 1st
	Secondhand dealer, junk dealer, pawnbroker ¹ (including used cars)	\$153.00	December 31
	Junk collector	\$26.00	December 31
Ch. 28, Art. IV	Wreckers and vehicle towing	\$278.00	June 30
Ch. 28, Art. VII	Valet Parking	\$ 2 7 3 . 0 0 p e r l o c a t i o n	Twelve months
	Valet Parking Special Event Permit	\$64.00	
Ch. 28, Art. VIII	Licensing of Booting of Motor Vehicles	\$105.00	October 31
Ch. 30, Art. II	Taxicabs and liveries:		
	Taxicab business license	315.00	April 30
	Livery business license	315.00	April 30

¹ Reflects city practice for junk dealers and pawnbrokers.

Location in Code	Description	Fee	Expiration Date
	Taxicab driver's license	79.00	April 30
	Taxi Replacement license	11.00	
	Livery driver's license	21.00	April 30
	Livery replacement license	11.00	
Ch. 30, Art. III	Horse-drawn cabs	210.00, plus 21.00 per driver	April 30
Ch. 30, Art. IV	Bicycle cabs	105.00, plus 21.00 per driver	April 30
Ch.30, Art. V	Tour companies	315.00, plus 32.00 per vehicle/operator operator	April 30
<u>Ch. 35</u>	<u>Marijuana Cultivation</u> <u>- Tier 1</u>	<u>500.00</u>	<u>Twelve</u> <u>months/concurrent</u> <u>with state</u> <u>license</u>
	<u>Marijuana Cultivation</u> <u>- Tier 2</u>	<u>5,000.00</u>	<u>Twelve</u> <u>months/concurrent</u> <u>with state</u> <u>license</u>
	<u>Marijuana Cultivation</u> <u>- Tier 3</u>	<u>10,000.00</u>	<u>Twelve</u> <u>months/concurrent</u> <u>with state</u> <u>license</u>
	<u>Manufacturing -</u> <u>manual</u>	<u>2,500.00</u>	<u>Twelve</u> <u>months/concurrent</u> <u>with state</u> <u>license</u>

Location in Code	Description	Fee	Expiration Date
	<u>Manufacturing - high hazard</u>	<u>5,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Retail Marijuana - medical</u>	<u>5,000.00</u>	<u>Twelve months</u>
	<u>Retail Marijuana - adult use</u>	<u>10,000</u>	<u>Twelve months/concurrent with state license</u>
	<u>Small Scale Marijuana Caregiver</u>	<u>250.00</u>	<u>Twelve months</u>
	<u>Marijuana Testing</u>	<u>1,000.00</u>	<u>Twelve months/concurrent with state license</u>

(b) Fees for licenses to be established by the city pursuant to state law shall be as follows:

Description	Fee	Expiration Date
Amusements, including images; pageantry; sleight of hand tricks; puppet shows; feats of balancing; wire dancing; personal agility; or dexterity	\$22.00	Per day
Billiards or pool, per table	\$33.00	Twelve months or concurrent with state liquor license or with any city license
Bowling alley, per establishment	\$92.00	April 30

Description	Fee	Expiration Date
Circus	\$181.00	Per day
Circus (bona fide nonprofit organization)	\$27.00	Per day
Going-out-of-business sale	\$104.00	--
Menageries	\$22.00	Per day
Motion picture theatres (other than open-air drive-in) operating more than six (6) months:		
Seating capacity 999 or less, per screen	\$295.00	June 30
Seating capacity 1,000 or more, per screen	\$486.00	June 30
Temporary--One (1) week or less	\$33.00	One week
Temporary--More than one (1) week but less than two (2) months	\$49.00	Two months
Temporary--More than two (2) months but less than six (6) months	\$77.00	Six months
Roller skating rink	\$164.00	June 30

(Code 1968, §§ 302.6, 414.1, 414.5, 712.2, 714.6, 714.7, 901.12; Ord. No. 391-72, 7-5-72; Ord. No. 201-74, 4-17-74; Ord. No. 645a-75, 11-17-75; Ord. No. 231-80, 12-22-80; Ord. No. 553-81, § 1, 3-2-81; Ord. No. 554-81, 3-2-81; Ord. No. 576-81, § 2, 3-16-81; Ord. No. 694-81, 5-18-81; Ord. No. 82-81, § 1, 7-6-81; Ord. No. 392-82, 2-1-82; Ord. No. 564-82, 5-17-82; Ord. No. 565-82, 5-17-82; Ord. No. 566-82, 5-17-82; Ord. No. 510-84, § 1, 4-2-84; Ord. No. 591, 5-21-84; Ord. No. 658-84, 5-30-84; Ord. No. 431-85, § 3, 2-20-85; Ord. No. 554-85, 5-14-85; Ord. No. 212-85, §§ 1, 2, 10-21-85; Ord. No. 116-86, § 1,

3-3-86; Ord. No. 551-86, 5-12-86; Ord. No. 189-87, § 2, 12-7-87; Ord. No. 386-88, 5-16-88; Ord. No. 425-89, 5-15-89; Ord. No. 29-89, 6-19-89; Ord. No. 258-90, 2-21-90; Ord. No. 351-90, 5-21-90; Ord. No. 264-91, 3-4-91; Ord. No. 358-91, 5-20-91; Ord. No. 183-91, 12-2-91; Ord. No. 175-92, 3-16-92; Ord. No. 245-93, 3-22-93; Ord. No. 83-93, § 1, 9-8-93; Ord. No. 94-93, 9-20-93; Ord. No. 221-94, § 2, 2-23-94; Ord. No. 314-94, 5-16-94; Ord. No. 229-95, 4-3-95; Ord. No. 34-95, 7-5-95; Ord. No. 264-96, § 1, 5-20-96; Ord. No. 128-98, 10-19-98; Ord. No. 282-99, §2, 5-17-99; Ord. No. 228-00, §1, 5-15-00; Ord. No. 276-01, 5-21-01; Ord. No. 277-01, 5-21-01; Ord. No. 119-01/02, § 6, 12-3-01; Ord. No. 258-01/02, 5-20-02; Ord. No. 260-01/02, 5-20-02; Ord. No. 246-02/03, 5-19-03; Ord. No. 248-02/03, 5-19-03; Ord. No. 180-03/04, 4-7-04; Ord. No. 217-03/04, 5-17-04; Ord. No. 68-04/05, 10-4-04; Ord. No. 247-04/05, 5-16-05; Ord. No. 245-05/06, 5-15-06; Ord. No. 227-06/07, 5-21-07; Ord. No. 196-07/08, 4-28-08; Ord. No. 246, 07-08, 5-19-08; Ord. No. 224-09/10, 5-17-10; Ord. No. 229-12/13, 5-20-13; Ord. No. 159-12/13, 4-22-13; Ord. 52-14/15, 9-15-2014;)Ord. 246-14/15, 6-24-2015; Ord. 109-15/16, 11-16-2015; Ord. 181-15/16, 3-21-2016; Ord. 180-15/16, 3-21-2016; Ord. 18-17/18, 8-21-2017; Ord. No. 111-17/18, 11-20-2017; Ord. No. 218-17/18, 5-21-2018; Ord. No. 244, 5-20-2019; Ord. No. 285-19/20, 7-15-2019; Ord. No. 25-19/20, 8-12-2019)

Sec. 15-6. Fees.

(a) *Application fees.* Except as expressly provided, all applications for original licenses or for the consent of the city council, other than a flea market seller, temporary FSE or auction license, shall be accompanied by an administrative fee of forty-five dollars (\$45.00) to defray the cost of processing the application. All applications for renewal of licenses shall be accompanied by the fees for issuance and an administrative fee of thirty-five dollars (\$35.00), except for a flea market seller to defray the cost of processing the application. In any case where notice by publication or mail is required, the applicant shall pay the cost of publication and postage in advance. Application fees shall not be refundable.

(i) Applications for any original licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of five hundred dollars (\$500.00). Applications for renewal of licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of two hundred and fifty dollars (\$250.00).

(ii) Applications for original Small Scale Caregiver

Licenses shall be accompanied by an administrative fee of fifty dollars (\$50.00). Applications for renewal of Small Scale Caregiver Licenses shall be accompanied by an administrative fee of forty dollars (\$40.00).

(b) *Appeals fee.* Appeals from determinations of the Permitting and Inspections Department shall be accompanied by a filing fee of twenty-five dollars (\$25.00) and the appellant shall also pay the full cost of publication and postage in advance, if such notice is required. For the purposes of this subsection, notice by publication shall be deemed to apply to the hearing on appeal whenever the requirement of publication would exist in the first instance. Appeals fees shall not be refundable except that, upon a successful appeal, the Permitting and Inspections Department shall credit the appeal fee toward the fee for issuance and shall refund any excess.

(c) *Filing fees.* Whenever any document, other than an application for any license, is required or permitted to be filed with the Permitting and Inspections Department in connection with any license, and no fee for such filing is otherwise prescribed, the fee for filing such document shall be two dollars (\$2.00) for the first page, and one dollar (\$1.00) for each page thereafter. Filing fees shall not be refundable.

(d) *Fees for issuance.* Fees for issuance of licenses shall be as provided in section 15-12. Fees for issuance shall be refundable in the amounts, and under the conditions, as set forth in a policy adopted by the Permitting and Inspections Department.

(e) *Late fees.* An additional fee shall be charged for issuance of any license after expiration of the holder's prior license, unless the application for the renewal license was filed prior to such expiration. The additional fee for issuance or renewal of any license applied for after the applicant has commenced the activity, or has permitted the use of the device to be licensed prior to such issuance, shall be ten dollars (\$10.00) or five (5) percent per month of the fee for issuance, whichever is greater, but shall not exceed the fee specified in this chapter for issuance of that license. Late fees shall not be refundable.

(f) *Proration.* The fee for issuance of an original license, unless issued late as provided in subsection (e), and which is issuable on an annual basis, but which when issued will not give the licensee twelve (12) full months use prior to expiration,

shall be reduced by ten (10) percent for each full month that licensee will not have the use of the license, but in no case shall the license fee be reduced by more than fifty (50) percent. Notwithstanding the foregoing, there shall be no proration of the fee for excavators' licenses issued pursuant to chapter 25, article VII of this Code.

(g) *Fees to be cumulative.* Fees provided for in this section shall be deemed cumulative and shall be in addition to any other fee or fees required for the issuance of any permit under section 15-12. Where a maximum license fee is established by the state, the fees set by this chapter shall be deemed cumulative to the extent of such maximum fee.

(h) *Refunds where activity subsequently prohibited.* If, during the unexpired term of the license, a licensed activity is subsequently prohibited by amendment to this Code, the Permitting and Inspections Department shall refund to the licensee a portion of the license fee in accordance with the formula for proration of fees set forth in section 15-6(f).

(Code 1968, § 901, 6; Ord. No. 231-80, § 901.6, 12-22-80; Ord. No. 554-81, § 901.6, 3-2-81; Ord. No. 40-82, 6-21-82; Ord. No. 554-85, 5-14-85; Ord. No. 210-85, § 1, 10-21-85; Ord. No. 30-87, 7-6-87; Ord. No. 424-89, 5-15-89; Ord. No. 247-04/05, 5-16-05; Ord. No. 224-09/10, 5-17-10; Ord. No. 203-11/12, 6-4-12; Ord. No. 165-15/16, 3-7-2016; Ord. 18-17/18, 8-21-2017)

Chapter 10 FIRE PREVENTION AND PROTECTION*

ARTICLE II. FIRE CODE

Sec. 10-16. Adoption of National Fire Protection Association 1: Fire Code.

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that a certain code known as the National Fire Protection Association (NFPA) 1: Fire Code (hereinafter referred to as the Fire Code) recommended by the National Fire Protection Association, being particularly the 2018 edition thereof and the whole thereof, and except for such portions as are added to, deleted, modified or amended by section 10-18, of which code not less than one (1) copy has been and now is filed in the office of the city clerk and the same is hereby adopted and incorporated as fully as if set out at length herein, and shall be controlling within the limits of the city.
(Code 1968, § 321.1; Ord. No. 389-72, 9-6-72; Ord. No. 188-00, § 6, 4-24-00; Ord. No. 25-10/11, 8-16-10; Ord. No. 59-19/20. 11-4-2019)

State law reference(s)--Authority to adopt codes by reference, 30-A M.R.S.A. § 3003.

Sec. 10-17. Definitions.

(a) Wherever the word "municipality" or "city" is used in the Fire Prevention Code, it shall be held to mean the City of Portland.

(b) Wherever the words "authority having jurisdiction" are used in the Fire Prevention Code, they shall be held to mean the chief of the fire department of the City of Portland, or his or her duly authorized representative or a housing safety official designated by the city manager.

(Code 1968, § 321.2; Ord. No. 389-72, 9-6-72; Ord. No. 564A-72, 9-6-72; Ord. No. 188-00, § 6, 4-24-00; Ord. No. 25-10/11, 8-16-10; Ord. 298-14/15, 7-6-2015)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 10-18. Amendments.

The Fire Prevention Code adopted by section 10-16 is amended, modified and deleted in the following respects:

(a) The following provisions shall be added to the Fire Code as unnumbered sections, and shall amend any provisions of the Fire Code to the contrary:

(1) "In addition to the circumstances under which a fire watch may otherwise be required or allowed by the Fire Code, in the case of structures posing significant life safety risks that may result in the displacement of person(s) a fire watch, with specifications and criteria to be set forth by the authority having jurisdiction, may be instituted if said watch is approved by the authority having jurisdiction in consultation with the City Manager and Corporation Counsel."

(2) All structures with a fire alarm system or fire suppression system shall be provided with a Knox box(es). The number, make and model and location of the box(es) shall be determined and approved by the authority having jurisdiction. All keys required to operate the life safety signaling or fire suppression systems, and building keys, shall be placed within this box.

(b) The following shall be added to section 1.7.7.1:

It shall be a violation of this article for any person either to interfere with or to prevent such inspection.

(c) Section 1.10 (Board of Appeals) shall be deleted.

(d) Section 1.12.2 is deleted and replaced as follows:

All applications for a permit required by the Fire and Life Safety codes shall be filed electronically in the manner, and in such form and detail, as the authority having jurisdiction shall prescribe. Applications for permits shall be accompanied by plans and other documentation in an approved electronic format, as required by the authority having jurisdiction.

(e) The introductory sentence to 1.12.8 is deleted and replaced as follows:

In addition to the permits required by the Life Safety Code, the authority having jurisdiction shall have the authority to issue permits for any of the activities identified in Tables 1.12.8(a), (b), (c) and (d) and the operations listed below.

Permits for the following operations and materials, as described in Tables 1.12.8(a), (b), (c) and (d) shall be required and shall have the following fees:

Operations and Materials	Permit Fee
Spraying or dipping of flammable finishes	\$174.00 (A)
Aircraft fuel servicing	See Motor fuel dispensing and refueling
Aircraft refueling vehicles	See Motor fuel dispensing and refueling
Automotive fuel servicing	See Motor fuel dispensing and refueling
Carnivals and fairs	\$141.00 (A)
Commercial rubbish-handling operation (formerly Bulk Waste Storage)	\$174.00 (A)
Cutting and welding operations	\$65.00 (D)
Dry cleaning Plants	\$65.00 (A)
Display fireworks (also Flame effects and Pyrotechnics before a proximate audience)	\$141.00 (B), (C), (D)
Flame effects	See Display fireworks

Operations and Materials	Permit Fee
Spraying or dipping of flammable finishes	\$174.00 (A)
Flammable and combustible liquids, (other than motor fuel dispensing)	\$174.00 (A)
Tier I hazardous materials	\$65.00 (A), (E)
Tier II hazardous Materials	\$263.00 (A), (F)
Hot work	\$174.00 (B)
Liquified Petroleum Gasses	\$174.00 (A)
Marine craft fuel servicing	See Motor fuel dispensing and refueling
Marijuana growing, processing, or extraction facilities	TBD (G)
Motor fuel dispensing and refueling (also Aircraft fuel servicing and vehicles; Automotive fuel servicing; and Marine craft fuel servicing)	\$174.00 (A)
Pyrotechnics before a proximate audience	See Display fireworks
Repair Garages and Service Stations	\$174.00 (A)
Lumber Yards and woodworking plants (formerly Woodworking and Lumber Storage Plants)	\$174.00 (D)

(f) Table 1.12.8(a) shall be amended to add the following:

Operations and Materials	Permit Required	Cross Reference Section Number	Permit Fee
Blasting operations 1) < 50 cu. yds. 2) Utility trench 3) 50-300 cu. yds. 4) 300+ cu. yds.	For blasting operations.		1) \$50 (B), (D) 2) \$50 (B), (D) 3) \$100 (B), (D) 4) \$500 (B), (D)
Certificate of Fitness for Fire Alarm Service and Installation Company	To engage in the business of fire alarm service and installation	1.13.1(3)	\$250.00 each
Certificate of fitness for special hazards systems	To engage in the business of special hazards system service and installation	1.13.1(3)	\$250 each

Certificate of fitness for marijuana growing, processing or extraction facilities	TBD	1.13.1(3)	TBD (G)
Fire Alarm Inspections Sticker	Acquisition and application of fire alarm inspection stickers	1.12.7	\$25.00 each
Special Type Dispensing Systems, other than Flammable or Combustible Liquids		Private and Special Laws of 1917, Chapter 160	\$174.00 (A)

(A) Application and license issued through Permitting and Inspections Department after Fire Department review.

(B) Application and license issued directly through the Fire Department.

(C) Equal to fee charged by state.

(D) State license and proof of insurance required.

(E) For quantities of hazardous materials at or above the levels specified in Table 1.12.8, but below the levels required to be reported to the State of Maine.

(F) For quantities of hazardous materials at or above the levels required to be reported to the State of Maine.

(G) No permits may be issued until the City Council

adopts licensing for marijuana uses.

- (g) Section 13.3.1.2 is amended to add the following:

The authority having jurisdiction shall have power to modify the water supply requirements of this section for individual installations where meeting such requirements are impractical, financial reasons not being a consideration, provided such amended requirements shall not be less stringent than the minimum water supply requirements for sprinkler systems in the State of Maine."

- (h) Subsections 13.3.2.7.3(3) and (4) shall be deleted.

- (i) Section 13.3.2.8.3, shall be deleted.

(j) In addition to the requirements of 18.2.3, fire department access roads shall comply with the standards set forth in the *City of Portland's Technical and Design Standards and Guidelines, Chapter IV (Public Safety Standards)*.

(k) In addition to the requirements of Section 18.3, fire hydrants shall comply with the standards set forth in the *City of Portland's Technical and Design Standards and Guidelines, Chapter IV (Public Safety Standards)*.

- (l) Section 33.1.1 shall be deleted and replaced with the following:

Storage of more than 100 tires outside shall be in accordance with Chapter 33.

(m) The title of Section 33.2.1 shall be deleted and replaced with the following:

Outside Tire Storage Sites and Piles.

(n) Section 33.2.1.1 shall be deleted and replaced with the following:

Individual outside tire storage piles containing more than 100 tires shall be limited in base area to 2,500 ft³ (232 m²).

(o) Section 33.2.1.2 shall be deleted and replaced with the following:

The dimension of tire storage piles shall not exceed 10 ft (3 m) in height, 30 ft (9 m) in width, and 30 ft (9 m) in length.

(p) Section 33.2.2 shall be deleted.

(q) Section 33.2.2.1 shall be deleted.

(r) Section 33.2.2.2 shall be deleted.

(s) Section 33.2.2.3 shall be deleted.

(t) Section 33.2.2.4 shall be deleted.

(u) Annex E, Fire Fighter Safety Building Marking System is adopted.

(v) Section 38.3.1 shall be added as follows:

For other than CO2 and nonhazardous extraction processes, any facility conducting marijuana extraction shall be protected throughout with a NFPA 13 sprinkler system.

(w) Section 38.6.2.4.4 shall be added as follows:

In addition to the continuous gas detection system required by 38.6.2.4.1, at least one gas detection monitor, supervised by a monitored fire alarm system, shall be installed outside of an extraction room. The gas detection monitor shall be installed in accordance with NFPA 72.

(Code 1968, § 321.6; Ord. No. 389-72, 9-6-72; Ord. No. 564A-72, 9-6-72; Ord. No. 117-82, § 1, 8-2-82; Ord. No. 388-92, 5-18-92; Ord. No. 260-96, § 1, 5-20-96; Ord. No. 188-00, § 6, 4-24-00; Ord. No. 228-06/07, 5-21-07; Ord. No. 245-07/08, 5-19-08; Ord. No. 25-10/11, 8-16-10; Order 245-14/15, 6-24-2015; Ord. No. 165-15/16, 3-7-2016; Ord. No. 253-15/16, 7/1/2016; Ord. 18-17/18, 8-21-2017; Ord. No. 217-17/18, 7-1-2018, Ord. No. 218-17/18, 7-1-2018; Ord. No. 59-19/20. 11-4-2019)

MEMORANDUM

TO: Health and Human Services and Public Safety Committee; Economic Development Committee
CC: Greg Mitchell; Kristen Dow
FROM: Staff working group
RE: Marijuana Business Licensing Overview

This memo summarizes the highlights of the licensing ordinance drafted by a staff working group to allow the licensing of marijuana business and how the City's licensing scheme fits in with the existing zoning as well as state law.

Background

The State of Maine has established two separate types of marijuana businesses - medical and adult use (recreational). Medical marijuana caregivers have operated for years, as have medical marijuana dispensaries. Adult use marijuana businesses are not currently allowed, but with the recent adoption of rules that take effect in September, licensing for recreational uses are on the horizon.

The City of Portland adopted a conditional zoning ordinance late last year that will only take effect once the City passes its licensing ordinance. The proposal before the joint committee is that licensing ordinance. Once adopted, the City will be able to begin licensing both medical and adult use marijuana uses, including growing, testing, cultivation, and retail stores. Adult use marijuana businesses will not be able to open until licensed with the state.

The approach of the staff working group has been to generally treat medical and adult use marijuana uses similarly, because they will present similar challenges and have similar impacts on their neighbors and the City. For example, a large cultivation facility will function the same, regardless of whether it is growing for medical or adult use purposes. The same is true for retail, testing, or manufacturing.

The challenge in doing so is that the state has adopted extensive regulations for adult use marijuana uses, but not for medical uses. The regulations for medical uses are significantly less comprehensive, leaving what staff feels are gaps in protections for consumers, the City, and neighbors. For that reason, the proposed licensing tries to address those gaps.

Types of Licenses

Consistent with the zoning already in place, the licensing ordinance provides for five different categories of licenses:

1. Tier 1 Cultivation – cultivation of up to 500 sq. ft. of canopy for medical or adult use;

2. Tier 2 Cultivation – cultivation of up to 2,000 sq. ft. of plant canopy for medical or adult use;
3. Tier 3 Cultivation – cultivation of up to 7,000 sq. ft. of plant canopy for medical or adult use;
4. Manual Manufacturing – processing (extraction, baking, etc) using only low hazard processes;
5. High Hazard Manufacturing – processing using higher hazard processes;
6. Medical Retail – registered caregiver stores selling only to patients;
7. Adult Use Retail – stores selling to all individuals over age 21;
8. Small Scale Caregiver – caregivers selling to no more than five patients per month; and
9. Testing Facilities – providing testing services for adult use and medical marijuana.

All licenses will be granted by City staff, and all licenses – except for retail licenses, which will be discussed below – will go through the same application and review process.

Allocation of Retail Licenses

Staff is proposing to limit marijuana retail stores – both medical and adult use – to require a 250’ buffer between stores and between any store and dispensary. The goal of this buffer is to avoid having stores cluster in one location and to avoid oversaturation of the market. These concerns are based on lessons learned from other states and towns that permitted marijuana retail stores without those precautions and saw undesirable results in their jurisdictions. Limitations on retail stores in some fashion is being widely used in other Maine towns that have already adopted their regulations, including South Portland, which has a 300’ buffer between retail stores.

Staff is also proposing a cap on retail stores of 20 stores in the City. Other jurisdictions, including Hallowell and many out of state jurisdictions have limited the number of stores. Staff anticipates that this will be adequate to satisfy the initial demand for license, without allowing the industry to grow beyond what is sustainable or desirable for the City.

As written, the proposed ordinance provides for retail licenses to be allocated on a first qualified-first licensed basis. Under this system, applicants would be expected to submit a full and complete application, along with the non-refundable application fee. Staff would then evaluate the application for completeness and basic qualifications. A draft completeness checklist is included in your packet, although this would change with any ordinance revisions made by the Committees and the Council.

If the application is complete and meets all basic qualifications, it would move forward for review. If the license was granted, the applicant would have one year to open the retail store, including all building permits, other license, certificate of occupancy, etc.

If the application was not complete, the application would be rejected, the application fee forfeited, and the applicant would lose its spot in the first qualified-first licensed queue and

would have to reapply. Similarly, if the applicant did not open the retail store within one year, it would lose its spot in the queue and would have to reapply.

Staff did consider alternative methods for allocating retail licenses. One option considered was a “weighted” lottery - where stores competing for the same space would earn points for certain favorable attributes, such as experience, funding, etc. The proposed store with the most points would be awarded the license. Any tie would be determined by a lottery. The City of Aurora, CO used a similar system to award its licenses, and the relevant regulation is attached. If the City wanted to adopt this approach, then a matrix of criteria and points would have to be written and adopted.

Licenses could also be awarded by a pure lottery. Hallowell used this process to distribute its retail marijuana stores, and received some negative feedback. Staff does not recommend this path, as it does not favor those who are more prepared and/or qualified.

Finally, merit based consideration is an option. This would be similar to the weighted lottery in that criteria for evaluation would need to be developed and Council and/or staff would also have to convene a committee for evaluating applications. Although the state allocated its initial dispensary licenses based on merit, this would be a challenging process for the City to implement and is not recommended.

Application Requirements

The ordinance sets out certain criteria for all licensees. Of note are the following requirements:

1. Designation of a community relations liaison. The goal behind designating a community relations liaison is to have someone responsible to answer inquiries from the public. For a small scale caregiver, this will likely be the owner and caregiver, whereas for a larger operation, it could be a manager, PR person, or other.
2. Landlord permission. Similar to our requirement for short term rentals, marijuana businesses will have to provide notarized landlord permission to operate the marijuana business out of their chosen location.
3. Security plan. This plan will have to meet the minimum requirements of the ordinance, but the hope is that many businesses go above those minimum requirements to provide adequate security.
4. Waste disposal plan. Again, this plan will have to meet the minimum requirements of the ordinance, but requiring it up front is designed to have businesses thinking about waste disposal issues proactively.
5. Odor mitigation plan. The odor mitigation plan must be sufficient to eliminate the odor of marijuana either at the property line, or at the boundary with any other use within the same property, whichever is closer. For a small scale caregiver in a single-family home, this might involve a few carbon filters. The odor mitigation plan will obviously need to be much more involved for larger cultivation and processing facilities.

Certain types of businesses will also require:

6. Operations Plan. This plan will discuss growing and fertilizing methodology, inventory control, and similar information.
7. Quality Control Plan. This plan will require applicants to disclose the steps they will be taking to test their products and ensure the end product is safe for consumption.
8. Disclosure of Chemicals. Applicants will be required to disclose chemicals being used in the operation, as well as the SDS sheets for those chemicals. This will allow the City to monitor the chemicals, as well as ensure that inspectors and first responders are aware of potential hazards.
9. Engineer Certification. For certain businesses, an engineer must sign off on the facility and equipment.
10. Electrical Certification. Historically, marijuana businesses have taxed their electrical systems without an eye to safety. Most businesses will be required to provide a statement by a master electrician that the electrical system is safe and adequate for the proposed use.

All of the required plans will be reviewed, and staff can require changes to the plans, as necessary to accomplish the ordinance's goals. Approved plans must be kept on site so that they can be accessed by any inspector or other City official.

Performance Guarantee

Staff is proposing to require a performance guarantee be posted for each marijuana business, other than small scale caregivers or testing facilities. The performance guarantee will be in the estimated amount required to wind down the business safely and responsibly. This ensures that if a business is unsuccessful, there will be funds to properly dispose of any excess marijuana or marijuana products, as well as equipment, chemicals, etc. A successful and responsible marijuana business may have this requirement lifted after three years of operation.

Fees

The costs of implementing this licensing program in a responsible manner are significant. Applications for most business types will be extensive and time consuming. For the first several years of operation, it is also important to do regular inspections, and proposes routine inspections of most business types at least twice a year. In addition, we expect a fair amount of complaints as new businesses open up, which also take staff time to investigate and address.

To manage this, staff expects to add two staff members in the licensing office to manage applications, renewals, inspections, and complaints. Additionally, we propose to add one health inspector, one code officer, one fire inspector, and one police sergeant, each with specialized training in marijuana related inspections. All of the current inspectors will need additional

training in compliance issues for this new industry, as will all of the City’s first responders who might be responding to emergencies or other calls at marijuana businesses. There will also be an increase in related overhead, including attorney time for questions and enforcement.

To cover these additional costs, the City is proposing application and annual fees as follows:

	App. Fee	Annual Fee	Expiration
Cultivation - Tier 1	\$500	\$500	September 30
Cultivation - Tier 2	\$500	\$5,000	September 30
Cultivation - Tier 3	\$500	\$10,000	September 30
Manufacturing - manual processing only	\$500	\$2,500	September 30
Manufacturing - high hazard processing	\$500	\$5,000	September 30
Retail - medical marijuana	\$500	\$5,000	September 30
Retail - adult use	\$500	\$10,000	September 30
Small scale caregiver	\$50	\$250	September 30
Testing	\$500	\$1,000	September 30

These fees will be added in to Chapter 15 along with all other licensing fees. By way of comparison, below are the fees from a few other jurisdictions in Maine. Some of the licenses do not perfectly line up with those being proposed in Portland, so they are close approximations.

	Portland	State	So. Portland	Auburn
Tier 1 Cultivation	\$500	\$500	\$600	\$1,000
Tier 2 Cultivation	\$5,000	\$3,000	\$600	\$1,500
Tier 3 Cultivation	\$10,000	\$10,000	\$600	\$2,500
Manual Mfg.	\$2,500	\$2,500	\$300	\$2,500
High Hazard Mfg.	\$5,000	\$2,500	\$300	\$2,500
Medical Retail	\$5,000		\$1,400	\$5,000
Adult Use Retail	\$10,000	\$2,500	\$1,400	\$5,000
Sm. Scale Caregiver	\$250	\$240/ patient	N/A	
Testing	\$1,000	\$1,000	N/A	\$2,500

Licensee Qualifications

Most of the qualifications required of individual and corporate applicants are fairly routine and also track state law requirements. Staff is, however, proposing to add one additional qualification – that the applicant, or any significant parties in the applicant if a corporate entity, does not have any “disqualifying violations.” We have defined that to include late payments to the City, a significant history of unresolved violations, and false statements. The goal behind this requirement is to ensure that bad actors, who have historically not met their obligations under the law, are not awarded licenses.

Additional Requirements

The remainder of the licensing ordinance has additional performance standards (security, waste disposal, odor), as well as some additional restrictions, a few of which are summarized:

1. Labeling. The goal of requiring labeling is allowing consumers to make informed choices. This will ensure that consumers are aware that the product they are purchasing contains THC, and whether or not it has been tested for quality, purity, and/or potency.
2. Food products. The ordinance prohibits making marijuana food products in a shape or design intended to appeal to minors (such as gummies), and adding marijuana to other brand name products (Coke, or Keebler cookies).
3. Manufacturing space for marijuana and non-marijuana products. Staff is recommending that marijuana and non-marijuana food products not be allowed to be manufactured in the same kitchen or on the same equipment as non-marijuana products. The reason for this is concerns about cross contamination of non-marijuana foods.
4. Retail delivery restrictions. The ordinance, as proposed, prohibits mobile sales, deliveries, mail order sales, and other remote sales. Small scale caregivers could still provide medical marijuana products by delivery.

Insurance and Indemnification

The final section requires marijuana businesses to maintain certain insurance levels, and also provides that accepting a license from the City requires the marijuana business to hold the City harmless from any consequences arising out of any prosecution of the business or any claim by a third party. Marijuana remains illegal at the federal level, and, although the City does not anticipate issues arising out that, the risk for operating in this industry should remain with the business itself, and not with the City. These types of provisions are not unique - Auburn has an indemnification clause in its ordinance, and other municipalities across the country have similar requirements.

Additional Ordinance Changes

Staff is proposing a few additional changes to several other chapters in the City Code. If the Committee is favorable to these changes, staff will prepare red-lined copies of those ordinances for the Committee's review.

CHAPTER 10

Chapter 10 contains the City's fire regulations. Several months ago, the HHS Committee reviewed proposed changes to Chapter 10 and recommended their passage by Council. Those changes have not yet been presented to the full Council, to give the opportunity to finalize the marijuana-related provisions. Now that licensing is nearly complete, staff is recommending the following changes to the draft Chapter 10:

1. Removing the fire permit specific to marijuana - the costs and inspections that were contemplated by this proposed permit have been incorporated into the license fee.
2. Add a requirement to install a sprinkler system in all marijuana uses. Staff feels this is an important requirement, given the danger that a fire could present in these types of uses.

CHAPTER 11

Chapter 11 regulates food and food licensing. Currently, the City does not license or inspect food processors who do not sell their products at retail. Staff is proposing to add an additional license for marijuana food processors. As part of this license, the City's health inspectors would inspect the processing space, and ensure that the processor has the required food safety certifications.

CHAPTER 15

The fee schedule listed above in this memo will be added into the fee schedule in Chapter 15.



CITY OF PORTLAND
Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

To: Members of the Economic Development Committee and Health & Human Services Committee

FROM: Jon P. Jennings 
City Manager

DATE: January 28, 2020

RE: Draft Proposal of the Scoring Rubric for Retail Marijuana Licenses

After reviewing with staff the alternative scoring matrix for the allocation of retail store licenses that was proposed at the last HHS/EDC meeting, I provide this feedback on potential implementation concerns.

One of the things that the Staff Working Group was attempting to accomplish with the matrix in the draft Chapter 35 for allocation of retail licenses was to keep all the points as objective as possible and to avoid subjectivity, which could open the City up to challenge. We wanted the points to be granted on verifiable facts and not personal perspectives or opinions on the value of certain aspects of applicants' proposals.

There are two concerns with the matrix that was presented at the last committee meeting. First, it had criteria for awarding of points that are more difficult to quantify objectively. Second, it awarded points if the applicant submitted completed applications/plans, which would be redundant of the language already in the proposed ordinance that would require a complete application before being considered for licensing. The Licensing Office will not accept any application that is incomplete, therefore we would only be accepting a 10 for the majority of the categories.

With respect to the specific categories in the alternative matrix, these concerns are

Category 1: Basic Operations gives points for having a clear application ranging from 1 to 10. Sections 35-14, 35-25 and 35-42 in the draft ordinance clearly define what is required for an application to be considered complete and the majority of the bulleted points in this category are listed in the draft ordinance.

Category 2: Security Plan gives points for having a clear plan ranging from 1 to 10. The description of what is required in a security plan is listed in section 35-35 of the proposed order, and will be further detailed in regulations. The Police Department will be meeting with the applicant to review the confidential plan after it has been submitted and accepted for review. To be accepted, the majority of the bulleted points would have to be in the 10 point column.

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January 28, 2020
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Category 3: Community & Public Health Impact gives points for submitting a plan for hiring creating new jobs, wages, employee trainings and interaction with the Community. This would be a subjective analysis on what staff deems the right number of jobs would be to grant 10 points.

The City also, does not track new positions and if they applicant did not follow through with their proposal would a license be revoked? The same can be said about wages and benefits, staff would have to give points on what they think.

Category 4: Experience and Timeline gives points for previous business experience, list of violations and expected opening date. The rubric in the draft ordinance already assigns points for both operating a business in Maine with no violations or experience operating a marijuana retail store in Maine or another state. The State also has a one year deadline to open a retail store before the applicant would need to reapply, so timelines are fixed to 365 days.

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

35-1. Definitions.

Except as otherwise specified, the definitions in Chapter 14 shall apply to this Chapter.

Disqualifying conviction shall mean any of the following: (1) any felony conviction where the conviction or completion of any sentence, whichever is more recent, has been completed within the last ten years; or (2) any conviction for a drug related crime other than a felony, but not including convictions for marijuana related crimes, where the conviction or completion of any sentence, whichever is more recent, has been completed within the last five years.

Disqualifying violation shall mean, within the previous five years, the non-payment or late payment greater than 30 days of any tax or fee; any citation for licensing, land use, life safety, building, fire, health, or similar violation that was not corrected within the timeframe required by the City; any suspension, revocation, or denial of any license or permit; any false statement on a City form or application; and any other significant failure to comply with City ordinances. Disqualifying violations shall not include parking tickets.

Manual processing shall include the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

Marijuana means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. “Marijuana” includes marijuana concentrate but does not include hemp as defined in 7 M.R.S. §2231(1), or a marijuana product.

Marijuana business shall mean any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the City. This shall include registered dispensaries, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.

35-2. Enforcement.

- a. This Chapter shall be enforced by the City Manager and his/her designee(s).
- b. Each day that a violation of this Chapter exists shall be a civil violation subject to the following:
 1. *Civil penalties.* Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that

the violation has existed. However, the maximum amount of civil penalties may be increased where:

- (a) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or
- (b) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

2. *Posting against occupancy.* In addition to any other remedies provided by this Code, the City may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for any of the following violations:

- (a) Operating a marijuana business without a valid City and state license;
- (b) Failure to allow entrance and inspection to any City official on official business after a reasonable request;
- (c) Allowing the use or consumption of marijuana or marijuana products on the premises of the marijuana business; and
- (d) Any other violation that the City determines has the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

c. The City Manager or his/her designee is authorized to 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 Chapter.

d. If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

35-3. Appeals.

Appeals of decisions made pursuant to this Chapter shall be as follows:

a. An appeal from a decision to issue, issue with conditions, deny, or revoke a license pursuant to Article 2 may be appealed to Superior Court pursuant to M.R. Civ. P. 80B by a party with standing.

b. An appeal from any notice of violation, suspension, revocation, or similar enforcement action under this Chapter may be appealed to the City Manager or his/her designee by a party with standing within ten business days of the written decision taking such action. An appeal from any decision of the City Manager may be appealed to Superior Court pursuant to M.R. Civ. P. 80B.

35-4. Reserved.

35-5. Reserved.

35-6. Reserved.

ARTICLE 2. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-7. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-8. Reserved.

35-9. Reserved.

35-10. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-11. Licensing Requirements.

- a. Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.
- b. Operating without a license prohibited. No individual or entity may operate a marijuana business within the City without first obtaining a license from the City.
- c. Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.

- d. Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.
- e. No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating a marijuana business is a privilege and not a right in the City.
- f. Licenses not transferable. Licenses issued pursuant to this Article are not transferable. ~~However, except for retail and dispensary licenses shall be, which are transferable only in accordance with Sec. 35-42 until. However retail and dispensary licenses shall no longer be transferable~~ the effective date of federal legislation allowing federally regulated financial institutions to serve marijuana businesses, or the removal of the cap on marijuana retail stores and dispensaries in Sec. 35-42(i).
- g. Multiple licenses. An individual or entity may hold multiple licenses under this Article, except that an individual or entity may not hold more than one retail and/or dispensary license, or have an interest in an entity that holds more than one retail and/or dispensary license, until after January 1, 2025.

35-12. License Types.

The City has established the following license types for marijuana businesses:

- a. Cultivation – Tier 1. A tier 1 marijuana cultivation license shall allow the license holder to cultivate up to 500 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- b. Cultivation – Tier 2. A tier 2 marijuana cultivation license shall allow the license holder to cultivate up to 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- c. Cultivation – Tier 3. A tier 3 marijuana cultivation license shall allow the license holder to cultivate more than 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- d. Dispensary. A dispensary license shall allow a registered dispensary to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statute.
- e. Manufacturing – Manual. A manual manufacturing license shall allow the license holder to manufacture marijuana using manual processing only.
- f. Manufacturing – High Hazard. A high hazard manufacturing license shall allow the license holder to manufacture marijuana using chemicals and solvents in addition to manual processing methods.

- g. Retail – Medical. A medical marijuana retail license shall allow a registered caregiver to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statutes.
- h. Retail – Adult Use. An adult use marijuana retail license shall allow the license holder to sell adult use marijuana in accordance with Title 28-B of the Maine Revised Statutes.
- i. Small Scale Caregiver. A small scale caregiver license shall allow a registered caregiver to engage in the business of a small scale caregiver, as defined in Chapter 14, including cultivation, manual processing, and limited sales to patients, as defined.
- j. Testing. A marijuana testing license shall allow the license holder to engage in the business of testing medical and/or adult use marijuana for third parties.

35-13. Licensing Procedure.

- a. Applications submission. All applications for licenses under this Article shall be submitted to the Business Licensing Office on forms provided by the City, and shall include all required information, attachments, and fees. No application will be considered unless and until it is complete, as determined by the Business Licensing Office.
- b. Review and recommendation by City departments. The following City departments shall review all applications and recommend whether to issue, issue with conditions, or deny the permits applied for.
 - 1. The Permitting and Inspections Department shall review all applications for compliance with this Article, Chapters 6, 14, 10, and 15 of this Code, as applicable, and all other matters within its purview.
 - 2. The Police Department shall review the security plans submitted by each applicant, as well as any disqualifying convictions of the applicant and associated individuals, and all other matters within its purview.
 - 3. The Fire Department shall review all applications as to compliance with Chapter 10 of this Code, other fire and life safety concerns, and all other matters within its purview.
 - 4. Other City staff or departments shall review and provide recommendations on applications as necessary to adequately evaluate the applications.
- c. Hiring of third party professionals. Where the City determines that it is necessary for an applicant to hire a third party professional to complete any portion of the application, the City may require an applicant to hire a professional with qualifications sufficient to satisfy the City.

- d. City consultation with third party experts. Where the City determines that it is necessary for the City to consult with a third party expert on an application or portion of an application, it may do so and charge the costs of that third party expert consultation to the applicant. Before doing so, however, the City shall give notice to the applicant of its determination of need, including the basis for that determination; the third-party that the City proposes to engage; and the estimated fee for the third-party consultation. The applicant shall have the opportunity to provide feedback to the City on its determination before the City engages the third party.
- e. Licensing decisions. Applications for any license shall be granted, granted with conditions, or denied by the City Manager or his/her designee. Conditions may be imposed on any license issued pursuant to this Article, as necessary to protect the health, safety, and welfare of the public.
- f. Allocation of retail licenses. Retail licenses shall be considered as follows:
 1. The City Manager may establish multiple rounds of licensing as necessary to manage the workload of staff necessary to license all prospective retail stores, and the anticipated market demand.
 2. The City Manager shall establish an opening date and a closing date for applications for any given round of licensing.
 3. Upon submission of an application for a given round of licensing, the City will perform a completeness review and establish that the applicant has a complete application and meets the minimum qualifications.
 - i. If the application is complete and the applicant meets the minimum qualifications, the City will assign the application a numerical score based on the criteria outlined in subsection (f)(4) below.
 - ii. If the application is incomplete, the applicant will be notified of the incompleteness and given one week to correct any incompleteness. If the application is still incomplete after that time, the City will reject the application. The applicant may reapply, but any second or subsequent application will be treated as a new application.
 4. Each application shall be awarded points based on the following matrix. Except where otherwise stated, a particular qualification must be held by at least 26% of the individuals owning the entity to qualify for any points.

At least 51% owned by socially <u>and economically</u> disadvantaged individual(s), as defined <u>further by regulations to be promulgated by the City Manager based off of</u> by the Small Business Association <u>Section 8(a) regulations</u> regulations; women; veterans; and/or individuals who immigrated to the United States within the previous ten years.	+1
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At least 51% owned by individual(s) who have been a Maine resident for at least five years.	+1
Owned by individual(s) with experience running a licensed marijuana retail store or dispensary in Maine or another state with no history of violations or license suspensions or revocations	+1
Applicant has previously been licensed by the State of Maine or the City for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years	+1
Ownership or leasehold interest in proposed retail location by applicant for a minimum of 2 years	+1
Location greater than 500 feet from school property	+1 per additional 1,000 ft.
Business plan committing to annually contribute 1% net profits as a restricted donation to the City for youth education on substance use education and prevention	+1
Business plan committing to sell only marijuana products, CBD, and related paraphernalia	+1
Evidence of at least \$150,000 in liquid assets	+1

5. Applicants with the highest point totals shall be chosen first for tentative approval for a license.

Where two or more applicants have the same number of points, some or all of the applicants cannot be awarded tentative approval due to either the 250' dispersal requirement, the cap imposed by Sec. 35-42, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

6. If the application is tentatively approved, the applicant will have one year from tentative approval to open the retail business, including obtaining all final state and local approvals, building permits and approvals, certificates of occupancy, and any other criteria. If the applicant fails to meet the one-year deadline, it forfeits its tentative approval. The applicant may reapply, but any second or subsequent application will be treated as a new application.
7. Any applicant with a complete application, but who is not awarded tentative approval, may choose to be placed on a wait list for a period of up to one year.

8. A licensee who has its license revoked, or who fails to timely renew its license, shall forfeit its right to renew its retail license. The licensee may reapply, but any second or subsequent application will be treated as a new application.
9. Except for licenses issued pursuant to Sec. 35-42(i)(1), licensees who have a medical marijuana retail license may convert to an adult use retail license, so long as they meet the requirements for such license and pay the licensing fees. An applicant who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement.

35-14. License Application.

Applications for all licenses under this Article shall be on forms provided by the City. In addition to any other information deemed necessary by the City, applicants shall provide the following information:

a. *General application.*

1. The name, mailing address, physical address, and phone number of the business, as well as any other available contact information, including email address, fax number, website, etc.
2. The name, mailing address, phone number, and email address of the following:
 - (a) The individual or corporate owner of the marijuana business;
 - (b) A community relations liaison, as described in Sec. 35-32;
 - (c) A person with a physical address in the City who is authorized to accept service of process on behalf of the marijuana business; and
 - (d) An emergency contact, as described in Sec. 35-32.
2. A general description of the business, including hours of operation, type of business, etc.
3. The license being applied for.

- b. *Corporate entity supplement.* Where the marijuana business is a corporate entity, the applicant must disclose the name, mailing address, phone number, and email address of each and every individual or corporate owner, officers, directors, managers, general partners, shareholders, and/or other parties responsible for the marijuana business.
- c. *Background check information and consent.* Where a background check of any kind is required by this Code, the applicant must provide all relevant information sufficient to conduct the background check, as well as any necessary consents.

- d. *Landlord permission.* Notarized, written permission from the owner of the property where the marijuana business proposes to operate for the applicant to operate the marijuana business for which the applicant is applying, or a copy of a fully executed lease agreement specifically allowing the use of the leased space to be used as they type of marijuana business applied for.
- e. *State authorizations.* Applicants must provide evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations. Except that, for retail stores subject to the allocation provisions of Sec. 35-13(f), the applicant need not provide evidence
- f. *Security plan.* A security plan, which shall be kept confidential, and which shall be sufficient to prevent the diversion of marijuana and marijuana products, and to protect the health and safety of owner, patrons, City officials, and the public.
 - 1. The security plan shall, at a minimum, address all of the security requirements included in Sec. 35-35.
 - 2. The City may require any reasonable modifications to the security plan that it deems necessary to prevent diversion and protect the public safety.
 - 3. A copy of the approved security plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the security plan before or after licensing must be reviewed by the Police Department.
- g. *Waste disposal plan.* A waste disposal plan, which shall be sufficient to prevent diversion of marijuana or marijuana product, and shall be sufficient to prevent contamination of land, water, and sewer; and
 - 1. The waste disposal plan shall, at a minimum, address all of the waste disposal requirements included in Sec. 35-38, and all waste disposal requirements otherwise included in this Code, including, but not limited to, Chapters 24 and 32.
 - 2. The City may require any reasonable modifications to the waste disposal plan that it deems necessary.
 - 3. A copy of the approved waste disposal plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the waste disposal plan before or after licensing must be reviewed and approved by the City.
- h. *Odor mitigation plan.* An odor mitigation plan, which shall be sufficient to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer.

1. The odor mitigation plan shall at a minimum, address all of the odor mitigation requirements included in Sec. 35-39.
 2. The City may require any reasonable modifications to the odor mitigation plan that it deems necessary, including requiring that the plan be designed by a qualified, licensed professional engineer.
 3. A copy of the approved odor mitigation plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the odor mitigation plan before or after licensing must be reviewed and approved by the City.
- i. *License specific requirements.* A licensee must provide the additional information specific to the license being applied for, as described in Sec. 35-23 through 35-27.
 - j. Any other information that the City Manager decides is necessary to evaluate an application under this Article.

35-15. Performance Guarantee Required.

- a. For all marijuana businesses, other than small scale caregivers and marijuana testing facilities, a performance guarantee shall be required in the amount of the cost of winding down the marijuana business, including proper disposal of all marijuana, marijuana plants, and marijuana product; disposal of chemicals and solvents; disposal of specialized equipment; and resolution of any outstanding compliance issues.
- b. The performance guarantee shall be supplied before the issuance of the final license.
- c. This requirement may be satisfied by surety bond, letter of credit, escrow account, or by evidence, acceptable to the City, of the financial and technical ability and commitment of the applicant or its agents to wind down the business in full compliance with all federal, state, and local requirements.
- d. At the sole discretion of the City Manager or his/her designee, the marijuana business may be released from its obligation to maintain the performance guarantee after three years of successful and responsible operation of the marijuana business in a manner acceptable to the City.

35-16. Fees and Costs.

- a. The initial application fee, annual licensing fee, and expiration date for licenses issued under this Article shall be as listed in Chapter 15 of this Code. Application fees shall be due only for the initial application, or any time that the applicant makes substantial changes to the licensed business and requires re-approval.

- b. Applicants shall also be responsible for paying the City's reasonable expenses associated with the review of an application, including:
 - 1. Any required criminal background checks;
 - 2. Any costs of notification; and
 - 3. The cost of any independent, third-party review, where the City determines it is necessary to effectively evaluate an application.
- c. Application fees and any expenses charged pursuant to this section shall be non-refundable.
- d. Upon request of the applicant, the annual licensing fee may be refunded if the applicant 1) withdraws its application prior to the granting of the license; 2) is denied a marijuana business license; or 3) notifies the City that it is abandoning its license prior to opening the marijuana business. Refunds must be requested within 60 days of withdrawal, denial, or abandonment.

35-17. Minimum Qualifications for Individual Applicants.

All natural persons who apply for a license under this Article shall meet all of the following requirements:

- a. Be at least 21 years of age;
- b. Not have any disqualifying convictions or currently be subject to prosecution for any disqualifying conviction;
- c. Not have any disqualifying violations;
- d. Not have been an owner, officer, director, manager, general partner, shareholder, or other responsible party in any corporate entity with disqualifying violations within the past two years;
- e. Not have any revocation or suspension of a marijuana-related license, permit, certificate, or registration;
- f. Not be employed by any state agency or City department with regulatory authority over the marijuana business, including the City Executive Department, Police Department, Permitting and Inspections Department, Planning Department, Fire Department, and Corporation Counsel's Office; and
- g. Not be a law enforcement officer.

35-18. Minimum Qualifications for Corporate Applicants.

All corporate or other entities who apply for a license under this Article shall meet all of the following requirements:

- a. Be formed or organized under the laws of the State of Maine;
- b. Be in good standing with the Maine Secretary of State;
- c. Not have any disqualifying violations within the past two years; and
- d. Have all officers, directors, managers, and general partners be natural persons who meet the minimum requirements for an individual applicant in 35-17 above.

35-19. Suspension and Revocation.

- a. Grounds for suspension. In addition to the grounds for suspension enumerated in Chapter 15, the following shall be grounds for suspension of a license pursuant to this Article:
 1. Any event or condition that would have disqualified an applicant from obtaining an original license, until that disqualification is resolved to the satisfaction of the City;
 2. The licensee has failed to timely supplement its license information, as required;
 3. The licensee has failed to file any required reports or furnish any information, as required; and
 4. The licensee has knowingly permitted, encouraged, failed to prevent, or failed to remedy a violation of this Article.
- b. Length of suspension. Any first suspension pursuant to this Article may not exceed six months after the resolution of the condition that formed the grounds for suspension. Any second and subsequent suspensions may not exceed one year after the resolution of the condition that formed the grounds for suspension.
- c. Grounds for revocation. In addition to the grounds for revocation enumerated in Chapter 15, the following shall be grounds for revocation of a license pursuant to this Article:
 1. Failing to timely remedy any condition in (a) above;
 2. Repeated significant violations of this Article; and
 3. Any event that would have disqualified the license from initially obtaining a license.

- d. Length of revocation. Any license revocation shall prohibit the licensee from being an owner, officer, director, manager, general partner, shareholder, and/or otherwise responsible for any marijuana business for one year after the resolution of the condition that formed the grounds for revocation.
- e. Procedures for suspension or revocation. Suspension or revocation proceedings shall be conducted by the Permitting and Inspections Department pursuant to the following procedures:
 - 1. Prior to suspension or revocation, a licensee shall be given notice of the reasons that the City is considering the action and an opportunity to be heard.
 - 2. Where the reason for suspension or revocation could reasonably threaten health, safety, and/or welfare, a license may be suspended without notice and hearing, so long as notice and an opportunity to be heard is provided as soon as practicable.
 - 3. Suspensions or revocations will be issued in writing.

35-20. Reserved.

35-21. Reserved.

35-22. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-23. Cultivation Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for any tier of cultivation license must also provide the following:

- a. The amount of plant canopy to be grown;
- b. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- c. Operations plan, including growing and fertilizing methodology, inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the marijuana being cultivated;
- e. Disclosure of chemicals, fertilizer, pesticides, and similar substances - whether organic or synthetic - to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;

- f. Written certification by a qualified engineer that the cultivation facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code; and
- g. Written certification by a Maine certified Master Electrician that the cultivation facility and operation meets all electrical standards adopted by the State of Maine and/or the City.

35-24. Manufacturing Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a manufacturing license must also provide the following:

- a. Description of manufacturing processes to be used, including extraction methods;
- b. Floor plans, including the location of processing equipment, storage areas for marijuana, chemicals and solvents, and other items; office areas, etc.;
- c. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured;
- e. Disclosure of chemicals, solvents, and similar substances to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;
- f. Written certification by a certified professional engineer, licensed by the State of Maine, that the manufacturing facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code;
- g. Written certification by a Maine certified Master Electrician that the manufacturing facility and operation meets all electrical standards adopted by the State of Maine and/or the City; and
- h. Where a licensee will manufacture food or food products, the licensee must also provide proof of licensing pursuant to the Maine Food Code and Chapter 11 of this Code.

35-25. Retail and Dispensary Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage of the facility under the control of the applicant and dedicated to the retail facility or dispensary and ancillary activities;
- b. Floor plans, including the location of retail space, storage areas for marijuana products, areas dedicated to the sale of non-marijuana products, office areas, etc.;
- c. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors, and similar information; and
- d. Documentation that the marijuana retail facility or dispensary meets the dispersal requirements of Sec. 35-42.

35-26. Small Scale Caregiver License.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage dedicated to the small scale caregiver use;
- b. Total plant canopy;
- c. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured; and
- e. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors and to ensure that the small scale caregiver operation does not exceed the five patients in one calendar month, and similar information.

35-27. Marijuana Testing License

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Floor plans, including the location of testing equipment; storage areas for marijuana samples, chemicals and solvents, and other items; office areas, etc.;
- b. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information; and

- c. Disclosure of chemicals, solvents, and similar substances to be used in the testing process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation.

35-28. Reserved.

35-29. Reserved.

35-30. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-31. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-32. Cooperation with municipal officials.

- a. The City Manager's designees shall be permitted to enter any marijuana business during regular business hours for the purpose of making inspections, and examining and copying records.
- b. Each and every person responsible for the management or control of the marijuana business must afford free access to every part of such establishment and to render all aid and assistance necessary to enable the City to make a full, thorough and complete examination thereof to determine compliance with this Article.
- c. Each marijuana business shall designate a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.
- d. Each marijuana business shall designate an emergency contact who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

35-33. Record retention Requirements.

In addition to those records required to be kept and maintained by the State of Maine, all marijuana business licensee shall also keep the following records:

- a. Invoices of all purchases for the previous two years demonstrating the source of those purchases;
- b. Receipts of all sales for the previous two years;
- c. Testing results, if any, for the previous two years;
- d. A copy of all current state and local licenses; and
- e. Information about each concern addressed to the community relations liaison, including the date and time of the contact; the substance of the concern raised; the contact information of the originator of that contact; the date and time of the licensee's response; and the substance of the response.

35-34. Compliance with Approvals.

All licensees under this Article shall comply with their approved plans, including security plans, waste disposal plans, operating plans, odor mitigation plans, and any other plans that are submitted to and approved by the City.

35-35. Security Requirements.

All marijuana businesses must implement the following minimum security requirements, which shall also be incorporated into a security plan.

- a. Building security. All fixed locations for a marijuana business shall have the following:
 1. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance but not disturb neighbors.
 2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are connected to a new or existing AES system, and are professionally monitored and maintained in good working condition.
 3. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
 4. Exterior electronic monitoring and video cameras. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.

5. Consistent and systematic prevention of loitering.
 6. Facilities approved by the Police Department or its third party designee for securing cash and all marijuana product packaged for sale as further detailed in regulations to be promulgated by the City Manager~~Police Department~~. Regulations shall require facilities sufficient to provide for the safety of employees and the public, and to prevent employee and third party theft and diversion.
 7. Any other security features that the Police Department deems necessary to ensure public safety and prevent theft and illegal transfer of marijuana.
- b. Mobile security. All mobile operations of a marijuana business, including pick-ups and deliveries of samples for testing, wholesale products, deliveries by small scale caregivers, and similar functions shall have the following security:
1. The vehicle may not have identifying marks associating the vehicle with a marijuana business;
 2. The vehicle must have video cameras showing the interior of the vehicle, as well as the exterior of the vehicle, and recordings must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request; and
 3. For mobile operations of a marijuana retail store, marijuana manufacturing and marijuana cultivation, the vehicle must have at least two individuals present in the vehicle.

35-36. Responsibility for Employees, Guests, and Customers.

- a. A marijuana business shall be responsible for all individuals on their premises.
- b. A marijuana business shall not sell any marijuana product to, or allow an individual to enter or to remain on their premises, who is
 1. Disorderly;
 2. Intoxicated;
 3. A threat to safety; or
 4. Has consumed or attempted to consume marijuana on the premises.

35-37. Information disclosure requirements.

- a. A copy of the business license issued pursuant to this Article must be prominently displayed at each location of the marijuana business.
- b. The business license number issued to each marijuana business must be clearly disclosed in all written advertising, marketing, and promotional materials.
- c. Each marijuana business must disclose the telephone number of its community relations liaison, after the statement, "For questions or concerns contact [number]" in all written advertising, marketing, and promotional materials; and must be prominently displayed at each location of the marijuana business.
- d. A sign, prominently displayed near the entrance to the marijuana business stating the minimum age to enter the business and, if a retail store, the minimum age to purchase products from the retail store.

35-38. Waste Disposal Requirements.

1. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers.
2. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be disposed of unless and until it has been modified such that it is not useable.
3. All waste and wastewater from any marijuana facility must be treated such that it will not create excessive odors, contamination, or pollution.
4. No waste from a marijuana business may be disposed of in residential trash.

35-39. Odor Mitigation Requirements.

The smell of marijuana shall not be detectable at the property boundary and/or at any adjoining use of the same property. A marijuana business licensee is responsible for taking any and all measures necessary to ensure that this standard is met.

35-40. Labeling.

Any marijuana business that sells marijuana or marijuana products at retail, must label all products as follows:

- a. All marijuana must be in labeled containers meeting the requirements of this section.
- b. All required statements must be in a font and size that is readily legible to the average person.

- c. Where applicable, the label must contain the following:
 - 1. A statement that the marijuana or marijuana product contains THC;
 - 2. If the marijuana or marijuana product has been tested for quality, purity, or potency, and any such representations are made about the marijuana or marijuana product, the following must be disclosed in close proximity to that representation:
 - i. The name, location, and license number of the testing facility; and
 - ii. The date of the test results.
 - 3. If the marijuana or marijuana product has not been tested for quality, purity, and/or potency by an independent third party, a statement that the product has not been tested for quality, purity, and/or potency.

35-41. Limitations on the Production and Sale of Marijuana Food Products.

The following limitations apply to the manufacture and sale at wholesale or retail of food or beverage products containing marijuana:

- a. Marijuana products may not be manufactured or sold in a shape or design that is intended to appeal to minors;
- b. Marijuana or marijuana derivatives may not be added to commercially available products that do not otherwise contain marijuana; and
- c. Marijuana food and beverage products may not be manufactured, processed, or packaged in the same kitchen or room, or using the same equipment, as non-marijuana food and beverage products.

35-42. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

- a. Hours of operation. Marijuana retail stores and dispensaries may only be open to the public between the hours of 7:00 a.m. and 10:00 p.m. daily, and no sale or other distribution of marijuana may occur on the premises outside of those hours.
- b. Age restrictions.
 - 1. A medical marijuana retail store may not allow any individual under the age of 18 to enter their premises, including as an employee.
 - 2. An adult use marijuana retail store may not allow any individual under the age of 21 to enter their premises, including as an employee.

- c. On-premises consumption of any products. The sale of food or beverages, whether they contain marijuana or not, for on-premises consumption is prohibited.
- d. Other uses prohibited. Marijuana retail stores and dispensaries may not have uses other than marijuana retail or other retail on the premises, including entertainment or restaurant uses.
- e. Education requirements.
 - 1. Marijuana retail stores and dispensaries must distribute a leaflet, brochure, or flyer with every marijuana product sold, or place a sticker or label on every marijuana product sold, that informs the purchaser of:
 - i. The appropriate dosage of marijuana products;
 - ii. The dangers of over consumption;
 - iii. The impact that marijuana has on brain development; and
 - iv. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 2. Marijuana retail stores and dispensaries must have a sign, prominently displayed by the point of sale, informing customers of:
 - i. That consumption of marijuana is illegal at the federal level and that consuming marijuana could impact employment, immigration status, the right to own firearms, the right to a commercial driver's license, and other rights;
 - ii. That consumption of marijuana and marijuana products in public is illegal; and
 - iii. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 3. The City shall draft acceptable language for the leaflet, brochure, flyer, sticker, and/or signs required by this subsection. Any marijuana retail store or dispensary wishing to use alternative language must receive prior approval from the City's Department of Health and Human Services.
- f. Fixed location sales only.
 - 1. A marijuana retail store, small scale caregiver, and/or dispensary may only sell marijuana and marijuana products in person, directly to the purchaser, and out of a fixed and licensed location.
 - 2. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.
 - 3. Mail order, telephone, internet or similar remote sales are specifically prohibited.

4. Notwithstanding the provisions of this section, a small scale caregiver, medical marijuana retail store, and/or dispensary may make deliveries of marijuana products to a qualifying patient with whom that small scale caregiver, medical marijuana retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of marijuana the small scale caregiver, medical marijuana retail store, and/or dispensary has previously verified in person.
- g. Drive through windows. A marijuana retail store or dispensary may not use a drive through window, or any other outdoor space to sell marijuana or marijuana products.
- h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' of any other marijuana retail facility or marijuana dispensary, as measured along or across public ways, in a straight line, from any entrance that is accessible to the public.

This distance restriction shall not apply to one adult use and one medical marijuana retail facility or dispensary that 1) share the same or immediately adjoining space; 2) have common ownership; 3) have consistent naming and branding; and 4) are permitted by the state to share such space.

- i. Cap on retail stores. The number of retail stores and dispensaries in the City combined shall be capped at 20.
 1. However, this cap shall not apply to any dispensary or medical marijuana retail store operating with a City business license, a change of use permit, and/or a site plan approval prior to September 1, 2019, so long as that dispensary or medical marijuana retail store does not apply to convert to an adult use retail store.
 2. If an existing dispensary or medical marijuana retail store applies to convert to an adult use retail store, the facility will become subject to the cap in this section and the allocation procedures of Sec. 35-13.
- j. Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary must attend a City-approved training within ninety days of beginning in that position and then annually thereafter. Employing a manager or front line staff that does not have the required training may be grounds for suspension. If the training program is provided by the Department of Health and Human Services, the Department shall charge a fee for the cost of this class.
 1. Retail stores must submit a list of employees annually with their license renewal, along with verification that they have successfully completed a City-approved training program.
- k. Transfer of retail and dispensary licenses. The ownership of a retail or dispensary licensee may only be transferred subject to the following limitations:

1. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
2. Any transfers of interest in a retail or dispensary license occurring before January 1, 2025 must not impact any of the licensee's points calculated under Sec. 35-13(f)(4).
3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

35-43. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, marijuana businesses shall also be subject to the following restrictions on all signs that are visible from the exterior of the building:

- a. Signs shall not contain the image of a marijuana leaf, plant, or readily identifiable marijuana product;
- b. Signs may not be animated or have variable messages;
- c. Signs may not have cartoons or similar images that are likely to appeal to minors; and
- d. Marijuana businesses may not advertise by leaflets or flyers placed or posted outside of the business premises.

35-44. Other Prohibitions.

- a. On-premises consumption. Consumption of marijuana on the premises of any marijuana business is prohibited.
- b. Outdoor growing. Marijuana plants may not be grown outdoors and may only be grown within a fully enclosed and secured structure.
- c. Indoor air quality. A marijuana business may not use any chemical, process, or methodology that would result in compromised indoor air quality, including the use of technology such as sulfur pots.
- d. Giveaways and samples prohibited. Marijuana businesses may not distribute marijuana or marijuana products free of charge.

35-45. Insurance and Indemnification.

- a. Each marijuana business, other than a small scale caregiver, shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$1,000,000.00 per occurrence for bodily injury, death, and property damage.
- b. Each small scale caregiver shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000.00 per occurrence for bodily injury, death, and property damage.
- c. Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the City prior to obtaining the final license. Certificates shall guarantee ten days notice to the City of termination of insurance from the insurance provider or agent. The City's acceptance or lack of acceptance of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this article.
- d. By accepting a license from the City for a marijuana business, the licensee knowingly and voluntarily waives, releases and discharges the City from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the City, or any of its officers, agents, employees, representatives, insurers, successors and assigns for 1) any injuries, damages, or liabilities resulting from the arrest, prosecution, or other consequence of the marijuana business or its parties of control for a violation of local, state, or federal laws, rules, or regulations; and 2) any claim by a third party against the marijuana business.
- e. To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of, resulting from, or relating to the performance of any license issued to licensee under this Article or the operation of the licensee's marijuana business. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall survive termination of any license issued to a licensee under this Article and shall not be limited by the provision for insurance in this Article.
- f. This article shall not be construed as imposing upon the City or any official, agent, or employee of the City, any liability or responsibility for damages to any person resulting from or in relation to the performance of this license, nor shall the City or any official, agent or employee of the City be deemed to have assumed any such liability or responsibility by reason of inspections authorized herein, or the issuance of any license.



Health & Human Services Department
Kristen Dow, Director

MEMORANDUM

**TO: Health and Human Services & Public Safety (HHS& PS) and
Economic Development Committees**

FROM: Kristen Dow, Director, Health & Human Services Department

DATE: August 27, 2019

**SUBJECT: Staff Response to Questions Raised at August 6, 2019 Joint
Committee Meeting**

Introduction

The information contained in this memo is in response to questions raised by the joint HHS&PS and Economic Development committee members during the meeting on August 6, 2019, regarding the Public Health Division's input on the Draft Retail Marijuana Ordinance.

1) What are the public health implications as they relate to imposing a cap on the number of retail licenses available in Portland?

Imposing a cap on retail marijuana licensing will support efforts to protect the public from health or social harms. Initiating the proposed cap of 20 licenses, as a precautionary measure, will help to protect our vulnerable populations (i.e. protect youth from the advertising and increased access) and will allow for effective implementation of the rules and regulations.

As a Schedule 1 drug, (Schedule 1 drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence)⁴ the U.S. Food and Drug Administration provides few testing or regulatory oversight functions of marijuana plants or products, unlike for tobacco and alcohol products. Implementation of regulatory oversight can take significant time and financial resources.¹

Precautionarily, a limited number of retail licenses, or a phased-in approach could:

- Slow down the commercialization of the product, limit youth access, and protect against high-potency products linked with a higher frequency of psychoses and dependency
- Ensure a strong monitoring and surveillance system to track the impact of adult-use marijuana legalization on health, public safety, and social conditions
- Ensure a high-quality regulatory scheme is put in place that carefully considers potential health and social impacts, streamlines processes across agencies, and considers approaches to mitigating the long-term costs of regulating marijuana in Maine in the absence of Federal Drug Administration regulations

Research in states including Colorado and Illinois supports local-level caps in the interest of protecting public health.^{1,2}

An article from the Journal of the American Medical Association lists additional unexpected health effects of marijuana in Colorado, including: cyclic vomiting syndrome with severe abdominal pain, vomiting, and diaphoresis, as well as unintentional marijuana ingestion by children.³

Marijuana edibles have presented challenges, as edibles have been the leading cause of health care visits due to marijuana intoxication by people of all ages. This is likely due to the misunderstanding by adults of the delayed effects of ingestion compared to inhalation. While smoking marijuana results in clinical effects within ten minutes, oral tetrahydrocannabinol (THC), one of at least 113 cannabinoids identified in cannabis and the principal psychoactive constituent of cannabis, does not reach significant blood concentration until at least thirty minutes and peaks at approximately three hours. While 10-30mg of THC is recommended for intoxication, edibles such as “cookies,” “brownies,” or “gummy bear” packages often contain approximately 100mg, resulting in unintentional overconsumption.

2) What information does the City propose to include in the educational materials provided to customers?

The Public Health Division’s Substance Use Prevention Program is responsible for youth and young adult substance use prevention throughout the City of Portland. The program’s content experts propose implementing a framework similar to evidence-based alcohol and tobacco prevention strategies. These strategies, selected for their proven impact on reducing youth access and supporting positive role model behavior, include:

- Required retailer education (and encouraged adjacent non-retailers) - educating retailers of regulations and how to communicate with customers about the product(s), as well as technical assistance on pricing and promotion strategies.
- Accidental ingestion and safe storage education – the Substance Use Prevention Program offers a lock-box loan program and will provide tips for parents to keep their children safe around marijuana, including how to respond in an emergency. This is particularly important, with respect to the 160% increase in calls about children to the Northern New England Poison Control Center since the legalization of recreational marijuana in 2016.⁵
- Brain development education – while marijuana is legal to purchase at the age of 21, a young person’s brain is not fully developed until about age 25. Early initiation of marijuana use can have lasting consequences.⁶
- Risks of overconsumption – individuals of all ages can overconsume marijuana and it is important for people to have a firm understanding of marijuana dosing. Additionally, there are steps that can reduce overconsumption, such as labeling requirements and potency caps.

In addition to health-related education, we are proposing a public education campaign for new Mainers who do not have citizenship and the legal and immigration implications for individuals of any age.

Sources

- 1) *Protecting Public Health and Promoting Equity in Adult Use Marijuana Legalization in Illinois: Recommendations for Policy Makers*. Illinois Public Health Institute. November, 2018 http://iphionline.org/wp-content/uploads/2018/12/Public-Health-Equity-Framework-Paper-FINAL_formatted.pdf
- 2) *Colorado Retail Marijuana: Education & Prevention Resource Guide*. Colorado Department of Public Health & Environment. https://www.colorado.gov/pacific/sites/default/files/MJ_RMEP_Resource-Guide.pdf
- 3) *The Implications of Marijuana Legalization in Colorado*. Journal of the American Medical Association. January, 2015. <https://jamanetwork.com/journals/jama/article-abstract/2022370>
- 4) *Understanding Drug Schedules*. healthychildren.org. 2019. <https://www.healthychildren.org/English/ages-stages/teen/substance-abuse/Pages/Controlled-Substances-Not-Just-Street-Drugs.aspx>
- 5) *Poison Control Calls for Kids up 160% Since Recreational Marijuana Legalization*. WGME. August, 2019. https://wgme.com/news/marijuana-in-maine/poison-control-calls-up-160-since-recreational-marijuana-legalization?fbclid=IwAR0TpIwwK7oOhMeUledN7iR-e-rZKW3_8vQPBohr2KVLTVYfwbl0QsuUVDk
- 6) *Brain Development, Teen Behavior and Preventing Drug Use*. Partnership for Drug-Free Kids. <https://drugfree.org/article/brain-development-teen-behavior/>

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8300 info@portlandmaine.gov •
www.portlandmaine.gov



The Teenage Brain:

Your teen may not make sense to you, but their brain can! Understand the impact of alcohol and drugs during this critical time of brain development.

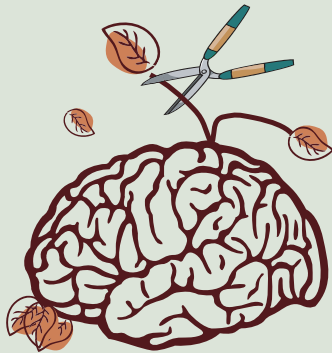
Who is this child?

She won't talk to you but spends hours on the phone talking with her friends. He acts like a grown-up one minute and like a kid the next. She always seems to have a different opinion than you and needs to express it.

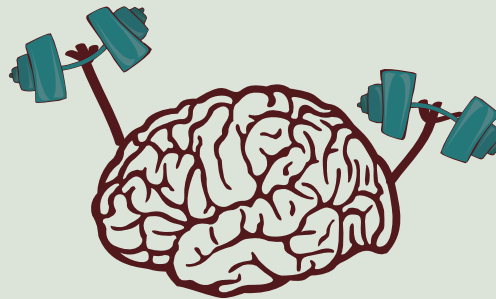
Sound familiar? You must be the parent of a teenager!

What is really going on?

During young adulthood, the brain goes through a wave of major development. In fact, studies show that the brain isn't fully developed until well into early adulthood.¹



Pruning: The brain cells and neural connections that are used the least **get pruned away and die off.**²



Strengthening: The brain cells and neural connections that are used the most **get stronger.**²

The more time a teen spends learning music or mastering a sport, the stronger those brain connections become. The same is true for the connections used for watching TV or playing video games.

Why does he act that way? What was she thinking?

The development of the teen brain has a lot to do with it! Based on the stage of their brain development, young people are more likely to act on impulse and are less likely to stop and consider the potential consequences of their actions, even if these behaviors can be dangerous.¹

Frontal Cortex: This is the area of the brain that controls reasoning and helps us think before we act. It is still changing and developing well into early adulthood.¹



Hormones: During puberty, hormones associated with risk taking and sensation seeking are surging when the brain's ability to understand consequences and make decisions is not fully developed.³

Amygdala: This region of the brain is responsible for instinctual reactions such as fear and aggressive behavior. This region develops early.¹

Add drugs and alcohol to the mix?

The combination of “raging hormones” and an immature brain explain why teens are vulnerable to experimenting with alcohol, tobacco, and other drugs. These substances can have a long term impact on brain functions.³



Alcohol

- Youth who begin drinking before age 15 are 4 times more likely to become alcohol dependent.⁴
- Alcohol tricks the brain’s pleasure reward system, strengthening neural pathways that are based on a harmful chemical instead of real life experience.³
- Alcohol suppresses the brain’s frontal lobe, leading to poor decision-making and risky behavior.⁵
- Heavy, on going use of alcohol can have a long term impact on brain functions such as learning, memory, and the ability to understand consequences.⁶

Prescription Medications

- Prescription medications are prescribed by a medical professional. Some of these may affect the brain, especially those used to treat pain or mental health disorders.⁷
- Commonly misused prescription medications include prescription stimulants, anxiety medications, sleep disorder medications, and prescription painkillers.⁷
- Prescription painkillers reduce pain, bind to opioid receptors in the brain, and may lead to a physical dependence and misuse.⁷



Marijuana

- 1 out of 6 people who start using marijuana as a teen become dependent.⁸
- Long time marijuana users report poor mental and physical health and a lower quality of life.⁹
- Students who smoke marijuana tend to get lower grades and are more likely to drop out of high school.⁹
- A recent study found that adults who began habitually smoking marijuana before age 18 showed an eight-point drop in IQ, which is a considerable decline.⁸

What Can I Do?

Remember That:

Teenagers are energetic, thoughtful, and idealistic, with a deep interest in what’s fair and right.

Although the adult brain is much different than the adolescent brain, adolescents can make good decisions and differentiate between right and wrong. Just remember, they may have a harder time making good decisions in high pressure social situations. This doesn’t mean that they shouldn’t be held responsible for their actions.

Set Limits and Stay Connected:

Know the facts.

Set clear rules around underage drinking and drug use and stick to them.

Know your child’s friends and the parents of your child’s friends.

Trust, but verify – check in with other parents about your teen’s activities or drop by once in a while where your teen tells you they will be.

1: Facts for Families. American Academy of Child and Adolescent Psychiatry. December 2011. 2: Research Facts and Findings. Adolescent Brain Development. Collaboration of Cornell University, University of Rochester and NYS Center for School Safety. May 2002. 3: The Adolescent Brain and Substance Use, Getting Results Fact Sheet. California Department of Education. 2009. 4: Underage Drinking Costs. Underage Drinking Enforcement Training Center. www.udetc.org/UnderageDrinkingCosts.asp 5: Too Smart To Start. Alcohol and the Developing Brain. SAMHSA 6: Tapert et. al. Alcohol and the Adolescent Brain. National Institute on Alcohol Abuse and Alcoholism. 7: Mind Over Matter: Prescription Drugs. National Institute on Drug Abuse. National Institutes of Health, U.S. Department of Health and Human Services. <https://teens.drugabuse.gov/teachers/mind-over-matter/prescription-drugs>. 2009. 8: The TEDS Report. Marijuana Admissions to Substance Abuse Treatment 18 to 30: Early vs. Adult Initiation. Substance Abuse and Mental Health Services Administration. 9: Marijuana Facts for Teens National Institute on Drug Abuse. National Institutes of Health. 2017.

**For more information, please contact: Portland Public Health's
Substance Use Prevention Program: jdosseva@portlandmaine.gov**

Adapted from materials created by the Public Health Program of the Opportunity Alliance



PORTLAND PUBLIC HEALTH

Safety Considerations for Marijuana Use

②1 Marijuana consumption is prohibited to anyone under 21 years old.



THC is the chemical in marijuana that makes a person feel high.

Start low: a single serving of 5 mg THC or even less.



Go slow: marijuana products may take between 2—4 hours after consuming to take full effect.



First time using: be cautious as eating too much of a marijuana edible may lead to unwanted effects.



Driving high may result in a DUI. Laws prohibit driving under the influence of marijuana.



Public Health
Portland Public Health Division
Office of Prevention, Control, and Disease Response Management

PORTLAND PUBLIC HEALTH

Safety Considerations for Marijuana Use



Using marijuana while pregnant or breastfeeding may be harmful to your baby.



Store marijuana and marijuana products safely. Lock them up, out of reach from children and pets.



If you've consumed too much, or suspect a child or pet has accidentally consumed marijuana, call for help. Call the **Poison Control Hotline** at **1-800-222-1222** for free, quick, and expert help.

For more information contact Janet Dosseva
at jdosseva@portlandmaine.gov.





WARNING: THIS PACKAGE CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. CANNABIS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CALL POISON CONTROL (1-800-222-1222) IF YOU SUSPECT A CHILD OR PET HAS CONSUMED A CANNABIS PRODUCT.

MEMORANDUM

TO: Health and Human Services and Public Safety Committee; Economic Development Committee
CC: Greg Mitchell; Kristen Dow
FROM: Staff working group
DATE: November 20, 2019
RE: Marijuana Business Licensing Update

INTRODUCTION

At the last Committee meeting on August 6, 2019, the Staff Working Group presented an initial draft of a proposed new ordinance regulating marijuana businesses. The Committee had questions and feedback on that draft, which the Working Group has worked diligently to investigate and address. Staff has also taken a significant amount of feedback from members of the industry, which staff has also considered and addressed, where appropriate. Based on all of that, the Staff Working Group has proposed several changes to the ordinance and a new version of the ordinance is in your packets.

This memo addresses the following topics:

1. Method of allocating retail licenses
2. 20 store cap on retail licenses
3. Prohibition on processing marijuana and non-marijuana products in the same facility
4. On-premises consumption of non-marijuana food products
5. Consumer education requirements
6. Number of plants per cultivation tier
7. Including dispensaries
8. Landlord permission
9. Testing facility ISO accreditation
10. Security Requirements
11. Fee Schedule
12. Changes to other Code chapters

ANALYSIS

1. Method of Allocating Retail Licenses - Weighted Lottery

In the initial draft of the ordinance, staff proposed allocating the limited number of retail licenses on a first-come-first-served basis. The Committee had significant questions and concerns about this method, as did members of the industry. In response, the Staff Working Group has rewritten the ordinance to reflect a “weighted lottery” system. The new proposal gives the City Manager the discretion to create different rounds of licensing for retail stores. For each round, the City Manager would determine an opening date for applications, a closing date, and the number of licenses to be allocated during that round. Upon submission of an application for a particular

round of licensing, staff would review the application for completeness and allow the applicant one week to cure any deficiencies. After the application period closed, all complete applications would be scored based on the following matrix:

At least 51% owned by socially disadvantaged individual(s), as defined by the Small Business Association regulations; women; veterans; and/or individuals who immigrated to the United States within the previous ten years.	+1
At least 51% owned by individual(s) who have been a Maine resident for at least five years.	+1
Owned by individual(s) with experience running a licensed marijuana retail store or dispensary in Maine or another state with no history of violations or license suspensions or revocations	+1
Applicant has previously been licensed by the State of Maine or the City for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years	+1
Ownership or leasehold interest in proposed retail location by applicant for a minimum of 2 years	+1
Location greater than 500 feet from school property	+1 per additional 1,000 ft.
Business plan committing to annually contribute 1% net profits as a restricted donation to the City for youth education on substance use education and prevention	+1
Business plan committing to sell only marijuana products, CBD, and related paraphernalia	+1
Evidence of at least \$150,000 in liquid assets	+1

Licenses for that round would be awarded based on the number of points, and the applicants with the highest score would receive the first license. Licenses would continue to be awarded in order of next highest score, so long as the applicant can also meet the 250' buffer requirement between retail stores, and all other ordinance requirements. If any applicants have a tie score and there are not enough licenses or the applicants are within 250' of each other, the license(s) would be awarded based on a lottery.

2. Cap on Number of Retail Stores

The Committee expressed concerns about the 20 retail store limit. Staff did consider the feedback and questions, and still stands by its recommendation of a 20 store cap as the most prudent way to implement not only a new ordinance, but also a completely new industry in the City. This memo does provide context with respect to other jurisdictions that have capped the number of marijuana retail stores, and also experiences of other jurisdictions with respect to their caps. Please also see the attached memo from the HHS Department addressing this issue.

Caps are not new to the City of Portland, and the Council has used them in other contexts. For example, the City currently limits the number of non-owner occupied short term rental units to 400 to avoid adverse impacts on neighborhoods and ensure that the City retains a strong residential population. The Jetport limits the number of Jetport Taxi licenses to 42 to avoid oversaturation and unhealthy competition.

Additionally, the number of agency liquor stores in the City are limited by the Bureau of Alcoholic Beverages. That limitation is based on population and Portland is limited to 11. Those limits are also in place to manage the impact on the community.

To provide context for the cap recommended by staff, a sampling of caps implemented in other cities and towns across the country is provided below, in addition to the population in those jurisdictions, and how that cap translates to the number of retail stores per 1,000 population.

Municipality	Number of Stores	Population (2017 est.)	Stores per 1,000 Population
Lowell, Massachusetts	5	111,346	0.04
Kennewick, Washington	4	81,607	0.05
Fort Collins, Colorado	9	165,080	0.05
Seattle, Washington	42	724,245	0.06
Tacoma, Washington	16	213,418	0.07
Worcester, Massachusetts	15	185,667	0.08
Salem, Massachusetts	5	43,411	0.12
Pacifica, California	6	39,087	0.15
Pullman, Washington	5	33,354	0.15
Fitchburg, Massachusetts	7	40,793	0.17
Lansing, Michigan	25	116,986	0.21
Grover Beach, California	4	13,628	0.29

Portland, Maine	20	66,882	0.30
Denver, Colorado	226	705,439	0.32
W. Hollywood, California	16	37,080	0.43
Fairbanks, Alaska	25	31,664	0.79
Pittsfield, Massachusetts	35	42,591	0.82
Hallowell, Maine	2	2,365	0.85
Farmington, Maine	7 (4 adult use)	7,633	0.92 (0.52 adult use)
Poland, Maine	10	5,590	1.79

Although many jurisdictions have not explicitly stated the reasoning for their chosen caps, there are a few exceptions:

Massachusetts - Some Massachusetts jurisdictions have adopted their cap relative to the number of liquor store licenses, setting it specifically at 20% of the number of liquor stores.

Washington - The State of Washington had originally allocated the number of retail licenses in each larger municipality, with an additional amount allowed for the remaining towns in a given county. After a study in 2015 of the estimated distribution of the marijuana market, the state adjusted its caps upwards to the current standards.

Denver, Colorado - Denver originally had no caps on stores when its adult-use industry became legal in 2014. By the end of 2015, however, Denver identified the proliferation of marijuana stores, particularly in more economically disadvantaged neighborhoods, as a concern, along with significant neighborhood complaints. In 2016, the Denver City Council voted to adopt caps on both growing operations and retail stores.

Fort Collins, Colorado - To determine the cap on medical retailers, Fort Collins determined their cap relative to the number of medical patients. Their cap is set at one retail store for every 500 medical patients, for a current total of nine licenses (not including existing stores at the time of legislation). Only medical licensees are allowed to convert to adult use licensees.

Additionally, Oregon recently passed legislation to limit its production, after a study found that supply significantly outstripped demand in the previously un-capped market.

Staff is also proposing to add in “grandfathering” language for medical retail stores or dispensaries that are currently operating in the City, so long as they do not apply to change to an adult use facility. This provision is limited to only those locations with an approved change of use

permit or site plan approval. Building permits, certificates of occupancy, or other types of permits or approvals will not be sufficient to grandfather in a store. As written, this provision may have the effect of slightly increasing the total number of retail stores and/or dispensaries operating in the City above the proposed 20.

3. Separating manufacturing

One question that arose was about the required separation for facilities manufacturing both marijuana products and non-marijuana products; the example given was a bakery that wants to produce both types of baked goods. Currently, any adult use marijuana manufacturing facility is already prohibited from manufacturing non-marijuana products by the state. Keeping this requirement in the proposed ordinance would even the field for medical and adult use manufacturing, and make the same rules apply.

Additionally, this prohibition on using the same space for manufacturing marijuana and non-marijuana products is fairly consistent across other jurisdictions that have legalized adult use marijuana.

4. On-premises consumption of food items

During the zoning process, staff had proposed an absolute prohibition on marijuana retail stores (recreational or medical) selling non-marijuana food products. Staff's concerns were two-fold. First, it would be nearly impossible to enforce the prohibition against on-premises and/or public consumption. Once removed from its packaging, it would be impossible for enforcement staff to determine whether a product being consumed contained marijuana. Additionally, the selling of both products could lead to consumer confusion between the marijuana and non-marijuana products.

The Council was uncomfortable with the absolute prohibition on sales of non-marijuana food products, so staff revised its position, with input from the industry. The current proposal is that marijuana and non-marijuana products can both be sold, but neither can be consumed on-premises. For example, a retail store can sell both marijuana and non-marijuana products, but cannot have any bar stools, tables, or other eating areas, and all products must be packaged to go. Again, this is intended to avoid the situation where an inspector walks into a store, observes an individual consuming product, but cannot determine whether or not that product contains marijuana. Perhaps even more importantly, allowing on-premises consumption of non-marijuana products is more likely to encourage on-premises consumption of marijuana products, because people will be encouraged to linger at the retail store, rather than take their purchases and go home to consume.

If the Council chooses to remove this ban against on-premises consumption of any products, it will be practically impossible for staff to enforce the prohibition against on-premises consumption of marijuana products. On-premises consumption of marijuana products is

prohibited at the state level, and also carries an increased risk of public and health risks, as outlined in the memo from the HHS Department.

For context, many other jurisdictions prohibit the sale of non-marijuana goods altogether, including California (may only sell cannabis accessories and branded merchandise), Canada (accessories only), Colorado (no non-marijuana consumable products), Nevada (paraphernalia, accessories, and CBD and hemp products), and Washington (paraphernalia only).

5. Educational requirements

The first draft of the proposed ordinance required retail businesses to provide certain information to consumers at the point of sale in a flyer or other handout. The revised version updates those requirements; allows the notifications to be placed on a sticker instead of a flyer; and provides that the City's HHS Department will draft the required language. The updated ordinance also requires a sign at the point of sale also notifying purchasers of certain resources and risks of consumption. The HHS Department has provided draft educational documents that have been included.

Finally, staff is proposing to add a required class on responsible selling for all retail and dispensary front line staff . This is similar to training already required for sales of alcohol. HHS would charge separately for this class, with the goal to cover the costs of providing the class.

6. Plants per cultivation tier

The Committee posed the question of how many plants would each tier of cultivation - which is based on plant canopy and not number of plants - allow. The number of plants depends largely on the growing strategy of the cultivator. However, each tier would allow the following ranges of plants:

- Tier 1 (500 sq. ft.): 83 - 500 plants
- Tier 2 (2,000 sq. ft.): 333 - 2,000 plants
- Tier 3 (7,000 sq. ft.): 1167 - 7,000 plants

7. Dispensaries

Although the original draft of the ordinance applied to dispensaries by nature of the definitions, it was not explicit and left many issues unclear. The revised ordinance makes it clear that dispensaries will also be subject to the same regulations as other retail stores. The proposed fee for dispensaries will be identical to that for medical retail stores.

8. Landlord permission

The ordinance originally stated that applicants would need to submit notarized, written permission from the landlord. Staff has added an alternative to that requirements, allowing an

applicant to provide a copy of a fully executed lease agreement that specifically states the space may be used as a marijuana business.

9. Testing accreditation

Staff removed the requirement that testing facilities provide proof of accreditation at the time of application. Testing facilities will likely not be able to get accreditation before opening, the state gives facilities one year to provide proof of accreditation, and the state will also be confirming accreditation. Staff felt that requirement could be removed from the local ordinance, as it would be duplicative.

10. Security Requirements

In response to questions from the industry, the most recent version of the ordinance provides updated security requirements. The relevant changes include:

- Removing the requirement that small scale caregivers utilize the same safes as required for larger operations;
- Adding the requirement that cash be kept in a drop box safe;
- Clarifying the type of safes to be used;
- Modifying the mobile security requirements; and
- Requiring that a burglar alarm be connected to an AES box, which will sound directly at dispatch.

11. Fee Schedule

The fee schedule proposed by the staff working group last meeting has remained the same, with the exception of the addition of dispensaries which will be subject to the same fees as medical retail stores. The fees are based on the anticipated cost of implementing and maintaining this program, as well as estimates of the number of licenses. Given that this is an entirely new industry, the anticipated number of licenses in each category is simply an estimate.

To manage this new industry properly, the plan is to add several positions with specialty training in the various departments that will be responsible for licensing and monitoring the new businesses. The new staff will take on the significant burden of reviewing applications, inspecting new facilities, responding to complaints, and conducting multiple inspections annually for at least the first few years. Proposed staff will include an additional Health Inspector, Licensing and Registration Assistant and Code Enforcement Officer/Life Safety Plan Reviewer, which we anticipate will be dedicated nearly full time to marijuana licensing, inspections, and enforcement for at least the first several years. Those salaries will account for \$208,707 of the anticipated costs of the program.

In addition, the City will add another police sergeant, whose time will be dedicated approximately 50% to the marijuana licensing program for a cost of \$51,760. Public Works and Corporation Counsel's Office are planning to absorb the additional work into their departments without adding staff. The DPW costs of reviewing applications and inspections for solid waste

and wastewater are estimated at \$10,060 (10% of a coordinator's time), while the value of Corporation Counsel's Office is estimated at \$22,650 (15% of an attorney's time) (which will significantly increase with any litigation over licensing decisions).

We have estimated the number of licenses that will be applied for in each category below along with the proposed fee. The number will most likely fluctuate year to year as the market settles.

License Type	Annual Fee	Estimated #	Annual Estimated Receipts
Cultivation – Tier 1	\$500	30	\$15,000
Cultivation – Tier 2	\$5,000	3	\$15,000
Cultivation – Tier 3	\$7,500	7	\$52,500
Dispensary	\$5,000	1	\$5,000
Manufacturing – manual processing only	\$2,500	5	\$12,500
Manufacturing – high hazard processing	\$5,000	5	\$25,000
Retail – medical marijuana	\$5,000	5	\$25,000
Retail – adult use	\$10,000	15	\$150,000
Small scale caregiver	\$250	125	\$31,250
Testing	\$1,000	3	\$3,000
TOTAL			\$319,750
Estimated annual costs			\$319,057

12. Changes to other Code provisions

In addition to the changes to Chapter 35 that are in front of the Committee, staff also proposes making changes to the following Chapters:

- **Chapter 2.5** - To allow certain types of burglar alarms to ring directly through to dispatch, certain provisions of Chapter 2.5 will need to be changed:

Sec. 2.5-19. Direct connections to police department.

Except as otherwise specifically provided in this code, no~~No~~ alarm user shall maintain any direct connection from an alarm system to the communication center of the police department.

Sec. 2.5-20. Automatic dialing devices.

Any alarm system may be connected to any central station by an automatic dialing device, but no such device shall connect any alarm system to the communication center of the police department, except as otherwise specifically provided in this code.

- **Chapter 10** - Staff is recommending an amendment to Chapter 10 to require that all manufacturing facilities be sprinkled, other than those using only CO₂ and nonhazardous extraction processes.

Section 38.3.1 shall be added as follows:

For other than CO₂ and nonhazardous extraction process, any facility conducting marijuana extraction shall be protected throughout with a NFPA 13 sprinkler system.

- **Chapter 11** - Staff is recommending adding an additional class of food license solely for manufacturing marijuana.
- **Chapter 15** - Amendments to Chapter 15 will incorporate the final licensing fees, as well as the application fees. Initial application for all license classes other than small scale caregivers are proposed to be \$500 and renewal application fees are proposed to be \$100. Small scale caregiver application fees will be commensurate with existing application fees of \$45 for initial and \$35 for renewal.

MEMORANDUM

TO: Health and Human Services and Public Safety Committee; Economic Development Committee
CC: Greg Mitchell; Kristen Dow
FROM: Staff working group
DATE: December 30, 2019
RE: Marijuana Business Licensing Update

INTRODUCTION

At the last Committee meeting on November 26, 2019, the Committee had additional questions for staff, which are addressed here:

1. Whether other jurisdictions require manufacturing facilities be sprinkled
2. The definition of “school” for purposes of the 500’ setback and additional points for a retail store applicant for distance from a school
3. The maximum distance that a retail store could get from a school
4. How “liquid assets” might be defined if points were given to a retail store with minimum liquid assets on hand
5. Whether cannabis businesses can access lines of credit and performance guarantees
6. Additional information about the SBA’s business development program and how the City might mirror that process for giving points to socially and economically disadvantaged individuals
7. A proposal to allow the transfer of retail store licenses if the Committee chose to do so

ANALYSIS

1. Requirements in other jurisdictions to sprinkle manufacturing facilities.

Staff has proposed adding a requirement to Chapter 10 of the City Code that would require marijuana manufacturers to install sprinklers. Manufacturing facilities can use highly flammable and combustible materials in their processing, and manufacturing facilities have produced some significant explosions across the country. In fact, the Bangor Fire Department responded to an explosion earlier this year at a manufacturing facility, where the explosion was only contained because it was in a former military building with one-foot thick concrete walls and ceiling.

With respect to the requirement to sprinkle manufacturing facilities, the Committee asked if other communities were imposing similar requirements. In Maine, we are aware that the Town of Sanford has a similar requirement to install automatic sprinkler systems above the requirements of the NFPA 1 Fire Code. In fact, Sanford goes above and beyond what City staff is proposing and also requires that all marijuana retail businesses be sprinkled.

2. Definition of schools for purposes of buffer requirements.

The amendments to the Zoning Code that were previously passed require a 500' distance from "a preexisting public school, private school, or a public preschool program, as defined by 20-A M.R.S.A. §1." The draft of the licensing ordinance also provides points for each additional 1,000 feet from a school. The Committee asked for clarification on the definition of school. Under state statute: "Public school" means a school that is governed by a school board of a school administrative unit and funded primarily with public funds. "Private school" means an academy, seminary, institute or other private corporation or body formed for educational purposes covering kindergarten through grade 12 or any portion thereof. "Public preschool program" means a program offered by a public elementary school pursuant to chapter 203 that provides instruction to children who are 4 years of age, including but not limited to a Head Start program that is approved as a component of the public preschool program."

3. Maximum distance that a business could get from a school.

Staff analyzed the maximum distance a retail marijuana (adult and/or medical) store could get from a school by measuring distances from school parcels to the farthest extent of areas zoned to permit retail marijuana sales. First results produced a misleadingly high maximum distance of nearly 10,000 feet, because the area of the B-4 included in the initial results is currently state-owned land near the Jetport and unlikely to be available for retail uses. Further analysis revealed a maximum distance of approximately 4,000 feet. Under the draft regulations, this analysis shows approximately 36% of the allowed total zone areas potentially offering 1 point, and approximately 14.5% affording 2 points.

4. How "liquid assets" are defined in jurisdictions that require minimum assets.

Staff has proposed awarding one point for marijuana retail applicants that can provide evidence of at least \$150,000 liquid assets. At the last meeting, staff provided examples of other jurisdictions that require minimum liquid assets for licensure at all. The Committee asked about how those jurisdictions defined the required assets.

- Pennsylvania – for dispensaries requires \$150,000 "on deposit with one or more financial institutions," basically requiring cash on hand.
- Aurora, CO – requires \$400,000 "in liquid assets available under the applicant's control." Aurora defines liquid assets as "assets that can be readily converted into cash, and includes assets that will be placed directly into the retail marijuana store. Liquid assets include, but are not limited to, the following: funds in checking or savings accounts, certificates of deposit, money market accounts, mutual fund shares, publicly traded stocks, United States savings bonds, furniture and equipment, packaged marijuana, and related products and inventory to be transferred to the retail

marijuana store. "Liquid assets" does not mean household items, vehicles, marijuana plants, and real property and improvements thereto."

- Michigan – requires that a retail store have \$300,000 of "capitalization," with not less than 25% in liquid assets. "[L]iquid assets include assets easily convertible to cash, including, but not limited to, cash, certificates of deposit, 401(k) plans, stocks, and bonds."

5. Whether cannabis businesses can access a line of credit, other types of liquid assets, and a performance guarantee.

Currently, there is one Maine financial institution, cPort Credit Union, that is openly serving the cannabis industry and has plans to roll out lending products for that industry later this year. Additionally, the Secure and Fair Enforcement (SAFE) Banking Act of 2019, supported by Senators King and Collins, passed in the House of Representatives in September 2019. The Senate has not yet voted on it. This legislation may provide the federal assurances that banks and credit unions need to provide banking services and financing products to the cannabis industry.

Given similar requirements in other jurisdictions across the country, and the more robust cannabis industry elsewhere, staff will try to get additional information on resources for cannabis industries outside of Maine.

6. The SBA's Business Development Program definitions.

The proposed ordinance provides one point towards retail licensing for a business that is "At least 51% owned by socially disadvantaged individual(s), as defined by the Small Business Association regulations; women; veterans; and/or individuals who immigrated to the United States within the previous ten years." The Committee asked for additional information on the SBA process and how that might be implemented at the City level. Suggestions were also made to ensure that individuals qualifying for the point are both socially and economically disadvantaged to track the SBA requirements, and to remove recent immigrants from the qualifications.

The SBA regulations state that, "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control." The regulations specify that there is a rebuttable presumption that the following individuals are socially disadvantaged:

- Black Americans;
- Hispanic Americans;
- Native Americans;

- Asian Pacific Americans; and
- Subcontinent Asian Americans.

Individuals who do not fall within those groups may establish individual social disadvantage through a set of criteria defined by the SBA regulations.

In addition to being socially disadvantaged, under the SBA regulations, an applicant must also be economically disadvantaged to qualify for programming. Economic disadvantage is established through the submission of personal financial information. Simplified down, the individual must show:

- Net worth of less than \$250,000. This does not include equity in the applicant marijuana business, a personal residence, certain retirement accounts, and certain other assets.
- Average income of less than \$250,000 for the previous three years.
- Total net worth of less than \$4 million.

The SBA evaluates each application individually with the help of certain certifications and narratives, and staff would propose to implement a similar process for the City. The Council may consider allowing the City Manager to promulgate rules for this certification process.

7. Alternatives to allow limited transfer of retail stores ownership.

Under City ordinances, no transfer of business licenses is permitted at all. However, in practice, the City has allowed a de minimus transfer of up to 10% without requiring a new business license. This is true for all licenses, including those that may be forfeited in the case of a change of ownership, such as entertainment licenses in the Entertainment Overlay District, short term rentals, and certain taxi licenses. Staff recommends treating marijuana retail businesses in the same manner. Allowing transfers will create a market for retail licenses and will undermine the City's efforts at ensuring that the most qualified and responsible individuals get retail licenses.

That said, if the Committee does want to allow some ability to transfer marijuana retail licenses, staff recommends allowing the transfer of no more than 25% of the business in any five-year period, and recommends that transfers be subject to the following restrictions:

- Any transfer must not impact the business's qualification points under the matrix currently proposed in § 35-13(f). E.g. if a business gained a point for being 51% women-owned, one point for a five-year successful business history, and one point for an individual with experience running a dispensary in Maine, the transfer may not impact those point awards.
- The new owners must pass the same requirements and background checks as any initial owner.
- The transfer must be approved by the State.



CITY OF PORTLAND
Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

To: Members of the Economic Development Committee and Health & Human Services Committee

FROM: Jon P. Jennings 
City Manager

DATE: January 28, 2020

RE: Draft Proposal of the Scoring Rubric for Retail Marijuana Licenses

After reviewing with staff the alternative scoring matrix for the allocation of retail store licenses that was proposed at the last HHS/EDC meeting, I provide this feedback on potential implementation concerns.

One of the things that the Staff Working Group was attempting to accomplish with the matrix in the draft Chapter 35 for allocation of retail licenses was to keep all the points as objective as possible and to avoid subjectivity, which could open the City up to challenge. We wanted the points to be granted on verifiable facts and not personal perspectives or opinions on the value of certain aspects of applicants' proposals.

There are two concerns with the matrix that was presented at the last committee meeting. First, it had criteria for awarding of points that are more difficult to quantify objectively. Second, it awarded points if the applicant submitted completed applications/plans, which would be redundant of the language already in the proposed ordinance that would require a complete application before being considered for licensing. The Licensing Office will not accept any application that is incomplete, therefore we would only be accepting a 10 for the majority of the categories.

With respect to the specific categories in the alternative matrix, these concerns are

Category 1: Basic Operations gives points for having a clear application ranging from 1 to 10. Sections 35-14, 35-25 and 35-42 in the draft ordinance clearly define what is required for an application to be considered complete and the majority of the bulleted points in this category are listed in the draft ordinance.

Category 2: Security Plan gives points for having a clear plan ranging from 1 to 10. The description of what is required in a security plan is listed in section 35-35 of the proposed order, and will be further detailed in regulations. The Police Department will be meeting with the applicant to review the confidential plan after it has been submitted and accepted for review. To be accepted, the majority of the bulleted points would have to be in the 10 point column.

Memorandum
January 28, 2020
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Category 3: Community & Public Health Impact gives points for submitting a plan for hiring creating new jobs, wages, employee trainings and interaction with the Community. This would be a subjective analysis on what staff deems the right number of jobs would be to grant 10 points.

The City also, does not track new positions and if they applicant did not follow through with their proposal would a license be revoked? The same can be said about wages and benefits, staff would have to give points on what they think.

Category 4: Experience and Timeline gives points for previous business experience, list of violations and expected opening date. The rubric in the draft ordinance already assigns points for both operating a business in Maine with no violations or experience operating a marijuana retail store in Maine or another state. The State also has a one year deadline to open a retail store before the applicant would need to reapply, so timelines are fixed to 365 days.

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

35-1. Definitions.

Except as otherwise specified, the definitions in Chapter 14 shall apply to this Chapter.

Disqualifying conviction shall mean any of the following: (1) any felony conviction where the conviction or completion of any sentence, whichever is more recent, has been completed within the last ten years; or (2) any conviction for a drug related crime other than a felony, but not including convictions for marijuana related crimes, where the conviction or completion of any sentence, whichever is more recent, has been completed within the last five years.

Disqualifying violation shall mean, within the previous five years, the non-payment or late payment greater than 30 days of any tax or fee; any citation for licensing, land use, life safety, building, fire, health, or similar violation that was not corrected within the timeframe required by the City; any suspension, revocation, or denial of any license or permit; any false statement on a City form or application; and any other significant failure to comply with City ordinances. Disqualifying violations shall not include parking tickets.

Manual processing shall include the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

Marijuana means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. “Marijuana” includes marijuana concentrate but does not include hemp as defined in 7 M.R.S. §2231(1), or a marijuana product.

Marijuana business shall mean any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the City. This shall include registered dispensaries, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.

35-2. Enforcement.

- a. This Chapter shall be enforced by the City Manager and his/her designee(s).
- b. Each day that a violation of this Chapter exists shall be a civil violation subject to the following:
 1. *Civil penalties.* Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that

the violation has existed. However, the maximum amount of civil penalties may be increased where:

- (a) There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or
- (b) The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

2. *Posting against occupancy.* In addition to any other remedies provided by this Code, the City may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for any of the following violations:

- (a) Operating a marijuana business without a valid City and state license;
- (b) Failure to allow entrance and inspection to any City official on official business after a reasonable request;
- (c) Allowing the use or consumption of marijuana or marijuana products on the premises of the marijuana business; and
- (d) Any other violation that the City determines has the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

c. The City Manager or his/her designee is authorized to 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 Chapter.

d. If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

35-3. Appeals.

Appeals of decisions made pursuant to this Chapter shall be as follows:

a. An appeal from a decision to issue, issue with conditions, deny, or revoke a license pursuant to Article 2 may be appealed to Superior Court pursuant to M.R. Civ. P. 80B by a party with standing.

b. An appeal from any notice of violation, suspension, revocation, or similar enforcement action under this Chapter may be appealed to the City Manager or his/her designee by a party with standing within ten business days of the written decision taking such action. An appeal from any decision of the City Manager may be appealed to Superior Court pursuant to M.R. Civ. P. 80B.

35-4. Reserved.

35-5. Reserved.

35-6. Reserved.

ARTICLE 2. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-7. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-8. Reserved.

35-9. Reserved.

35-10. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-11. Licensing Requirements.

- a. Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.
- b. Operating without a license prohibited. No individual or entity may operate a marijuana business within the City without first obtaining a license from the City.
- c. Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.

- d. Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.
- e. No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating a marijuana business is a privilege and not a right in the City.
- f. Licenses not transferable. Licenses issued pursuant to this Article are not transferable. ~~However, except for retail and dispensary licenses shall be, which are transferable only in accordance with Sec. 35-42 until. However retail and dispensary licenses shall no longer be transferable~~ the effective date of federal legislation allowing federally regulated financial institutions to serve marijuana businesses, or the removal of the cap on marijuana retail stores and dispensaries in Sec. 35-42(i).
- g. Multiple licenses. An individual or entity may hold multiple licenses under this Article, except that an individual or entity may not hold more than one retail and/or dispensary license, or have an interest in an entity that holds more than one retail and/or dispensary license, until after January 1, 2025.

35-12. License Types.

The City has established the following license types for marijuana businesses:

- a. Cultivation – Tier 1. A tier 1 marijuana cultivation license shall allow the license holder to cultivate up to 500 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- b. Cultivation – Tier 2. A tier 2 marijuana cultivation license shall allow the license holder to cultivate up to 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- c. Cultivation – Tier 3. A tier 3 marijuana cultivation license shall allow the license holder to cultivate more than 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.
- d. Dispensary. A dispensary license shall allow a registered dispensary to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statute.
- e. Manufacturing – Manual. A manual manufacturing license shall allow the license holder to manufacture marijuana using manual processing only.
- f. Manufacturing – High Hazard. A high hazard manufacturing license shall allow the license holder to manufacture marijuana using chemicals and solvents in addition to manual processing methods.

- g. Retail – Medical. A medical marijuana retail license shall allow a registered caregiver to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statutes.
- h. Retail – Adult Use. An adult use marijuana retail license shall allow the license holder to sell adult use marijuana in accordance with Title 28-B of the Maine Revised Statutes.
- i. Small Scale Caregiver. A small scale caregiver license shall allow a registered caregiver to engage in the business of a small scale caregiver, as defined in Chapter 14, including cultivation, manual processing, and limited sales to patients, as defined.
- j. Testing. A marijuana testing license shall allow the license holder to engage in the business of testing medical and/or adult use marijuana for third parties.

35-13. Licensing Procedure.

- a. Applications submission. All applications for licenses under this Article shall be submitted to the Business Licensing Office on forms provided by the City, and shall include all required information, attachments, and fees. No application will be considered unless and until it is complete, as determined by the Business Licensing Office.
- b. Review and recommendation by City departments. The following City departments shall review all applications and recommend whether to issue, issue with conditions, or deny the permits applied for.
 - 1. The Permitting and Inspections Department shall review all applications for compliance with this Article, Chapters 6, 14, 10, and 15 of this Code, as applicable, and all other matters within its purview.
 - 2. The Police Department shall review the security plans submitted by each applicant, as well as any disqualifying convictions of the applicant and associated individuals, and all other matters within its purview.
 - 3. The Fire Department shall review all applications as to compliance with Chapter 10 of this Code, other fire and life safety concerns, and all other matters within its purview.
 - 4. Other City staff or departments shall review and provide recommendations on applications as necessary to adequately evaluate the applications.
- c. Hiring of third party professionals. Where the City determines that it is necessary for an applicant to hire a third party professional to complete any portion of the application, the City may require an applicant to hire a professional with qualifications sufficient to satisfy the City.

- d. City consultation with third party experts. Where the City determines that it is necessary for the City to consult with a third party expert on an application or portion of an application, it may do so and charge the costs of that third party expert consultation to the applicant. Before doing so, however, the City shall give notice to the applicant of its determination of need, including the basis for that determination; the third-party that the City proposes to engage; and the estimated fee for the third-party consultation. The applicant shall have the opportunity to provide feedback to the City on its determination before the City engages the third party.
- e. Licensing decisions. Applications for any license shall be granted, granted with conditions, or denied by the City Manager or his/her designee. Conditions may be imposed on any license issued pursuant to this Article, as necessary to protect the health, safety, and welfare of the public.
- f. Allocation of retail licenses. Retail licenses shall be considered as follows:
 1. The City Manager may establish multiple rounds of licensing as necessary to manage the workload of staff necessary to license all prospective retail stores, and the anticipated market demand.
 2. The City Manager shall establish an opening date and a closing date for applications for any given round of licensing.
 3. Upon submission of an application for a given round of licensing, the City will perform a completeness review and establish that the applicant has a complete application and meets the minimum qualifications.
 - i. If the application is complete and the applicant meets the minimum qualifications, the City will assign the application a numerical score based on the criteria outlined in subsection (f)(4) below.
 - ii. If the application is incomplete, the applicant will be notified of the incompleteness and given one week to correct any incompleteness. If the application is still incomplete after that time, the City will reject the application. The applicant may reapply, but any second or subsequent application will be treated as a new application.
 4. Each application shall be awarded points based on the following matrix. Except where otherwise stated, a particular qualification must be held by at least 26% of the individuals owning the entity to qualify for any points.

At least 51% owned by socially <u>and economically</u> disadvantaged individual(s), as defined <u>further by regulations to be promulgated by the City Manager based off of</u> by the Small Business Association <u>Section 8(a) regulations</u> regulations; women; veterans; and/or individuals who immigrated to the United States within the previous ten years.	+1
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At least 51% owned by individual(s) who have been a Maine resident for at least five years.	+1
Owned by individual(s) with experience running a licensed marijuana retail store or dispensary in Maine or another state with no history of violations or license suspensions or revocations	+1
Applicant has previously been licensed by the State of Maine or the City for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years	+1
Ownership or leasehold interest in proposed retail location by applicant for a minimum of 2 years	+1
Location greater than 500 feet from school property	+1 per additional 1,000 ft.
Business plan committing to annually contribute 1% net profits as a restricted donation to the City for youth education on substance use education and prevention	+1
Business plan committing to sell only marijuana products, CBD, and related paraphernalia	+1
Evidence of at least \$150,000 in liquid assets	+1

5. Applicants with the highest point totals shall be chosen first for tentative approval for a license.

Where two or more applicants have the same number of points, some or all of the applicants cannot be awarded tentative approval due to either the 250' dispersal requirement, the cap imposed by Sec. 35-42, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

6. If the application is tentatively approved, the applicant will have one year from tentative approval to open the retail business, including obtaining all final state and local approvals, building permits and approvals, certificates of occupancy, and any other criteria. If the applicant fails to meet the one-year deadline, it forfeits its tentative approval. The applicant may reapply, but any second or subsequent application will be treated as a new application.
7. Any applicant with a complete application, but who is not awarded tentative approval, may choose to be placed on a wait list for a period of up to one year.

8. A licensee who has its license revoked, or who fails to timely renew its license, shall forfeit its right to renew its retail license. The licensee may reapply, but any second or subsequent application will be treated as a new application.
9. Except for licenses issued pursuant to Sec. 35-42(i)(1), licensees who have a medical marijuana retail license may convert to an adult use retail license, so long as they meet the requirements for such license and pay the licensing fees. An applicant who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement.

35-14. License Application.

Applications for all licenses under this Article shall be on forms provided by the City. In addition to any other information deemed necessary by the City, applicants shall provide the following information:

a. *General application.*

1. The name, mailing address, physical address, and phone number of the business, as well as any other available contact information, including email address, fax number, website, etc.
2. The name, mailing address, phone number, and email address of the following:
 - (a) The individual or corporate owner of the marijuana business;
 - (b) A community relations liaison, as described in Sec. 35-32;
 - (c) A person with a physical address in the City who is authorized to accept service of process on behalf of the marijuana business; and
 - (d) An emergency contact, as described in Sec. 35-32.
2. A general description of the business, including hours of operation, type of business, etc.
3. The license being applied for.

- b. *Corporate entity supplement.* Where the marijuana business is a corporate entity, the applicant must disclose the name, mailing address, phone number, and email address of each and every individual or corporate owner, officers, directors, managers, general partners, shareholders, and/or other parties responsible for the marijuana business.
- c. *Background check information and consent.* Where a background check of any kind is required by this Code, the applicant must provide all relevant information sufficient to conduct the background check, as well as any necessary consents.

- d. *Landlord permission.* Notarized, written permission from the owner of the property where the marijuana business proposes to operate for the applicant to operate the marijuana business for which the applicant is applying, or a copy of a fully executed lease agreement specifically allowing the use of the leased space to be used as they type of marijuana business applied for.
- e. *State authorizations.* Applicants must provide evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations. Except that, for retail stores subject to the allocation provisions of Sec. 35-13(f), the applicant need not provide evidence
- f. *Security plan.* A security plan, which shall be kept confidential, and which shall be sufficient to prevent the diversion of marijuana and marijuana products, and to protect the health and safety of owner, patrons, City officials, and the public.
 - 1. The security plan shall, at a minimum, address all of the security requirements included in Sec. 35-35.
 - 2. The City may require any reasonable modifications to the security plan that it deems necessary to prevent diversion and protect the public safety.
 - 3. A copy of the approved security plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the security plan before or after licensing must be reviewed by the Police Department.
- g. *Waste disposal plan.* A waste disposal plan, which shall be sufficient to prevent diversion of marijuana or marijuana product, and shall be sufficient to prevent contamination of land, water, and sewer; and
 - 1. The waste disposal plan shall, at a minimum, address all of the waste disposal requirements included in Sec. 35-38, and all waste disposal requirements otherwise included in this Code, including, but not limited to, Chapters 24 and 32.
 - 2. The City may require any reasonable modifications to the waste disposal plan that it deems necessary.
 - 3. A copy of the approved waste disposal plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the waste disposal plan before or after licensing must be reviewed and approved by the City.
- h. *Odor mitigation plan.* An odor mitigation plan, which shall be sufficient to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer.

1. The odor mitigation plan shall at a minimum, address all of the odor mitigation requirements included in Sec. 35-39.
 2. The City may require any reasonable modifications to the odor mitigation plan that it deems necessary, including requiring that the plan be designed by a qualified, licensed professional engineer.
 3. A copy of the approved odor mitigation plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the odor mitigation plan before or after licensing must be reviewed and approved by the City.
- i. *License specific requirements.* A licensee must provide the additional information specific to the license being applied for, as described in Sec. 35-23 through 35-27.
 - j. Any other information that the City Manager decides is necessary to evaluate an application under this Article.

35-15. Performance Guarantee Required.

- a. For all marijuana businesses, other than small scale caregivers and marijuana testing facilities, a performance guarantee shall be required in the amount of the cost of winding down the marijuana business, including proper disposal of all marijuana, marijuana plants, and marijuana product; disposal of chemicals and solvents; disposal of specialized equipment; and resolution of any outstanding compliance issues.
- b. The performance guarantee shall be supplied before the issuance of the final license.
- c. This requirement may be satisfied by surety bond, letter of credit, escrow account, or by evidence, acceptable to the City, of the financial and technical ability and commitment of the applicant or its agents to wind down the business in full compliance with all federal, state, and local requirements.
- d. At the sole discretion of the City Manager or his/her designee, the marijuana business may be released from its obligation to maintain the performance guarantee after three years of successful and responsible operation of the marijuana business in a manner acceptable to the City.

35-16. Fees and Costs.

- a. The initial application fee, annual licensing fee, and expiration date for licenses issued under this Article shall be as listed in Chapter 15 of this Code. Application fees shall be due only for the initial application, or any time that the applicant makes substantial changes to the licensed business and requires re-approval.

- b. Applicants shall also be responsible for paying the City's reasonable expenses associated with the review of an application, including:
 - 1. Any required criminal background checks;
 - 2. Any costs of notification; and
 - 3. The cost of any independent, third-party review, where the City determines it is necessary to effectively evaluate an application.
- c. Application fees and any expenses charged pursuant to this section shall be non-refundable.
- d. Upon request of the applicant, the annual licensing fee may be refunded if the applicant 1) withdraws its application prior to the granting of the license; 2) is denied a marijuana business license; or 3) notifies the City that it is abandoning its license prior to opening the marijuana business. Refunds must be requested within 60 days of withdrawal, denial, or abandonment.

35-17. Minimum Qualifications for Individual Applicants.

All natural persons who apply for a license under this Article shall meet all of the following requirements:

- a. Be at least 21 years of age;
- b. Not have any disqualifying convictions or currently be subject to prosecution for any disqualifying conviction;
- c. Not have any disqualifying violations;
- d. Not have been an owner, officer, director, manager, general partner, shareholder, or other responsible party in any corporate entity with disqualifying violations within the past two years;
- e. Not have any revocation or suspension of a marijuana-related license, permit, certificate, or registration;
- f. Not be employed by any state agency or City department with regulatory authority over the marijuana business, including the City Executive Department, Police Department, Permitting and Inspections Department, Planning Department, Fire Department, and Corporation Counsel's Office; and
- g. Not be a law enforcement officer.

35-18. Minimum Qualifications for Corporate Applicants.

All corporate or other entities who apply for a license under this Article shall meet all of the following requirements:

- a. Be formed or organized under the laws of the State of Maine;
- b. Be in good standing with the Maine Secretary of State;
- c. Not have any disqualifying violations within the past two years; and
- d. Have all officers, directors, managers, and general partners be natural persons who meet the minimum requirements for an individual applicant in 35-17 above.

35-19. Suspension and Revocation.

- a. Grounds for suspension. In addition to the grounds for suspension enumerated in Chapter 15, the following shall be grounds for suspension of a license pursuant to this Article:
 1. Any event or condition that would have disqualified an applicant from obtaining an original license, until that disqualification is resolved to the satisfaction of the City;
 2. The licensee has failed to timely supplement its license information, as required;
 3. The licensee has failed to file any required reports or furnish any information, as required; and
 4. The licensee has knowingly permitted, encouraged, failed to prevent, or failed to remedy a violation of this Article.
- b. Length of suspension. Any first suspension pursuant to this Article may not exceed six months after the resolution of the condition that formed the grounds for suspension. Any second and subsequent suspensions may not exceed one year after the resolution of the condition that formed the grounds for suspension.
- c. Grounds for revocation. In addition to the grounds for revocation enumerated in Chapter 15, the following shall be grounds for revocation of a license pursuant to this Article:
 1. Failing to timely remedy any condition in (a) above;
 2. Repeated significant violations of this Article; and
 3. Any event that would have disqualified the license from initially obtaining a license.

- d. Length of revocation. Any license revocation shall prohibit the licensee from being an owner, officer, director, manager, general partner, shareholder, and/or otherwise responsible for any marijuana business for one year after the resolution of the condition that formed the grounds for revocation.
- e. Procedures for suspension or revocation. Suspension or revocation proceedings shall be conducted by the Permitting and Inspections Department pursuant to the following procedures:
 - 1. Prior to suspension or revocation, a licensee shall be given notice of the reasons that the City is considering the action and an opportunity to be heard.
 - 2. Where the reason for suspension or revocation could reasonably threaten health, safety, and/or welfare, a license may be suspended without notice and hearing, so long as notice and an opportunity to be heard is provided as soon as practicable.
 - 3. Suspensions or revocations will be issued in writing.

35-20. Reserved.

35-21. Reserved.

35-22. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-23. Cultivation Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for any tier of cultivation license must also provide the following:

- a. The amount of plant canopy to be grown;
- b. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- c. Operations plan, including growing and fertilizing methodology, inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the marijuana being cultivated;
- e. Disclosure of chemicals, fertilizer, pesticides, and similar substances - whether organic or synthetic - to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;

- f. Written certification by a qualified engineer that the cultivation facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code; and
- g. Written certification by a Maine certified Master Electrician that the cultivation facility and operation meets all electrical standards adopted by the State of Maine and/or the City.

35-24. Manufacturing Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a manufacturing license must also provide the following:

- a. Description of manufacturing processes to be used, including extraction methods;
- b. Floor plans, including the location of processing equipment, storage areas for marijuana, chemicals and solvents, and other items; office areas, etc.;
- c. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured;
- e. Disclosure of chemicals, solvents, and similar substances to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;
- f. Written certification by a certified professional engineer, licensed by the State of Maine, that the manufacturing facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code;
- g. Written certification by a Maine certified Master Electrician that the manufacturing facility and operation meets all electrical standards adopted by the State of Maine and/or the City; and
- h. Where a licensee will manufacture food or food products, the licensee must also provide proof of licensing pursuant to the Maine Food Code and Chapter 11 of this Code.

35-25. Retail and Dispensary Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage of the facility under the control of the applicant and dedicated to the retail facility or dispensary and ancillary activities;
- b. Floor plans, including the location of retail space, storage areas for marijuana products, areas dedicated to the sale of non-marijuana products, office areas, etc.;
- c. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors, and similar information; and
- d. Documentation that the marijuana retail facility or dispensary meets the dispersal requirements of Sec. 35-42.

35-26. Small Scale Caregiver License.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Total square footage dedicated to the small scale caregiver use;
- b. Total plant canopy;
- c. Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;
- d. Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured; and
- e. Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors and to ensure that the small scale caregiver operation does not exceed the five patients in one calendar month, and similar information.

35-27. Marijuana Testing License

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

- a. Floor plans, including the location of testing equipment; storage areas for marijuana samples, chemicals and solvents, and other items; office areas, etc.;
- b. Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information; and

- c. Disclosure of chemicals, solvents, and similar substances to be used in the testing process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation.

35-28. Reserved.

35-29. Reserved.

35-30. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-31. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-32. Cooperation with municipal officials.

- a. The City Manager's designees shall be permitted to enter any marijuana business during regular business hours for the purpose of making inspections, and examining and copying records.
- b. Each and every person responsible for the management or control of the marijuana business must afford free access to every part of such establishment and to render all aid and assistance necessary to enable the City to make a full, thorough and complete examination thereof to determine compliance with this Article.
- c. Each marijuana business shall designate a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.
- d. Each marijuana business shall designate an emergency contact who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

35-33. Record retention Requirements.

In addition to those records required to be kept and maintained by the State of Maine, all marijuana business licensee shall also keep the following records:

- a. Invoices of all purchases for the previous two years demonstrating the source of those purchases;
- b. Receipts of all sales for the previous two years;
- c. Testing results, if any, for the previous two years;
- d. A copy of all current state and local licenses; and
- e. Information about each concern addressed to the community relations liaison, including the date and time of the contact; the substance of the concern raised; the contact information of the originator of that contact; the date and time of the licensee's response; and the substance of the response.

35-34. Compliance with Approvals.

All licensees under this Article shall comply with their approved plans, including security plans, waste disposal plans, operating plans, odor mitigation plans, and any other plans that are submitted to and approved by the City.

35-35. Security Requirements.

All marijuana businesses must implement the following minimum security requirements, which shall also be incorporated into a security plan.

- a. Building security. All fixed locations for a marijuana business shall have the following:
 1. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance but not disturb neighbors.
 2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are connected to a new or existing AES system, and are professionally monitored and maintained in good working condition.
 3. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
 4. Exterior electronic monitoring and video cameras. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.

5. Consistent and systematic prevention of loitering.
 6. Facilities approved by the Police Department or its third party designee for securing cash and all marijuana product packaged for sale as further detailed in regulations to be promulgated by the City Manager~~Police Department~~. Regulations shall require facilities sufficient to provide for the safety of employees and the public, and to prevent employee and third party theft and diversion.
 7. Any other security features that the Police Department deems necessary to ensure public safety and prevent theft and illegal transfer of marijuana.
- b. Mobile security. All mobile operations of a marijuana business, including pick-ups and deliveries of samples for testing, wholesale products, deliveries by small scale caregivers, and similar functions shall have the following security:
1. The vehicle may not have identifying marks associating the vehicle with a marijuana business;
 2. The vehicle must have video cameras showing the interior of the vehicle, as well as the exterior of the vehicle, and recordings must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request; and
 3. For mobile operations of a marijuana retail store, marijuana manufacturing and marijuana cultivation, the vehicle must have at least two individuals present in the vehicle.

35-36. Responsibility for Employees, Guests, and Customers.

- a. A marijuana business shall be responsible for all individuals on their premises.
- b. A marijuana business shall not sell any marijuana product to, or allow an individual to enter or to remain on their premises, who is
 1. Disorderly;
 2. Intoxicated;
 3. A threat to safety; or
 4. Has consumed or attempted to consume marijuana on the premises.

35-37. Information disclosure requirements.

- a. A copy of the business license issued pursuant to this Article must be prominently displayed at each location of the marijuana business.
- b. The business license number issued to each marijuana business must be clearly disclosed in all written advertising, marketing, and promotional materials.
- c. Each marijuana business must disclose the telephone number of its community relations liaison, after the statement, "For questions or concerns contact [number]" in all written advertising, marketing, and promotional materials; and must be prominently displayed at each location of the marijuana business.
- d. A sign, prominently displayed near the entrance to the marijuana business stating the minimum age to enter the business and, if a retail store, the minimum age to purchase products from the retail store.

35-38. Waste Disposal Requirements.

1. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers.
2. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be disposed of unless and until it has been modified such that it is not useable.
3. All waste and wastewater from any marijuana facility must be treated such that it will not create excessive odors, contamination, or pollution.
4. No waste from a marijuana business may be disposed of in residential trash.

35-39. Odor Mitigation Requirements.

The smell of marijuana shall not be detectable at the property boundary and/or at any adjoining use of the same property. A marijuana business licensee is responsible for taking any and all measures necessary to ensure that this standard is met.

35-40. Labeling.

Any marijuana business that sells marijuana or marijuana products at retail, must label all products as follows:

- a. All marijuana must be in labeled containers meeting the requirements of this section.
- b. All required statements must be in a font and size that is readily legible to the average person.

- c. Where applicable, the label must contain the following:
 - 1. A statement that the marijuana or marijuana product contains THC;
 - 2. If the marijuana or marijuana product has been tested for quality, purity, or potency, and any such representations are made about the marijuana or marijuana product, the following must be disclosed in close proximity to that representation:
 - i. The name, location, and license number of the testing facility; and
 - ii. The date of the test results.
 - 3. If the marijuana or marijuana product has not been tested for quality, purity, and/or potency by an independent third party, a statement that the product has not been tested for quality, purity, and/or potency.

35-41. Limitations on the Production and Sale of Marijuana Food Products.

The following limitations apply to the manufacture and sale at wholesale or retail of food or beverage products containing marijuana:

- a. Marijuana products may not be manufactured or sold in a shape or design that is intended to appeal to minors;
- b. Marijuana or marijuana derivatives may not be added to commercially available products that do not otherwise contain marijuana; and
- c. Marijuana food and beverage products may not be manufactured, processed, or packaged in the same kitchen or room, or using the same equipment, as non-marijuana food and beverage products.

35-42. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

- a. Hours of operation. Marijuana retail stores and dispensaries may only be open to the public between the hours of 7:00 a.m. and 10:00 p.m. daily, and no sale or other distribution of marijuana may occur on the premises outside of those hours.
- b. Age restrictions.
 - 1. A medical marijuana retail store may not allow any individual under the age of 18 to enter their premises, including as an employee.
 - 2. An adult use marijuana retail store may not allow any individual under the age of 21 to enter their premises, including as an employee.

- c. On-premises consumption of any products. The sale of food or beverages, whether they contain marijuana or not, for on-premises consumption is prohibited.
- d. Other uses prohibited. Marijuana retail stores and dispensaries may not have uses other than marijuana retail or other retail on the premises, including entertainment or restaurant uses.
- e. Education requirements.
 - 1. Marijuana retail stores and dispensaries must distribute a leaflet, brochure, or flyer with every marijuana product sold, or place a sticker or label on every marijuana product sold, that informs the purchaser of:
 - i. The appropriate dosage of marijuana products;
 - ii. The dangers of over consumption;
 - iii. The impact that marijuana has on brain development; and
 - iv. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 2. Marijuana retail stores and dispensaries must have a sign, prominently displayed by the point of sale, informing customers of:
 - i. That consumption of marijuana is illegal at the federal level and that consuming marijuana could impact employment, immigration status, the right to own firearms, the right to a commercial driver's license, and other rights;
 - ii. That consumption of marijuana and marijuana products in public is illegal; and
 - iii. Additional information as required by rules promulgated by the Department of Health and Human Services.
 - 3. The City shall draft acceptable language for the leaflet, brochure, flyer, sticker, and/or signs required by this subsection. Any marijuana retail store or dispensary wishing to use alternative language must receive prior approval from the City's Department of Health and Human Services.
- f. Fixed location sales only.
 - 1. A marijuana retail store, small scale caregiver, and/or dispensary may only sell marijuana and marijuana products in person, directly to the purchaser, and out of a fixed and licensed location.
 - 2. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.
 - 3. Mail order, telephone, internet or similar remote sales are specifically prohibited.

4. Notwithstanding the provisions of this section, a small scale caregiver, medical marijuana retail store, and/or dispensary may make deliveries of marijuana products to a qualifying patient with whom that small scale caregiver, medical marijuana retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of marijuana the small scale caregiver, medical marijuana retail store, and/or dispensary has previously verified in person.
- g. Drive through windows. A marijuana retail store or dispensary may not use a drive through window, or any other outdoor space to sell marijuana or marijuana products.
- h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' of any other marijuana retail facility or marijuana dispensary, as measured along or across public ways, in a straight line, from any entrance that is accessible to the public.

This distance restriction shall not apply to one adult use and one medical marijuana retail facility or dispensary that 1) share the same or immediately adjoining space; 2) have common ownership; 3) have consistent naming and branding; and 4) are permitted by the state to share such space.

- i. Cap on retail stores. The number of retail stores and dispensaries in the City combined shall be capped at 20.
 1. However, this cap shall not apply to any dispensary or medical marijuana retail store operating with a City business license, a change of use permit, and/or a site plan approval prior to September 1, 2019, so long as that dispensary or medical marijuana retail store does not apply to convert to an adult use retail store.
 2. If an existing dispensary or medical marijuana retail store applies to convert to an adult use retail store, the facility will become subject to the cap in this section and the allocation procedures of Sec. 35-13.
- j. Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary must attend a City-approved training within ninety days of beginning in that position and then annually thereafter. Employing a manager or front line staff that does not have the required training may be grounds for suspension. If the training program is provided by the Department of Health and Human Services, the Department shall charge a fee for the cost of this class.
 1. Retail stores must submit a list of employees annually with their license renewal, along with verification that they have successfully completed a City-approved training program.
- k. Transfer of retail and dispensary licenses. The ownership of a retail or dispensary licensee may only be transferred subject to the following limitations:

1. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
2. Any transfers of interest in a retail or dispensary license occurring before January 1, 2025 must not impact any of the licensee's points calculated under Sec. 35-13(f)(4).
3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

35-43. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, marijuana businesses shall also be subject to the following restrictions on all signs that are visible from the exterior of the building:

- a. Signs shall not contain the image of a marijuana leaf, plant, or readily identifiable marijuana product;
- b. Signs may not be animated or have variable messages;
- c. Signs may not have cartoons or similar images that are likely to appeal to minors; and
- d. Marijuana businesses may not advertise by leaflets or flyers placed or posted outside of the business premises.

35-44. Other Prohibitions.

- a. On-premises consumption. Consumption of marijuana on the premises of any marijuana business is prohibited.
- b. Outdoor growing. Marijuana plants may not be grown outdoors and may only be grown within a fully enclosed and secured structure.
- c. Indoor air quality. A marijuana business may not use any chemical, process, or methodology that would result in compromised indoor air quality, including the use of technology such as sulfur pots.
- d. Giveaways and samples prohibited. Marijuana businesses may not distribute marijuana or marijuana products free of charge.

35-45. Insurance and Indemnification.

- a. Each marijuana business, other than a small scale caregiver, shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$1,000,000.00 per occurrence for bodily injury, death, and property damage.
- b. Each small scale caregiver shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000.00 per occurrence for bodily injury, death, and property damage.
- c. Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the City prior to obtaining the final license. Certificates shall guarantee ten days notice to the City of termination of insurance from the insurance provider or agent. The City's acceptance or lack of acceptance of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this article.
- d. By accepting a license from the City for a marijuana business, the licensee knowingly and voluntarily waives, releases and discharges the City from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the City, or any of its officers, agents, employees, representatives, insurers, successors and assigns for 1) any injuries, damages, or liabilities resulting from the arrest, prosecution, or other consequence of the marijuana business or its parties of control for a violation of local, state, or federal laws, rules, or regulations; and 2) any claim by a third party against the marijuana business.
- e. To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of, resulting from, or relating to the performance of any license issued to licensee under this Article or the operation of the licensee's marijuana business. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall survive termination of any license issued to a licensee under this Article and shall not be limited by the provision for insurance in this Article.
- f. This article shall not be construed as imposing upon the City or any official, agent, or employee of the City, any liability or responsibility for damages to any person resulting from or in relation to the performance of this license, nor shall the City or any official, agent or employee of the City be deemed to have assumed any such liability or responsibility by reason of inspections authorized herein, or the issuance of any license.



January 7, 2020

To the Portland City Council Committees on Economic Development and Health and Human Services and Public Safety,

My name is Mark Barnett. I own Higher Grounds in the Old Port, I am a prospective adult-use retail licensee and I work with the Maine Craft Cannabis Association, a diverse community of independent cannabis professionals and enthusiasts committed to building and promoting an authentic craft cannabis industry in Maine through sound, sensible public policy and responsible business practices. I use the term 'marijuana' herein to avoid confusion with cannabis that contains very small amounts of THC and is legally considered 'hemp'.

We would like to thank City staff for all of their hard work on these thorny issues and the care they have taken to look out for the interests of Portland's residents and businesses.

Still, we are dismayed at the direction that Portland's proposed ordinance has taken and the degree to which it disadvantages small businesses, whether intentionally or not, and to which it contributes to stigmatization of a safe substance that has been legalized in the state of Maine. This is disappointing in light of the high degree of support Portland's citizens have consistently shown for a liberal approach to marijuana. We are concerned that Portland's rules may throttle Maine's dynamic small businesses and block them from legally participating in the economic opportunity offered by legalization. Further, we vigorously dispute assertions that legal, licensed cannabis businesses present a risk to the public health.

Legal, transparent marijuana markets are an improvement to public health and safety, not the other way around. Legalizing the commerce of marijuana does not increase youth use, crime, or pose any other serious risk to the public health. In fact, legal medical markets and adult use markets may potentially improve certain public health and safety outcomes including things like opioid overdoses and even workplace deaths^{1,2}. We have submitted supporting studies and other material along with these comments that we hope the Council will take into consideration.

We believe the City wants to support Maine-grown, small businesses and create a viable, competitive legal market. **Below, we summarize the key issues we have found with the ordinance as proposed.**

- The Cap: Creating an explicit cap on the number of retail locations within Portland is anti-competitive, unfair and unnecessary. We believe the City should reject this model and, instead, utilize already existing zoning, sensible safety measures, and the basic qualification parameters which, combined with the economic obstacles of starting up a marijuana business, will already limit the number of participants.



- **Scoring:** If the City *does* use a cap, the scoring should reflect the most logical and equitable reflection of who should be given entry into the market – including points given to established, licensed caregivers; established, licensed Portland business owners; populations most impacted by the drug war and socially and economically disadvantaged; and businesses that not only will promise inclusive hiring and progressive workplace values but already embody them.
- **Transferability:** If there must be a cap, licenses should be allowed to follow the licensee, rather than be locked to a specific individual property. Property owners already hold enormous power.
- **Raising of capital:** We suggest the Council allow sales of ownership up to 49% and only block changes in control or transactions not compliant with licensing criteria in order to promote the survival of smaller businesses not linked to highly resourced, multi-state operators.
- **Limits on products or revenue streams:** We urge the Council to allow sale of other legal products rather than reward marijuana only businesses, including non-marijuana consumables which pose no threat to public safety. The City should instead follow state regulations.
- **Unnecessary, huge costs with no justification in public safety.** We urge the Council to only impose mandatory regulations that A) demonstrably promote public health and/or safety and B) are cost-effective. By a rough estimate, the current ordinance proposal adds more than \$200,000 to the capital required for a fairly small project, with that figure escalating for larger cultivation and extraction and processing projects. Performance guarantees, demonstration of liquid assets and product safe requirements are of particular note in terms of high costs with little to no benefit to public health and safety.

For more detail:

The Cap

1. **Caps are anti-competitive, unfair and unnecessary** in a business as competitive, complex and difficult as marijuana, where even obtaining real estate is extremely difficult for most businesses. From a business perspective, competition drives better outcomes for everyone — particularly consumers — except for entrenched monopolies. Caps ‘create’ the need to establish arbitrary licensing criteria that dramatically stifle businesses’ ability to operate—without providing any demonstrable benefit to the public. *We recommend the City Council reject the cap.*
2. **The justification for the cap—that Portland will be overwhelmed with marijuana stores—does not seem supported by evidence from markets where licenses have not been capped** (see attached PDF)³. Without caps, per-capita penetration of marijuana stores isn’t markedly higher than the proposed 20 in Portland. For example, Portland OR has 28.4 shops per 100,000 people; Denver has 25.5; Seattle has 8; Anchorage has 9. And the state has seen far fewer license applications than anticipated. If Portland can’t support the number of stores that attain



licenses, many of those will exit the business and existing stock will have been invested in and revamped for other retail uses. Business turnover happens all the time.

3. **Fears of ‘risks to public health’ and other fiscal and associated costs of legalization are a misplaced legacy of the Drug War.** The U.S. Substance Abuse and Mental Health Services Administration (SAMSHA) observed that teen use of marijuana continues to decline⁴, and numerous studies have found that following legalization (medical and adult use), teen use declines^{5,6}. Adult Mainers have been and continue to use marijuana⁷ without material public harm and the dangers of youth use are best addressed by driving sales to the regulated market with a fair playing field for licensed businesses that enforce age (and quality) requirements.
4. **With a cap, the City artificially creates the ‘secondary’ license market driven by the highest bidder rather than by normal market forces of product quality, customer service, responsible participation in the market and community, etc.** Without a cap, marijuana licenses are just like any others (except much harder and more expensive to obtain and maintain).

The proposed scoring system

1. **Scoring by its nature (both in terms of category choice and how much to allocate) is fairly arbitrary and subjective.** We recognize that some standards are necessary, but as there are already many of these embedded in marijuana operations, the better approach would be to allow those factors to unfold as long as certain objective safety, location, and secondary impact standards are met.
2. **As proposed, the system unfairly awards points for maximum distance from schools despite no research on this factor being correlated to youth use.** Even by staff’s calculation a facility could gain more than 4 points from its proximity to schools—4 times the weight of any other category. That item alone could mean Portland has 20 licensed shops on the outskirts of town. Distance from a school is already a minimum qualification for licensure. *We recommend at least limiting this to +1 point.*
3. **Maintain provisions supporting social and economic equity that are inclusive in acknowledging inequality and social and economic disadvantage.** City staff has acknowledged the importance of incorporating social and economic justice into a scoring framework. Still, the Federal government’s standards for such status, as in other areas of Federal law and rule, discriminate against so-called ‘sexual’ minorities that experience heightened levels of social and economic injustice in American society. Simply adopting that standard will continue that bias against sexual minorities.



4. **The current timeframe for certain factors was changed without justification in ways unfair to newer, but established Portland businesses.** In the previous draft, a prospective licensee would be awarded a point for operating a licensed business in the City of Portland for two years or more without violations. This latest draft increased that number to 5 years without explanation. Why was this change made? We understand that the City wants to see some modicum of business experience with its licensees, but this change seems designed to deliberately exclude certain businesses. We recommend that +1 point be awarded as originally proposed - for 2+ years of operation without violations. If the lookback window is extended, it should focus on safety, pesticide use, and treatment of labor.
5. **Points to dispensary operators provide more favoritism to an already privileged class. This isn't accompanied by parallel points awarded to licensed caregivers in good standing.** Near-monopoly control of marijuana sales for nearly a decade is enough advantage. Without some consideration of participation in the medical marijuana industry outside of dispensaries, this flies in the face of the avowed desire to promote economic fairness and to protect access for Mainers – especially those who have been working to provide medical cannabis as small operators throughout the state. We recommend either no credit for dispensary experience or that +1 point be awarded for either: 2 years of experience running a licensed dispensary OR 2 years of an active caregiver license of any kind in good standing.
6. **If the City wants to support Maine citizens, follow the state's residency rules and award a further point for a Maine birth certificate.** Many of the other scoring elements will be very difficult for most Mainers to achieve given either their exclusive nature or their high cost. If we must score, then help offset the challenge to small Maine-based businesses with these.
7. **Remove the requirement for demonstrating \$150,000 in liquid assets.** We believe that the already significant cost and barriers to entry of developing a viable, licensed marijuana retail business combined with the byzantine compliance requirements and rules are plenty sufficient to 'cull the herd', to put it bluntly. Think of how difficult (or expensive) it will be for a licensee to secure that additional funding knowing they could have 50% odds of application failure. If this were common practice for business licenses, it might seem less out of place.

Transferability

1. **The City is considering barring licensees from moving locations** – interfering with portability of their business and locking them into one location. Licenses should be allowed to be geographically transferable, otherwise, the City is simply handing the keys to the retail marijuana industry over to property owners. We urge the Council to at least permit geographic transfers of licenses where the new location meets all zoning and licensure requirements.



2. **It is the licensee that has been evaluated for a license, including onerous background checks, financial assurances, fees and more - not the owner of the building.** If at the end of a lease a business must choose either to perish or pay triple or even five times previous rent—not to mention accept any number of anti-tenant clauses, financial commitments, and the like—then legal marijuana in Portland will just be a cash piñata for landlords.

Limits on the raising of funds

1. **Capital formation is the key to business growth and the key to small businesses competing with large, multi-state operators.** The City proposes to limit retail stores to being able to raise less than \$50,000 per year (based on a valuation of \$500,000) - this is equivalent to the cost of adding just one new management position—or to \$125,000 over the course of five years. We urge the Council to allow sales of ownership up to 49% and only block changes in control, reviewing any new investor and resulting entity under the same standards applied during licensure, just as the state will have done .
2. The comparison that has been made to alcohol licenses is fundamentally inaccurate. Alcohol businesses pay normal taxes on profits; retail marijuana businesses can pay well upwards of 50% of pre-tax profits in federal income taxes alone^{8,9}. Marijuana operations are very strictly regulated particularly for adult use businesses, with onerous packaging, tracking, personnel, security, and a dizzying array of other compliance costs that other businesses—including liquor licensees—don't suffer. Further, most marijuana business cannot raise bank debt—period. The Senate's deep resistance to reforming the status of marijuana for banking¹⁰ is proof that we should not expect profound change anytime soon. Meanwhile, larger, multi-state operators have already raised hundreds of millions of dollars and will find no complaint with ever-increasing capital demands. Closing off the ability to raise money to support difficult periods or, conversely, investments in growth and improving operations could be a recipe for disaster for all but the wealthiest businesses.

The State of Maine has prioritized 'control' of a license in its regulatory framework. The City could do the same, limiting the sale of a stake in a licensee's capital to 49% and requiring no change in control. Transactions and resulting entities would have to meet the same standards that initial applications do. This would at the very least provide a little more flexibility for operators to survive in a difficult operating environment without compromising City goals.

Limits on products or revenue streams

1. **The City should permit marijuana businesses to have diverse revenue streams as there is no public health or safety justification for discouraging this commerce.** This is a business where entrants must be ID'd and over the age of 21, all activity is monitored by video surveillance, and all marijuana products have extensive and onerous packaging requirements, so the risks – if



there are any – are highly mitigated. In a business with so many ancillary costs, diversity may be vital to survival. We recommend removing the +1 for a ‘cannabis-only’ business plan.

Buffer zones

1. **Buffer zones are anti-competitive and will indubitably lead to lawsuits that could jeopardize the program and cost the City substantial sums to defend.** We respect the desire to prevent clustering of similar businesses in order to preserve the diverse feel of Portland’s neighborhoods, but we again highlight just how difficult it is to obtain real estate in the first place to even try and apply for a license. Furthermore, because the City has permitted certain actors, ‘bad’ behavior could ultimately be rewarded by ‘stealing a jump’ on an area where numerous other businesses would vie for the ability to be licensed and to compete. Those latter could be forgiven for considering their own legal recourse should that situation prevent them from qualifying for licensure. Is 250’ based on a desired dispersion rate map or is there a better way to calculate what this number should be? We feel it could be lower without jeopardizing the City’s desire to preserve neighborhood diversity. We recommend striking the buffer zone entirely.

Requiring leaflets and stickers above that required by the state

1. **Requiring leaflets and stickers above the labeling already required by the state is unnecessary, costly, and environmentally irresponsible.** At a time when we are banning single-use plastic straws and plastic bags (which we ardently support), the City should avoid creating hundreds of thousands of leaflets or (not functionally possible) stickers on products to advertise the heinous dangers of marijuana usage when there are already very, very onerous packaging and labeling requirements for marijuana products in Maine. By one estimate, discarded paper and paperboard already make up over 25% of solid municipal waste¹². We recommend requiring instead that shops display any health warning language prominently by the point-of-sale.

Visibility of marijuana leaf

1. **The proposal to prohibit viewing of a marijuana leaf from outside of the building has not been credibly tied to discouraging underage consumption.** We recommend removing this entirely.

Burdensome, unnecessary costs

1. **The proposed ordinance adds unnecessary costs that will further jeopardize survivability of smaller businesses and ultimately reduce revenue to state and municipal coffers.** The state and now the City are adding substantial onerous costs of compliance and restrictions on operations that could knock smaller players out of a market that will be nowhere near as lucrative as the City seems to believe. The assumption that licenses will be lucrative seems to



drive much of the regulatory conversation—but it is a false one. According to the Marijuana Business Daily Industry Factbook for 2018, less than 40% of retail ‘recreational’ marijuana stores are profitable¹¹ (slightly higher for medical, skewed by the monopolistic regulation of most medical markets), and 20-30% make annual losses. Most buyers of marijuana are rational economic actors who will go to the state’s readily available, low risk, unregulated and untaxed market if costs in the legal market are too high, or to the markets outside of Portland delivering into the city.

2. **Requiring all marijuana to be stored within a safe if not on shelves is entirely impracticable for numerous reasons of both size and sanitary storage for refrigerated or frozen items.** Requiring product not on shelves be stored behind a second locked security door is absolutely sufficient given extensive other security requirements, particularly video surveillance and remotely monitored entry. We agree that strict cash security measures should be followed, and it is reasonable for the City to require such measures though it’s nearly 100% likely that an operator would willingly do so on their own. The new proposed language effectively mandates an 8”-reinforced-wall vault, which could easily cost upwards of \$20,000 for the construction of ‘vault’ walls and a door. What is the risk to public health? What are storage requirements for much more ‘dangerous’ shops like pharmacies and liquor stores? We recommend that the Council require a second locked security door only, and that where necessary product be required to be stored at appropriate sanitary temperature.
3. **Requiring two persons per vehicle while conducting any remote marijuana operations is costly, onerous and does not improve public health or safety.** Do we mandate that businesses in any other area maintain specific staffing levels? Does a second person make a delivery vehicle safer? If an attempted burglary occurs, that second employee will just be another person who is instructed to do nothing to risk their own safety for liability purposes. This adds at least \$25,000 per year to staffing costs. Will this be enforced on delivery businesses from outside of Portland which will be operating with much lower overhead? We recommend removing this entirely.
4. **Requiring cameras on vehicle interior and exterior for marijuana vehicle operations ignores the reality that if a violation is going to be committed, the offending individuals would simply step off camera.** We recommend removing this entirely.
5. **Forced payment for city use of third party professionals—some of which might have marijuana lobbying or consulting operations—could be a black hole for a project of and seems ripe for abuse.** We recognize the City is looking to protect itself and citizens from costs of this program—but there should be limits on out of pocket expenses. Such fees could easily run into the thousands for a small project and into the tens of thousands for a larger project. Prospective licensees won’t even be assured of licensure, adding to the already high price tag of even vying for a license in the city of Portland.



6. **Performance guarantees privilege the wealthy at the expense of the entrepreneur.** Do we ask for them for breweries? Food packaging plants? Energy projects? What is the risk to the public health? This is another area of project cost that could run into the many tens of thousands for larger projects. Further, the largest projects currently in Portland appear to have been grandfathered in and aren't required to provide such, creating a highly unequal playing field. We recommend striking these entirely. In the worst case, if performance guarantees remain, these funds should at least count towards any demonstration of 'liquid assets' that the City requires. Otherwise, these two pieces combined could represent \$200,000 in capital producing no return for a retail business. This is an impossible standard for most.

We hope that our comments have made clear to the Council our deep concerns with this process and the proposed ordinance. Portland and its residents are faced with a once-in-a-lifetime opportunity for hardworking, passionate, and responsible citizen entrepreneurs. We urge the Council to take advantage of this golden opportunity by rejecting the proposed regulations that would cripple the ability of many of the most knowledgeable, conscientious and hardworking Mainers to participate.

By no means do we support an unregulated, unsafe, or untaxed 'marijuana' industry—we recognize there are serious public policy concerns at play and do not wish to diminish these in the conversation. But it is our view that we in fact go backwards when we overregulate and restrict a commerce that is already happening everywhere around us with little to no oversight. How can bringing this industry 'into the light' be more of a public health risk? Decades of drug policy research fly in the face of that argument.

We extend to all members of City government the invitation to engage on these issues we have highlighted and hope that a robust debate will bring us to a better place. We are all operating in good faith here, but the City risks generating public rancor, controversy, and legal liabilities if it seeks to limit too aggressively to restrict this opportunity.

There is a better way—let the market, and the residents of and visitors to of our great City, who are its customers, decide.

Sincerely,

Mark Barnett



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11. Attached PDF – profitability
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INTERNAL REVENUE CODE SECTION 280E: CREATING AN IMPOSSIBLE SITUATION FOR LEGITIMATE BUSINESSES

What is Section 280E?

Section 280E of the Internal Revenue Code forbids businesses from deducting otherwise ordinary business expenses from gross income associated with the "trafficking" of Schedule I or II substances, as defined by the Controlled Substances Act. The IRS has subsequently applied Section 280E to state-legal cannabis businesses, since cannabis is still a Schedule I substance.

A throwback from the Reagan Administration, Section 280E originated from a 1981 court case in which a convicted cocaine trafficker asserted his right under federal tax law to deduct ordinary business expenses. In 1982, Congress created 280E to prevent other drug dealers from following suit. It states that no deductions should be allowed on any amount "in carrying on any trade or business if such trade or business consists of trafficking in controlled substances."

With 23 states and the District of Columbia now allowing some form of legal marijuana, 280E is applied to state-regulated cannabis businesses more often than it is to the types of illegal drug dealers that the provision was intended to penalize.

How does Section 280E hurt state-legal cannabis businesses?

Federal income taxes are based on a fairly simple formula: start with gross income, subtract business expenses to calculate taxable income, and then pay taxes on this amount. Owners of regular businesses often derive profits from these business deductions.

"I'm taxed on nearly double the amount that my business actually makes."

Cannabis businesses, however, pay taxes on gross income. These businesses often pay tax rates that are 70% or higher. As John Davis, owner of the Northwest Patient Resource Center in Seattle, WA states, "I'm taxed on nearly double the amount that my business actually makes."

***– John Davis,
Northwest Patient
Resource Center***

Below is a simplified model that illustrates the tax structure for cannabis businesses compared to a normal businesses. In this scenario, the normal business's taxable income is \$150,000, while the cannabis business is taxed on \$350,000, despite having the same costs and expenses.

	Non-Cannabis Business	Cannabis Business
Gross Revenue	\$1,000,000	\$1,000,000
Cost of Goods Sold	\$650,000	\$650,000
Gross Income	\$350,000	\$350,000
Deductible Business Expenses	\$200,000	\$0
Taxable Income	\$150,000	\$350,000
Tax (30%)	\$45,000	\$105,000
Effective Tax Rate	30%	70%

The taxation problem facing cannabis businesses just got worse.

"There are a lot of businesses that are going to get absolutely creamed."

***– Jim Marty,
Bridge West CPAs***

In January 2015, the Internal Revenue Service issued an internal memorandum that opined on how state-legal cannabis businesses should compute federal income taxes. Drafted by the IRS Chief Counsel, the memo rejects many of the tax deductions that these businesses have traditionally made. The memo challenges tax strategies that allow these businesses to stay afloat, and imposes a strict interpretation of Section 280E of the Internal Revenue Code. Without even the meager deductions state-legal cannabis businesses were previously allowed to take, these businesses face a bleak financial future. This deeply affects their ability to reinvest profits

back into their local communities and fulfill the will of state voters, legislatures, and regulatory bodies that have mandated that cannabis be dispensed through legal storefronts.

Jim Marty, a CPA with Colorado's Bridge West CPAs, says that many marijuana businesses are going to struggle under the new rules. "There are a lot of businesses that are going to get absolutely creamed," he says.

What types of business expenses are scrutinized under 280E?

- Employee salaries
- Utility costs such as electricity, internet and telephone service
- Health insurance premiums
- Marketing and advertising costs
- Repairs and maintenance
- Rental fees for facilities
- Routine repair and maintenance
- Payments to contractors

State-legal cannabis businesses are allowed to deduct the Cost of Goods Sold (COGS) on their taxes. Also, since 2007, cannabis businesses have made deductions on their non-cannabis business activities. Most importantly, however, cannabis businesses have also followed guidance from section 263A of the IRC, which allows businesses to capitalize on indirect costs — such as administrative and inventory costs, as well as the amount paid in state excise taxes — and deduct them under COGS.

Depending on the business, these indirect costs can be sizable. The strategy of including these costs in COGS is oftentimes what allows cannabis businesses to collect meager profits.

What deductions are now likely to be challenged?

- General and administrative costs (bookkeeping, legal expenses, technology costs)
- State excise taxes
- Storage of cannabis
- Purchasing cannabis
- Depreciation of cannabis

How did these deductions benefit cannabis businesses?

Attached below are three documents that illustrate how 280E has applied to typical cannabis businesses both before and after the tightening of IRS rules.

Figure 1 is a 1065 tax filing from 2013 from a medical cannabis business in Denver, Colorado. Gross receipts totaled \$776,772, and thanks to some strong work by a CPA, the business was able to deduct \$435,819 in Cost of Goods Sold, leaving a gross income of \$340,953. The business had an additional \$153,806 in deductions that any other business would be able to take, but were disallowed under 280E. Since the business was allowed deductions on Cost of Goods Sold, it paid taxes on \$340,953 instead of on \$776,772. Its effective tax rate was still 55% of its final earnings, but the business owner was able to invest the remaining cash back into the business.

Without these deductions, what does a final tax bill look like for a state-authorized cannabis business?

Figure 2 is a 1065 tax filing from 2014 from a medical cannabis dispensary in Seattle, Washington. The business followed the new, even stricter 280E rules in its filing. As the documents show, gross income from this business totaled \$154,469 for 2014, and the business had \$101,100 in expenses. If this business were a regular business, it would be taxed on its earnings, which were \$53,369. In order to comply with 280E, however, the business was unable to take these deductions, and instead it paid taxes on \$154,469. The business' tax payment totaled \$46,340, which equates to 87% of its true earnings. The business owner had only \$7,029 to either invest back into his business or keep as profit.

What's the worst-case scenario for a business under 280E?

Figure 3 is a 1065 and Statement of Activities and Changes In Net Assets from a medical marijuana dispensary in Arizona. The business produced \$876,420 in gross receipts and was permitted to deduct \$319,386 in Cost of Goods Sold, but could take no deductions for its other expenses. The business, thus, was taxed on its gross income, which was \$557,034.

Like many startup businesses, however, the dispensary had significant first-year expenses, which totaled \$867,863. These operating expenses were non-deductible under 280E. So while the business actually lost a total \$310,829 for the year, its tax bill was still \$189,781. Despite bringing in \$876,420, the business ended up more than half a million dollars in the red.

Mitch Woolheiser, owner of Northern Lights Cannabis in Edgewater, Colorado, said he's "hoarding cash" in preparation for his tax payment. "I can't give my employees raises. I can't put money back into my business. Instead I've been hoarding cash in anticipation of what the IRS is going to take," Woolheiser says.

"I can't give my employees raises. I can't put money back into my business. Instead I've been hoarding cash in anticipation of what the IRS is going to take."

***– Mitch Woolheiser,
Northern Lights
Cannabis***

How many state economies are affected by 280E?

Section 280E affects all businesses that engage in the cultivation, sale, or processing of the cannabis plant. This includes cultivators, medical dispensaries, marijuana retail stores, and infused product manufacturers, as well as concentrates and cannabis oil manufacturers.

Cannabis is now legal in some form in 23 U.S. states as well as the District of Columbia, with Oregon and Alaska joining Colorado and Washington as states with laws regulating marijuana sales to adults over 21. Several other states are expected to enact similar laws regulating marijuana in 2016.

What impact does this have on the cannabis industry and states attempting to regulate marijuana?

“Section 280E de-incentivizes people from filing tax returns. It penalizes people who are trying to be transparent and operate within the law.”

***– Henry Wykowski,
Henry G. Wykowski & Associates***

Cannabis entrepreneurs *want* to pay federal and state taxes. Maintaining a strong working relationship with the IRS legitimizes these businesses and, in turn, the entire cannabis industry. But the current taxation climate has convinced some cannabis entrepreneurs to either ignore 280E on their tax filings, or forego paying taxes altogether. These businesses would rather gamble on the IRS overlooking their filing than see their revenues evaporate due to 280E.

As Henry Wykowski, a California attorney who works with marijuana clients on tax issues, states, “Section 280E de-incentivizes people from filing tax returns. It penalizes people who are trying to be transparent and operate within the law.”

We believe the most recent IRS memo will force even more cannabis businesses to sidestep the IRS. This will undoubtedly lead to long and expensive audits, as well as lawsuits that will challenge the IRS memo and 280E as a whole.

How can this problem be resolved?

The National Cannabis Industry Association believes that the best fix to the situation is to remove marijuana from the Controlled Substances Act. However, The Small Business Tax Equity Act – companion Senate and House legislation introduced in the 114th Congress by Sen. Ron Wyden (D-OR) and Rep. Earl Blumenauer (D-OR) – would more narrowly address the unfair impact 280E has on states with regulated cannabis markets without necessitating a sweeping shift in U.S. marijuana policy.

“The intent of the law was to go after criminals, not law-abiding job creators. Congress needs to step up and clarify that this provision has become a case study in unintended consequences.”

***– Grover Norquist,
Americans for Tax Reform***

The legislation – S. 987 and H.R. 1855 – would exempt cannabis businesses acting in compliance with state law from the 280E provision, thereby allowing them to take the ordinary business deductions afforded to all other legal businesses.

In his endorsement of The Small Business Tax Equity Act, Americans for Tax Reform President Grover Norquist said, “The intent of the law was to go after criminals, not law abiding job creators. Congress needs to step up and clarify that this provision has become a case study in unintended consequences.”

This sensible solution would bring this outdated provision of the tax code into the modern era and allow cannabis businesses to operate in accordance with the will of state voters and legislative bodies who have mandated that these businesses work within a legitimate, above-ground environment. Amending 280E will also allow businesses in the emerging cannabis industry to better invest in their local communities by hiring additional employees and offering more competitive salaries rather than sending inordinate amounts of revenue into the federal tax coffers.

ACKNOWLEDGMENTS

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Jim Marty, Bridge West CPAs

James Thorburn and Rich Walker, Thorburn-Walker

Matthew Walstatter, Pure Green Cannabis

Mitch and Eva Woolheiser, Northern Lights

Henry Wykowski, Henry G. Wykowski and Associates

Luigi Zamarra, Luigi CPA

Figure 1

Form 1065 Department of the Treasury Internal Revenue Service		U.S. Return of Partnership Income For calendar year 2013, or tax year beginning _____, 2013, ending _____, 20_____.		OMB No. 1545-0098 2013	
Information about Form 1065 and its separate instructions is at www.irs.gov/form1065 .					
A Principal business activity _____		Name of partnership _____		D Employer identification number _____	
B Principal product or service _____		Type or Print Number, street, and room or suite number, if a P.O. box, see the instructions. _____		E Date business started _____	
C Business code number _____		City or town, state or province, country, and ZIP or foreign postal code _____		F Total assets (see instructions) \$ 260,244	
G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return (6) ☐ Technical termination — also check (1) or (2)					
H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____					
I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year _____					
J Check if Schedules C and M-3 are attached ☐					
Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.					
INCOME	1 a Gross receipts or sales		1 a	776,772.	
	b Returns and allowances		1 b		
	c Balance. Subtract line 1b from line 1a		1 c	776,772.	
	2 Cost of goods sold (attach Form 1125-A)		2	435,819.	
	3 Gross profit. Subtract line 2 from line 1c		3	340,953.	
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)		4		
	5 Net farm profit (loss) (attach Schedule F (Form 1040))		5		
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		6		
SEE INSTRUCTIONS FOR LIMITATIONS	7 Other income (loss) (attach statement)		7		
	8 Total income (loss). Combine lines 3 through 7		8	340,953.	
	9 Salaries and wages (other than to partners) (less employment credits)		9	85,004.	
	10 Guaranteed payments to partners		10		
	11 Repairs and maintenance		11	6,638.	
	12 Bad debts		12		
	13 Rent		13	8,325.	
	14 Taxes and licenses		14		
	15 Interest		15		
	16a Depreciation (if required, attach Form 4562)		16a	8,287.	
	b Less depreciation reported on Form 1125-A and elsewhere on return		16b	0.	
	16c		16c	8,287.	
	17 Depletion (Do not deduct oil and gas depletion.)		17		
	18 Retirement plans, etc.		18		
19 Employee benefit programs		19			
20 Other deductions (attach statement)		20	-108,254.		
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20		21	0.		
22 Ordinary business income (loss). Subtract line 21 from line 8		22	340,953.		
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.					
Sign Here Signature of general partner or limited liability company member manager _____ Date _____		May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No			
		Print/type preparer's name _____ Preparer's signature _____ Date 12/31/14 Check ☒ if self-employed PTIN _____			
Paid Preparer Use Only Firm's name _____ Firm's EIN _____ Firm's address _____ Phone no. (303) 625-4077		Firm's name _____ Firm's EIN _____ Firm's address _____ Phone no. (303) 625-4077			
		Firm's name _____ Firm's EIN _____ Firm's address _____ Phone no. (303) 625-4077			

Gross
COGS
Taxable Profit

2013.

01p05101.SCR 05:05:12

Non-Deductible

[REDACTED]
SEATTLE, WA 98126
206-588-2841

March 27, 2015

[REDACTED]
RE:

[REDACTED]
Schedule K-1 from Partnership's 2014 Return of Income

Dear [REDACTED]

Enclosed is your 2014 Schedule K-1 (Form 1065) Partner's Share of Income, Deductions, Credits, Etc. from [REDACTED]. This information reflects the amounts you need to complete your income tax return. The amounts shown are your distributive share of partnership tax items to be reported on your tax return, and may not correspond to actual distributions you have received during the year. This information is included in the Partnership's 2014 Federal Return of Partnership Income that was filed with the Internal Revenue Service.

This is the final year that [REDACTED] will file a Return of Partnership Income. As a result, this will be the last Schedule K-1 (Form 1065) you will receive from the partnership.

If you have any questions concerning this information, please contact us immediately.

Sincerely,

[REDACTED]

Enclosure(s)

Schedule K-1
(Form 1065)

2014

Department of the Treasury
Internal Revenue ServiceFor calendar year 2014, or tax
year beginning _____, 2014
ending _____Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

Seattle, WA 98126

C IRS Center where partnership filed return
e-fileD ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

Bellevue, WA 98004

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC memberH ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner?..... Individual

J If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here. ☐

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	51 %	51 %
Loss	51 %	51 %
Capital	51 %	51 %

K Partner's share of liabilities at year end:

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ 11,988

L Partner's capital account analysis:

Beginning capital account	\$ 39,213
Capital contributed during the year	\$
Current year increase (decrease)	\$ 73,273
Withdrawals & distributions	\$
Ending capital account	\$ 112,486

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

M Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No

If 'Yes', attach statement (see instructions)

☒ Final K-1☐ Amended K-1

651113

OMB No. 1545-0123

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
	101,100.		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
	53,369.		
5	Interest income		
	2.		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
		A	-283.
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
		C	21,734.
12	Section 179 deduction		
	5,434.		
13	Other deductions		
A	661.	19	Distributions
		20	Other information
		A	2.
14	Self-employment earnings (loss)		
A	154,469.		

*See attached statement for a

Amount taxed on...
30% is \$46,340.07
Amount to live on
would be \$7,029.00

BAA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2014

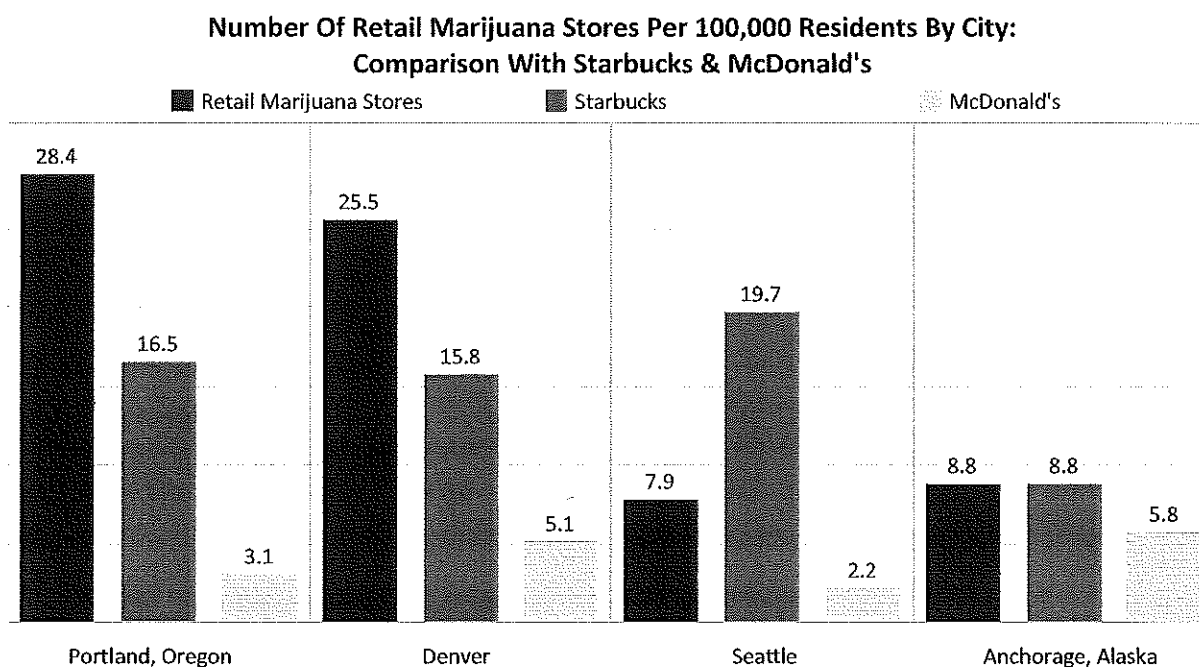
Partner 1

PTPA0312L 11/28/14

Figure 3

Form 1120 Department of the Treasury Internal Revenue Service	U.S. Corporation Income Tax Return For calendar year 2013 or tax year beginning _____, ending _____ Information about Form 1120 and its separate instructions is at www.irs.gov/form1120 .	OMB No. 1545-0123 2013
A Check if: 1a Consolidated return (attach Form 851) ☐ b Life/nonlife consolidated return ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (see instructions) ☐ 4 Schedule M-3 attached ☐	Name _____ TYPE OR PRINT Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____	B Employer identification number _____ C Date incorporated _____ D Total assets (see instructions) \$ 1,406,508 E Check if: (1) ☒ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change
Income 1a Gross receipts or sales 1a 876,420 b Returns and allowance 1b c Balance. Subtract line 1b from line 1a. 1c 876,420 2 Cost of goods sold (attach Form 1125-A) 2 319,386 3 Gross profit. Subtract line 2 from line 1c. 3 557,034 4 Dividends (Schedule C, line 19) 4 5 Interest 5 6 Gross rents 6 7 Gross royalties 7 8 Capital gain net income (attach Schedule D (Form 1120)) 8 9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797) 9 10 Other income (see instructions—attach statement) 10 11 Total income. Add lines 3 through 10. 11 557,034		
Deductions (See instructions for limitations on deductions.) 12 Compensation of officers (see instructions—attach Form 1125-E) 12 13 Salaries and wages (less employment credits) 13 14 Repairs and maintenance 14 15 Bad debts 15 16 Rents 16 17 Taxes and licenses 17 18 Interest 18 19 Charitable contributions 19 20 Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562) 20 21 Depletion 21 22 Advertising 22 23 Pension, profit-sharing, etc., plans 23 24 Employee benefit programs 24 25 Domestic production activities deduction (attach Form 8903) 25 26 Other deductions (attach statement) 26 27 Total deductions. Add lines 12 through 26. 27 0 28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11. 28 557,034 29a Net operating loss deduction (see instructions) 29a b Special deductions (Schedule C, line 20) 29b c Add lines 29a and 29b. 29c 0		
Tax, Refundable Credits, and Payments 30 Taxable income. Subtract line 29c from line 28 (see instructions) 30 557,034 31 Total tax (Schedule J, Part I, line 11) 31 189,392 32 Total payments and refundable credits (Schedule J, Part II, line 21) 32 0 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐ 33 34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed. 34 189,392 35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid. 35 0 36 Enter amount from line 35 you want: Credited to 2014 estimated tax 36 0		
Sign Here Signature of officer _____ Date _____ Title _____ Print/Type preparer's name _____ Preparer's signature _____ Date _____	May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☒ No Check ☐ if self-employed PTIN _____ Firm's EIN _____ Phone no. _____ State AZ ZIP code _____	
Paid Preparer Use Only For Paperwork Reduction Act Notice, see separate instructions.	Form 1120 (2013)	

CHART 5.10: Number Of Retail Marijuana Stores Per 100,000 Residents By City: Comparison With Starbucks & McDonald's



Source: Oregon Liquor Control Commission, Colorado Department of Revenue, Washington Liquor and Cannabis Board, Alaska Alcohol and Marijuana Control Office, Google Maps

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The level of competition with which retailers must contend can be put into perspective by comparing the number of marijuana retail stores per 100,000 residents in several major cities to Starbucks and McDonald's—stores that are considered ubiquitous in the U.S.

In Portland, Oregon, and Denver, marijuana retailers outnumber Starbucks by a wide margin. In Seattle—ground zero for the coffee movement of the late 1990s—Starbucks outnumber retail marijuana stores, while in Anchorage, Alaska, marijuana retailers and Starbucks are equally represented. The relative proportion in each of these cities can be partly explained by state regulations: Washington has a statewide cap on the number of allowed retailers, limiting the number of marijuana retail. Alaska, Colorado and Oregon have no such statewide caps (although municipalities can institute caps).

In all cases, the density of marijuana retailers is greater than that of McDonald's, with the largest difference in Portland and the smallest difference in Anchorage.

This level of competition places additional pressure on retailers to provide customers with a consistently positive experience. If a customer has a less-than-positive experience at any given recreational store, they likely have dozens of other stores in the same vicinity they can visit instead. Retailers need to provide a compelling reason for a customer to visit, such as low prices, exceptional service, broad product selection or convenience.

CHART 5.09: The Impact Of 280E On A Retailer's Bottom Line

Form 1125-A (Rev. December 2012) Department of Revenue		INCOME STATEMENT		OMB No. 1545-2225
	MARIJUANA RETAILER		TRADITIONAL RETAILER	
1. Revenue	\$1,000,000		\$1,000,000	
2. Cost of Goods Sold	\$500,000		\$500,000	
a. Wholesale Cost	\$400,000		\$400,000	
b. Delivery	\$75,000		\$75,000	
c. Storage	\$25,000		\$25,000	
3. Rent	\$100,000		\$100,000	
4. Utilities	\$100,000		\$100,000	
5. Insurance	\$50,000		\$50,000	
6. Maintenance	\$50,000		\$50,000	
Taxable Income	\$500,000		\$200,000	
Tax Burden at 25% Rate	\$125,000		\$50,000	
Income After Taxes & Expenses	\$75,000		\$150,000	

Marijuana retailers cannot deduct these business expenses, while traditional retailers can. So in this example, taxable income for cannabis dispensaries/rec stores is \$500,000 – reflecting only cost of goods sold adjustments – while traditional retailers have taxable income of \$200,000. As a result, cannabis retailers pay more in taxes.

A cannabis dispensary or rec shop ends up with about half the income of a traditional retailer despite having the same expenses and revenue.

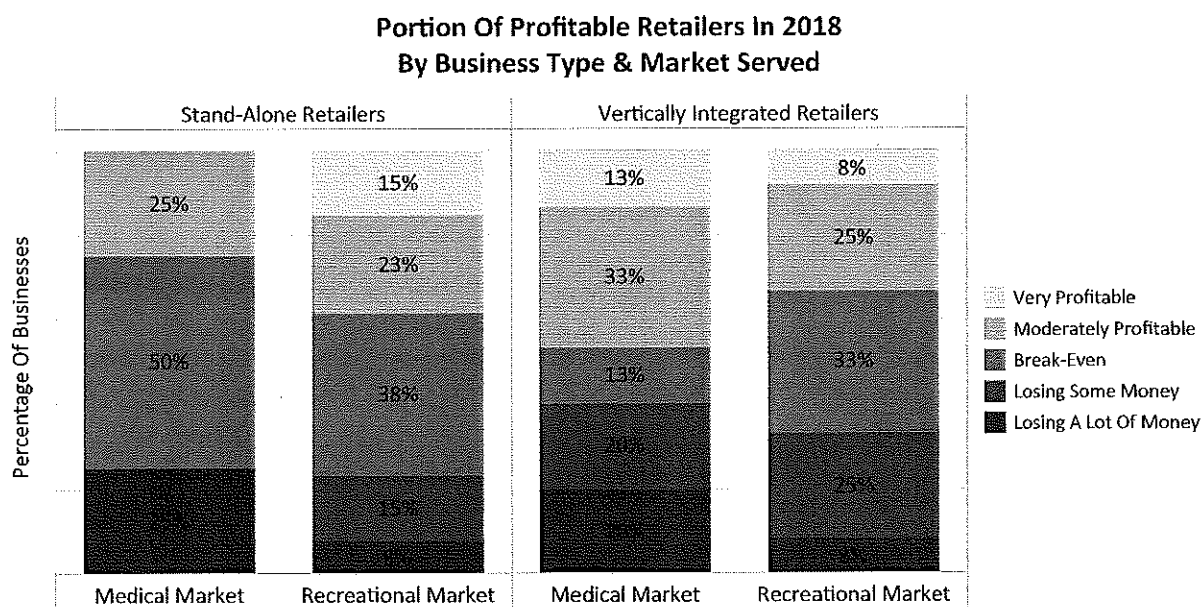
A marijuana retailer and a traditional retailer are allowed to adjust their taxable income based on the cost of goods sold (essentially a tax deduction), but this is the only adjustment a marijuana retailer can make.

Source: 2019 Marijuana Business Daily

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While much has been made of the rapid growth of the marijuana industry throughout the United States, cannabis business owners still face significant obstacles turning sales into profits. The most notable hurdle is IRS tax requirement 280E, which creates a high tax burden on marijuana companies, particularly retailers. Under Section 280E of the federal tax code, the only tax deduction marijuana retailers may claim pertains to the cost of goods sold—or the direct expenses attributable to the production of products sold by a company. As a result, vertically integrated retailers can take higher deductions, as these businesses are directly involved in the production of marijuana and infused products, whereas stand-alone retailers are not. To illustrate how these tax considerations affect a business' bottom line, the chart above shows a hypothetical income statement from a stand-alone marijuana retailer compared with a traditional retailer.

Although there has been no movement on changing 280E to date, lawmakers are working to push through other changes, such as the Secure and Fair Enforcement (SAFE) Banking Act. In addition to loosening federal restrictions that prevent banks from working with marijuana companies, the SAFE Banking Act would address the limitations of 280E.

CHART 5.06: Portion Of Profitable Retailers In 2018 By Business Type & Market Served

Note: "Losing A Lot Of Money" (expenses and taxes exceed revenue by more than 25%); "Losing Some Money" (expenses and taxes exceed revenue by up to 25%); "Moderately Profitable" (up to 25% of revenue left after expenses and taxes are paid); "Very Profitable" (more than 25% of all revenue left after expenses and taxes are paid).

Source: 2019 Marijuana Business Factbook

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Across all markets and business types, most retailers reported making a profit or breaking even in 2018. Overall, retailers in recreational markets fare better than those in medical markets, with a greater proportion of retailers in MMJ markets reporting losses than those in adult-use markets.

The same holds true for vertically integrated retailers: A higher proportion in medical markets reported losing at least some money than vertically integrated retailers in recreational markets. Several medical marijuana states—including Iowa, Minnesota and New York—require vertical integration and have high barriers to entry, including significant licensing fees, but sales have not yet met expectations. In the case of Iowa, regulators recognize this disconnect and have made plans to revisit their fee structure during the 2019 legislative session.

Michele Perejda
141 Washington Avenue
January 7, 2020

My name is Michele Perejda. I own a residence at 141 Washington Avenue. My son Matthew owns 143 Washington Avenue. Both properties are in the R-6 residential zone, and have been since the inception of zoning in Portland (1958).

The property immediately adjacent to 143 Washington Avenue was, until recently zoned residential and is now (as of 2015) in the B-1 zone.* The owner of 143 rear (Akasha LLC) purports to be building a bathhouse as a use in the zone and the building has been permitted as a Bathhouse with limited hours.

Like others who may be located near potential licensees I have a concern about change of use, hours of operation, and other factors that will affect the use and enjoyment of my property, and the value of my property if a retail marijuana operation is opened immediately next door with extended hours and with transient access -all within blinking distance of my front door.

The exterior of my son's home is inches from the property line of the purported Bathhouse.

He has actually lost access to the entire back line of his property and home exterior.

He cannot even open his car door without encroaching on the neighboring property at 143 Rear Washington Avenue.

I believe that my concerns are not unique. It is common sense that City zoning and regulation should indeed and must take into account the potential for nuisance and the permanent diminution of value that such a potential use in close proximity to to an R6 zone represents

I support the city's efforts to develop policies and ordinances that will govern the lawful retail sale of marijuana, as allowed by Maine Law.

In that connection, however, I propose that the Council carefully consider restrictions on the licensing of retail marijuana businesses within 250 feet of a residential zone, just as it has included restrictions on sales proximate to schools and churches.

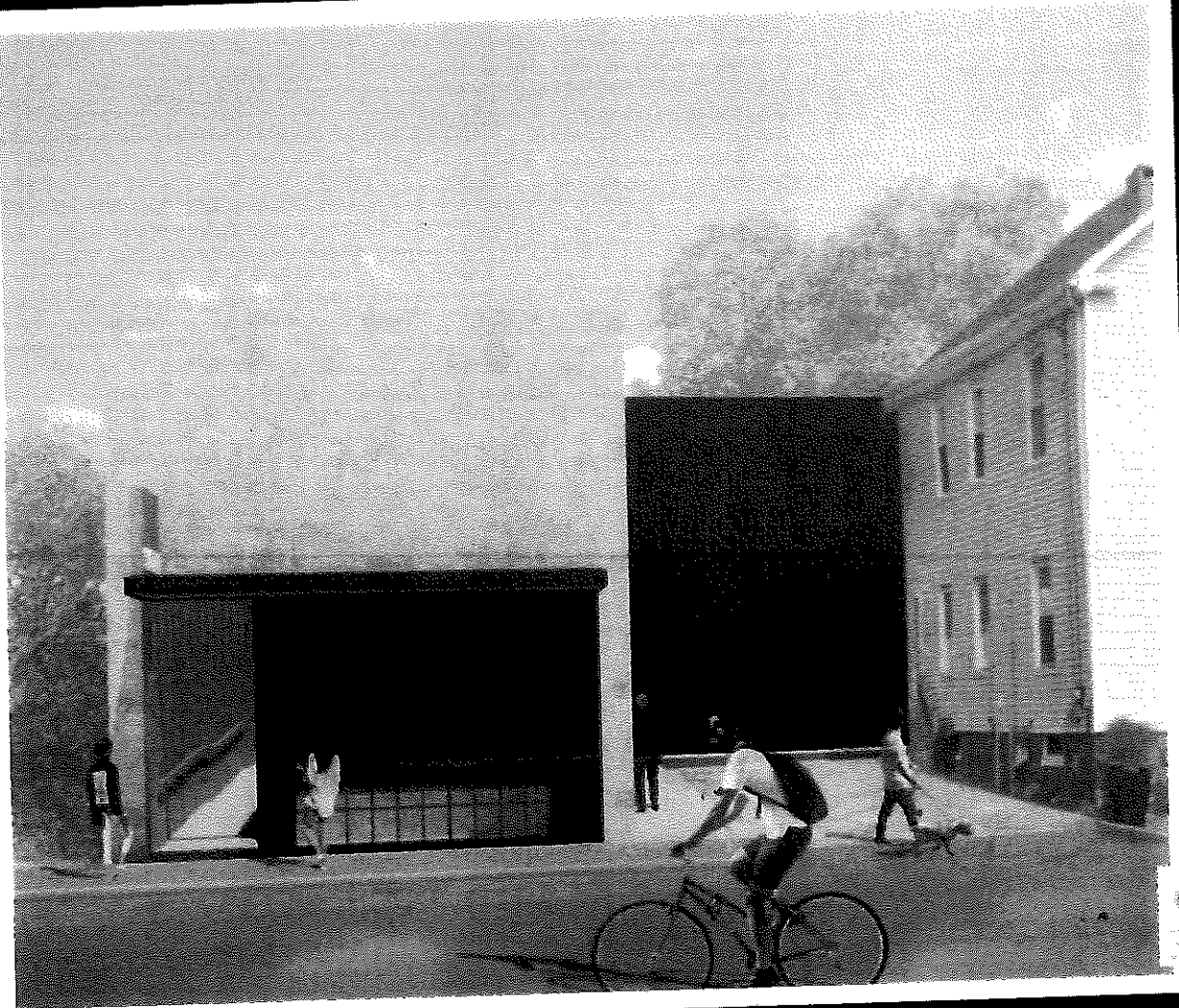
If such a use is allowed, I propose that hours of operation be considered and limited to 9 a.m. and 6 p.m.

I am interested in the individual comments of each member of the City Council and from the citizens of the City of Portland on this proposal.

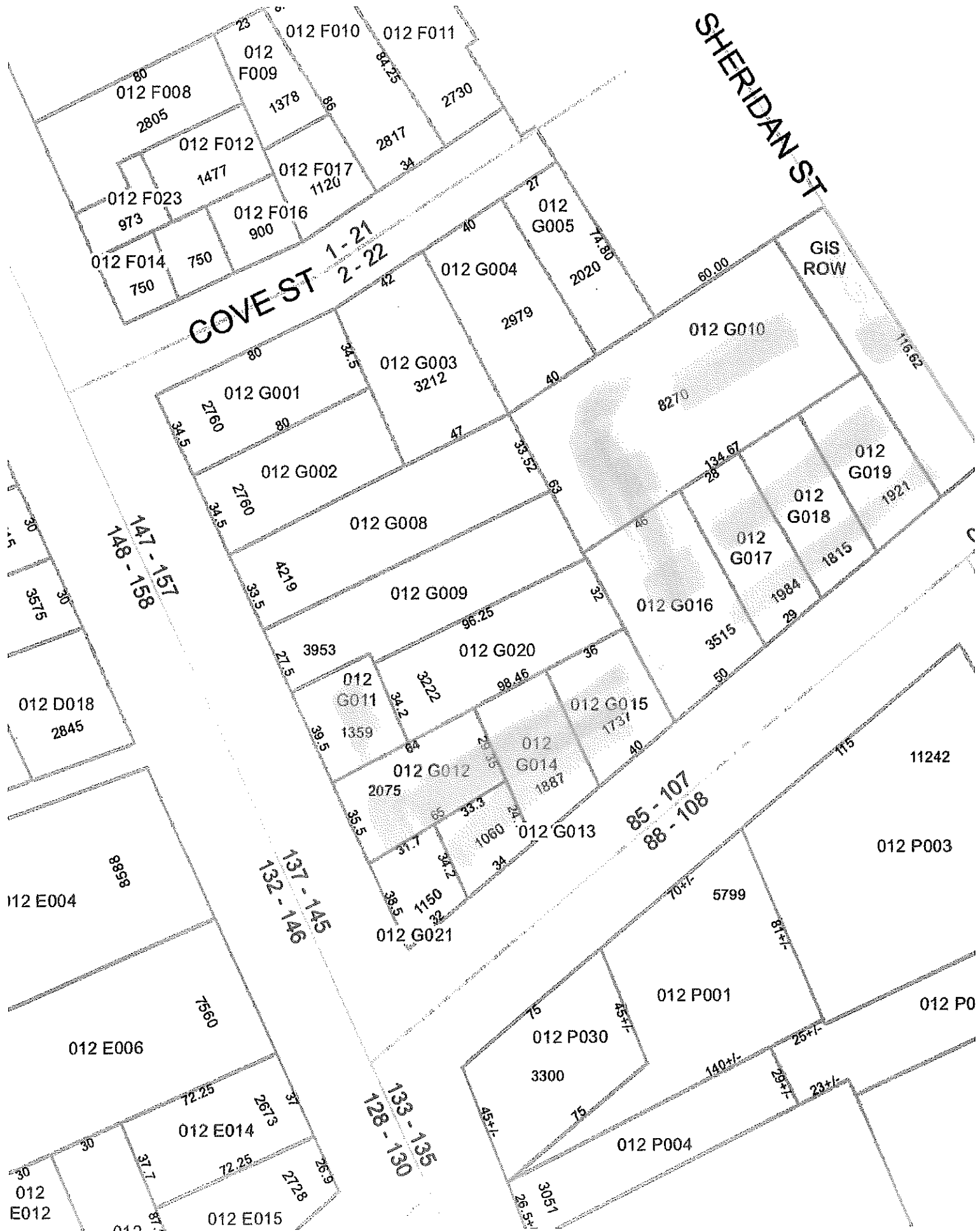
Most of the negative impacts of any new type of regulated business can be mitigated through thoughtful regulation.

It is not uncommon for restrictions to be placed on the location of particular uses within a zone. For example, gun sales and retail vaping are not allowed within a short distance to schools and school property.

"Formula" retail stores and restaurants have been restricted or prohibited in the Old Port and the Arts District.



Artist's rendering shows the facade of Washington Baths, a public bath house and sauna under construction on Washington Avenue. Courtesy of Washington Baths. Courtesy of Washington Baths





INTERNAL REVENUE CODE SECTION 280E: CREATING AN IMPOSSIBLE SITUATION FOR LEGITIMATE BUSINESSES

What is Section 280E?

Section 280E of the Internal Revenue Code forbids businesses from deducting otherwise ordinary business expenses from gross income associated with the "trafficking" of Schedule I or II substances, as defined by the Controlled Substances Act. The IRS has subsequently applied Section 280E to state-legal cannabis businesses, since cannabis is still a Schedule I substance.

A throwback from the Reagan Administration, Section 280E originated from a 1981 court case in which a convicted cocaine trafficker asserted his right under federal tax law to deduct ordinary business expenses. In 1982, Congress created 280E to prevent other drug dealers from following suit. It states that no deductions should be allowed on any amount "in carrying on any trade or business if such trade or business consists of trafficking in controlled substances."

With 23 states and the District of Columbia now allowing some form of legal marijuana, 280E is applied to state-regulated cannabis businesses more often than it is to the types of illegal drug dealers that the provision was intended to penalize.

How does Section 280E hurt state-legal cannabis businesses?

Federal income taxes are based on a fairly simple formula: start with gross income, subtract business expenses to calculate taxable income, and then pay taxes on this amount. Owners of regular businesses often derive profits from these business deductions.

"I'm taxed on nearly double the amount that my business actually makes."

Cannabis businesses, however, pay taxes on gross income. These businesses often pay tax rates that are 70% or higher. As John Davis, owner of the Northwest Patient Resource Center in Seattle, WA states, "I'm taxed on nearly double the amount that my business actually makes."

***– John Davis,
Northwest Patient
Resource Center***

Below is a simplified model that illustrates the tax structure for cannabis businesses compared to a normal businesses. In this scenario, the normal business's taxable income is \$150,000, while the cannabis business is taxed on \$350,000, despite having the same costs and expenses.

	Non-Cannabis Business	Cannabis Business
Gross Revenue	\$1,000,000	\$1,000,000
Cost of Goods Sold	\$650,000	\$650,000
Gross Income	\$350,000	\$350,000
Deductible Business Expenses	\$200,000	\$0
Taxable Income	\$150,000	\$350,000
Tax (30%)	\$45,000	\$105,000
Effective Tax Rate	30%	70%

The taxation problem facing cannabis businesses just got worse.

"There are a lot of businesses that are going to get absolutely creamed."

***– Jim Marty,
Bridge West CPAs***

In January 2015, the Internal Revenue Service issued an internal memorandum that opined on how state-legal cannabis businesses should compute federal income taxes. Drafted by the IRS Chief Counsel, the memo rejects many of the tax deductions that these businesses have traditionally made. The memo challenges tax strategies that allow these businesses to stay afloat, and imposes a strict interpretation of Section 280E of the Internal Revenue Code. Without even the meager deductions state-legal cannabis businesses were previously allowed to take, these businesses face a bleak financial future. This deeply affects their ability to reinvest profits

back into their local communities and fulfill the will of state voters, legislatures, and regulatory bodies that have mandated that cannabis be dispensed through legal storefronts.

Jim Marty, a CPA with Colorado's Bridge West CPAs, says that many marijuana businesses are going to struggle under the new rules. "There are a lot of businesses that are going to get absolutely creamed," he says.

What types of business expenses are scrutinized under 280E?

- Employee salaries
- Utility costs such as electricity, internet and telephone service
- Health insurance premiums
- Marketing and advertising costs
- Repairs and maintenance
- Rental fees for facilities
- Routine repair and maintenance
- Payments to contractors

State-legal cannabis businesses are allowed to deduct the Cost of Goods Sold (COGS) on their taxes. Also, since 2007, cannabis businesses have made deductions on their non-cannabis business activities. Most importantly, however, cannabis businesses have also followed guidance from section 263A of the IRC, which allows businesses to capitalize on indirect costs — such as administrative and inventory costs, as well as the amount paid in state excise taxes — and deduct them under COGS.

Depending on the business, these indirect costs can be sizable. The strategy of including these costs in COGS is oftentimes what allows cannabis businesses to collect meager profits.

What deductions are now likely to be challenged?

- General and administrative costs (bookkeeping, legal expenses, technology costs)
- State excise taxes
- Storage of cannabis
- Purchasing cannabis
- Depreciation of cannabis

What impact does this have on the cannabis industry and states attempting to regulate marijuana?

"Section 280E de-incentivizes people from filing tax returns. It penalizes people who are trying to be transparent and operate within the law."

***– Henry Wykowski,
Henry G. Wykowski & Associates***

Cannabis entrepreneurs *want* to pay federal and state taxes. Maintaining a strong working relationship with the IRS legitimizes these businesses and, in turn, the entire cannabis industry. But the current taxation climate has convinced some cannabis entrepreneurs to either ignore 280E on their tax filings, or forego paying taxes altogether. These businesses would rather gamble on the IRS overlooking their filing than see their revenues evaporate due to 280E.

As Henry Wykowski, a California attorney who works with marijuana clients on tax issues, states, "Section 280E de-incentivizes people from filing tax returns. It penalizes people who are trying to be transparent and operate within the law."

We believe the most recent IRS memo will force even more cannabis businesses to sidestep the IRS. This will undoubtedly lead to long and expensive audits, as well as lawsuits that will challenge the IRS memo and 280E as a whole.

How can this problem be resolved?

The National Cannabis Industry Association believes that the best fix to the situation is to remove marijuana from the Controlled Substances Act. However, The Small Business Tax Equity Act – companion Senate and House legislation introduced in the 114th Congress by Sen. Ron Wyden (D-OR) and Rep. Earl Blumenauer (D-OR) – would more narrowly address the unfair impact 280E has on states with regulated cannabis markets without necessitating a sweeping shift in U.S. marijuana policy.

"The intent of the law was to go after criminals, not law-abiding job creators. Congress needs to step up and clarify that this provision has become a case study in unintended consequences."

***– Grover Norquist,
Americans for Tax Reform***

The legislation – S. 987 and H.R. 1855 – would exempt cannabis businesses acting in compliance with state law from the 280E provision, thereby allowing them to take the ordinary business deductions afforded to all other legal businesses.

In his endorsement of The Small Business Tax Equity Act, Americans for Tax Reform President Grover Norquist said, "The intent of the law was to go after criminals, not law abiding job creators. Congress needs to step up and clarify that this provision has become a case study in unintended consequences."

This sensible solution would bring this outdated provision of the tax code into the modern era and allow cannabis businesses to operate in accordance with the will of state voters and legislative bodies who have mandated that these businesses work within a legitimate, above-ground environment. Amending 280E will also allow businesses in the emerging cannabis industry to better invest in their local communities by hiring additional employees and offering more competitive salaries rather than sending inordinate amounts of revenue into the federal tax coffers.

How did these deductions benefit cannabis businesses?

Attached below are three documents that illustrate how 280E has applied to typical cannabis businesses both before and after the tightening of IRS rules.

Figure 1 is a 1065 tax filing from 2013 from a medical cannabis business in Denver, Colorado. Gross receipts totaled \$776,772, and thanks to some strong work by a CPA, the business was able to deduct \$435,819 in Cost of Goods Sold, leaving a gross income of \$340,953. The business had an additional \$153,806 in deductions that any other business would be able to take, but were disallowed under 280E. Since the business was allowed deductions on Cost of Goods Sold, it paid taxes on \$340,953 instead of on \$776,772. Its effective tax rate was still 55% of its final earnings, but the business owner was able to invest the remaining cash back into the business.

Without these deductions, what does a final tax bill look like for a state-authorized cannabis business?

Figure 2 is a 1065 tax filing from 2014 from a medical cannabis dispensary in Seattle, Washington. The business followed the new, even stricter 280E rules in its filing. As the documents show, gross income from this business totaled \$154,469 for 2014, and the business had \$101,100 in expenses. If this business were a regular business, it would be taxed on its earnings, which were \$53,369. In order to comply with 280E, however, the business was unable to take these deductions, and instead it paid taxes on \$154,469. The business' tax payment totaled \$46,340, which equates to 87% of its true earnings. The business owner had only \$7,029 to either invest back into his business or keep as profit.

What's the worst-case scenario for a business under 280E?

Figure 3 is a 1065 and Statement of Activities and Changes In Net Assets from a medical marijuana dispensary in Arizona. The business produced \$876,420 in gross receipts and was permitted to deduct \$319,386 in Cost of Goods Sold, but could take no deductions for its other expenses. The business, thus, was taxed on its gross income, which was \$557,034.

Like many startup businesses, however, the dispensary had significant first-year expenses, which totaled \$867,863. These operating expenses were non-deductible under 280E. So while the business actually lost a total \$310,829 for the year, its tax bill was still \$189,781. Despite bringing in \$876,420, the business ended up more than half a million dollars in the red.

Mitch Woolheiser, owner of Northern Lights Cannabis in Edgewater, Colorado, said he's "hoarding cash" in preparation for his tax payment. "I can't give my employees raises. I can't put money back into my business. Instead I've been hoarding cash in anticipation of what the IRS is going to take," Woolheiser says.

"I can't give my employees raises. I can't put money back into my business. Instead I've been hoarding cash in anticipation of what the IRS is going to take."

***– Mitch Woolheiser,
Northern Lights
Cannabis***

How many state economies are affected by 280E?

Section 280E affects all businesses that engage in the cultivation, sale, or processing of the cannabis plant. This includes cultivators, medical dispensaries, marijuana retail stores, and infused product manufacturers, as well as concentrates and cannabis oil manufacturers.

Cannabis is now legal in some form in 23 U.S. states as well as the District of Columbia, with Oregon and Alaska joining Colorado and Washington as states with laws regulating marijuana sales to adults over 21. Several other states are expected to enact similar laws regulating marijuana in 2016.

ACKNOWLEDGMENTS

Special thanks to the industry experts whose contributions of time, insight, and materials made this report possible:

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Darin Guthrie, Darin Guthrie CPA

James Hunt, James G. Hunt PLLC

Jim Marty, Bridge West CPAs

James Thorburn and Rich Walker, Thorburn-Walker

Matthew Walstatter, Pure Green Cannabis

Mitch and Eva Woolheiser, Northern Lights

Henry Wykowski, Henry G. Wykowski and Associates

Luigi Zamarra, Luigi CPA

Figure 1

U.S. Return of Partnership Income For calendar year 2013, or tax year beginning _____, 2013, ending _____, 20_____.		OMB No. 1545-0098 2013	
Form 1065 Department of the Treasury Internal Revenue Service			
Information about Form 1065 and its separate instructions is at www.irs.gov/form1065 .			
A Principal business activity B Principal product or service C Business code number	Type or Print Name of partnership Number, street, and room or suite number. If a P.O. box, see the instructions. City or town, state or province, country, and ZIP or foreign postal code	D Employer identification number E Date business started F Total assets (see instrs) \$ 260,244	
G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return (6) ☐ Technical termination -- also check (1) or (2)			
H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____			
I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year _____			
J Check if Schedules C and M-3 are attached ☐			
Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.			
INCOME INSTRUCTIONS FOR LIMITATIONS	1 a Gross receipts or sales	1 a 776,772.	
	b Returns and allowances	1 b	
	c Balance. Subtract line 1b from line 1a		1 c 776,772.
	2 Cost of goods sold (attach Form 1125-A)		2 435,819.
	3 Gross profit. Subtract line 2 from line 1c		3 340,953.
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)		4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))		5
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		6
	7 Other income (loss) (attach statement)		7
	8 Total income (loss). Combine lines 3 through 7		8 340,953.
	9 Salaries and wages (other than to partners) (less employment credits)		9 95,004.
	10 Guaranteed payments to partners		10
	11 Repairs and maintenance		11 6,638.
	12 Bad debts		12
	13 Rent		13 8,325.
	14 Taxes and licenses		14
	15 Interest		15
	16 a Depreciation (if required, attach Form 4562)	16 a 8,287.	
	b Less depreciation reported on Form 1125-A and elsewhere on return	16 b 0.	16 c 8,287.
	17 Depletion (Do not deduct oil and gas depletion.)		17
	18 Retirement plans, etc.		18
	19 Employee benefit programs		19
20 Other deductions (attach statement)	STMT	20 -108,254.	
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20		21 0.	
22 Ordinary business income (loss). Subtract line 21 from line 8		22 340,953.	
Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.		May the IRS discuss this return with the preparer shown below (see instrs)? ☒ Yes ☐ No	
Signature of general partner or limited liability company member manager _____ Date _____			
Print/preparer's name Jordan Cornelius	Preparer's signature Jordan Cornelius	Date 12/31/14	
Firm's name Cornelius CPAs	Firm's EIN 12-3456789	Check ☒ if self-employed ☐ if not	
Firm's address 10200 E Girard Ave, Ste A-105 Denver	Phone no. (303) 625-4077		
Paid Preparer Use Only			
BAA. For Paperwork Reduction Act Notice, see separate instructions. PTPAD112 12/19/13 Form 1065 (2013)			

Figure 1

Form 1065
Page 1, Line 20Other Deductions Worksheet
Keep for your records

2013

Name as Shown on Return

Employer Identification No.

1	Accounting	1	
2	Advertising	2	33,915.
3	Amortization	3	
4	Automobile and truck expense	4	285.
5	Bank charges	5	433.
6	Cleaning	6	
7	Commissions	7	
8	Computer services and supplies	8	1,814.
9	Credit and collection costs	9	
10	Delivery and freight	10	
11	Discounts	11	
12	Dues and subscriptions	12	
13	Equipment rent	13	3,763.
14	Gifts	14	
15	Insurance	15	1,933.
16	Janitorial	16	
17	Laundry and cleaning	17	
18	Legal and professional	18	
19 a	Meals and entertainment, subject to 50% limit	19 a	
b	Meals and entertainment, subject to 80% limit	b	
c	Meals and entertainment, allowed at 100%	c	447.
d	Less disallowed	d	
e	Meals and entertainment, net	19 e	447.
20	Miscellaneous	20	
21	Office expense	21	
22	Outside services	22	3,833.
23	Parking fees and tolls	23	
24	Permits and fees	24	
25	Postage	25	98.
26	Printing	26	
27	Security	27	
28	Supplies	28	13,195.
29	Telephone	29	4,497.
30	Tools	30	
31	Training/continuing education	31	
32	Travel	32	
33	Uniforms	33	
34	Utilities	34	1,014.
35	Other (itemize):	35	
	PROFESSIONAL SERVICES		6,565.
	SOFTWARE		
	CASH SHORT/OVER		764.
	MERCHANT ACCOUNT FEES		12,181.
	263A ADJUSTMENT TO COGS		-39,125.
	280E NON-DEDUCTIBLE EXPENSES		-153,806.
35	Total	35	-208,254.

Non-Deductible

[REDACTED]
SEATTLE, WA 98126
206-588-2841

March 27, 2015

[REDACTED]
RE:

[REDACTED]
Schedule K-1 from Partnership's 2014 Return of Income

Dear [REDACTED]

Enclosed is your 2014 Schedule K-1 (Form 1065) Partner's Share of Income, Deductions, Credits, Etc. from [REDACTED]. This information reflects the amounts you need to complete your income tax return. The amounts shown are your distributive share of partnership tax items to be reported on your tax return, and may not correspond to actual distributions you have received during the year. This information is included in the Partnership's 2014 Federal Return of Partnership Income that was filed with the Internal Revenue Service.

This is the final year that [REDACTED] will file a Return of Partnership Income. As a result, this will be the last Schedule K-1 (Form 1065) you will receive from the partnership.

If you have any questions concerning this information, please contact us immediately.

Sincerely,

[REDACTED]
Enclosure(s)

Schedule K-1
(Form 1065)

2014

Department of the Treasury
Internal Revenue ServiceFor calendar year 2014, or tax
year beginning _____, 2014
ending _____Partner's Share of Income, Deductions,
Credits, etc. **See separate instructions.**☒ Final K-1☐ Amended K-1

651113

OMB No. 1545-0123

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

Seattle, WA 98126

C IRS Center where partnership filed return
e-fileD ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner**

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

Bellevue, WA 98004

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC memberH ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? Individual

J If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here. ☐

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	51 %	51 %
Loss	51 %	51 %
Capital	51 %	51 %

K Partner's share of liabilities at year end:

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ 11,988

L Partner's capital account analysis:

Beginning capital account	\$ 39,213
Capital contributed during the year	\$
Current year increase (decrease)	\$ 73,273
Withdrawals & distributions	\$
Ending capital account	\$ 112,486

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

M Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No

If 'Yes', attach statement (see instructions)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
	101,100.		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
	53,369.		
5	Interest income		
	2.		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
		A	-283.
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
		C	21,734.
11	Other income (loss)		
12	Section 179 deduction	19	Distributions
	5,434.		
13	Other deductions		
A	661.	20	Other information
		A	2.
14	Self-employment earnings (loss)		
A	154,469.		

*See attached statement for a

FOR
IRS
USE
ONLYAmount taxed on...
30% is \$46,340.07
Amount to live on
would be \$7,029.00

BAA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2014

Partner 1

PTPA0312L 11/28/14

Figure 3

Form 1120 Department of the Treasury Internal Revenue Service	U.S. Corporation Income Tax Return For calendar year 2013 or tax year beginning _____, ending _____ Information about Form 1120 and its separate instructions is at www.irs.gov/form1120 .	OMB No. 1545-0123 2013
A Check if: 1a Consolidated return (attach Form 951) ☐ b Life/nonlife consolidated return ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (see instructions) ☐ 4 Schedule M-3 attached ☐	Name _____ TYPE OR PRINT Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____	B Employer identification number _____ C Date incorporated _____ D Total assets (see instructions) \$ 1,406,508 E Check if: (1) ☒ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change
Income	1a Gross receipts or sales 876,420 1b Returns and allowance _____ 1c Balance. Subtract line 1b from line 1a. 876,420 2 Cost of goods sold (attach Form 1125-A) _____ 3 Gross profit. Subtract line 2 from line 1c. 319,386 4 Dividends (Schedule C, line 19) _____ 5 Interest _____ 6 Gross rents _____ 7 Gross royalties _____ 8 Capital gain net income (attach Schedule D (Form 1120)) _____ 9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797) _____ 10 Other income (see instructions—attach statement) _____ 11 Total income. Add lines 3 through 10. 557,034	12 Compensation of officers (see instructions—attach Form 1125-E) _____ 13 Salaries and wages (less employment credits) _____ 14 Repairs and maintenance _____ 15 Bad debts _____ 16 Rents _____ 17 Taxes and licenses _____ 18 Interest _____ 19 Charitable contributions _____ 20 Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562) _____ 21 Depletion _____ 22 Advertising _____ 23 Pension, profit-sharing, etc., plans _____ 24 Employee benefit programs _____ 25 Domestic production activities deduction (attach Form 8903) _____ 26 Other deductions (attach statement) _____ 27 Total deductions. Add lines 12 through 26. 0 28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11. 557,034 29a Net operating loss deduction (see instructions) _____ 29b Special deductions (Schedule C, line 20) _____ 29c Add lines 29a and 29b. 0
Deductions (See instructions for limitations on deductions.)	30 Taxable income. Subtract line 29c from line 28 (see instructions) 557,034 31 Total tax (Schedule J, Part I, line 11) 189,392 32 Total payments and refundable credits (Schedule J, Part II, line 21) 0 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐ 34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed. 189,392 35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid. 0 36 Enter amount from line 35 you want: Credited to 2014 estimated tax ☐ Refunded ☐	30 Taxable income. Subtract line 29c from line 28 (see instructions) 557,034 31 Total tax (Schedule J, Part I, line 11) 189,392 32 Total payments and refundable credits (Schedule J, Part II, line 21) 0 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐ 34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed. 189,392 35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid. 0 36 Enter amount from line 35 you want: Credited to 2014 estimated tax ☐ Refunded ☐
Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28 (see instructions) 557,034 31 Total tax (Schedule J, Part I, line 11) 189,392 32 Total payments and refundable credits (Schedule J, Part II, line 21) 0 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐ 34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed. 189,392 35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid. 0 36 Enter amount from line 35 you want: Credited to 2014 estimated tax ☐ Refunded ☐	30 Taxable income. Subtract line 29c from line 28 (see instructions) 557,034 31 Total tax (Schedule J, Part I, line 11) 189,392 32 Total payments and refundable credits (Schedule J, Part II, line 21) 0 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐ 34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed. 189,392 35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid. 0 36 Enter amount from line 35 you want: Credited to 2014 estimated tax ☐ Refunded ☐

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here Signature of officer _____ Date _____ Title _____	May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☒ No
---	---

Print/Type preparer's name _____	Preparer's signature _____	Date _____	Check ☐ if self-employed ☐ PTIN _____
Firm's EIN _____		Phone no. _____	
State AZ		ZIP code _____	

Paid Preparer Use Only

For Paperwork Reduction Act Notice, see separate Instructions.

Form 1120 (2013)

Figure 3

STATEMENT OF ACTIVITIES AND CHANGES IN NET ASSETS
December 31, 2013

NET SALES	\$ 876,420	Gross
COST OF SALES	<u>319,386</u>	COGS
GROSS PROFIT	557,034	Taxable Income
OPERATING EXPENSES		
Consulting	442,331	
Contract labor	417,204	
Occupancy	102,343	
Depreciation	73,147	
Interest expense	34,637	
Advertising and promotion	32,253	
Management fees (See Note 5)	29,263	
Computer and internet	10,592	
Utilities	9,886	
License and permits	7,739	
Insurance	6,885	
Repairs and maintenance	4,522	
Bank fees	3,985	
Telephone	3,760	
Office supplies	3,441	
Research and development	855	
Travel	557	
Security	448	
Meals and entertainment	299	
Printing	107	
Allocation to inventory	(316,391)	
Total Operating Expenses	<u>867,863</u>	Non-Deductible
INCOME BEFORE INCOME TAXES	(310,829)	
PROVISION FOR INCOME TAXES	<u>(189,781)</u>	Taxes Paid
(Decrease) in Net Assets	(500,610)	Total loss
NET ASSETS, BEGINNING OF YEAR	<u>(337,418)</u>	
NET ASSETS, END OF YEAR	<u>\$ (838,028)</u>	



CITY OF PORTLAND
Parks, Recreation & Facilities Department
Sally DeLuca, Director

CITY OF PORTLAND
Parks, Recreation & Facilities Department
Ethan Hipple, Deputy Director

March 2020

To Portland City Councilors,

The Department of Parks, Recreation and Facilities is recommending changes to the current off-leash dog policy in Baxter Woods (Chapter 5 of City Code). Specific code revisions are attached to this memo. The proposed changes represent a compromise that was arrived at after multiple public meetings of the Parks Commission, consultation with Maine Audubon, and conversations with community and dog-owner groups. The proposal has been informed by both the 2018 Baxter Woods Management Plan, as well as the 2019 Bird Surveys Report (attached to this memo). On February 26, 2020, the Sustainability and Transportation Committee voted unanimously to forward this proposal to the City Council.

Department Proposal, as recommended by **Parks Commission 7/18/19** (10 in favor, 1 opposed) and **Sustainability and Transportation Committee 2/26/20** (unanimous):

- **April 1 through July 31, annually:** Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- **August 1 through March 31, annually:** Dogs permitted off-leash and under voice control from 5am to 9am, and from 3pm to 10pm. From 9am to 3pm, dogs must be on 8-foot leash.
- **Habitat Restoration Area:** In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas. The habitat restoration area would be delineated by designating the Northern Carriage Path and areas north of it on-leash only. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

Background Information

Baxter Woods was donated to the City of Portland by Governor Percival Baxter in 1946. Among the many conditions in the deed are the following:

- *"shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreational and educational purposes..."*
- *"shall forever be kept in its natural wild state and as a bird sanctuary for wild birds...."*

Chapter 5 of Portland City code currently allows for dogs to run off-leash in Baxter Woods, but within voice-command of the owner. Baxter Woods is used heavily by dog-owners and staff have received verbal and written comments from the public about the current policy. Before a policy change was first publicly proposed



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Sally DeLuca, Director

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Ethan Hipple, Deputy Director

in March of 2019, the majority of the public comments have been opposed to the current permissive off-leash policy. Following changes proposed by staff, the majority of public comments have been in favor of retaining the existing policy, with a smaller number supporting changes to the policy to restrict some or all off-leash dogs.

Many of the comments opposed to the current off-leash policy list safety as a primary concern. Numerous dog owners have told us that they do not bring their dog to Baxter Woods for fear of their dog being harassed or attacked by other unruly dogs, and some parents have told us that they prefer not to bring their children there for the same reason. Many of the written comments are attached to this memo.

Staff have had many conversations with teachers and daycare operators who have tried to use Baxter Woods for outdoor classroom space and exercise space, only to be turned back due to the high number of unruly off-leash dogs. Teachers reported that recently arrived immigrant children in particular sometimes felt threatened by the presence of off-leash dogs. This proposal attempts to balance the hours of off-leash activity so that the park is welcoming to all.

Management Plan, 2018

In 2018, staff contracted with Forest Ecologist Rob Ryan to conduct an ecological assessment of Baxter Woods. The study looked at current conditions, soil and water quality protection, forest health, and wildlife conservation (attached to this memo).

One finding of the Management Plan Report was that the off-leash dog activity was having a negative impact on ground-nesting and ground-feeding birds. Baxter Woods in its present day condition with dogs running off leash at all hours would not qualify as a “sanctuary for wild birds”. The report recommends enforcing an on-leash dog policy at Baxter Woods.

Bird Surveys, 2019 and 2020

Staff contracted with Biodiversity Research Institute to conduct surveys of all birds in Baxter Woods so that we have baseline data to compare to future years when potential policy changes will take effect. The surveys were conducted in the Summer and Fall of 2019. Additional surveys will take place in Spring of 2020. The findings of the surveys to date showed that Baxter Woods has a lower number of nesting and reproducing birds than other comparable areas in the City of Portland, and that off leash dog activity has likely had a negative effect on breeding bird populations. The report is attached to this memo.

Nearby Off Leash Areas

There are many parks and open spaces in Portland that allow off leash dogs. Within 1 mile of Baxter Woods, there are 4 public properties that allow off-leash dogs (Evergreen Cemetery, Capisic Pond Park, University Park, and Canco Woods). We also have dedicated dog parks that also allow off leash dogs (Quarry Run, Valley Street). Staff believe that the public will still have ample access to high-quality, conveniently-located open spaces for their dogs to run free in a more appropriate location.



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Portland currently has 813 acres of parks and open spaces. 495 of the total 813 acres are designated by ordinance as off-leash areas. Baxter Woods represents 32.5 acres of the current off-leash area. With the proposed changes, there would be 462.5 acres of off-leash area in Portland, out of a total of 813 acres of parks and open spaces (57% off leash).

Process Timeline

April 2019: Parks Commission Public Meeting to discuss potential changes. The meeting and agenda were publicly posted on the City website, and staff put up posters at entrances to Baxter Woods two weeks prior to the meeting. Email invitations were also sent to the “Responsible Dog Owners of Baxter Woods” facebook group admin, as well as the Deering Center Neighborhood Association.

At the April 4, 2019 meeting, staff presented a proposal to require dog owners to use 25 foot leashes year-round in Baxter Woods. Staff recommended that the Parks Commission take public comment on this issue and then take an advisory vote on the proposal. The Parks Commission heard much public comment on the issue, with many off leash dog owners opposed to the proposal and asking if a compromise was possible. The Parks Commission took no action at this meeting, and asked staff to research whether a compromise proposal was possible.

July 2019:

On July 18, 2019, staff presented a compromise proposal to the Parks Commission. The compromise proposal was crafted after careful consideration of public comments at the April 4, 2019 meeting and further consultation with Maine Audubon, Forest Ecologist Rob Bryan, and members of the community group Responsible Dog Owners of Baxter Woods. Specifically, staff met with Dawn Leland (Responsible Dog Owners of Baxter Woods) and resident Marc Lesperance, both of whom had taken on a leadership role in opposing changes to the proposed leash law. Staff sought out feedback from a wide variety of experts and users of the park to come up with a compromise proposal that would allow for some off-leash dog use in Baxter Woods, but that would also enable the City to fulfill its role as the steward of the property and to maintain the property as described in the deed.

The City recognizes the value and sense of community that comes from the many daily users of the park who are there specifically to let their dogs run off-leash. Our overall goal is to balance the many needs of *all* kinds of park users, so a compromise policy was developed that would consist of the following:

- **April 1 through July 31, annually:** Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- **August 1 through March 31, annually:** Dogs permitted off-leash and under voice control from 5am to 9am, and from 5pm to 10pm. From 9am to 5pm, dogs must be on 8-foot leash. *During the July 18, 2019 meeting, the evening start time for off leash hours was amended from 5pm to 3pm.*
- **Habitat Restoration Area:** In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration



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efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas. The habitat restoration area would be delineated by designating the Northern Carriage Path and areas north of it on-leash only. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

The compromise proposal offers access to dogs on-leash 12 months a year, and for 8 of those 12 months, dogs off-leash and under voice control would still be welcome. The compromise proposal also mirrors hours of off-leash use that are used at East End Beach so that dog owners have a simple, easy to remember schedule that will be easy to follow and enforce.

The compromise proposal also changes the leash requirement from a 25 foot leash to an 8 foot leash. This was primarily due to public comment at the April 4, 2019 meeting. Many dog owners stated that a 25 foot leash in a tightly wooded area would result in tangles and potential aggression, so the recommendation was changed from 25 feet to 8 feet. An 8 foot leash will also enable dog owners to keep their dogs out of sensitive habitat restoration areas.

During the season when dogs would be allowed off leash (August through March), staff are proposing limited hours for off leash activity (only from 5am to 9am, and again from 3pm to 10pm) In effect, this would require that dogs are required to be on leash from 9am to 3pm. This is scheduled so that during the school day, school groups, daycares and others can use the woods without off-leash activity. We have a wide variety of park visitors in Portland, many of whom love the presence of off leash dogs, some who are indifferent, and some who feel threatened by off-leash dogs. This proposal seeks to find a balance so that everyone can feel comfortable visiting Baxter Woods.

The Parks Commission voted in favor of the amended staff proposal (10 in favor, 1 opposed). The Parks Commission vote is advisory only.

January 15, 2020: Sustainability and Transportation Committee Workshop

The Sustainability and Transportation Committee held a workshop on Baxter Woods Leash rules that included presentations from Parks, Recreation and Facilities Staff, as well as Friends of Baxter Woods.

February 26, 2020: Sustainability and Transportation Committee Recommendation

The Sustainability and Transportation Committee heard presentations from the Friends of Baxter Woods and City staff, and took public comment. The Committee voted unanimously to forward the proposal to City Council.



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Sally DeLuca, Director

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Peer Land Management Policies

Most conservation areas in the region that are managed as bird or wildlife sanctuaries simply ban dogs altogether due to their well-documented negative impact on wildlife. A select few areas have more relaxed rules allow dogs, but on-leash only.

We know of no areas managed as wildlife sanctuaries in Maine that allow for any off-leash dog activity.

- Bangor City Forest, Bangor: Dogs on Leash only
- Fore River Sanctuary, Portland (Owned by Portland Trails): Dogs on Leash only
- Robinson Woods, Cape Elizabeth: Dogs on Leash only (limited hours)
- Gilsland Farm Audubon Center, Falmouth: No Dogs at all
- Wolfe's Neck Center: Dogs on Leash only
- River Point Conservation Area, Falmouth: No Dogs at all

With the compromise proposal, Baxter Woods would stand alone in continuing to allow for a limited amount of off-leash use (outside of prime nesting season) and could serve as an innovative test case in managing for wildlife and off-leash dog use simultaneously.

After numerous conversations with Maine Audubon, their staff affirmed that this compromise policy would have some positive benefits for birds and wildlife, especially if combined with a habitat restoration area. Audubon experts state that with proper restoration and enforcement, we could see up to a dozen ground-nesting bird species in Baxter Woods. Likely species include, but are not limited to, ground sparrows, woodcock, oven birds and wood thrush.

Enforcement:

Staff do currently enforce leash laws at Baxter Woods, but ticketing is rare as we try to take a more educational approach. We are working on funding strategies to bring on additional Rangers to patrol and enforce leash laws throughout the City.

History of Off Leash Dog Ordinance in Baxter Woods

During the April 4, 2019 meeting, some Commissioners raised the question of "When did the City start to allow off leash dogs at Baxter Woods?" Staff researched the various versions of Chapter 5 of the City Code and discovered that Baxter Woods was added to the list of off-leash voice control parks (along with 13 other parks) during December of 1983. At the time, the city was debating whether to allow dogs and off-leash dogs in Western Cemetery, and as part of those deliberations, a list was created of parks where off-leash activity was permitted. Baxter Woods was included on that list for unknown reasons.

Conclusion

We hope that the Council will consider this proposal that would allow the City to serve as a better steward of this property and to abide by the conditions set forth in the Baxter Woods deed. Through working with various stakeholders and experts, we believe we have arrived at a good-faith compromise proposal that would



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continue to allow off-leash activity for 8 months of the year, while restricting off leash activity only during the 4 months of the year when bird breeding is most likely.

Sincerely,
Ethan Hipple

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

Attachments:

Proposed Chapter 5 Code Revisions
Baxter Woods Management Plan (2018)
Baxter Woods Bird Surveys (2019)
Written public comment
2/10/20 Memo from Corporation Counsel concerning Baxter Woods Deed

Chapter 5 ANIMALS AND FOWL*

*Cross reference(s)--Unleashed animals prohibited in cemeteries, § 7-135; feeding of animals so as to control rodents and vermin, § 22-15; storing of feed for animals so as to control rodents and vermin, § 22-16.

Art. I. In General, §§ 5-1--5-15

Art. II. Dogs, §§ 5-15.1--5-75

Div. 1. Generally, §§ 5-15.1--5-30

Div. 2. Impoundment, §§ 5-31--5-70

Div. 3. Canine Waste, §§ 5-71--5-75

Art. III. Feeding of Wildlife Prohibited, §§ 5-110--5-111

Art. IV. Keeping of Domesticated Chickens, §§ 5-400--5-499

Art. V. Restrictions on the Sale of Dogs and Cats.

§§5-500--5-505

Art. VI. Prohibition on Display of Wild and Exotic Animals.

§§5-506--5-509

ARTICLE I. IN GENERAL

Sec. 5-1. Reserved.

Sec. 5-2. Reserved.

Sec. 5-3. Reserved.

Sec. 5-4. Reserved.

Sec. 5-5. Reserved.

Sec. 5-6. Reserved.

Sec. 5-7. Reserved.

Sec. 5-8. Reserved.

Sec. 5-9. Reserved.

Sec. 5-10. Reserved.

Sec. 5-11. Reserved.

Sec. 5-12. Reserved.

Sec. 5-13. Reserved.

Sec. 5-14. Reserved.

Sec. 5-15. Reserved.

ARTICLE II. DOGS*

*State law reference(s)--Dogs, 7 M.R.S.A. § 3401 et seq.

DIVISION 1. GENERALLY

Sec. 5-15.1. Definitions.

The following words when used in this article shall have the meaning given herein:

At large shall mean and include any of the following:

- (a) On the public street or publicly owned property unless controlled by a leash of not more than eight (8) feet in length, except as provided below;
- (b) In a motor vehicle parked and not restrained from projecting its head from the vehicle;
- (c) Within the following city-owned parks unless on a leash or other tether of not more than twenty-five (25) feet in length: Bayside Park; Baxter Pines; Deering Oaks; Dougherty Field; Eastern Promenade, except as provided in subsection (e)(5) below; Longfellow Park; Payson Park; Quaker Park; Stroudwater Park; Western Promenade; unless such park is posted with signs stating that "Maximum Eight-Foot Canine Leash is Required" by the parks authority to accommodate mass gatherings or public events;
- (d) Except as provided in subsection (e)(5) below for the wooded portion of Evergreen Cemetery, and subsection (h) below for the Western Cemetery, within all city-owned cemeteries unless on a leash or other tether of not more than twenty-five (25) feet in length; provided, however, dogs shall be allowed on the roadways and walkways of the cemeteries only and not on the cemetery lots;
- (e) Within the following city-owned property unless (1) on a leash or other tether of not more than twenty-five (25) feet in length; or (2) the owner is physically present within fifty (50) feet of the dog and at all times has a leash and has the dog under voice control. Voice control shall mean that the dog returns

immediately to and remains by the side of the owner in response to the owner's verbal command. At no time shall one owner have more than three (3) dogs under voice control:

1. Baxter Woods, pursuant to the following schedule and additional requirements regarding leash length: ~~s;~~

- From August 1 to March 31: Dogs are permitted under voice control at the following times: From 5am to 9am and from 3pm to 10pm. From 9am to 3pm all dogs must be on an eight (8) foot leash.
- From April 1 to July 31, all dogs must be on an eight (8) foot leash at all times.
- ~~1.~~• Additionally, dogs must be on an 8-foot leash at all times on the Northern Carriage Path and in all areas of Baxter Woods north of the Northern Carriage Path.

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2. Capisic Pond Park;
3. The portion of Evergreen Cemetery to the north and west of Northern Avenue, in the wooded area only;
4. East End Beach, from the day after Labor Day through the day before Memorial Day;
5. Eastern Promenade park within (1) the area bounded by the following: Cutter Street to the lower sidewalk to the exit side of the Fort Allen roadway and back to Cutter Street; and (2) the mid-slope nature path. Said areas of Eastern Promenade park to be open to dogs under voice control from Memorial Day through Labor Day from 5:00 a.m. to 9:00 a.m. and 5:00 p.m. to 10:00 p.m. of each day, and from Labor Day through Memorial Day from 5:00 a.m. to 10:00 p.m. of each day;
6. Hall School Woods;
7. At North Street/Washington Avenue across from East End Community School;
8. Letson Purchase;
9. Ocean Avenue Dog Park;

10. Woods located behind Portland Arts and Technical High School;
11. Pine Grove Park;
12. Riverton Park;
13. University Park;
14. Valley Street Park; ~~and~~

15. Presumpscot River Preserve;

~~14.~~ 16. Canco Woods; and

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~~15-~~ 17. Any city owned island park areas and open space; unless such property is posted by the parks authority with signs stating that "Maximum Eight-Foot Canine Leash is Required" to accommodate mass gatherings or public events;

- (f) On the East End Beach beginning on Memorial Day through Labor Day of each year between the hours of 9:00 a.m. and 5:00 p.m., whether leashed or not;
- (g) Within any playfields, school yards and playgrounds whether leashed or not;
- (h) Within the Western or Eastern Cemeteries whether leashed or not;
- (i) All areas referred to in subsections (c), (d), (e), (f) and (g) above are more particularly defined on maps on file in the office of the Department of Public Works.

Dangerous dog shall mean:

- (a) any dog, that, without provocation, or, upon being incited by its owner or any other person in control of the dog, assaults an individual or domesticated animal, or public or private property; or
- (b) any dog that, by attacking or threatening to attack an individual or an individual's domesticated animal, causes a reasonably prudent person, acting in a reasonable and non-aggressive manner, to fear bodily harm.

Owner shall mean and include any person owning, keeping, possessing, or harboring a dog.

Public street shall mean and include any street, whether accepted or unaccepted, and include sidewalks, turnarounds, and other portions thereof.

Publicly owned property shall mean and include all property owned by the city, including without limitation any park or cemetery of the city, and all property owned by any other public or governmental entity unless such entity has established different regulations.

(Ord. No. 31-83, § 1, 11-7-83; Ord. No. 356-83, 12-19-83; Ord. No. 176-96, § 1, 3-4-96; Ord. No. 224-97, § 1, 3-17-97; Ord. No. 60-98, 8-3-98; Ord. No. 75-99, 10-4-99; Ord. No. 143-01, 1-3-01; Substitute Ord. No. 185, 2-21-01;

Ord. 108-15/16, 11-16-2015)

Editor's Note: Original should read under (b) dangerous dog "on public or private property"

Sec. 5-16. License required.

No dog shall be kept within the limits of the city unless such dog shall have been licensed and such license displayed by its owner in accordance with the statutes of the state. The provisions of this section shall not apply to any dog belonging to an out-of-state resident visiting within the city without the intention of becoming a resident, but the owner of such a dog shall comply with the remaining provisions of this article.

(Code 1968, § 421.1; Ord. No. 31-83, § 2, 11-7-83)

State law reference(s)--Licenses for dogs, 7 M.R.S.A. § 3451 et seq.

Sec. 5-17. Running at large prohibited.

(a) No dog shall be permitted to be at large within the city. Anyone whose dog, while at large and without provocation, assaults any person, animal or property shall be subject to a penalty of double the otherwise applicable penalty unless the dog owner is cited under Sec. 5-21 in which case that section shall control the applicable fine.

(b) The minimum penalty for violations of this section shall be as follows:

- 1st violation: \$75.00
- 2nd violation: \$100.00
- 3rd violation: \$150.00
- 4th or more violations: \$500.00

These penalties shall be calculated and assessed on an owner regardless of whether the dog running-at-large is the same dog in each violation.

(Code 1968, § 421.2; Ord. No. 31-83, § 3, 11-7-83; Ord. No. 68-87, § 1, 8-17-87; Ord. No. 176-96, § 2, 3-4-96; Ord. No. 75-99, 10-04-99; Ord. No. 143-01, 01-03-01)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 25.

Sec. 5-18. Disturbing the peace.

No person shall own, possess, or harbor any dog which by loud, frequent, or habitual barking, howling, or yelping, disturbs the peace of any person. Any person who shall violate the provisions of this section shall, upon the first occasion

thereof, be given a warning and shall, upon conviction of any subsequent violations within a period of six (6) months from such warning, be subject to a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00).

(Code 1968, § 421.9; Ord. No. 279-77, § 1, 7-6-77; Ord. No. 31-83, § 4, 11-7-83)

Cross reference(s)--Offenses against the public peace, § 17-16 et seq.

Sec. 5-19. Interference with animal control officer prohibited.

No person shall interfere with, hinder or molest any animal control officer or other person authorized to enforce such laws in the performance of any duty of such officers, or seek to release any dog in the custody of an animal control officer, except as provided in this article.

(Code 1968, § 421.6; Ord. No. 176-96, § 3, 3-4-96)

Sec. 5-20. Records to be kept.

It shall be the duty of an animal control officer to keep, or cause to be kept, an accurate and detailed record of the licensing, impoundment and disposition of all dogs coming into his or her custody and of the name of the owner.

(Code 1968, § 421.7; Ord. No. 176-96, § 4, 3-4-96; Ord. No 143-01, 1-3-01)

Sec. 5-21. Dangerous Dog.

(a) It shall be a violation of this Ordinance to own, keep, possess or harbor a dangerous dog;

(b) The minimum financial penalty for a violation of this section is five hundred dollars (\$500.00) for the first offense, seven hundred and fifty dollars (\$750.00) for the second offense, and one thousand dollars (\$1,000.00) for the third offense. This penalty shall not be waived nor shall any portion of it be suspended by the court. These penalties shall be calculated and assessed on an owner regardless of whether the dangerous dog is the same dog in each violation.

(c) In addition to the financial penalty imposed by subsection (b), after hearing a court of competent jurisdiction shall order:

1. that the dangerous dog be muzzled, restrained, confined to the premises of its owner in a secure enclosure or any other reasonable measure to be

imposed to protect the safety, health and welfare of the City's inhabitants; or

2. that the dog be euthanized if it has injured a person or domesticated animal or if it has a history of a prior assault. The cost of seizure and euthanasia of the dog shall be assessed to the owner of the dangerous dog.

(d) Owner to pay restitution. Where the victim of a dangerous dog has incurred medical expenses, veterinary expenses or any other direct financial loss, the owner of said dangerous dog shall be ordered to pay restitution to the victim in accordance with the criteria set forth in 17-A M.R.S.A. §1325.

(e) Dogs presenting immediate threat to public. After issuing a summons and before hearing, if the dog poses an immediate or continuing threat to the public, a sheriff, local law enforcement officer or animal control officer shall order the owner or keeper of the dog to muzzle, restrain or confine the dog to the owner's premises or to have the dog confined at the owner's expense at a place determined by the sheriff, local law enforcement officer or animal control officer. If the owner or keeper fails to comply, the sheriff, local law enforcement officer or animal control officer may apply to District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public and turn the dog over to the applicant or other suitable person.

(f) Ex parte. An order may be entered ex parte upon findings by the court or justice of the peace when:

- (1) The dog has inflicted a serious bodily injury as defined in title 17-A, section 2, subsection 23; or
- (2) There is a reasonable likelihood that the dog is dangerous or vicious and:
 - a. Its owner has failed to muzzle, restrain or confine the dog; and
 - b. That failure poses an immediate threat of harm to the public.

- (g) Modify order. An order may be modified by the court.

- (1) Upon two (2) days' notice or a shorter period the court may prescribe, the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.
- (2) The Court shall hear and determine the motion as expeditiously as possible.
- (3) The owner shall submit an affidavit setting forth specific facts to substantiate the modification or dissolution of the order. The applicant has the burden of presenting evidence to substantiate the original findings.

(h) Recovery of Costs/Liens. The owner of the dog shall be assessed any costs incurred by the City under this section. The City or any person taking possession of a dog as provided in this section has a lien on that dog in accordance with Title 17, section 1021, subsection 6. In addition, costs assessed by the City shall be enforceable by lien for the benefit of the City pursuant to Section 1-16 of this code in addition to any penalties provided in this section.

(i) Treble damages. If a dog whose owner or keeper refuses or neglects to comply with the order, wounds any person by a sudden assault or wounds or kills any domestic animal, the owner or keeper shall pay the person injured treble damages and costs to be recovered by a civil action.

(Ord. No. 75-99, 10-04-99; Ord. No. 143-01, 1-3-01)

Sec. 5-22. Enforcement

The provisions of this division may be enforced by any designated representative of the Chief of Police or by the canine control officer.

(Ord. No. 75-99, 10-04-99)

Sec. 5-23. Reserved.

Sec. 5-24. Reserved.

Sec. 5-25. Reserved.

Sec. 5-26. Reserved.

Sec. 5-27. Reserved.

Sec. 5-28. Reserved.

Sec. 5-29. Reserved.

Sec. 5-30. Reserved.

DIVISION 2. IMPOUNDMENT

Sec. 5-31. Causes; confinement period.

Unlicensed dogs, whether or not at large, and dogs found running at large, whether or not licensed, shall be taken and impounded by an animal control officer in a shelter designated by the city as the city animal shelter and there confined for a period of not more than six days.

(Code 1968, § 421.3; Ord. No. 328-75, § 1, 5-19-75; Ord. No. 255-90, 2-21-90; Ord. No. 176-96, § 5, 3-4-96; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-32. Notice to owner if possible.

Where the ownership of any dog impounded under section 5-31 is known or can be reasonably ascertained by an animal control officer, such officer shall, if possible, notify the owner within three (3) days of such impoundment, but failure to give such notice shall in no way impose any liability upon the city for the destruction or transfer to another of any dog so impounded and not reclaimed within a period of six (6) days.

(Code 1968, § 421.4; Ord. No. 328-75, § 1, 5-19-75; Ord. No. 255-90, 2-21-90; Ord. No. 176-96, § 6, 3-4-96; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-33. Redemption by owner.

Any owner may regain possession of an impounded dog upon presentation of a valid certificate of vaccination against rabies, a license for the current year and the receipt evidencing payment of the municipal impoundment and accrued shelter boarding fees.

(Code 1968, § 421.4; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-34. Disposition of unclaimed dogs.

Any dog impounded under the provisions of this division and not reclaimed by the owner within the six (6) days shall be considered to be abandoned by the owner and the property of the city and may, after consultation with the designated shelter, be humanely destroyed or given to the designated shelter or any person deemed to be responsible and a suitable owner who will agree to comply with the provisions of this article.

(Code 1968, § 421.4; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-35. Fees.

(a) Any dog impounded under this division may be reclaimed upon payment of the municipal impoundment charge and the accrued boarding charges at the rate established pursuant to Title 7, M.R.S.A., Part 9. In addition, any unlicensed dog shall be given a temporary license by the shelter upon proof of rabies vaccination, and notice of such temporary license shall be provided to the city clerk by the shelter.

(b) The municipal impoundment charge is hereby established as twenty dollars (\$20.00) per dog for the first impoundment, forty dollars (\$40.00) per dog for the second impoundment, and fifty-five dollars (\$55.00) per dog for each impoundment thereafter. The designated shelter or the city shall collect such charge prior to release of the dog to any person. If the shelter collects the fee, the shelter shall forward it to the city or credit the City's account in a manner and on a schedule approved by the City's Finance Director. If the designated shelter waives all or a portion of its own fees and charges, the shelter may waive the municipal impoundment fee to the same extent but not to a greater extent.

(Code 1968, §§ 421.5, 421.8; Ord. No. 160-75, 2-19-75; Ord. No. 329-75, § 1, 5-19-75; Ord. No. 258-76, §§ 1, 2, 5-17-76; Ord. No. 122-79, § 1, 2-22-79; Ord. No. 550-86, 5-12-86; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00; Ord. No. 268-08/09, 5-18-09)

Sec. 5-36. Reserved.
Sec. 5-37. Reserved.
Sec. 5-38. Reserved.
Sec. 5-39. Reserved.
Sec. 5-40. Reserved.
Sec. 5-41. Reserved.
Sec. 5-42. Reserved.
Sec. 5-43. Reserved.
Sec. 5-44. Reserved.
Sec. 5-45. Reserved.
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Sec. 5-64. Reserved.
Sec. 5-65. Reserved.
Sec. 5-66. Reserved.
Sec. 5-67. Reserved.
Sec. 5-68. Reserved.
Sec. 5-69. Reserved.
Sec. 5-70. Reserved.

DIVISION 3. CANINE WASTE

Sec. 5-71. Duty to dispose.

It shall be a violation of this division for any person who owns, possesses or controls a dog to fail to remove and dispose of any feces left by his/her dog on any sidewalk, street or publicly owned property.

(Ord. No. 468-83, 6-8-83)

Sec. 5-72. Reserved.

Editor's note--Ord. No. 236-83, adopted Oct. 17, 1983, repealed § 5-72. Said former section, relative to duty of dog owners to possess means of removing canine waste, derived from Ord. No. 468-83, adopted June 8, 1983.

Sec. 5-73. Enforcement.

The provisions of this division may be enforced by any designated representative of the director of parks and recreation or, the chief of police, or by the canine control officer.

(Ord. No. 468-83, 6-8-83; Ord No. 75-99, 10-04-99)

Sec. 5-74. Penalties for violation.

Violation of this division shall be punished by a minimum penalty of two hundred and fifty dollars (\$250.00) for each violation. The minimum penalty for a third offense under this section shall be five hundred dollars (\$500.00). Where financial hardship is demonstrated, a violator of this division may perform community service in lieu of the financial penalty, if such a program is available through the city. Such community service shall consist of removing canine waste within the city at a rate of 25 hours per offense and 50 hours for the third (or more) offense. (Ord. No. 468-83, 6-8-83; Ord. No. 176-96, § 7, 3-4-96; Ord. No. 75-99, 10-04-99)

Sec. 5-75. Exemption.

This regulation shall not apply to a dog accompanying any handicapped person who, by reason of his/her handicap, is physically unable to comply with the requirements of this division. (Ord. No. 468-83, 6-8-83)

Sec. 5-76. Reserved.
Sec. 5-77. Reserved.
Sec. 5-78. Reserved.
Sec. 5-79. Reserved.
Sec. 5-80. Reserved.
Sec. 5-81. Reserved.
Sec. 5-82. Reserved.
Sec. 5-83. Reserved.
Sec. 5-84. Reserved.
Sec. 5-85. Reserved.
Sec. 5-86. Reserved.
Sec. 5-87. Reserved.
Sec. 5-88. Reserved.
Sec. 5-89. Reserved.
Sec. 5-90. Reserved.
Sec. 5-91. Reserved.
Sec. 5-92. Reserved.
Sec. 5-93. Reserved.
Sec. 5-94. Reserved.
Sec. 5-95. Reserved.
Sec. 5-96. Reserved.
Sec. 5-97. Reserved.

Sec. 5-98. Reserved.
Sec. 5-99. Reserved.
Sec. 5-100. Reserved.
Sec. 5-101. Reserved.
Sec. 5-102. Reserved.
Sec. 5-103. Reserved.
Sec. 5-104. Reserved.
Sec. 5-105. Reserved.
Sec. 5-106. Reserved.
Sec. 5-107. Reserved.
Sec. 5-108. Reserved.
Sec. 5-109. Reserved.

ARTICLE III. FEEDING OF WILDLIFE PROHIBITED

Sec. 5-110. Prohibition against feeding wildlife on specified public property.

(a) Within the Portland Downtown District, as established and defined by order of the City Council, Order #306, (3/16/1992), amended by Council Order #185 (2/22/95), no person shall intentionally dispense any type of food, substance or seeds to feed any species of wildlife upon the public ways or upon property owned or controlled by the city.

(b) "Wildlife" as used in this Article means any undomesticated or untamed bird or animal without a known or identifiable owner and includes, but is not limited to, wildlife such as pigeons and squirrels. The definition does not include dogs or deer.

(c) This section shall not apply within the boundaries of Lincoln Park.
(Ord. No. 12-02/03, 8-5-02)

Sec. 5-111. Warning required before prosecution.

Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal or written warning to an individual and if the individual ceases the activity, then no citation shall issue. Once an individual has been given one

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warning, the requirement in this subparagraph has been met and
no subsequent warnings are required.
(Ord. No. 12-02/03, 8-5-02)

ARTICLE IV. KEEPING OF DOMESTICATED CHICKENS

Sec. 5-400. Purpose.

The purpose of this article is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis while creating standards and requirements that ensure that domesticated chickens do not adversely impact the neighborhood surrounding the property on which the chickens are kept.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-401. Reserved.

(Ord. No. 152-08/09, 2-18-09; Ord. 244-14/15, 6-24-2015; Ord. 18-17/18, 8-21-2017, Chicken permit repealed.)

Sec. 5-402. Number and type of chickens allowed.

(a) The maximum number of chickens allowed is six (6) per lot regardless of how many dwelling units are on the lot.

(b) Only female chickens are allowed. There is no restriction on chicken species.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-403. Non-commercial use only.

Chickens shall be kept as pets and for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-404. Enclosures.

(a) Chickens must be kept in an enclosure or fenced area (chicken pen) at all times during daylight hours. Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact. The chicken pen must provide adequate sun and shade and must be impermeable to rodents, wild birds, and predators, including dogs and cats. It shall be constructed with sturdy wire fencing buried at least 12" in the ground. The pen must be covered with wire,

aviary netting, or solid roofing. The use of chicken wire is not permitted.

- (b) Chickens shall be secured within a henhouse during non-daylight hours.
- (1) Any henhouse shall be at least ten (10') feet from any residential structure or any other structure on any adjacent lots. The henhouse shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator and bird-proof wire of less than one (1) inch openings. The use of scrap, waste board, sheet metal, or similar materials is prohibited. The henhouse must be well-maintained.
- (2) Henhouses shall only be located in rear yards, and shall meet zoning setbacks applicable to detached accessory structures. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the setbacks for structures generally applicable in the zoning district are met. In no case may a henhouse be placed in the front yard. Henhouses are not allowed to be located in any part of a home.

(Ord. No. 152-08/09, 2-18-09; Ord. No. 42-11/12, 10/3/11)

Sec. 5-405. Odor and noise impacts.

(a) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible at the property boundaries.

(b) Perceptible noise from chickens shall not be loud enough at the property boundaries to disturb persons of reasonable sensitivity.

(Ord. No. 152-08/09, 2-18-09)

Sec. 406. Lighting.

Only motion-activated lighting may be used to light the exterior of the henhouse.

(Ord. No. 152-08/09, 2-18-09)

Sec. 407. Predators, rodents, insects, and parasites.

The property owner and/or chicken owner shall take all necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites that may result in unhealthy conditions to human habitation may be removed by the City, through the animal control officer, or any other designee, and the cost of the same shall be borne by the property owner and/or chicken owner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 408. Feed and water.

Chickens must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds and predators.
(Ord. No. 152-08/09, 2-18-09)

Sec. 409. Waste storage and removal.

Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully enclosed container. No more than one, twenty gallon container of manure shall be stored on any one property housing chickens. All other manure shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 410. Fees for reinspections.

Following the city's issuance of a notice of violation of the requirements hereunder and an order to correct violations, the city will reinspect at the expense of seventy five dollars (\$75.00) to the property owner and/or chicken owner to determine whether the violations have been fixed in compliance with this article. Failure to correct the violation shall result in a penalty imposed pursuant to sec. 4-411 below in addition to the reinspection fee. If the violations have not been fixed in compliance with this chapter, the violator shall be assessed a reinspection fee of one hundred and fifty dollars (\$150.00) for each subsequent reinspection. Failure to pay the assessment for reinspection shall create a lien on the property of the violator and the assessment and lien shall be collected and enforced pursuant to section 1-16.
(Ord. No. 152-08/09, 2-18-09)

Sec. 411. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this article shall be a civil violation and a fine of one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense. This penalty is in addition to any expense for reinspection of the property.
(Ord. No. 152-08/09, 2-18-09)

Sec. 412. Revocation of permit.

A permit to keep chickens may be revoked where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of any other applicable ordinance or law.
(Ord. No. 152-08/09, 2-18-09)

Sec. 413. Removal of chickens.

In addition to the penalty stated in §4-411, any violation of the provisions of this article shall be grounds for an order from the city to remove the chickens and the chicken-related structures.

The health inspector, health officer, or animal control officer may order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 414. Separability.

In the event that any section, subsection or portion of this article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article.
(Ord. No. 152-08/09, 2-18-09)

Sec. 5-415. to 5-499 Reserved.

ARTICLE V. RESTRICTIONS ON THE SALE OF DOGS AND CATS

Sec. 5-500. Definitions.

The following words when used in this article shall have the following meanings:

Animal care facility shall mean an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission or practice is, in whole or significant part, protecting the welfare of animals and placing animals in permanent homes or with animal rescue organizations.

Animal rescue organization shall mean any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue of animals and the placement of those animals in permanent homes, and which does not obtain dogs or cats from a breeder or broker for payment or compensation.

Breeder shall mean a person who maintains dogs or cats for the purpose of breeding and selling their offspring.

Broker shall mean a person who transfers dogs or cats at wholesale for resale by another.

Cat shall mean a member of the *Felis catus* family.

Dog shall mean a member of the *Canis familiaris* family, or resultant hybrid.

Offer for sale shall mean to sell, offer for sale or adoption, barter, auction, give away or otherwise dispose of a dog or cat.

Pet shop shall mean any place, business, establishment or vehicle required to be licensed under 7 M.R.S. § 3933. Such definition shall not include an animal care facility or animal rescue organization, as defined.
(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-501. Prohibition on Pet Shop Sales.

(a) A pet shop shall offer for sale only those dogs and cats that:

(i) Are older than eight (8) weeks; and

(ii) Have been obtained from or are displayed in cooperation with:

- (1) An animal care facility; or
- (2) An animal rescue organization; and

(b) A pet shop shall not offer for sale a dog or cat that is younger than eight (8) weeks old;

(c) Each pet shop shall maintain records sufficient to document the source of each dog or cat the pet shop acquires, for at least one (1) year following the date of acquisition. Such records shall be made available, immediately upon request, to any designated representative of the City including, but not limited to, the Chief of Police or his or her designee, any animal control officer, any designated representative of the Animal Welfare Program or any state humane agent as defined in 17 M.R.S. §1011.

(d) Each pet shop offering dogs or cats for sale shall post, in a conspicuous location on the cage or enclosure of each animal, a sign listing the name of the animal care facility or animal rescue organization from which each dog or cat in the cage or enclosure was acquired.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-502. Prohibition on Sales in Public Places.

(a) It shall be unlawful for any person to sell, exchange, trade, barter, lease or display any dog or cat on any roadside, public right-of-way, parkway, median, park, other recreation area, flea market or other outdoor market, or commercial or retail parking lot regardless of whether such access is authorized.

(b) This section shall not apply to the following:

- (i) The display or adoption of dogs or cats by an animal care facility or an animal rescue organization; or
- (ii) The display of dogs or cats as part of a state or county fair exhibition, 4-H program, or other similar exhibitions or educational programs.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-503. Enforcement.

The provisions of this Article may be enforced by the City Manager or his or her designee.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-504. Penalties for Violation.

(a) A violation of this Article shall be punished by a minimum penalty of two hundred and fifty dollars (\$250.00) Each instance of a dog or cat offered for sale and displayed or obtained in violation of this Article is considered a separate violation under this provision.

(b) This Article may also be enforced pursuant to Portland City Code Chapter 1, §§1-1 to 1-15.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-505. Severability.

In the event that any section, subsection or portion of this article, or the application of such section, subsection or portion of this article to any person or circumstance, shall be declared by any competent Court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article, or the applicability of such section, subsection or portion of this article to other persons or circumstances.

(Ord. No. 40-16/17, 9-7-2016)

ARTICLE VI. Prohibition on Display of Wild and Exotic Animals.

Sec. 5-506. Definitions.

The following words and phrases have the following meanings:

Director means the City Manager or his or her designee, which is the party responsible for enforcement of this Article.

Display means any exhibition, fair, act, circus, ride, or similar undertaking in which wild and/or exotic animals are required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience, whether or not a fee is charged.

Mobile or traveling housing facility means a transporting vehicle such as a truck, trailer or railway car, used to transport or house wild and/or exotic animals while traveling for exhibition or other performance of those wild and exotic animals.

Traveling animal act means any display of wild and/or exotic animals where such animals are transported to, from, or between locations for the purpose of such display, in a mobile or traveling housing facility.

Wild and/or exotic animal means any live animal from any of the following scientific classifications:

- a) Artiodactyla (including hippopotamuses, giraffes, camels, and llamas, but excepting cattle, swine, sheep, and goats);
- b) Crocodilia (including alligators and crocodiles);
- c) Elephantidae (elephants);
- d) Felidae (including tigers, lions, jaguars, leopards, cheetahs, and cougars, or any hybrid thereof, but excluding domestic cats);
- e) Marsupialia (including kangaroos);
- f) Non-human primates (including apes, monkeys, and lemurs);
- g) Perissodactyla (including rhinoceroses, tapirs, and zebras);
- h) Pinnipedia (including seals, sea lions, and walruses);
- i) Ursidae (bears); or
- j) Elasmobranchii (including nurse sharks and lemon sharks).

This definition does not include or apply to horses.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-507. Prohibited Acts.

(a) It shall be a violation of this Article for any person, business, entity, corporation, limited liability company or other similar organization to allow for the participation of a wild and/or exotic animal in a traveling animal act in the City of Portland;

(b) The penalty for violations of this Article shall be \$500.00 per offense. Each and every wild and/or exotic animal exhibited and each day exhibition occurs shall constitute a separate offense; and

(c) This Article may also be enforced pursuant to Chapter 1, section 1-15 of the Portland City Code.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-508. Administration and Enforcement.

The Director shall be responsible for the administration and enforcement of the provisions of this Article.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-509. Effective Date.

This Article shall be effective on October 18, 2017.
(Ord. No. 30-17/18, 9-18-2017)

Baxter
to
Port-
land
City of
Deed

KNOW ALL MEN BY THESE PRESENTS, That I, Percival Proctor Baxter of Portland, County of Cumberland, State of Maine, in consideration of one (\$1.00) dollar and other valuable considerations paid by the CITY OF PORTLAND, a Municipal Corporation incorporated under the laws of the State of Maine and a body politic located in said County of Cumberland, the receipt whereof I do hereby acknowledge, and in furtherance of my desire to convey and donate to the CITY OF PORTLAND an area of land in the Deering District of said Portland, to be held forever by said CITY as TRUSTEE IN TRUST for the benefit of the people of Portland do hereby remise, release, sell, convey and forever quit-claim unto the said CITY OF PORTLAND and its successors to be forever held in trust the following described land located in said CITY, bounded and described as follows -

All my right title and interest in and to a certain tract or parcel of land with the buildings thereon situated between Forest and Stevens Avenues, Hartley Street and Baxter Road, so called in the City of Portland, State of Maine and located and described as follows:

Beginning on the westerly side of Forest Avenue at the northeast corner of the lot of land conveyed by Francis O. J. Smith to Owen Durgin by deed dated August 1875 and recorded in Cumberland County Registry of Deeds in Book 418, Page 501; thence northerly by the westerly side of Forest Avenue 523.0 feet more or less to the southeast corner of the lot of land conveyed by James P. Baxter to Saint Elizabeth's Roman Catholic Asylum by deed dated March 10, 1908, and recorded in said Registry in Book 821, Page 58; thence westerly by land of said Saint Elizabeth's Roman Catholic Asylum and by the lot of land conveyed by James P. Baxter to Roman Catholic Bishop Corporation Sole by deed dated March 10, 1908, and recorded in said Registry in Book 821, Page 59, a distance of 1850.81 feet to the easterly side of Stevens Avenue; thence southerly by the easterly side of Stevens Avenue 253.15 feet to a stone monument marking an angle in said easterly side of Stevens Avenue; thence southerly by said easterly side of Stevens Avenue 290.84 feet to the lot of land conveyed by James P. Baxter to John H. Fogg by deed dated June 14, 1899, and recorded in said Registry in Book 680, Page 31; thence easterly by land formerly of said Fogg 125 feet to a point; thence southerly by land formerly of said Fogg 10 feet to the lot of land conveyed by James P. Baxter to Charles Rich by deed dated July 7, 1879, and recorded in said Registry in Book 461, Page 117; thence easterly by land formerly of said Rich 2.0 feet to the northeasterly corner of said Rich lot; thence southerly by the land formerly owned by said Rich 39.7 feet more or less to the lot of land conveyed by James P. Baxter to Mark F. Fogg by deed dated June 13, 1900, and recorded in said Registry in Book 692, Page 53; thence easterly by land formerly of said Fogg and by the lot of land conveyed by James P. Baxter to Arthur D. Parkhurst by deed dated July 20, 1914, and recorded in said Registry in Book 934, Page 287, a distance of 99.44 feet to the northeast corner of said Parkhurst lot; thence southerly by the easterly line of land now or formerly of said Parkhurst and its continuation across the easterly end of Percival Street and its continuation southerly by other land of said

Grantor a distance of 250 feet to the northerly line of the lot of land conveyed by James P. Baxter to Alvin E. Plummer by deed dated April 13, 1885 and recorded in said Registry in Book 517, Page 372, said point being distant 100 feet from the northerly side of Hartley Street; thence easterly on a line parallel with and distant 100 feet from said northerly line of Hartley Street and by the rear line of lot formerly owned by said Plummer and by the lot of land conveyed by James P. Baxter to Charles E. Spear on October 27, 1899, recorded in said Registry in Book 682, Page 153, and by the lot of land conveyed by James P. Baxter to Fred P. Freeman and William L. Turner by deed dated May 18, 1885, recorded in said Registry in Book 517, Page 479, and by other land of said Grantor and by the lot of land conveyed by James P. Baxter to Alvin E. Plummer by deed dated June 15, 1885, and recorded in said Registry in Book 520, Page 117 a distance of 235.14 feet to the northeasterly corner of the lot formerly owned by said Plummer; thence southerly by the easterly line of land formerly owned by said Plummer 100 feet to the northerly side of Hartley Street; thence easterly by said northerly side of Hartley Street 878.23 feet to the southwesterly corner of the lot of land conveyed by Percival P. Baxter to George I. Geer by deed dated August 19, 1944, and recorded in said Registry in Book 1757, Page 109; thence northerly by the westerly line of land of said Geer 100 feet to the northwest corner of said Geer lot; thence easterly on a line parallel with said northerly side of Hartley Street and by land of said Geer and by the lot of land conveyed by James P. Baxter to Albert F. Mann by deed dated May 10, 1888, recorded in said Registry in Book 546, Page 141, and by the lot of land conveyed by James P. Baxter to Abram H. Milliken and George A. Lovell by deed dated December 7, 1897, recorded in said Registry in Book 660, Page 10 and by the lot of land conveyed by James P. Baxter to Ebenezer M. Gay and John Archibald by deed dated August 6, 1894, recorded in said Registry in Book 613, Page 456, and by the lot of land conveyed by James P. Baxter to the Delano Planing Mill Company by deed dated August 21, 1895, recorded in said Registry in Book 629, Page 117 a distance of 245.4 feet to the northeast corner of said Delano Planing Mill Company lot; thence southerly by land formerly of said Delano Planing Mill Company 8.15 feet to the lot of land conveyed by Martha A. Gray to Mary E. Gray by deed dated July 19, 1894 and recorded in said Registry in Book 615, Page 280; thence easterly by land formerly of said Mary E. Gray and by the lot of land conveyed by Martha A. Gray to Mary E. Gray by deed dated August 31, 1900, recorded in said Registry in Book 692, Page 423, and by the lot of land conveyed by Martha A. Gray to Margaret O'Connor by deed dated April 8, 1903, and recorded in said Registry in Book 733, Page 31 and by the lot of land conveyed by Martha A. Gray to Lillie B. Rowe by deed dated December 16, 1892 recorded in said Registry in Book 604, Page 217 and by the lot of land conveyed by Martha A. Gray to Lillie B. Rowe by deed dated June 30, 1891 recorded in said Registry in Book 582, Page 15 and by the lot of land conveyed by Martha A. Gray to Alvah E. Plummer by deed dated April 30, 1885 recorded in said Registry in Book 517, Page 464 a distance of 387.85 feet to the southwesterly corner of the Owen Durgin lot above mentioned; thence northerly by

the westerly line of the lot formerly owned by said Durgin 75 feet to an iron stake; thence easterly by land formerly owned by said Durgin 86.78 feet to said westerly side of Forest Avenue and the point of beginning.

Together with a right of way 33 feet in width in common with others from Forest Avenue to Stevens Avenue over land of said Saint Elizabeth's Roman Catholic Asylum and land of Roman Catholic Bishop Corporation Sole adjoining the northerly line of the lot above described lot and subject however to a right of way 33 feet in width from Forest Avenue to Stevens Avenue over said above described lot and adjoining the northerly side line of the above described lot.

Said above two strips each 33 feet in width are to be used together for street purposes and were conveyed and reserved in the deeds from James P. Baxter to Saint Elizabeth's Roman Catholic Asylum and to Roman Catholic Bishop Corporation Sole dated March 10, 1908, and recorded in said Registry in Book 821, Pages 58 and 59.

TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereto to said CITY OF PORTLAND as TRUSTEE as aforesaid and its successors in trust and the same shall not be conveyed or encumbered by said City but shall be held forever for the benefit of the people of said Portland

subject to the following terms, restrictions, reservations and conditions

- 1 - shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreational and educational purposes the same forever to be known as "MAYOR BAXTER WOODS";
- 2 - shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians, and any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;
- 3 - shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom;
- 4 - that the heavy ornamental iron gates now in possession of said City shall be erected by said City either at the Forest Avenue or Stevens Avenue entrance within one year after the date of this deed;
- 5 - that said City shall erect within one (1) year after the date of this deed and shall forever maintain on the land hereby conveyed a suitable bronze marker the said marker to recite the conditions of this gift, the same to be attached to a granite boulder located on said land and provided by said City;

This conveyance is made subject to all of the above mentioned terms, restrictions, reservations and conditions, and I the said PERCIVAL PROCTOR BAXTER COVENANT with the said CITY OF PORTLAND as such Trustee and its successors in trust that I will WARRANT and DEFEND the said premises to the said City and its successors in trust against the lawful claims and demands of all persons claiming by through or under me.

IN WITNESS WHEREOF, I the said PERCIVAL PROCTOR BAXTER being unmarried hereby set my hand and seal this eighth day of April in the year of our Lord one thousand nine hundred and forty-six.

Signed and Sealed in the Presence of

Alice M. Gurney .

Percival Proctor Baxter Seal

STATE OF MAINE :
SS.
CUMBERLAND . :

Portland, April 8, 1946

Personally appeared the above named PERCIVAL PROCTOR BAXTER and acknowledged the above instrument to be his free act and deed.

Before me, Alice M. Gurney

Notary Public Notarial Seal

Received April 17, 1946, at 10h 25m A. M., and recorded according to the original

MAINE
FULL DISCHARGE
FORM 21-117
Me. 10-206

Federal
Ld.Bk.
of
Spf'g.
to
Larrabee
&
Disch.

KNOW ALL MEN BY THESE PRESENTS, That THE FEDERAL LAND BANK OF SPRINGFIELD, 310 State Street, Springfield, Massachusetts, owner of a certain mortgage given by Joseph S. Larrabee and Susan E. Larrabee to the said THE FEDERAL LAND BANK OF SPRINGFIELD, dated December 31, 1925, and recorded in Cumberland County Registry of Deeds, in Book 1220 at Page 105, does hereby acknowledge that it has received full payment and satisfaction of the same and of the debt thereby secured, and in consideration thereof it does hereby cancel and discharge said mortgage and releases unto the said Joseph S. Larrabee and Susan E. Larrabee and their heirs and assigns forever the premises therein described.

IN WITNESS WHEREOF the said THE FEDERAL LAND BANK OF SPRINGFIELD has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Edward M. Whitaker, its Assistant Treasurer, this 3rd day of April 1946.

THE FEDERAL LAND BANK OF SPRINGFIELD CORPORATE
SEAL
By Edward M. Whitaker

Assistant Treasurer

Signed and Sealed in Presence of

I. B. Welch

COMMONWEALTH OF MASSACHUSETTS COUNTY OF HAMPDEN, SS.

On this 3rd day of April 1946, before me personally appeared Edward M. Whitaker to me personally known, who, being by me duly sworn, did say that he is the Assistant Treasurer of THE FEDERAL LAND BANK OF SPRINGFIELD and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said Edward M. Whitaker acknowledged said instrument to be the free act and deed of said corporation and his own free act and deed.

dms Before me, Allyn K. Talmadge Notary Public Notarial Seal

Received April 17, 1946, at 11h 50m A. M., and recorded according to the original

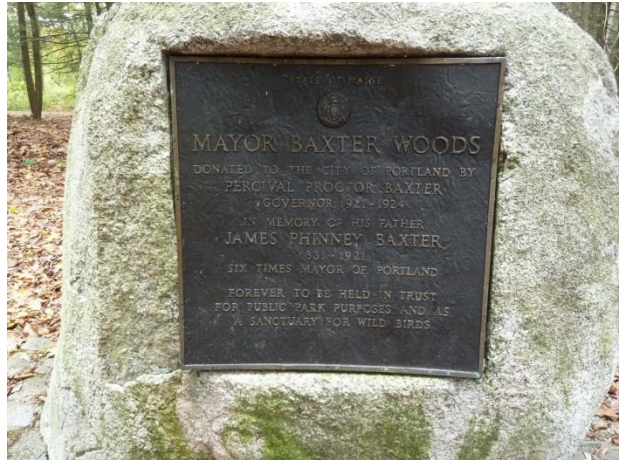
Forest and Wildlife Habitat Management Plan

for

Mayor Baxter Woods

Portland, Maine

Plan Date: May 18, 2018



Robert R. Bryan, LF# 907
Forest Synthesis LLC
271 Harpswell Neck Road
Harpswell, ME
rbryan@forestsynthesis.com

Forest Synthesis LLC

*Forest Management, Ecology, and
Certification*

www.forestsynthesis.com

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Introduction

Mayor Baxter Woods is a unique late successional forest located in the heart of the City of Portland that was donated to the City by Governor Percival Baxter in 1946 “...for the benefit of the people of Portland public recreational and educational purposes...” that “ shall forever be kept in its natural wild state and as a sanctuary for wild birds...”

At the request of the City of Portland Parks and Recreation Department, Forest Synthesis, LLC has prepared an ecological assessment and management plan based on the principles laid out in Governor Baxter’s deed. Key components of this project include assessment, mapping, of and recommendations for:

1. Natural ecosystems, including wildlife habitats based on forest type, age, structure, as well as non-forest habitats,
2. Other natural features, including wetlands, streams, vernal pools,
3. Forest health concerns, including invasive plants, insects, and disease,
4. Cultural features and human use, including historic features, trails, and a qualitative assessment of impacts associated with recreational use,
5. Protection, restoration and enhancement forest ecosystems and wildlife habitats, and
6. Ecological monitoring.

Management Goals and Objectives

Goals Based on Deed Restrictions

Based on Governor Baxter’s deed to the City¹, management goals for Mayor Baxter Woods (referred to hereafter in this report as MBW) include:

1. Use for public recreational and educational purposes, and
2. Keep the property in its natural and wild state and as a sanctuary for wild birds.

Restrictions associated with the deed that affect use and management include:

1. No streets for public conveyances and no cement walks, with only paths and trails for pedestrians,
2. Any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;
3. Use solely by pedestrians; horses, automobiles and other motor vehicles are excluded, except those of the City used solely in caring for the woods.

Reconciling Current Uses and Deed Conflicts

In attempting to identify specific management actions that are compatible with the deed requirements, several issues have been identified.

- The deed requires that MBW be “used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreation and educational purposes” and

¹ See Appendices for a summary of key deed restrictions

“shall forever be maintained for the sole use of pedestrians.” However, recreational uses conflict with the requirement that the forest be maintained as a “sanctuary for wild birds.” In particular, off-leash dogs are likely having a significant negative impact on ground-nesting and ground-feeding birds as well as those associated shrubs and small trees. A related concern is that the high density of trails and foot traffic adds to wildlife disturbance whether or not dogs are leashed. (see maps).

- Exotic (non-native) plant species identified as “invasive” by the Maine Natural Areas Program (MNAP) are altering the natural character in many places within MBW. The MNAP notes that because these plants can out-compete native species they are a direct threat to Maine’s natural and working landscapes. In addition, some exotic species not formally classified as “invasive” by MNAP are becoming well established in MBW. Because some of the invasive and exotic species are trees, the deed creates an internal conflict between the goal of maintaining the property in a “wild and natural state,” which implies that exotic species should be removed, and the restriction that trees that are a “menace to life may be removed, but no other trees therein shall be taken down.”
- Two species of exotic insect pests are found in the forest, notably elongate hemlock scale and hemlock wooly adelgid. Both insects kill hemlocks. While research into using predatory insects to control hemlock wooly adelgid shows some long-term promise, currently insecticides are the only effective control method to control with hemlock pest. Because of the widespread abundance of hemlock in MBW and in particular the dense hemlock midstory that characterizes much of the forest, maintaining all hemlocks may be impossible without repeated and widespread pesticide use. While tree mortality associated with native insects is a natural forest process, allowing widespread mortality of native tree from an exotic insect is not a “natural.....state” of the forest. Harvesting some of the midstory hemlocks threatened by these exotic insects would allow more light to reach the forest floor and encourage the establishment of other native tree seedlings. In the long run this would result in a more resilient forest of native species, but removing any hemlocks would conflict with the restriction on cutting of trees other than those that are hazardous.

Integrated Goals and Objectives

Clearly identified management goals and objectives are essential to guide management and to provide a framework for evaluating whether or not management outcomes are successful. The plan utilizes the following framework:

Goals: Broad generalizations about the future resource conditions that management is designed to culture. Goals are often long-term in nature and may also encompass values of interest to the landowner.

Objectives: Detailed descriptions, pertaining to a specific goal, of what the resource will look like or the management approaches necessary to achieve that goal. Objectives are often measureable and often are more short-term in nature than goals.

The goals and objectives below attempt to balance the internal conflicts within the deed by considering the long-term dynamics of the forest and its context within the surrounding cityscape. In addition, forest management goals that are not specifically mentioned in the deed but are considered to be a core

component of ecosystem management consistent with deed requirement that the forest be maintained “in a natural wild state and as a sanctuary for wild birds” are included.

1. Goal: Promote recreational uses that are consistent with maintaining the property in a wild and natural state and as sanctuary for wild birds

Objective:

- Reduce disturbance to forest birds from recreational use

Monitoring:

- Number and type of ground-nesting and understory birds using the forest

2. Goal: Maintain a natural ecosystem based on native plant and wildlife species and natural ecosystem processes

Objectives:

- Develop and implement a plan to control invasive plants and other non-native plants
- Develop and implement a plan to control non-native insects that currently or could in the foreseeable future threaten forest health (e.g. hemlock wooly adelgid, hemlock scale, browntail moth, winter moth)
- Allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time
- Maintain and enhance shrub and old-field habitat
- Restore degraded areas near property lines and along trails

Monitoring:

- Extent and density of invasive and other exotic plants
- Extent and density of non-native insects that threaten forest health
- Forest species composition, density, and tree size by major vegetation layer
- Extent and condition of shrub and old-field habitat
- Condition of restored areas

3. Goal: Protect soils and water quality

Objectives:

- Manage trails to minimize the area of soil compaction from pedestrians
- Minimize concentrated runoff from trails and associated impacts within MBW and lower in the watershed
- Ensure that ditches, culverts, and other components of the drainage system are designed to accommodate the increasingly intense rainfall events associated with climate change

Monitoring

- Condition of ground-layer vegetation adjacent to trails
- Condition and size of drainage structures relative to needs for large storm events
- Erosion and overflow within the drainage system

4. Protect City property from encroachment and inappropriate use

Objectives:

- Clearly mark all boundary lines with fencing or other means
- Restore areas where abutters are encroaching on City property
- Discourage unauthorized dumping of brush with appropriate signage

Monitoring:

- Condition of boundary lines
- Evidence of encroachment and unauthorized dumping

5. Goal: Promote educational uses consistent with the MBW deed

Objective:

- Develop educational programs and materials that emphasize the natural ecosystem and wildlife values of MBW

Monitoring:

- Number and type of educational programs and number of different audiences

Management Plan Summary

Table of Cover Types and Land Uses

The following table summarizes major cover types (forest/non-forest) and land uses. More detailed cover type information and descriptions are included in later sections of the report.

Cover Type/Land Use	Area (acres)
Deciduous forest	5.57
Coniferous forest	1.03
Mixed forest	22.98
Meadow/shrub	0.87
Shade tree/mown grass	1.47
Pond	0.22
Parking	0.10
Abutter encroachment	0.22
Total	32.46

Summary of Past management

Dates	Management Activity
1947-48	Individual risk tree removal to reduce per direction of Percival Baxter
49-50	Red pine planted with help of Deering High School students near Forest Avenue
1989-90	Some individual tree work (risk tree removal, etc.)
2004	Red pine thinning per direction of Maine Forest Service District Forester Dennis

Late 1990's to early 2000's	Brennan
2000-present	Removal of large Norway maple along Stevens Ave and near old home site
	Removal of Norway maple along Hartley Ave and control of Japanese barberry, multiflora rose, and Japanese knotweed.

Summary of Management Recommendations - 2016-2025

Following is a summary of activities included in the later sections of the report. Please refer to the Individual Stand Descriptions and Recommendations and other referenced sections for additional details on implementing the recommendations. Management recommendations included in this plan represents the opinion of Forest Synthesis based on the forest ecosystem assessment, restrictions spelled out in the MBW deed, and consultations with City and outside experts.

- Final decisions on which management actions to take and when to implement them will require further consideration by the City.
- Detailed plans for most of the recommended activities should be prepared before implementation, and the results of management should be monitored as needed.
- Recommendations below are prioritized. Priority 1 items are considered to be most important and should be undertaken first.

Stand or Area	Priority/Timing	Recommendations (This is a summary only - see applicable management plan sections for details.)	Management Plan Sections
All	1	Develop and implement a plan to control and monitor invasive plants as well as other aggressive non-native plants.	<i>Invasive Plants</i>
All	1	Develop and implement a plan to protect hemlock, red pine, and oaks from exotic insects and diseases that threaten these species in Maine. Highest short-term priority should be focused on mapping and protecting the old hemlock legacy trees in found throughout the forest.	<i>Insects and Disease; Stand Descriptions and Management Recommendations</i>
11, F4	1	Many properties on Hartley Street are encroaching onto City property. Where MBW abuts residential properties the City should clearly mark the boundary with fencing or multiple posts and signs and work with abutters to restore degraded city property to a natural condition. Signs should be placed at various points along other boundaries and access points.	<i>Boundary Lines</i>
All	1	Recreational uses, and in particular unleashed dogs, are likely having and adverse impact on ground-nesting and ground-feeding birds. Because the Baxter deed requires that the City maintain Baxter woods for recreational use and as a sanctuary for wild birds, the city should require that dogs be leashed. The city could consider closing some minor trails to create wider spaces between trails and thus minimize disturbance of wildlife.	<i>Recreational Use</i>
F1-F4	1	Develop and implement a site planting and maintenance plan that includes a) planting shrubs and wildflowers for wildlife food and cover as described in the <i>Stand Descriptions and Management Recommendations</i> for each area, and b) maintaining the wildlife habitat provided by these existing open/shrub areas by periodic	<i>Distribution of Habitat Types and Development Stages; Stand Descriptions and Management</i>

		brush mowing; cutting encroaching trees would also be beneficial but apparently is not allowed per deed restrictions.	<i>Recommendations</i>
All	1	The City should have a legal and policy review to decide under what circumstances trees may be cut in MBW.	<i>Reconciling Current Uses and Deed Conflicts</i>
All	1	Monitor the results of management actions and make corrective actions as needed. Annually monitor breeding birds, vernal pools, insects and diseases, invasive plants, condition of trails, boundary lines, and recreation use.	<i>Monitoring</i>
1	2	Thin the red pine plantation and allow natural regeneration to develop. The goal is to promote the best trees, develop understory wildlife habitat, and reduce risk from insect and disease.	<i>Stand Descriptions and Management Recommendations</i>
10	2	Remove all Norway maple and plant native species in conjunction with drainage improvements near Forest Avenue	<i>Stand Descriptions and Management Recommendations</i>
Trails	2	Review all trails and develop and implement a trail management and maintenance plan to minimize erosion, runoff and soil compaction, restore a more natural character, and restore historic landscaping.	<i>Trails</i>
All	2	Allow dead, dying trees, and downed trees and limbs to remain in place unless they represent a threat to trail users, and scatter downed limbs that fall on trails within the forest rather than chipping them.	<i>Wildlife Trees, Dead and Downed Wood, and Retention Patches</i>
1-10	2	The City has limited options to enhance habitat for birds and other wildlife due to the deed restrictions that do not allow tree cutting. In forest areas, allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time.	<i>Distribution of Habitat Types and Development Stages</i>
VP1, VP2	3	Consider enhancing the vernal pools to create more natural contours or a longer period when water is present, as described in the recommendations.	<i>Vernal Pools</i>
n/a	3	Compile historical and archaeological information from the Buttrick study and other sources to create a more complete and accurate history and maps of land use at MBW. These could be used for educational purposes and as a record for long-term management.	<i>Historical, Cultural, and Archaeological Sites</i>
5a	4	Removing some of the midstory hemlock in other parts of this stand would proactively reduce risk of hemlock loss while enhancing wildlife habitat by promoting understory and ground cover plant layers. However, this does not appear to be allowable under the deed restrictions.	<i>Distribution of Habitat Types and Development Stages ; Stand Descriptions and Management</i>

Maps



Notes:

Base map: Google Terrain

Forest Synthesis LLC

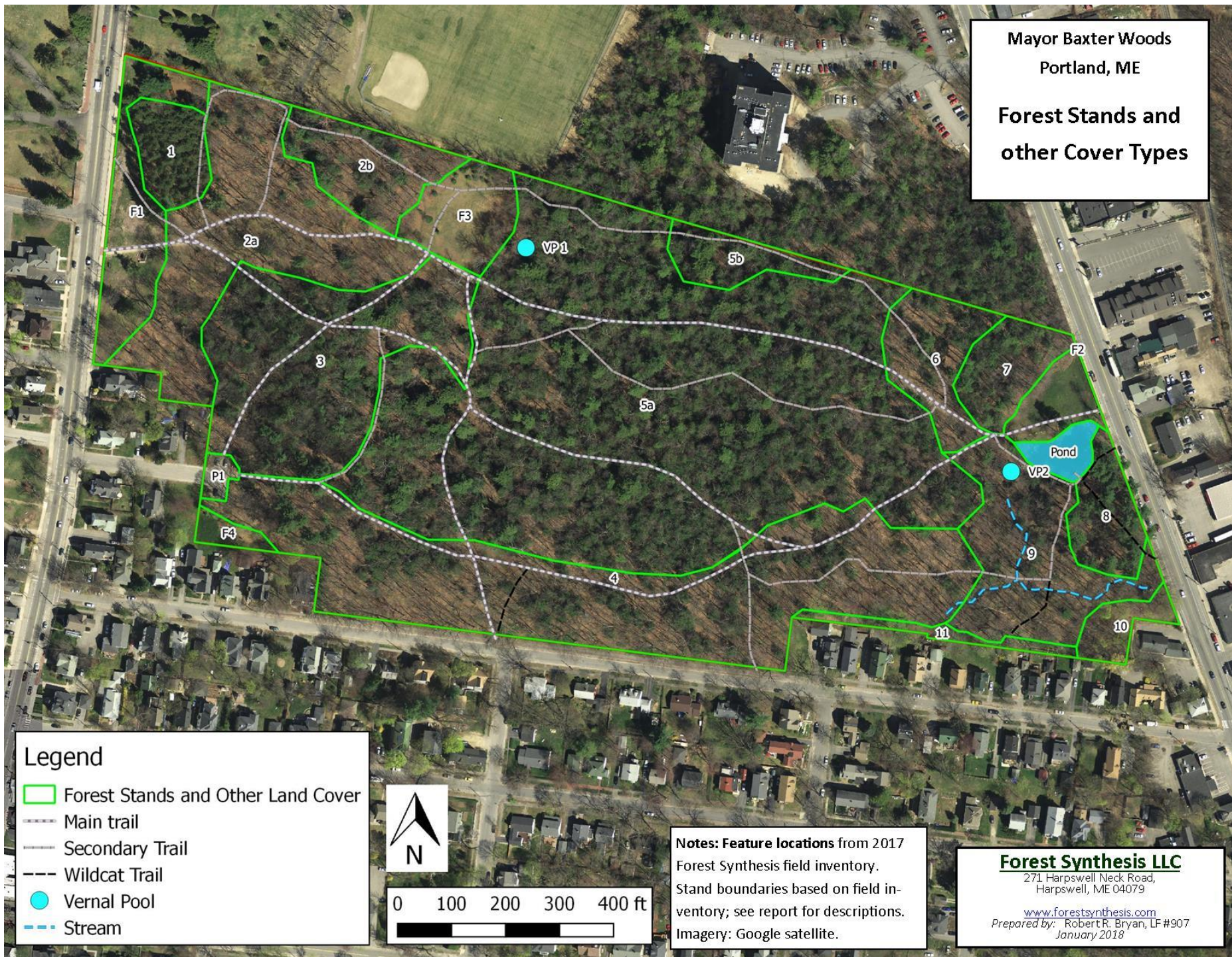
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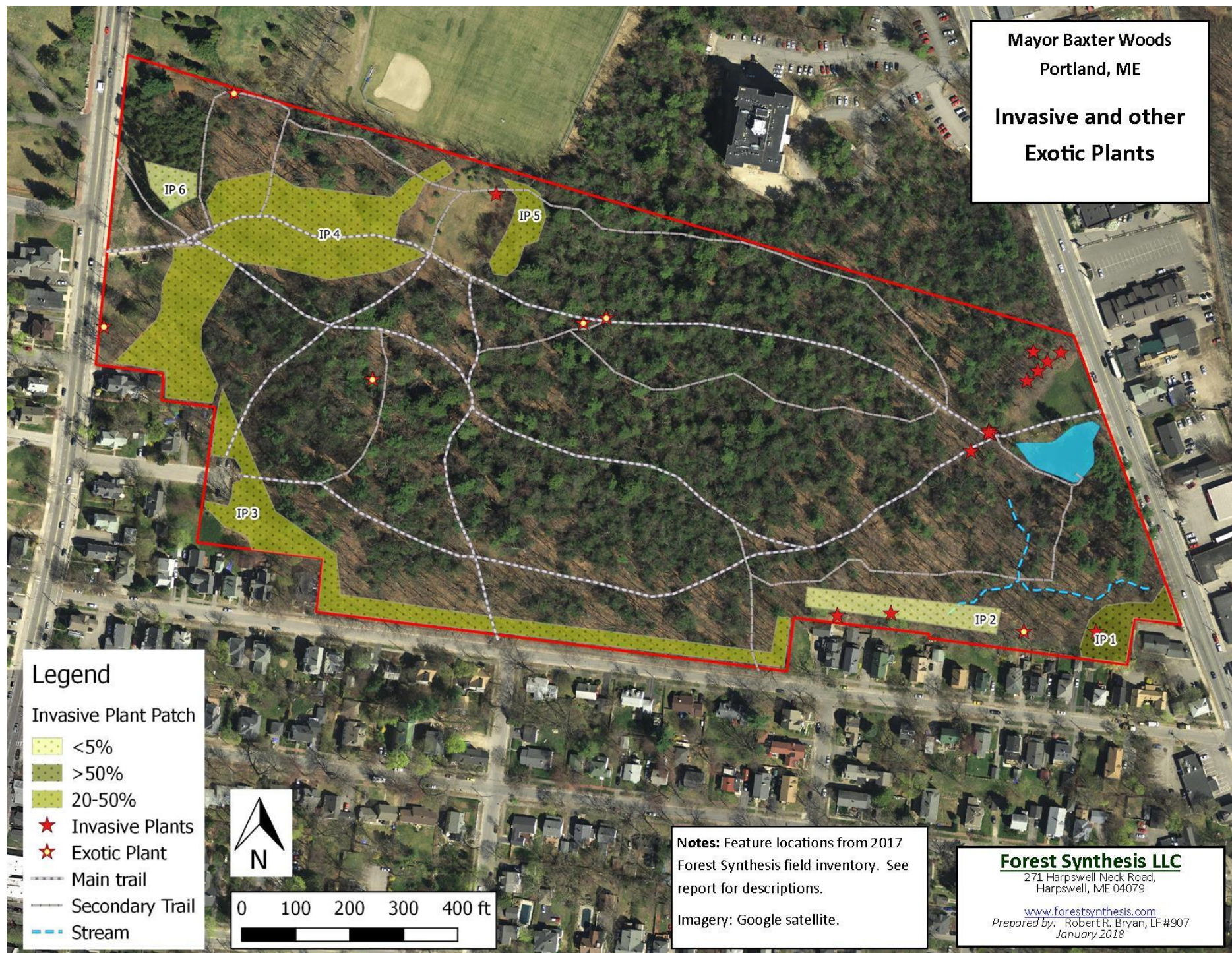
Prepared by: Robert R. Bryan, LF #907
January 2018

Mayor Baxter Woods
Portland, ME

Forest Stands and other Cover Types

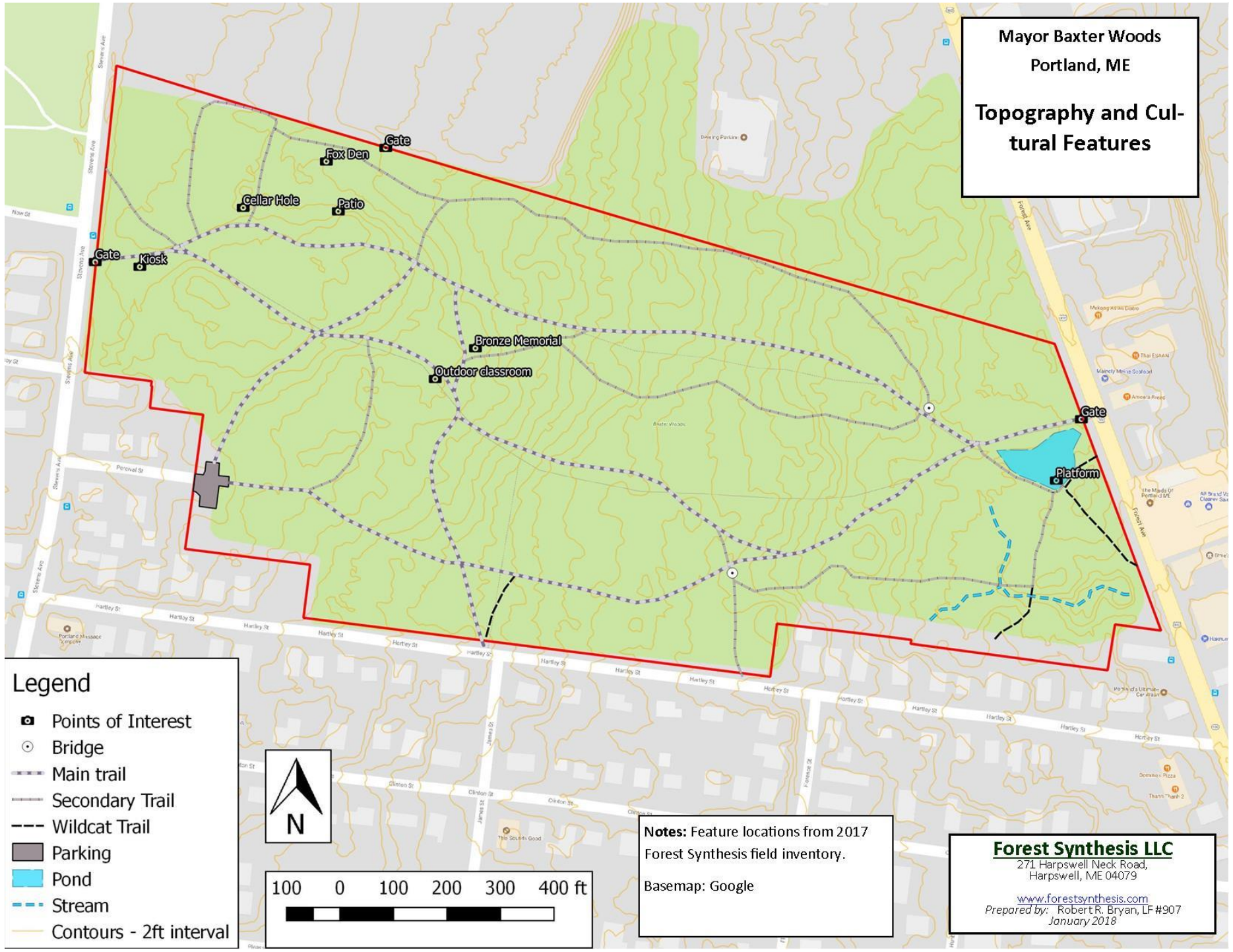


Mayor Baxter Woods
Portland, ME
Invasive and other
Exotic Plants



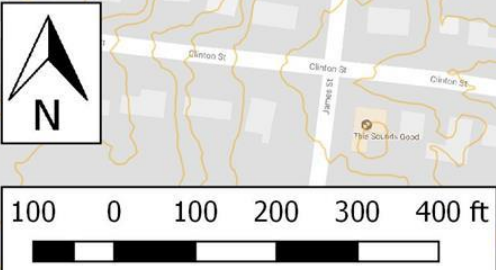
Mayor Baxter Woods
Portland, ME

Topography and Cul-
tural Features



Legend

- Points of Interest
- Bridge
- Main trail
- Secondary Trail
- Wildcat Trail
- Parking
- Pond
- Stream
- Contours - 2ft interval

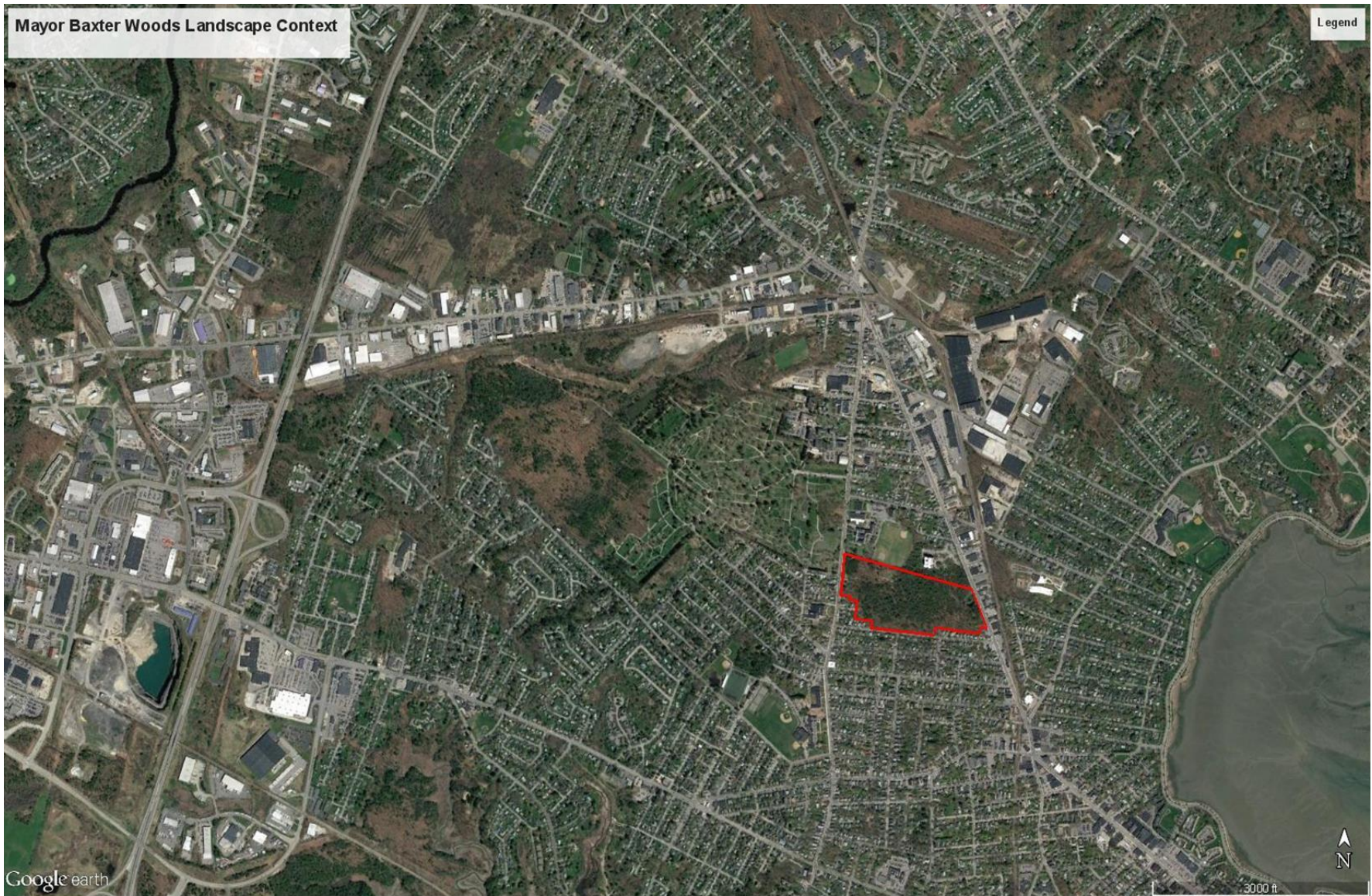


Notes: Feature locations from 2017 Forest Synthesis field inventory.

Basemap: Google

Forest Synthesis LLC
271 Harpswell Neck Road,
Harpswell, ME 04079

www.forestsynthesis.com
Prepared by: Robert R. Bryan, LF #907
January 2018



Notes:

Imagery source: Google Earth

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January 2018

Property Description

General Forest Description

Mayor Baxter Woods is located between Forest Avenue and Stevens Avenue in the Deering section of Portland (see Locus Map). The property is predominantly forested and characterized by old stands of red oak, white oak, white pine, hemlock and other species. With dominant canopy trees 180-200 years in age and untouched in over 100 years of age, the average size and age of the trees is extremely rare. As an example of old oak-pine-hemlock forest Baxter Woods may be without par anywhere in Maine.

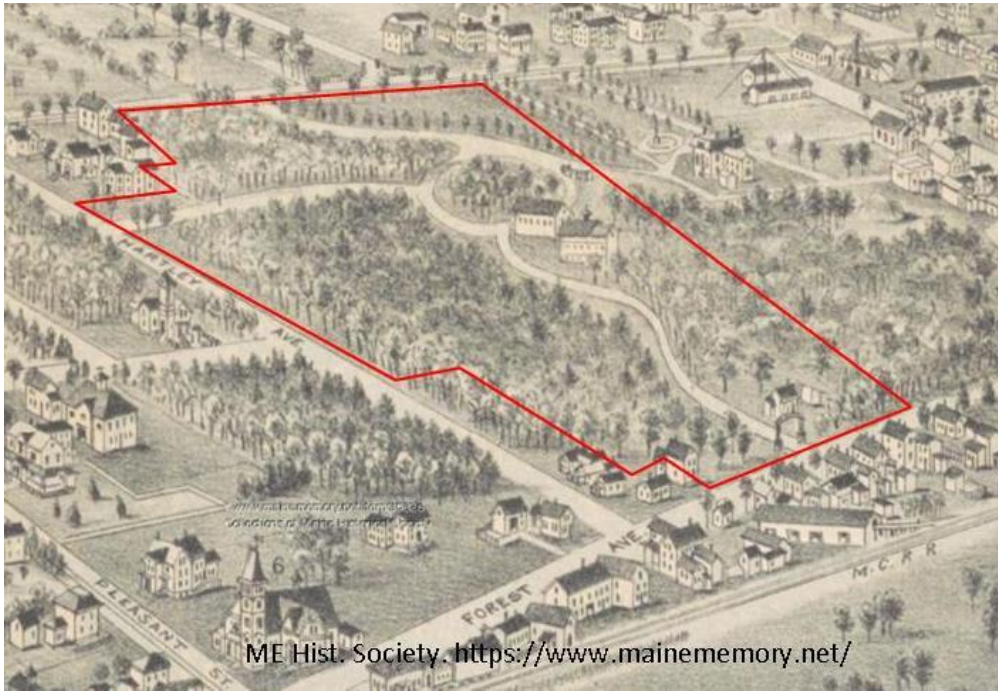
The terrain slopes gently in an easterly direction from Stevens Avenue to Forest Avenue. The soils originated as sandy outwash from glacial streams during the last ice age and range from excessively well-drained sands in the west to moderately well drained with a few somewhat poorly drained and poorly-drained pockets to the east. Intermittent seasonal water coursed and small streams drain to the east.

MBF is located in the Casco Bay watershed and drains to Back Cove, which is located short distance to the east.

Property History

Woodlands in this region were cleared for farming beginning in the late 1700's after the Revolution and into the 19th century, with abandonment of marginal farmland beginning in the latter half of the 19th century. Most of what we see as forest today in southern and central Maine was formerly farm field and pasture.

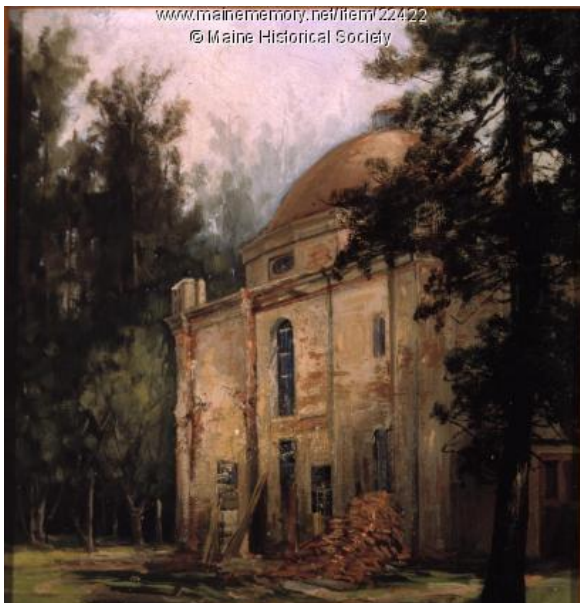
At MBW, smooth soil surfaces in the western third of the woods (Stand Map areas 1, 2a, 2b, 3, F1 and F3) and near Forest Avenue (areas 7, 8, 9 and F2) indicate that these areas were plowed at one time. Pit-and-mound soil topography is found on the remainder of the property. Pit-and-mound (or "pillow-and-cradle") topography develops over hundreds of years as forest trees tip over with age or wind and the root mass decays, leaving a mound where the root mass and uprooted soil were deposited and a shallow depression where the root mass once anchored the tree. Because pit-and-mound topography is smoothed out when former forest soils are plowed, its presence indicates that most of the central part of the property (Stand Map areas 4, 5a, 5b, and 6) was ever plowed, but it could have been partly cleared for pasture and or have been part of a farm woodlot. The presence of very old hemlock in the middle of the property is another sign that this area has always been wooded.



Baxter Woods was once part of the estate of F.O.J Smith, whose mansion “Forest Home” occupied the area near Stand F3 (see Stand Map)² from 1836 until the late 1800’s or early 1900’s. The mansion was surrounded by large trees at the time that Harrison Bird Brown painted the scene in 1880-1881³. While it is likely that Mr. Smith may have cut some trees for forest health and aesthetics, the size and apparent age of some of the overstory trees suggest that the forested areas were largely undisturbed during his tenure. This is confirmed by

1843 aerial map of Deering with current boundary of Mayor Baxter Woods outlined. “Forest Home” is located approximately where Stand Map area F3 is located today.

the 1886 Birds-eye View of Deering (Maine Historical Society, www.mainememory.net), which depicts mature forest in the eastern two-thirds of MBW (see image). The same map shows young forest and/or planted trees near Stevens Avenue, which confirms the likelihood that that the western third of the property was cleared and plowed at one time.



This painting of the Forest Home library c. 1839 also confirms that Baxter Woods had many mature trees at that time.

The same hands-off management continued after the estate was sold to James Phinney Baxter in 1878. The Stevens Avenue kiosk notes that oldest tree in Mayor Baxter Woods dates from 1807. One white oak stump observed in 2017 and estimated to have been cut about 5 years previously had approximately 185 annual rings (rough field count), suggesting the tree was established sometime around the 1830’s.

The red pine grove (Stand Map, area 1) was estimated to be planted in 1949 according to a resident who remembered both Baxter Pines and Baxter Woods planted with seedlings that involved Deering High School students and State of Maine plant stock. The stand was thinned in 2004 with advice from Dennis Brennon, the Maine Forest Service District Forester at the time.

² See the brochure *Welcome to Baxter Woods* for a more extensive ownership history beginning with F.O.J. Smith.

³ The estate was sold to James Phinney Baxter in 1878, so presumably the painting was commissioned by the former mayor Baxter as it is owned by the City.

Access

MBW has excellent access from Forest Avenue, Stevens Avenue, and Hartley Street for public recreation and for any management that might occur. The main trails provide a network of interior access. There is currently only one small fence opening on the north boundary, but a new gate is proposed for that area

Interaction with Surrounding Properties

Single family residential homes are located adjacent to the south and southwest. Multi-unit residential properties and playing fields are located to the north, commercial properties across Forest Avenue to the east and Evergreen Cemetery across Stevens Avenue to the west.

Legal Obligations

The principal legal obligations are the Baxter deed described in the introduction. Maine's laws applicable to timber harvesting and water quality protection, pesticide use, as well as municipal ordinances also apply. Because the City has an active urban forestry program and is familiar with legal requirements these will not be described in greater detail in this plan. Prior to any site disturbing activities, check with the City planning department, Maine Forest Service, and Maine DEP, or other applicable agencies (e.g. Maine Board of Pesticide Control) for the most recent applicable regulations.

Forest Ecosystem Planning and Management

The following sections describe ecological resources of importance and include recommendations to protect their values, Soil and Water Quality Protection, Management for Fish, Wildlife, and other Biodiversity, and Planning for Climate Change. Other management recommendations to achieve specific management objectives are included in later sections of this plan.

Soil and Water Quality Protection

Soils

Identification and Significance

Soils are critical to the long-term ecological health of the forest and a key factor in determining the species of trees and other plants that may be present. Most soils can be readily damaged by heavy equipment when soils are wet after rains and during the spring and fall mud seasons. Wetter sites may have very short windows for forest management activities and may be limited to either winter operations on frozen ground conditions or to dry periods at other times of the year.

A Natural Resource Conservation Service (NRCS) “Web Soil Survey” report for Baxter Woods was prepared for MBW (see Attachments). The field reconnaissance confirmed that NRCS mapping showing excessively well-drained sands in the west to moderately well drained with a few somewhat poorly drained fine sandy loams and poorly-drained pockets to the east. These soils are excellent for pine, oak and hemlock and are important factor in why these species are so prevalent today.

Trails

Current Conditions

The location of trails is shown several of the maps. Trails were classified into three major for the purposes of this plan:

Main trails: Gravel base, 10-15 foot width with culverts and ditching as needed, suitable for vehicular use.

Secondary trails: Footpaths 3-5 feet in width, natural soil base, not suitable for vehicular uses

Wildcat trails: Non-maintained trails established by customary pedestrian use

Some areas of slight surface erosion were noted on some the main trails, especially in Stand 4. The riprap ditch along the main trail in the eastern half of Stand 4 has been identified by the City as a possible area of improvement to restore a more natural character to the trail. Several of the main trail intersections have become very wide as result of walkers who cut the corner when going from one trail to the next.

Recommendations

Review all trails and develop and implement a trail management and maintenance plan with the following components:

- Ensure that the crown on main trails is sufficient to effectively and rapidly shed surface runoff;

- Minimize ditching by using changes in slope, ditch turnouts, and cross-drain culverts as needed to direct water into adjacent forest areas where it will infiltrate into the soil rather than be concentrated in an artificial drainage system;
- Replace and upgrade culverts as needed to ensure that they are capable of handling more intense rainfall occurring as a result of climate change (e.g., historically “50-100 year” storm events);
- Apply other applicable guidelines for roads and trail in **Best Management Practices for Forestry: Protecting Maine’s Water Quality** (“BMPs”; see *References* section) to protect soil and water quality;
- Use appropriate landscaping to minimize soil compaction and widening of the main trail junctions;
- Restore the historic stone work along the main trails;
- Manage secondary trails using the guidelines in the **Recreational Trail** section of the Appendices;
- Close most wildcat trails by placing brush and/or signage as needed;
- Refer to the *Recreation Use* section later in this report for recommendations related to trail management and related impacts on plant and wildlife habitat.



Lack of defined trail edges is leading to soil compaction and loss of vegetation at main trail junctions

Water Quality

- Always apply Maine’s **Best Management Practices** for water quality protection when disturbing soils or cutting trees.
- See *Aquatic Habitats and Riparian Zones* for other fish and wildlife habitat protection measures.

Management for Wildlife, Fish and Other Biodiversity

Introduction

This plan includes an assessment of current wildlife habitat conditions to use as a baseline against which to measure progress towards its long-term wildlife management goals. The habitat assessment methodology is based on and Maine Audubon's **Foresters for Maine Birds** (publication pending) and information on non-avian species from **Focus Species Forestry, a Guide to Integrating Timber and Biodiversity Management in Maine** (Bryan 2007). While both of these documents are geared towards landowners and managers with an interest in active forest management program, the assessment methodologies are well suited to MBW's goal to maintain the forest in a natural condition as a sanctuary for wild birds.

Forest Classification

The basic building block used for forest wildlife habitat assessments and management planning is the forest stand, which is an area that is generally similar in terms of vegetation cover type (species mix of dominant vegetation), age-class distribution, and site quality. Some stands may be very uniform in size and species composition (for example a stand of even-aged white pine) while others may be composed of patches of different species and ages (for example, an uneven-aged hemlock-hardwood forest). Stands may vary from a few acres to over 100 acres in size. For this property, aerial photography and field data were used to divide the forest into stands and to create the *Stand Map*.



Forest age, structure and type are key determinants of wildlife habitat. The young forest of shrubs and saplings above at Baxter Woods area F3 may be used by birds such as eastern towhee and chestnut-sided warbler, while older forest areas like this oak-hemlock forest type (Stand 5b) will attract birds such as Blackburnian warbler and black-throated blue warbler.

Forest Habitat Types

For habitat assessment purposes, common forest types found on the property have been grouped into Forest Habitat Associations, which generally share a common suite of wildlife species in any given region. The **Foresters for Maine Birds** habitat associations are described in the following table.

Forest Habitat Classification

Map Symbol	Forest Habitat Association <i>(comments in italics)</i>	Common Forest Types	Baxter Woods
NHW	Northern Hardwoods¹ <i>May include up to 25% softwoods</i>	Northern Hardwoods (beech-birch-maple and variants) Aspen-Birch (early successional variant)	No
NMW	Northern Mixedwoods² <i>Neither hardwoods nor softwoods exceed 75% of stocking</i>	Northern Hardwood/Hemlock Northern Hardwood/Spruce-Fir Hemlock (in patches) Aspen-Birch (early successional)	No
NSW	Northern Softwoods³ <i>May include up to 25% hardwoods</i>	Spruce-Fir Spruce-Hemlock White Pine-Mixed Conifer Northern White Cedar Aspen-Birch (early successional)	No
OP	Oak-Pine⁴ <i>May range from pure oak-dominated hardwoods to mixed hardwood and softwood stands</i>	Northern Red Oak Red Oak-Mixed Hardwoods Red Oak-White Pine-Red Maple White Pine Hemlock and Hemlock-Oak-Pine	Yes
MHW	Mixed Hardwoods	Oak-Northern Hardwoods Oak-Aspen-Birch	Yes

Habitat Age Class, Stand Structure Class, and Canopy Cover

Many wildlife species are closely linked to specific forest ages and structures, including tree size, canopy density, and vertical structure (i.e., canopy layering), and timber management options are also age and size related. Stands are classified in terms of general size and combinations of stand structure class (which is related to maturity) and canopy cover as described in the following tables. **Stand Structure Class** is an indication of ecological development, wildlife habitat condition, and commercial forestry potential. **Habitat Age Class** is used to summarize the stand structure classes into broad habitat conditions for assessment and planning.

Forest Habitat Age and Structure Classes			
Habitat Age Class	Stand Structure Class ¹		Description ²
Young	1	Regeneration	1-10 years old, <1" DBH ⁴
	2	Sapling	2-5" DBH, 10-30', <30% overstory ³ cover
Intermediate	3a	Intermediate - Single-aged (Poletimber)	Overstory 5-10" DBH, total canopy cover > 60-70% with midstory component <30%
	3b	Intermediate - Two-aged (Poletimber)	Overstory 5-10" DBH and <60% cover, development of midstory and understory variable depending on time since last harvest or other canopy disturbance
Older	4	Maturing (Small Sawtimber)	Overstory trees 10-16" DBH dominant, total canopy cover typically >60-70%
	5	Older Complex (Large Sawtimber)	Overstory trees >16" DBH dominant. Multiple canopy layers common with total canopy cover typically >60-70%

¹Equivalent forest product classes in parentheses.

²These are general descriptions; diameter and canopy cover may vary by species and site. Percent cover of any layer may be less than indicated if there has been recent harvesting (typically within 10-15 years)

³See Vegetation Layer table

⁴DBH: diameter at breast height (4.5 ft.)

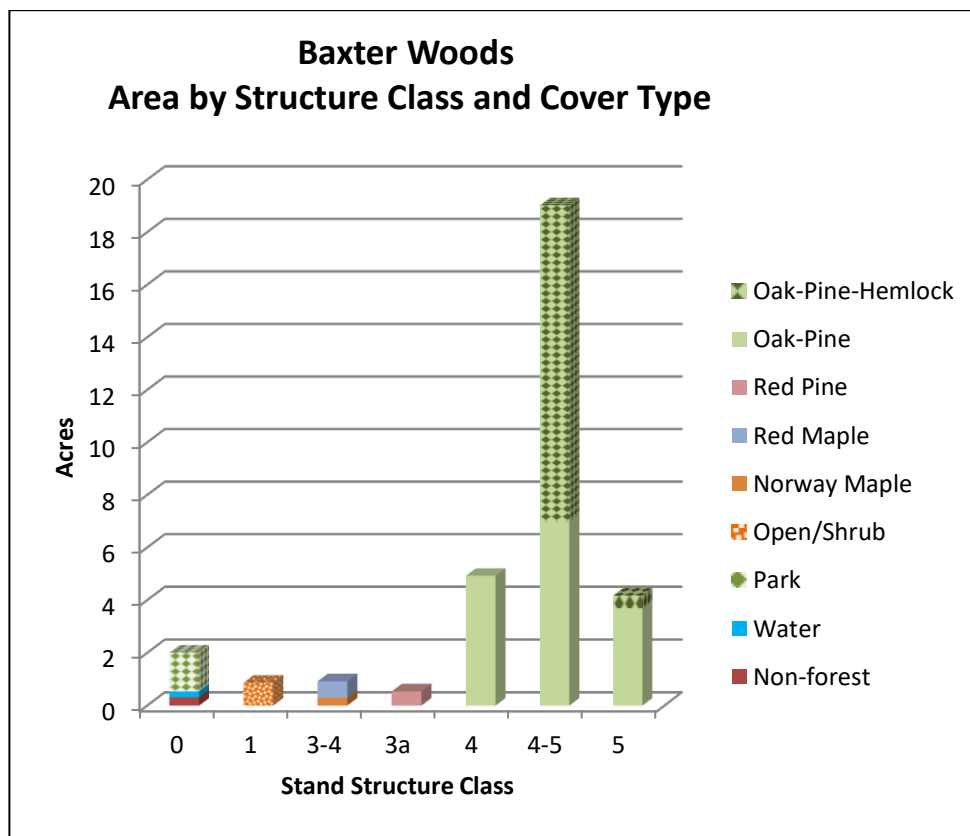
Vegetation Layer		Height (ft.)	Bird Habitat Notes
Canopy	Overstory	>30	Canopy heights of >50-60' are important for many mature forest species, including Black-throated Green Warbler and Blackburnian warbler.
	Midstory	6-30	Important nesting and foraging stratum for species like Canada Warbler that prefer dense midstory. Other species, such as Eastern Wood-Pewee, prefer a more open midstory.
Understory		1-6	Important feeding and nesting cover for mature-forest species such as Black-throated Blue Warbler and Veery.

Canopy Cover Classes

Cover Class	% Canopy Cover
A	>80
B	60-80
C	30-60
D	5-30
E	<5

Distribution of Habitat Types and Development Stages

The distribution of forest habitat type and associated development classes as well as other cover types on the property are summarized in the following chart.



Stand Class	Area (acres)	Percent
0	2.01	6.2%
1	0.87	2.7%
3-4	0.92	2.8%
3a	0.54	1.7%
4	4.92	15.2%
4-5	19.02	58.6%
5	4.18	12.9%
TOTAL	32.46	100.0%

Forest Canopy Layers					
Stand Number	Type	Stand Structure Class and % Cover			Acres
		Overstory	Midstory	Understory	
1	Red Pine	3a/B	0	1E	0.54
2a	Oak-Pine	5B	2-3D	1B	2.85
2b	Oak-Pine	4-5B	2C-	1-2C	0.92
3	Oak-Pine	3-5B	3C	1E	3.12
4	Oak-Pine	5A	2C	1D, C	5.47
5a	Oak-Pine-Hemlock	5B	2-3B	1D,C	12.04
5b	Oak-Pine-Hemlock	5C	2-3C	1D	0.49
6	Oak-Pine	4-5A	2-3C	1D	0.84
7	Red Maple	3-4A	2D	1C	0.62
8	Oak-Pine	4-5A	2C	1B	0.59
9	Oak-Pine	4-5B	2C	1C	1.80
10	Norway Maple	3-4A	2D	1C	0.30

11	Non-forest				0.22
F1	Park	2-4C	0	0	1.06
F2	Park	2D	0	0	0.41
F3	Open/Shrub	n/a	n/a	n/a	0.72
F4	Open/Shrub	n/a	n/a	n/a	0.15
Pond	Water	n/a	n/a	n/a	0.22
P1	Non-forest	n/a	n/a	n/a	0.10
					32.46

Current Conditions

The preceding chart and table show that older stands (Classes 4 and 5) account for over 81% of the forest area, and exceptionally large proportion for any forest in Maine. Nearly all stands have moderate to full canopy cover of mature trees. Midstory is generally moderate, and understory is moderate to low. Extensive area with limited to no understory can be easily observed while walking the trails, especially in the middle third of MBW. To a large extent this is caused by the very dense hemlock midstory in these stands, which limits the light available for forest regeneration. While attractive from a visual perspective, the lack of understory cover limits the habitat for species that nest and forage in the lower canopy layers. Old field, shrub, and young saplings, and important habitat type for some species, represent less than 3% of the area.

Recommendations

Specific to forest age and structure, the City has limited options to enhance habitat for birds and other wildlife due to the deed restrictions that do not allow tree cutting.

- In all stands except open/shrub areas, allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time. Tree mortality from wind events, ice storms, and native insects and diseases will result in canopy gaps that will allow establishment and development of the understory and ground cover plants and habitat for birds that use these areas. While a systematic plan should be developed and implemented to protect a significant portion of the oldest hemlocks from the exotic hemlock wooly adelgid (HWA) and outbreaks of hemlock scale (see *Insects and Disease* section later in this report), allowing these pests to go untreated in some patches will result in an increase the light reaching the forest floor in those areas and stimulate growth in the understory.

Rare, Threatened, and Endangered Species, Natural Communities, and Significant Wildlife Habitat

Information on known locations of rare, threatened and endangered species, Significant Wildlife Habitats, and rare or exemplary plant communities was provided by the Maine Natural Areas Program (MNAP). Beginning with Habitat (BWH) maps prepared by the Maine Department of Inland Fisheries and Wildlife (MDIFW) in cooperation with the Maine Natural Areas Program (MNAP) were also reviewed.

Current Conditions

The Beginning with Habitat maps and MNAP report do not show any high-value plant and wildlife habitats in or near Baxter Woods. The nearest mapped features are in Back Cove and on the Fore River.

- The Forest Synthesis field assessment did not identify any areas that would be classified as Significant Wildlife Habitats by MDIFW.
- A systematic survey for rare, threatened, or endangered plants and animals was not part of the Forest Synthesis assessment, but given the location and type of habitats present the presence of these species is highly unlikely.
- Forest stands 2, 3, 4, 5, and 6 have dominant canopy trees 180-200 years in age have not been harvested in well over 100 years. However, because Baxter Woods is less than 100 acres in size MNAP reports that none of the forest communities there qualify a “natural community of statewide significance.” Nonetheless, as an example of old-growth oak-pine-hemlock forest Baxter Woods may be without par anywhere in Maine.

Recommendations

- Management of the forest consistent with the MBW deed restrictions would also be consistent with the MNAP guidelines for natural communities and help protect its significance.

Vernal Pools

Identification and Ecological Significance

Vernal pools are small, fishless water bodies that provide breeding habitat for a unique group of amphibians and invertebrates, including (yellow) spotted and blue-spotted salamander, four-toed salamander, wood frog, and fairy shrimp. During most of the year, adult spotted salamanders and wood frogs are found in the nearby forest; spotted salamanders may be found up to several hundred feet from the pools and wood frogs are found up to a quarter mile or more from pools. Vernal pools are best identified in spring when breeding adults and/or eggs are present. By mid or late summer they are frequently dry. Typically, vernal pool species breed in small isolated pools and ponds, but other areas such as forested wetlands and stream floodplain channels are also often used. See ***Focus Species Forestry*** guidebook for more information. More detailed information may be found in **Forestry Habitat Management Guidelines for Vernal Pool Wildlife in Maine** (Calhoun and deMaynadier 2004).

Current Conditions

Two areas with some vernal pool characteristics were observed in MBW (see Stand Map). Informal observations were recorded during an April, 2016 field visit and again in October 2017.

- **VP1.** This is ephemeral pool formed by a small seep near the Forest Home site. A short stone wall at one end of the pool, its location adjacent to the Forest Home site, and the overall configuration suggest that some evidence that this pool may have been enhanced during the Smith estate period of the property to be part of the estate landscaping. The pool is currently 6-8" deep at spring high water and was dry when observed in October 2017. No spotted salamander or wood frog eggs were observed in April 2016 when eggs were found elsewhere in MBW.



Vernal Pool 1 was probably a landscape feature of the Forest Home Estate and could be enhanced by increasing its depth.

- **VP2.** VP2 is a small excavated pool in Stand 9, but with water over 12" in depth in April 2016. At that time 12 spotted salamander egg masses and 1 wood frog egg mass were observed in the pool. In October 2017 this pool was dry, but the number of egg masses observed suggests that the pool has a sufficiently long hydroperiod in some years to maintain small population of obligate vernal pool amphibians.
- **Pond.** In April 2016 both spotted salamander and wood frog egg masses were observed in the pond.

Recommendations

- VP1 could be enhanced to deepening the pool to a depth of 12"-16" to improve its potential value as vernal pool habitat. A short section of PVC pipe extending 2 ft. below the pool bottom could be installed to serve as a water table monitoring well. Water table depth data from this well could then be used to decide whether or not excavating the pool would be effective.
- VP2. This pool was clearly excavated and has steep sides and a small berm of excavated material around the edges. The pool could be visually enhanced by contouring the edges to create a more natural appearance.

Aquatic Habitats and Riparian Zones

Identification and Ecological Significance

Aquatic habitats at Baxter Woods include the pond near Forest Avenue and the ephemeral stream. Riparian areas are areas that are influenced by, and that influence, aquatic habitats. Species that benefit from aquatic habitats vary greatly with size, depth, vegetation, bottom structure, current, and other factors. Over 60 wildlife species in Maine are dependent on the adjacent riparian habitats for part of their life cycle, and many other species are frequently found in riparian habitats.



Pond. Despite its small size and urban location the pond attracts great blue herons, mallards, black ducks, amphibians, and many other species.

Ephemeral stream. A small, seasonally intermittent stream and tributary are located in the southeast corner of the property. The stream ends in a storm drain near Forest Avenue. Stream surveys were not part of assessment in this plan, but values presumably include habitat for some insects and other invertebrates, and as a source of naturally filtered water that drains into the Back Cove estuary.

Recommendations

- Maintain a border of native vegetation around the pond and landscaping as necessary to direct foot traffic to targeted areas where soil compaction and vegetation disturbance would be minimal.
- Maintain the forest adjacent to the stream in a natural condition. Keep the number of trail crossings to minimum. Where crossings cannot be avoided orient trail perpendicular to the stream. Avoid trails that closely parallel the stream (e.g., within 25 feet).

Wildlife Trees, Dead and Downed Wood, and Retention Patches

Identification and Ecological Significance

Wildlife trees include:

- **Snags:** Dead standing trees.
- **Cavity or den trees:** Live trees with nesting cavities or mammal dens.
- **Recruitment trees:** Large live trees that will be permanently retained (i.e., will never be harvested) and will eventually contribute to the snag, cavity tree, and downed woody material for wildlife and other biodiversity benefits. Typically these are large trees with significant decay or other cull defect, or beech with evidence of bear use

Downed Woody Material: Fallen tree trunks, branches and leaves.

Retention Patches: Areas of live vegetation roughly $\frac{1}{4}$ acre or more that are retained within larger harvest openings (e.g., >5 acres).

Wildlife trees and downed woody material are recognized for their value to vertebrate wildlife (e.g., woodpeckers, marten, wood ducks, and salamanders), insects, and fungi and for their role in the cycling of nutrients and organic matter in the forest. Standing dead wood and woody debris also provide nesting and hibernation habitat for native bee species. All sizes provide value, but large cavity trees (> 16 inches) are required by species such as barred owl and wood duck. The value of downed woody material also increases with size.

Retention patches are used when harvesting (for certain silvicultural or wildlife habitat management objectives) removes most of the overstory. In these cases retained patches of trees and other vegetation serve as a habitat “lifeboat” for species with low mobility (e.g., understory herbs, lichens, mosses and liverworts) whose habitat would be eliminated by even-aged management practices that clear most vegetation when regenerating the forest. Retention patches over one acre in size have the best temperature, humidity, and light conditions for retaining understory plants.



Decaying trees provide feeding and nesting habitat for woodpeckers. Excavated nest cavities in turn provide habitat for other species.

Observations

- Snags, cavity trees, and large and small woody material are moderately abundant in Baxter Woods.

Recommendations

- Allow dead, dying trees, and downed trees and limbs to remain in place unless they represent a threat to trail users.
- Scatter downed limbs that fall on trails within the forest rather than chipping them.

Forest Health

Invasive Plants

Identification and Ecological Significance

The Maine Natural Areas Program defines an invasive plant as “a plant that is not native to a particular ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.” MANP describes invasive plants as “a direct threat to what we value about Maine's natural and working landscapes [and the] second-greatest threat to global biodiversity after loss of habitat. Invading plants out compete native species by hogging sunlight, nutrients, and space. They change animal habitat by eliminating native foods, altering cover, and destroying nesting opportunities” ([MNAP website, 2017](#)). A list of some of the most problematic invasive species commonly found in Maine forests is included in the Appendices.

Current Conditions

The location of invasive plants is shown on the Invasive and other Exotic Plants map. Norway maple (classified as “probably invasive” by the Maine Natural Areas Program) is the most abundant exotic species. It dominates one stand (Stand 1) and is exhibiting invasive behavior in many areas of the MBW. Other species observed in mixed patches or as scattered clumps include Asiatic bittersweet, bush honeysuckle, common buckthorn, Japanese barberry, Japanese knotweed, Bishop’s weed (also “probably invasive”). Linden is an exotic species that is not classified as invasive but it is becoming well established in the understory and mid-canopy in many places. Lemon balm, another exotic not “invasive,” was observed in a large patch in Stand 11. Lists of invasive plants are included in the Individual Stand Descriptions and Recommendations.



Bishop’s weed (goutweed) is an example of an invasive exotic plant that is preventing the growth of native species in Mayor Baxter Woods

Some invasive plant control has occurred. Larger Norway maples in the vicinity of Hartley street were cut to eliminate seed sources, but where small Norway maples were cut and not treated with chemicals aggressive re-sprouting has occurred.

Recommendations

- The City should develop a plan and implement a plan to control and monitor invasive plants and other aggressive non-native plants throughout the MBW.
- To prevent introduction of other invasive plants, equipment used in the forest should be pressure-washed before being used on site.
- If mulch is needed, only use weed-free mulch, such as straw or wood chips that do not have any invasive plant seeds.

General approaches. Early detection and control is the key to managing invasive species. Small vines and shrubs may be pulled by hand, but treatment with a safe herbicide is the most effective means of controlling larger plants or large areas. Treatment methods are summarized in the Appendices.

Mechanical Control. Cutting is not an effective control measure as invasive plants will re-sprout vigorously. With diligence both barberry and smaller honeysuckle plants may be effectively controlled by hand pulling. During the spring when soils are moist is generally the best time. Pull all plants that are not too large. An “Extratigator” or similar brush puller (e.g. “Weed Wrench”) may be used to pull larger plants. To limit the chance of re-sprouting, care should be taken to ensure that as much root material as possible is removed. Any plants that are too large for pulling should be marked with flagging and GPS for follow-up control with chemicals.

Chemical Control. Where hand pulling is not effective or feasible, herbicides are generally the only effective treatment option. When properly handled and applied the herbicides glyphosate and triclopyr have been shown to have very low risk for organisms other than plants and they have minimal soil movement and break down rapidly. Other chemicals may be more effective in certain situations. Treatment methods are localized (individual plants and/or cut plant stems) and designed to minimize the amount of chemical use and damage to non-target plants. These chemicals and methods are recommended by The Nature Conservancy and other conservation groups for management of natural areas.

Follow-up monitoring and control 2-3 years after the initial treatment is necessary, regardless of whether mechanical or chemical controls are used.

Herbicide use is regulated by the Maine Board of Pesticide Control and all legal requirements must be followed.

Insects and Diseases

Current Conditions

Elongate hemlock scale (*Fiorina externa*) is a serious exotic pest of eastern hemlock. It also can be found on fir, spruce and other conifers. EHS attacks the surface of the hemlock needle and sucks out the fluid. This process causes the needles to turn yellow and drop prematurely ([Maine Forest Service webpage](#))

accessed 2/8/18). EHS was observed on several plots during the field assessment and is the likely cause of hemlock mortality in Stand 5b.

Hemlock wooly adelgid is an invasive aphid-like insect that feeds on hemlocks that has devastated hemlock stands in southern New England and in the Appalachians. HWA has spread north through the Midcoast region of Maine and is causing hemlock decline and mortality throughout this region. In northern New England decline can be slow, and cold winters tend to kill many of the insects. No evidence of hemlock decline caused by HWA – typically a thin, pale-green crown – was observed at MBW during the field reconnaissance, but it has been observed by City Forester Jeff Trarling.

Red pine in Maine is threatened by several pests and diseases, including the exotic red pine scale, and *Siroccocus* shoot blight, which is devastating red pine plantations in Maine. There is no evidence that the MBW red pine plantation (Stand 1) is affected yet, but this stand as well as the mature red pine scattered throughout Baxter Woods are at risk.

Beech-bark disease, which results from the combined action of exotic insect and an exotic fungus, has devastated American beech stands throughout its range. Beech bark disease was observed at MBW, but the trees are very healthy compared with most areas in Maine. There is no known control for beech bark disease. Dead and dying trees can be removed, but because beech regenerates through root, suckers and mature trees are often connected by root systems, it is impossible to eliminate or slow the disease by cutting.

Browntail moth, winter moth, and gypsy moth are exotic insects are serious threats to oak forests, and will also affect some other tree species. None have been observed at MBW to date, but browntail moth and winter moth are common in the Casco Bay region. Personal observations are that the oldest trees are most at risk during winter moth outbreak. Browntail moth seems to result in less tree mortality, but the toxic hairs shed by the developing caterpillars cause significant rashes on most people.

Recommendations

Hemlock Wooly Adelgid and Elongate Hemlock Scale

- Develop a comprehensive plan to monitor and control hemlock wooly adelgid and elongate hemlock scale.
- Consult with the Maine Forest Service and other experts as needed. Management references are included on the [Maine Forest Service HWA web page](#), and Forest Synthesis can provide contacts at the Nature Conservancy, which has an active program and recommendations to control HWA in key ecological areas.
- Chemical pesticides are generally the only consistent method to control HWA and EHS. However, the Maine Forest Service and US Forest Service are experimenting with biological controls, and the City should ask MFS if they would use Baxter Woods as an experimental site.
- Even if biological controls are used, the city should map and protect individual, old hemlocks with chemical methods. Ground injections of systemic pesticides (e.g., imidacloprid) can provide long lasting control of individual trees (up to 10 years), and studies have shown there is no evidence of chemical movement beyond the treated tree.

Red Pine Pests and Diseases

- To reduce the risk of major loss of red pine from red pine scale, *Sirrococcus*, and other diseases, monitor for these threats and manage the red pine plantation to allow a mixed stand of red pine and other native trees and shrubs to develop over time. See Stand 1 recommendations for details.

Browntail Moth, Winter moth, and Gypsy Moth

- Develop a contingency control plan for browntail moth, winter moth, and gypsy moth and monitor the forest on a regular basis for the presence of these exotic insect pests.

Planning for Climate Change

Researchers have estimated that Maine's average temperatures will increase at least by 3.5° F by 2100 if climate-warming emissions are significantly reduced and by as much as 12.5° F if emissions are not reduced. By 2100, the optimum climate for spruce and fir is predicted to shift to north of the Canadian border, while the optimum climate for northern hardwoods such as sugar maple and yellow birch is predicted to retreat to the western mountains and northwestern highlands of Maine. The northern limit of optimum climate for oak, which is now best adapted to southwestern Maine, is predicted to shift north to the Canadian border. Trees that are outside of their optimum climate are likely to become stressed, with potential for increased rates of health decline and mortality due to insects and diseases. Disturbances, including harvests and other management actions, can be used to facilitate the response of vegetation types to climate change.

Examples of species that are tolerant of warmer temperatures include white pine, red oak, and red maple. The general recommendations below have been developed by the author for consideration when developing plans for forest management.

Recommendations

- Landowners and managers can help mitigate climate change by sequestering carbon in soils, the forest floor, and in the canopy. Forest soil carbon loss can be minimized by avoiding clearcutting and other practices that heat the forest floor and increase decay and oxidization of organic matter. Managing for older and larger trees will store more carbon on the stump. Some studies have shown that carbon is also sequestered in long-lived forest products after trees are harvested.
- Consider planting species that are currently at the northern limit of their range and that can tolerate warmer temperatures.
- Increase culvert sizes over those included in BMP guides and otherwise modify water management and stream crossing practices to accommodate increases in storm severity



Cool-climate species such as sugar maple and yellow birch (shown here) as well as red spruce and other species may decline as the climate warms. Red oak, white pine, and red maple are well adapted to a warming climate.

Other Management Considerations

Historical, Cultural, and Archaeological Sites

Mayor Baxter Woods is well known as the site of the “Forest Home” estate of Francis Ormond Smith. Evidence of the estate remains in the form of cut granite blocks and landscape alteration near the small field in the northwestern part of property (Stand Map, areas 2B and F3). Archaeological studies in 2014 by Norm Buttrick and students from Catherine McCauley High School identified evidence of the estate.

Recommendations

- Compile information from the Buttrick study and other sources to create a more complete and accurate history and maps of land use at MBW. These could be used for educational purposes and as a record for long-term management.
- Consult with Maine Office of Historic Preservation about possible location of other historical and archeological sites.

Societal Considerations

Public forest management should include opportunities for members of the public to ask questions about and provide comments on draft plans before they are finalized.

Boundary Lines

Clearly marked boundaries are necessary to prevent timber trespass and other damage to property, including both protection from abutters and to ensure that you do not encroach on the lands of others. Boundary lines are delineated by roads, stone walls, and shorelines.

Current Conditions

- Boundaries formed by Forest Avenue, Hartley Street, and Stevens Avenue are clear.
- A chain link fence marks the north boundary.
- The boundary north of residences on Hartley Street (vicinity of Stand Map, area 11) has a few survey pins, but is not marked between the widespread pins. Most residential properties on Hartley Street have encroached onto City property (Stand Map, areas 11 and F4). Examples of encroachment include fencing, paved driveways, lawns, and gardens and brush dumping.
- Cedar post and rail fencing marks most of the boundary behind residences on Steven’s Avenue. However, sheds and equipment from two abutting properties at the south edge Stand 2a encroach several feet onto City property where there is no fence.

Recommendations

- Where MBW abuts residential properties on Hartley Street and Stevens avenue the City should clearly mark the boundary with fencing or other means (e.g., multiple posts and signs) and work with abutters to restore degraded city property to a natural condition. City Forester Jeff Tarling that surveyors will be working on this line in 2018.
- Signs should be placed at various points along other boundaries and access points



Example of unmarked property line and encroachment behind residences on Hartley Street.

Recreational Use

Current Conditions

- Walking, bike riding, and dog walking are common recreational activities in MBW. See maps for trail locations.

Recommendations

- As noted elsewhere in this report, recreational uses and in particular unleashed dogs are likely having an adverse impact on ground-nesting and ground-feeding birds. Because the Baxter deed requires that the City maintain Baxter woods for recreational use and as a sanctuary for wild birds, the city should require that dogs be leashed.
- The city could consider closing some minor trails to create wider spaces between trails and thus minimize disturbance of wildlife.

Forest Fire Protection

The property does not present any unusual vulnerability to fire compared with other wooded properties in the region. Forest fire risk is generally low due to Maine's climate. In the unlikely event that fire did occur, the current trail network provides good access to the interior of the forest for fighting fires.

Monitoring

Periodic monitoring is important to identify trend and issues that may develop and to help provide information for future management decisions. Many monitoring activities could be conducted by qualified volunteers. Recommended monitoring activities are included below.

Vernal Pools. Annually monitor depth, hydroperiod, and use by vernal pool species and other wildlife in April-May. See *The Maine Municipal Guide to Mapping and Conserving Vernal Pools* (Morgan and Calhoun 2012).

Breeding birds. Annually coordinate a post-migration breeding bird survey with Maine Audubon volunteers (June). Divide the forest into four to six monitoring blocks and identify singing males in each block. Compile data by species and the canopy layer where they are known to nest (see *Forestry for Maine Birds*). Ideally compare results with Evergreen Woods. Bird data from the spring migration period (May) would also be of interest.

Insects and Diseases. Monitor hemlock wooly adelgid, elongate hemlocks scale and other insects (see *Insect and Disease* section of this report). Contact the MFS District Forester or the MFS Division of Forest Health Monitoring (207-287-2431) if any concerns arise.

Invasive Plants. Monitor results if invasive plant controls and periodically check for new occurrences. Take appropriate action if any are found. See *Invasive Plants* section and Appendices for more information.

Condition of roads and trails. Check roads and trails for blocked ditches, culverts, and erosion problems.

Boundary lines. Periodically inspect boundary lines to be sure evidence is clearly visible and to check for unwanted encroachment from abutting properties.

Recreation use. Use trail cameras or other monitoring methods for fixed periods of time to quantify and describe recreation use and evaluate the potential impact of unleashed dogs on wildlife.

References and Resources

Literature Cited

Bryan, R.R. 2007. **Focus Species Forestry: A Guide to Integrating Timber and Biodiversity Management in Maine.** Maine Audubon, Falmouth, ME. Download: <http://www.forestsynthesis.com/resources.html>.

Maine Audubon. 2017. **Forestry for Maine Birds.** Maine Audubon, Falmouth, ME

Maine Department of Conservation. **Best Management Practices for Forestry: Protecting Maine's Water Quality.** Maine Forest Service, Augusta, ME. 1-800-367-0223.

Morgan, D.E., and A.J.K. Calhoun. 2012. **The Maine Municipal Guide to Mapping and Conserving Vernal Pools.** University of Maine, Sustainability Solutions Initiative, Orono, ME.

Mayor Baxter Woods Resources

2014 Archaeological Survey. <https://dcna.me/forest-home-of-francis-oj-smith/> (accessed 1/2/2018)

Appendices

Mayor Baxter Woods Deed Restrictions

As quoted in the City's **Welcome to Mayor Baxter Woods** brochure, restrictions in the 1946 deed from Governor Percival P. Baxter to the City include:

"...the above described premises with all the privileges and appurtenances thereto to said City of Portland as trustee as foresaid and its successors in trust and the same shall not be conveyed or encumbered by said City but shall be held forever for the benefit of the people of said Portland subject to the following terms, restriction, reservations and conditions:

- 1. shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park for public recreational and educational purposes the same forever to be known as "MAYOR BAXTER WOODS";*
- 2. shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians, and any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;*
- 3. shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom;*
- 4. that the heavy ornamental gates now in possession of said City shall be erected by said City either at the Forest Avenue or Stevens Avenue entrance within one year of the date of this deed;*
- 5. that said City shall erect within one (1) year after the date of this deed and shall forever maintain on the land hereby conveyed a suitable bronze marker the said marker to recite the conditions of this gift, the same to be attached to a granite boulder located on said land and provided by said City."*

Assessment Methods

Aerial photography, published maps, and field reconnaissance were used to map the extent of wetlands and the location of streams. Field map data were collected on a hand-held Global Positioning System (GPS) receiver. Base map information was prepared on a Geographic Information System (GIS) using data from the Maine Office of GIS and the field data.

The on-site visit occurred on March 26, 2016. Observations recorded in each forest stand included species composition, canopy closure, understory density, average tree size classes and quality, tree health, forest regeneration, soils and site conditions. There was no systematic timber inventory. Field data collected provides a basis for management recommendations and satisfies the requirements of the Tree Growth Tax Law.

Each stand has a number of the Forest Stand and Cover Type Map. To avoid repetitive text, where appropriate stands that are similar in character have been grouped in the descriptive tables below.

Individual Stand Descriptions and Recommendations

The following descriptions are based on an analysis of aerial imagery and the field assessment undertaken during October-December 2017. After discussions with the City it was agreed that quantitative, statistically valid forest inventory was not needed to gather the information needed to describe baseline conditions and develop recommendations designed to meet the City's objectives.

Notes on the stand descriptions and recommendations:

- **Wildlife Habitat Values.** Wildlife values are primarily based on the forest type and structure. The small size of the forest and setting in a developed landscape will limit habitat potential for many species, as will the high density of trails and number of unleashed dogs. These issues are discussed elsewhere in the report and are generally not addressed in the individual stand tables below.
- **Management recommendations.** Management recommendations in the stand tables below are generally limited to vegetation management options. Other recommendations, such as those for trails and strategies for multi-stand issues such as control of exotic insects, are addressed elsewhere in the report.

Stand 1			Map Unit	Acres
			1	0.54
CURRENT CONDITIONS				
Cover Type	Red (Norway) Pine	Overall Structure Class & % Cover		3B
Principle canopy species:	Red Pine	Overstory Class & % Cover		3a/B
		Midstory Class and % Cover		0
		Understory Class & % Cover		0
Stand description, age and history:	This stand was planted in 1949 and has a single canopy layer 6-10” in DBH (diameter at breast height, or 4.5 ft.) and 30-50 ft. in height. The southern and western sides were thinned in 2004 and have a layer of lowbush blueberry, asters, and grasses as well as seedlings and sprouts of red oak and black cherry. Seedlings near the edges have been mown periodically. The smooth soil surface topography in this and nearby stands suggest that the western third Baxter Woods was a field at one point in time.			
Wildlife Habitat Values	Wildlife habitat is essentially limited to the overstory canopy layer provides wildlife cover and feed (seed from cone crops) for species that tolerate high levels of human activity.			
Stand stocking:	The area that was thinned is well stocked but is nearing the time when another thinning would promote continued growth. The unthinned area is overstocked with trees of small crowns, which severely limits growth potential. Thinning the entire stand would promote the most vigorous trees as well as allowing native species to develop in the under understory, thereby improving			
Soils, Slopes, Site Quality, and Growth Rate	Soils are nearly level and well drained with good site quality. Growth rates estimated to be average.			
Forest Health	No forest health issues were noted, but the exotic red pine scale insect and <i>Siroccocus</i> shoot blight are devastating red pine plantations in Maine and this stand is at risk.			
Invasive and Exotic Plants	Bittersweet and Norway maple, <5% cover			
Cultural Features	This is a planted stand. A trail passes through the east side of the stand and along the west edge.			
Management Objectives and Recommendations				
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers			
Management Recommendations	Thin the stand to approximately 60% canopy closure to promote regeneration of native trees, which will be aided by jays, squirrels, and other wildlife moving seeds from nearby stands. This will improve wildlife habitat and promote transition to a more natural species mix while reducing impacts should red pine scale or <i>Sirroccus</i> become established.			

	- Control invasive plants. - In approximately 10 year the stand should be thinned again to less than 50% canopy cover of red pine. - Stand edges should not be mowed.
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Stand 2a		Map Unit	Acres
		2a	2.85
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Red Oak		5B
Overstory	Red oak (80%), white oak		5B
Midstory	Red oak, black cherry, hemlock, red maple, linden		2-3D
Understory:	Black cherry, red maple.		70%
Stand description, age and history:	Overstory of mature red oak 16-30” DBH and 60-80’ in height overtops a low-density midstory of hardwood saplings and small poles with a minor hemlock component. The smooth soil surface topography in this and nearby stands suggests that the western third Baxter Woods was a field at one point in time.		
Wildlife Habitat Values	The overstory and midstory provide good nesting and bird foraging habitat and acorns are a valuable food for many species, but species characteristic of larger forest blocks are unlikely to nest here. Large snag and/or canopy trees and downed logs were observed.		
Stand stocking:	Well stocked with large trees.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues were noted		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	A large rectangular pit reminiscent of a cellar hole but with no evidence of a foundation is located north of the main carriage trail. Sheds and equipment from tow abutting properties at the south edge of this stand encroach several feet onto City property where there is no fence.		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species deciduous forest with multiple canopy layers		
Management Recommendations	• Control invasive plants • Refer to general recommendations for trails • Research history of “cellar hole” (see cultural features) • No other active management recommended at this time.		

Stand 2b		Map Unit	Acres
		2b	0.92
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Oak –White Pine		5B
Overstory	Red oak & white oak (80%), plus white pine and red pine		4-5B
Midstory	Red oak, black cherry, red maple		2C-
Understory:	Black cherry, alternate-leaved viburnum.		1-2C
Stand description, age and history:	Mature hardwoods with a mixed conifer component. The overstory ranges from 12-24" DBH and 50-70' in height. Ground cover species noted include lowbush blueberry, black cherry seedlings, and asters. The smooth soil surface topography in this and nearby stands suggests that the western third		

	Baxter Woods was a field at one point in time.
Wildlife Habitat Values	In addition to species favoring mature hardwoods, pine warblers may nest in this stand, but species characteristic of larger forest blocks are unlikely to nest here.
Stand stocking:	Well stocked with mature trees
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.
Forest Health	No issues were noted
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.
Cultural Features	A level feature reminiscent of a landscape patio bordered by large cut stones is located in the southeast corner of this stand north of the carriage trail.
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Refer to general recommendations for trails - Research and decide on management of the “patio” area described above - No other active management recommended at this time.

Stand 3		Map Unit	Acres
		3	3.12
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	White Oak-Red Oak-White Pine		4B
Overstory	White oak, red oak, white pine, plus lesser amounts of hemlock and white ash		3-5B
Midstory	Hemlock, red maple		3C
Understory:	Hemlock, red maple		<5%
Stand description, age and history:	Mature hardwoods with a mixed conifer component. The largest oaks range from 20-40” DBH, with other species in the 12-20” diameter range. Ground cover species noted include lowbush blueberry, black cherry seedlings, and asters. The smooth soil surface topography in this and nearby stands suggests that the western third Baxter Woods was a field at one point in time.		
Wildlife Habitat Values	In addition to species favoring mature hardwoods, pine warblers may nest in this stand, but species characteristic of larger forest blocks are unlikely to nest here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues noted. Hemlock wooly adelgid may be present but it was not observed in the understory.		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	None noted except trails		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species forest with multiple canopy layers		
Management Recommendations	- Refer to general recommendations for trails - No other active management recommended at this time		

Stand 4		Map Unit	Acres
		4	5.47
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Red Oak		4-5A
Overstory	Red oak, plus minor component of beech, white oak, white ash, sugar maple, yellow birch and hemlock		5A
Midstory	Hemlock, beech, red maple, red oak		2C
Understory:	Beech, witch hazel, black cherry, balsam fir		5-70%
Stand description, age and history:	This is primarily a hardwood stand with hemlock in small patches. Structure is multi-aged but a mature canopy is dominant, ranging from 12-30" DBH and 60-80' in height.		
Wildlife Habitat Values	This stand provides habitat values of mature deciduous mixed forest, but species characteristic of larger forest blocks are unlikely to nest here. Scattered snags and cavity trees 12-18" observed.		
Stand stocking:	This stand is well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues were noted		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	Carriage trail and footpaths		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species forest with multiple canopy layers		
Management Recommendations	- Control invasive plants - Refer to general recommendations for trails - No other active management recommended at this time.		

Stand 5a		Map Unit	Acres
		5a	12.04
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Oak-White Pine-Hemlock		4-5A
Overstory	White oak, red oak, white pine; associated include hemlock, red pine, red maple, white ash, beech, and yellow birch		5B
Midstory	Hemlock, plus lesser amounts of red maple, white ash and yellow birch		2-3B
Understory:	Hemlock		0-30% (average <10%)
Stand description, age and history:	This is a distinctly two-aged stand with a mature hardwood-dominated canopy 16-30" DBH and 60-80' in height over an intermediate conifer layer dominated by hemlock. The presence of scattered large, old (probably over 150 years) hemlock in the overstory suggests that this area may never have been completely cleared. In contrast to the stands nearer to Stevens Avenue, the hummocky soil surface topography indicates that this area was never plowed.		
Wildlife Habitat Values	This stand provides habitat values of mature mixed hardwood-conifer forest, but has a minimal understory and ground cover layers favored by some species, and species characteristic of larger		

	forest blocks are unlikely to nest here.
Stand stocking:	Well stocked with mature trees.
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping, moderately well drained on the west to somewhat-poorly drained in lower-lying drainages and seeps downslope to the east. Growth rates estimated to be average.
Forest Health	Hemlock scale was observed on two plots; hemlock wooly adelgid (HWA) may be present in small amounts but was not observed. Due to the large amount of hemlock in this stand complete control of HWA may not be feasible and cultural practices to promote species diversity should be considered. No other issues were noted.
Invasive and Exotic Plants	A patch dominated by bittersweet is located near the west end of the stand adjacent. Linden, an exotic not technically classified as “invasive” is becoming established in the understory (see map).
Cultural Features	A shallow seasonal pool that appears to have been a landscape feature of the Forest Home estate is located near the western end of this stand (see map VP1). Carriage trails and footpaths cross the stand in a generally east-west direction.
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Consider excavating the seasonal pool (VP1) to a high-water depth of 18-28” to enhance habitat values for amphibians - Closing the two footpaths within the stand interior would reduce disturbance to wildlife. - Refer to general recommendations for trails - Removing some of the midstory hemlock in other parts of the stand would proactively reduce risk of hemlock loss while enhancing wildlife habitat by promoting understory and ground cover plant layers. However, this does not appear to be allowable under the deed restrictions.

Stand 5b		Map Unit	Acres
		5b	0.49
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Hemlock		5B
Overstory	Hemlock, plus white pine, red oak, and yellow birch		5C
Midstory	Hemlock, red oak		2-3C
Understory:	Hemlock beech		20%
Stand description, age and history:	This is a legacy patch of very old (probably over 150 years) hemlock and other species. There is no evidence of cutting.		
Wildlife Habitat Values	This stand is an inclusion within the larger Stand 5a. Refer to that stand description for details		
Stand stocking:	Moderate density due to some loss of overstory hemlock.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping, moderately well drained on the west to somewhat-poorly drained in lower-lying drainages and seeps downslope to the east. Growth rates estimated to be average.		
Forest Health	Several large hemlocks have died within the past 10 years, possible from hemlock scale.		
Invasive and Exotic Plants	None noted		
Cultural Features	Footpath		
Management Objectives and Recommendations			
Desired Future	Older, mixed species forest with multiple canopy layers		

Condition	
Management Recommendations	- Control elongate hemlock scale and hemlock woolly adelgid (see <i>Insect and Disease</i> section) - Refer to general recommendations for trails

Stand 6		Map Unit	Acres
		6	0.84
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Red Oak – White Pine		4-5A
Overstory	Red oak, white pine, plus beech and red pine		4-5A
Midstory	Hemlock, beech; associates include red maple and yellow birch		2-3C
Understory:	Hemlock, beech		<30%
Stand description, age and history:	Mature hardwood-conifer mix with a dense, mature overstory 12-24" DBH and 60-80' in height over a moderate density understory and midstory. This stand is very similar to Stand 4 and has a lower hemlock component than Stand 5. An old fire scar was observed on a white pine stump.		
Wildlife Habitat Values	Typical of a mature oak-pine forest, but species characteristic of larger forest blocks are unlikely to live here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and moderately well drained with apparently average growth rates.		
Forest Health	Hemlock scale and beech-bark disease (<i>Nectria</i> canker) observed		
Invasive and Exotic Plants	None observed		
Cultural Features	Footpath and carriage trail		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species oak-pine forest with multiple canopy layers		
Management Recommendations	• Refer to general recommendations for trails • No other management activities recommended at this time		

Stand 7		Map Unit	Acres
		7	0.62
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Maple		3-4A
Overstory	Red maple, plus minor component of red oak and white ash		3-4A
Midstory	Red oak, hemlock, red maple		2D
Understory:	Winterberry, arrow-wood viburnum, balsam fir, hemlock, yellow birch, white pine		+/- 50%
Stand description, age and history:	This is younger, even-aged stand that developed on what was likely an old field. The overstory is 8-12" DBH and 50-70' in height. The smooth soil surface topography in this area was likely a field at one point in time.		
Wildlife Habitat Values	The dense understory provides cover not generally found elsewhere in Baxter Woods.		
Stand stocking:	Well stocked with intermediate-sized trees.		
Soils, Slopes, Site Quality, and Growth	Mostly level, somewhat poorly drained with poorly drained patches. Growth rates estimated to be average to below average where wet.		

Forest Health	No issues were noted
Invasive and Exotic Plants	Japanese knotweed, barberry, burning bush
Cultural Features	None observed
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Allow this stand to develop - no other management activities recommended at this time.

Stand 8		Map Unit	Acres
		8	0.59
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	White Pine – Red Oak – Red Maple		4-5A
Overstory	White pine (60%), plus red oak, white oak, and red pine		4-5A
Midstory	Red oak, white oak, yellow birch , beech, white ash		2C
Understory:	Red oak, balsam fir, maple-leaved viburnum, hazelnut, huckleberry, lowbush blueberry		60-70%
Stand description, age and history:	The overstory is 12-24” DBH and 60-80’ in height. This essentially an even-aged stand but with a developing understory. The smooth soil surface topography in this was likely a field at one point in time.		
Wildlife Habitat Values	This stand buffers one side of the pond and has better understory habitat that is more robust than in most other parts of the forest. General habitat values are characteristic of older forests but species characteristic of larger forest blocks are unlikely to nest here. Large (>18”) and mid-sized snags and/or cavity trees were observed here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and appear to be moderately well drained. Growth rates are estimated to be average.		
Forest Health	No issues were noted.		
Invasive and Exotic Plants	A single Japanese barberry plant was observed.		
Cultural Features	Two short “wildcat” trails (unauthorized footpaths) lead from the pond area to Forest Avenue		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers		
Management Recommendations	- Control invasive plants - Consider blocking the wildcat trails - No other management activities recommended at this time.		

Stand 9		Map Unit	Acres
		9	1.8
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Maple-Red Oak		4-5B
Overstory	Red maple, red oak, white ash, beech		4-5B

Midstory	White ash, yellow birch, hemlock, red maple	2C
Understory:	Balsam fir, beech, hemlock, yellow birch, winterberry	+/- 40%
Stand description, age and history:	This is maturing hardwood stand in a low-lying area with stream channels. The overstory is 10-18" DBH and 60-80' in height over a low-density midstory with trees 2-4" DBH.	
Wildlife Habitat Values	A moderately dense understory in the north half of the stand provides good wildlife cover. Several snags and downed trees were observed. A small excavate pool (VP2) was observed in this stand. Twelve spotted salamander egg masses and one wood frog egg mass were observed here in April 2016.	
Stand stocking:	Well stocked with mixed hardwoods	
Soils, Slopes, Site Quality, and Growth	Soils are nearly level with steeper slopes immediately adjacent to the lower section of the stream. Soils vary from moderately well drained to somewhat poorly drained in lower lying areas. Growth appears to be average for the site.	
Forest Health	No issues were noted.	
Invasive and Exotic Plants	One Japanese barberry was observed near the carriage trail.	
Cultural Features	Footpaths and storm drain	
Management Objectives and Recommendations		
Desired Future Condition	Older, mixed species forest with multiple canopy layers	
Management Recommendations	• Control invasive plants • No other management activities recommended at this time.	

Stand 10		Map Unit	Acres
		10	0.3
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Norway Maple		3-4A
Overstory	Norway maple (75%), white ash (25%)		3-4A
Midstory	Red oak, hemlock, red maple		2D
Understory:	Winterberry, balsam fir, hemlock, yellow birch, arrow-wood viburnum		+/- 50%
Stand description, age and history:	This intermediate-aged stand has developed on a site that was a field at one point in time. The dominant Norway maple overstory 1-16” DBH and 60-80’ in height developed from seed sources in nearby residential areas.		
Wildlife Habitat Values	A moderately dense provides good wildlife cover in parts of the stand, but other areas are very open. There snags or cavity trees and little downed wood.		
Stand stocking:	Well stocked		
Soils, Slopes, Site Quality, and Growth	Soils are moderately well drained to somewhat poorly drained and slope toward the stream and storm drain near Forest Avenue. Overall site quality and growth rates are good.		
Forest Health	No insect or disease issues were noted.		
Invasive and Exotic Plants	Norway maple dominates the stand. One burning bush plant was also observed.		
Cultural Features	None		
Management Objectives and Recommendations			
Desired Future Condition	Restored forest dominated by native species		

Management Recommendations	Remove all Norway maple and plant native species in conjunction with drainage improvements near Forest Avenue
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Area 11. Encroachment Zone 0.22 acres

Description

This narrow strip along the property boundary north of Hartley Street has been encroached upon by the back yards of residences in that area. Small lawns, gardens, and furniture are found on the Baxter Woods property in this area. A slackline has been attached two trees on city property in the woods behind one of the homes. Brush dumping is also evident. Invasive plants include bush honeysuckle, Japanese barberry, Bishop's weed, and Lemon balm.

Recommendations.

- Clearly establish the property line with a fence or other permanent markers with signage.
- Restore the area to more natural conditions by removing all landscaping features, controlling invasive plants, and planting native trees and shrubs.

Area F1 Stevens Avenue Entrance - 1.06 acres

Description

This area is being managed like a typical city park with scattered trees and mown grass. Overstory trees 10-18" DBH and 60-60 ft. in height cover approximately 15% of the area; species included linden, Norway spruce, sugar maple, and white pine . A patch of recently planted sugar maple 2-3" DBH and 10-20 ft. in height accounts another 15%. Shrubs and understory trees are absent. Wildlife use would be primarily limited canopy species tolerant of edges and human activity. This area provides a transition from the urban environment to the natural forest that characterizes most of Baxter Woods.

Recommendations

- Plant patches of native shrubs with wildlife food and cover value away from the areas of greatest human activity.
- After the City has adopted an action plan for the forest the kiosk could be updated with additional information on the unique ecological values of Baxter Woods and goals for management.

Area F2 Forest Avenue Entrance - 0.41 acres

Description

This area is being managed like a typical city park with scattered planted trees (larch, paper birch, tupelo) and a large white pine and red maple. The entire area between and under the trees is mowed. Wildlife use would be primarily limited canopy species tolerant open-scattered trees and human activity. This area provides a transition from the urban environment to the natural forest that characterizes most of Baxter Woods.

Recommendations

- Plant a border of native shrubs with wildlife food and cover value along the north edge of the mown area and along the pond edge, leaving one or two openings for vistas and pond access.

Area F3 North Meadow 0.72 acres

Description

This area has a diversity of open/edge habitat, including mown grass, old field edges with grasses, goldenrods, raspberries, staghorn sumac, and apple that is unique in Baxter Woods. Invasive plants include common buckthorn along the west edge and bittersweet on the east.

Recommendations

- Control invasive plants.
- Develop a site planting and mowing plan to include:
 - a) Increasing the area in old field habitat by allowing encroachment into the frequently mown area, or purposefully planting patches to native wildflowers that will benefit butterflies and other insect pollinators.
 - b) Planting patches of natives shrubs that provide wildlife food and cover.
 - c) Maintaining the habitat type by mowing old field areas on a 3-5-year cycle so that both old field and shrub patches will always be present, and cut trees that are encroaching on this area if allowed by deed.

F4 Lawn and Shrub - 0.15 acres

Description

Residences near the West end of Hartley Street are encroaching onto City property. The MBW south boundary is unmarked and encroachment appears to extends 20 ft. to 50 ft. past the property line, including includes mown lawn, raised-bed garden, and leaf dumping. The remaining area includes a mix of goldenrods, asters, raspberries and planted white pine and white spruce saplings. Invasive plants include Norway maple and Japanese knotweed.

Recommendations

- Control invasive plants.
- Fence or otherwise clearly mark the entire boundary line and work with abutters to maintain the area in a natural condition. Maintaining a mix of shrubs and old-field herbaceous plants would provide habitat conditions that are under-represented on the MBW.

Maine Audubon Priority Forest Birds

Species, Region ¹ and Habitat Age Class	Preferred Stand Condition	Habitat Preference 1: Preferred; 2: Utilized; 0: Not used			
		Oak Pine	Northern Hardwood	Northern Mixedwoods	Northern Softwoods
Young Forest					
American Woodcock	Young forest and shrub patches with clearings for singing grounds and roosting	2	2	2	0
Chestnut-sided Warbler	Young forest patches typically 5-15 years old	0	1	2	0
Mourning Warbler (N/C)	Young forest with dense understory 2-10 years after harvest	2	1	2	2
Magnolia Warbler	Young of multi-aged forest with dense young conifers	0	0	1	1
Intermediate & Older Forests					
Black-throated Blue Warbler	Intermediate and older forests with dense understory and saplings, large forest blocks	2	1	1	0
Yellow-bellied Sapsucker	Intermediate and older forests with snags or decaying trees and shade-intolerant tree species	2	1	2	0
Eastern Wood-Pewee	Intermediate or older forest with gaps	2	2	2	0
Black-throated Green Warbler	Intermediate to older forest with hemlock or other conifers, large forest blocks	0	0	2	1
Older Forests					
Bay-breasted Warbler	Older – multi story	0	0	2	1
Blackburnian Warbler	Older conifer and mixed interior forest	2	0	1	1
Northern Parula	Older conifer or mixed moist forests, large patches	0	2	2	1
Scarlet Tanager	Older forest with oak, large forest blocks	1	1	2	
Ovenbird	Older forest, large forest blocks	1	1	1	2
Wood Thrush	Older forest, larger forest blocks	1	1	2	
Young to Older Forests					
Veery	Riparian forest and other moist forests with dense understory	2	1	2	2
Black-backed Woodpecker (N)	Variable aged forests with abundant dead/dying conifers	0	0	0	1
Boreal Chickadee	Variable aged forests with cavity or decaying trees	0	0	0	1
Canada Warbler	Variable aged, moist forests with dense understory; riparian areas, swamps	0	2	1	2
Northern Flicker	Variable forest ages, snags or decay trees >12" preferred for nesting	1	1	2	2
Olive-sided Flycatcher	Variable, peatlands, riparian areas, young forest, and gaps with snags	0	0	0	1

¹ Region: N – North, C – Central, S – South. No letter indicates statewide occurrence

Source: **Forestry for Maine Birds: A Forester's Guide.** Maine Audubon, Falmouth, ME. Publication pending 2016

Maine Audubon Priority Species known to breed at HRF or nearby:

Source: noted by J. Witham 2016

Breeding Birds

American Woodcock – breed here on a couple of occasions

Chestnut-sided Warbler – was one male around for a couple of years post-harvest, gaps just not big enough for them

Black-throated Blue Warbler – present in most years, most prevalent when red maple stump sprouts were at their peak

Eastern Wood-Pewee – increased following harvest, numbers down now

Black-throated Green Warbler – most common breeder with Ovenbird

Blackburnian Warbler – third most common

Northern Parula – one or two males every year

Scarlet Tanager – consistent breeder in low numbers

Ovenbird - most common breeder with BTG

Veery – numbers have dwindled to 0-1

Canada Warbler – one male for many years in red maple swamp

Northern Flicker – always around, few observations every year, never found a nest

Migration only

Magnolia Warbler

Yellow-bellied Sapsucker

Olive-sided Flycatcher

Mourning Warbler

Other species never observed at HRF

Harvest Guidelines for Retaining Wildlife Trees and Woody Biomass

General Guidelines for all Managed Stands

Dead Snags	• All dead snags should be considered for retention. • Under conditions where hand crews are operating, snags that represent a hazard should be felled at the logging contractor's discretion as needed to comply with safety guidelines. • Felled snags should be left in place.
Live Cavity Trees and Recruitment Trees	• The general guideline is: ◦ Four trees per acre >12" dbh, including one >18" dbh. • Select cavity trees first, if present, and then use recruitment trees to meet the guideline as needed. Retain a mix of species characteristic of the stand. • All live cavity trees with evidence of advanced decay and signs of use by wildlife should be considered for retention. However, cavity trees (<12" dbh) may be removed from the stand for silvicultural purposes unless there are not enough larger trees to meet the objective. • Trees suitable for consideration as recruitment trees include live pulpwood-quality trees of large diameter (>14" dbh) with evidence of interior defect and decay. Yellow birch and aspen with broken tops and maples with dead limbs in the lower crown are good candidates for consideration. Larger is better. • When possible, avoid timber harvesting from April through mid July to avoid disrupting nesting birds and denning animals.
Downed and Dead Woody Debris	• Avoid damaging existing downed woody material during harvesting, especially large (12"+) logs and stumps. • Attempt to leave large (>12 inch dbh and > 6 feet long) cull logs on site. Culls bucked out at the landing should be hauled back in the woods. • If whole-tree harvesting, retain and scatter tops, limbs and smaller trees from 20% of the trees harvested.

Retention of Live Trees in Even-aged Regeneration Harvests

Harvest block <10 ac.	• Leave the amount specified in the <i>General Guidelines for All Managed Stands</i> • Additional overstory retention may not be needed if adjacent stands are in long-term uneven-aged management. • Retain understory vegetation on ≥20% of the area.
Harvest block >10 ac.	• Leave the amount specified in the <i>General Guidelines for All Managed Stands</i>. • Leave representative uncut overstory in patches on ≥5% of the area. Larger patches (≥1 ac.) are preferred to protect forest understory vegetation. Identify retention patches prior to initial shelterwood cuts. • Retain understory vegetation on ≥20% of the area.

Notes:

- Diameter targets for standing trees and downed logs will vary with forest type and site.
- Where trees of sufficient diameter to meeting the targets are not present, retain the largest trees present and attempt to achieve a similar basal area in retained trees.
- Not all stands can meet targets for numbers of wildlife trees at all times, and small scale variability (e.g., on any given acre) may be significant. Therefore, it may be appropriate to attempt to meet targets across several stands.
- Avoid or minimize biomass harvests in riparian zones, rare plant and wildlife habitats, and on low productivity sites and other sensitive areas. Avoid repeated biomass harvests on the same site.
- **CAUTION! Dead and decaying trees are very dangerous, and loggers may need to fell them to comply with safety policies. If so, they should be left on the ground to provide habitat.**

Source: Developed by Maine Audubon (May 2008) based on *Biodiversity in the Forests of Maine* (C.A. Elliott, ed., U. Maine Coop. Extension 1999), other wildlife tree recommendations from multiple northeastern wildlife authors and researchers, and *Biomass Harvesting Guidelines for Forestlands, Brushlands, and Open Lands* (Minnesota Forest Resources Council, December 2007). The 20% understory retention guidelines for even-aged harvest is not included in the above but is recommended by Maine Audubon to help ensure that understory plant species and structure will become a significant part of the future stand.

Recreational Trail Planning Considerations

Well used recreation trails have the potential to disturb some wildlife species. Disturbance will vary with species, usage level and type, and season. Following are some general considerations for ecologically friendly trails that may be used by a wide range of public and private ownerships. Not all the uses discussed below are applicable to all landowners or appropriate in all situations.

Considerations for Recreation Trail Design and Use	
Trail Design and Layout	
✓ Well used recreation trails have the potential to disturb some wildlife species. Disturbance will vary with species, the usage level, type, and season. ✓ To minimize disturbance to wildlife, create wildlife security areas consisting of large patches of habitat without trails, rather than crossing all sections of a woodlot with trails. ✓ To minimize disturbance to aquatic wildlife, trails should not run parallel with the shore of water bodies and open wetlands for any distance. Rather, approach water bodies with spur trails to a screened viewpoint or have loop trails only approach the shoreline for short distances. See Maine Audubon's Conserving Wildlife in Maine's Shoreland Habitats. ✓ Poorly designed and built hiking trails can cause soil compaction, erosion, and degradation of water quality. American Trails has a number of excellent on-line resources on trail building and design (download: http://www.americantrails.org/resources/trailbuilding/index.html). The US Forest Service Trail Construction and Maintenance Handbook is also a helpful resource (download: http://www.fhwa.dot.gov/environment/fspubs/07232806/index.htm).	
Mechanized Use	
✓ Mountain bikes increase the potential for permanent soil damage, off-trail use, and conflicts with other users. However, studies have generally shown that mountain bikes have no more impact on wildlife than pedestrians. ✓ ATV use can cause severe soil damage, impact water quality, and affect forest values for other users of the area. Where ATV use is an objective, trails should follow the general design and layout principles above and use appropriate techniques to minimize damage to soils and water quality. Stream crossings and associated approaches, wet sites, and erosion on steep trails should be primary considerations. ✓ Trails should avoid sensitive winter habitats such as deer wintering areas and be planned to minimize conflicts with non-mechanized users. ✓ Consult trail design guidelines applicable to the type and amount of use anticipated.	
Pets	
✓ Dogs should be leashed during the nesting season of ground-nesting birds (April to end of July). Examples of ground nesting birds that might be disturbed by dogs include woodcock, hermit thrush, and ovenbird. Dogs should also be leashed during winter when snow restricts animal movement and cold temperatures require energy conservation for survival.	

Widespread Invasive Forest Plants in Maine

The following table lists some of the most frequently encountered invasive plants in Maine forests. This is not intended to be a complete list – forest owners and managers should consult sources of information such as the Maine Natural Areas Program for more complete information.

Widespread Invasive Forest Plants in Maine		
Common Name	Scientific Name	Habitat
Barberry, Japanese	<i>Berberis thunbergii</i>	Forest understory
Buckthorn, common	<i>Rhamnus cathartica</i>	Forest understory
Buckthorn, glossy	<i>Frangula alnus</i>	Forest understory
Honeysuckle, bush	<i>Lonicera morrowii</i>	Forest understory
Honeysuckle, Japanese	<i>Lonicera japonica</i>	Forest understory
Honeysuckle, Tatarian	<i>Lonicera tatarica</i>	Forest understory
Japanese knotweed	<i>Fallopia japonica</i>	Edges
Bittersweet, Asiatic	<i>Celastris orbiculata</i>	Edges, forest canopy vine
Loosestrife, purple	<i>Lythrum salicaria</i>	Wetlands
Rose, multiflora	<i>Rosa multiflora</i>	Old field, edges
Source: Maine Natural Areas Program 2006		

Control of Invasive Terrestrial Plants in Maine

Common Name	Scientific Name	Habitat	Control
Autumn Olive & Russian Olive	<i>Eleagnus umbellata</i> , <i>Eleagnus angustifolia</i>	Edges and open areas	Mechanical: Pull smaller plants, followed by mowing or pulling sprouts as needed. Chemical: Glyphosate on cut stumps. (1)
Barberry, Japanese	<i>Berberis thunbergii</i>	Forest understory	Mechanical: Pull shrubs, followed by mowing or pulling sprouts. Flame torch to lower stem may also be effective. Chemical: Glyphosate or triclopyr on cut stumps. (1, 2)
Bittersweet, Asiatic	<i>Celastris orbiculata</i>	Edges, forest canopy vine	Mechanical: Repeated cutting or pulling plants. Chemical: Glyphosate or triclopyr on cut stems. Seed bank may necessitate treatments repeated for several years. The flowers and fruit of Asiatic bittersweet grow from the joints where leaves join the vine, whereas American bittersweet's flowers are in terminal clusters. (1)
Buckthorn, common & glossy	<i>Rhamnus cathartica</i> <i>Frangula alnus</i>	Forest understory	Mechanical: Flame torch stems <42 inches diameter. If cutting, repeated treatment is required. Chemical: Glyphosate or triclopyr cut stem or foliar treatment. Treat in fall when green leaves persist after native trees and shrubs have lost their leaves. Resprouting may occur and seed bank may last 3 years. (1, 2)
Honeysuckle, bush Honeysuckle, Tartarian	<i>Lonicera morrowii</i> <i>Lonicera tatarica</i>	Forest understory	Mechanical: Cutting, burning. Repeated treatments may be required. Chemical: Glyphosate or triclopyr on leaves or cut stumps. (1, 2) Note: all non-native shrub honeysuckles have a hollow pith that is usually brown.
Honeysuckle, Japanese	<i>Lonicera japonica</i>	Forest understory	Mechanical: Pull shrubs and roots when soil is moist (repeated treatment likely required). Chemical: Glyphosate or triclopyr on leaves or stems. A vine that is distinguished from Maine's rare native vine honeysuckles by the separate leaves at the tip of the stem (on natives, a single fused terminal leaf wraps around the stem). (1)
Knotweed, Japanese	<i>Fallopia japonica</i>	Edges	Mechanical: Repeated cutting (3 or more times/season). Chemical: Cutting followed by glyphosate (repeat may be necessary). (1)
Mustard, garlic	<i>Alliaria petiolata</i>	Forest understory, esp. moist/rich soils	Mechanical: Hand pulling in early season. Chemical: Glyphosate foliar or dormant season basal spray. (1)
Loosestrife, purple	<i>Lythrum salicaria</i>	Wetlands	Mechanical: Pulling individual plants. Chemical: Glyphosate foliar spray or cut stem treatments. Biological: Release of beetles that feed exclusively on loosestrife has been effective on large infestations. (1)
Rose, multiflora	<i>Rosa multiflora</i>	Old field, edges	Mechanical: Repeated mowing (up to six time per year for 2 years). Chemical: Glyphosate or triclopyr on cut stems. (1, 2)

Notes:

- This table is intended to provide a broad overview of problematic forest invasive species and methods to control them. Consult the sources below and other experts (e.g., an ecologist and/or forester and a licensed herbicide applicator) to develop and implement an invasive species control plan.
- Herbicides used on areas open to the public must be applied under the supervision of a licensed applicator, or for terrestrial application only if applied by an employee or volunteer and the area is closed for 7 days. Other legal requirement of the Maine Board of Pesticide Control apply but are not included in this overview.
- Both glyphosate ("Roundup," Rodeo," "Accord" etc.) and triclopyr ("Garlon," "Pathfinder," "Remedy," "Renovate," "Tahoe," etc.) may be used on forests certified by the Forest Stewardship Council if the [FSC Pesticide Policy](#) is followed (as of 2007).

References:

- [University of Maine Invasive Plant Fact Sheets](#)
- [Wisconsin Manual For the Control of Ecologically Invasive Plants](#)

Other Sources of Information:

[Weed Control Methods Handbook: Tools and Techniques for Use in Natural Areas](#) (The Nature Conservancy; mechanical and chemical control methods)
[The Nature Conservancy - Wildlands Invasive Species Program](#) (information, links, workshops, on-line forums, etc)
[Weeds Gone Wild: Alien Plant Invaders of Natural Areas](#) (lists, species fact sheets, and other information)

Glossary of Forestry Terms

The following glossary was adapted from the Massachusetts Department of Conservation Forest Stewardship guidelines.

Acceptable Growing Stock (AGS) - See **Management Potential**.

Aesthetics - forest value rooted in beauty and visual appreciation

Allowable Harvest - the calculation of the amount of forest products that may be harvested, annually or periodically, from a specified area over a stated period, in accordance with the objectives of management.

Aspect - the orientation of a slope with respect to the compass; the direction toward which a slope faces. North facing slopes are generally cooler than south facing slopes, which often results in different plant communities.

Basal area - a measurement of the cross-sectional area of a tree trunk, in square feet, at breast height. Basal area (BA) of a forest stand is the sum of the basal areas of the individual trees, and is reported as BA per acre. Basal area is used as an indicator of total stand stocking (occupancy of a site).

Biological diversity - the variety of plants and animals, the communities they form, and the ecological functions they perform at the genetic, stand, landscape, and regional levels.

Biological legacy - an organism, a reproductive portion of an organism, or a biologically derived structure or pattern inherited from a previous ecosystem—Note: biological legacies often include large trees, snags, and down logs left after harvesting to provide refuge and to structurally enrich the new stand.

Biological maturity - the point in the life cycle of a tree at which there is no net biomass accumulation; the stage before decline when annual growth is offset by breakage and decay. See **Financial Maturity**

Biomass – 1) the total weight of all organisms in a particular population, sample, or area; biomass production may be used as an expression of site quality; 2) tree tops or entire trees that are harvested and chipped as a source of fuel.

BMP - Abbrev. *Best Management Practices*.

Board foot - See **Volume, tree**

Bole - the main trunk of a tree.

Broad-based dip - an erosion control structure similar to and having the same purpose as a waterbar. Structurally, broad-based dips differ in that they are generally longer, less abrupt, often are paved with stone and are more appropriately used on truck roads. See **Waterbar**.

Browse - portions of woody plants including twigs, shoots, and leaves used as food by such animals as deer.

Buffer Strip - a forest area of light cutting used to protect sensitive sites or vistas.

Canopy - the upper level of a forest, consisting of branches and leaves of taller trees.

Catastrophic Disturbance – Natural disturbances that result in substantial tree mortality, such as wildfire, hurricanes, tornadoes, or major insect outbreaks

Cleaning - See **Intermediate Cuttings**.

Coarse Woody Debris (CWD) - Dead and down woody material that is generally greater than 3” in diameter. Also referred to as Downed Woody Material (DWM). See **Biological Legacy**

Cord - See **Volume, tree**.

Compartment - a subdivision of a forest property for administrative convenience and record keeping purposes

Community - a collection of living organisms in a defined area that function together in an organized system through which energy, nutrients, and water cycle.

Conservation - the wise use and management of natural resources.

Coppice Cutting - See **Regeneration Cutting**.

-Corridor - a strip of wildlife habitat unique from the landscape on either side of it that links one isolated ecosystem “island” (e.g., forest fragment) to another. Corridors allow certain species access to isolated habitat areas, which consequently contributes to the genetic health of the populations involved.

Critical habitat - Uncommon habitat of great value to wildlife such as abandoned fields, orchards, aspen stands, blueberry barrens, cliffs, talus, caves, etc.

Crop tree - a term traditionally reserved to describe a tree of a commercially desirable species, with the potential to grow straight, tall, and vigorously. However, a crop tree can be one selected for non-timber purposes (varying with landowner objectives), such as mast production or den tree potential. See **Management Potential**

Crown class - an evaluation of an individual tree’s crown in relation to its position in the canopy and the amount of full sunlight it receives. The four recognized categories are: dominant (D), codominant (C), intermediate (I), and overtopped or suppressed (S).

Cull Tree - a live tree of commercial species that contains less than 50% usable material.

Rough cull: a tree whose primary cause of cull is crook, sweep, etc.

Rotten cull: a tree whose primary cause of cull is rot.

Danger tree - A standing tree that presents a hazard to employees due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stems or limbs, and the direction and lean of the tree. OSHA 1910.266, Logging Operations

Daylight - verb; to cut vegetation adjacent to a road or other open area to increase solar insulation to its surface. Daylighting is often used to speed the time for roads to dry after a period of wet weather.

DBH - abbrev. *diameter at breast height*; the diameter at breast height of a standing tree measured at 4.5' above the ground.

Den Tree-living hollow trees that are used for shelter by mammals or birds. Syn.; cavity tree.

Diameter-limit cut - a timber harvesting treatment in which all trees over a specified diameter may be cut. See **High Grading**.

Disturbance - a natural or human-induced environmental change that alters one or more of the floral, faunal, and microbial communities within an ecosystem. Timber harvesting is the most common human disturbance. Windstorms and fire are examples of natural disturbance.

Ecology - the study of interactions between living organisms and their environment.

Economic Maturity - See **Financial Maturity**

Ecosystem - a natural unit comprised of living organisms and their interactions with their environment, including the circulation, transformation, and accumulation of energy and matter.

Ecosystem management - Forest management that is applied with emphases on 1.) maintaining biodiversity, 2.) addressing societal or social needs, and 3.) being adaptive. See **Forest Management**.

Ecotype - a genetic subdivision of a species resulting from the selective action of a particular environment and showing adaptation to that environment. Ecotypes may be geographic, climatic, elevational, or soil-related.

Edge - the boundary between open land and woodland or between any two distinct ecological communities. This transition area between environments provides valuable wildlife habitat for some species, but can be problematic for some species, due to increased predation and parasitism. Syn.: ecotone

Endangered species - See **Rare Species**

Even-aged stand - See **Stand Structure**.

Featured Resource - the resource that is the primary focus of management activities.

Financial maturity - the point in the life cycle of a tree or stand when harvesting can be most profitable, i.e., when the rate of value increase of an individual tree or stand falls below a desired alternative rate of return. Syn.: Economic Maturity

Forest land - Land that is at least 10% stocked with trees.

Forest interior dependent species - animal species that depend upon extensive areas of continuous, unbroken forest habitat to live and reproduce, and are susceptible to higher rates of predation and population decline when interior forest habitat is fragmented or disturbed. See **Fragmentation**.

Forest management - the practical application of biological, physical, quantitative, managerial, economic, social and policy principles to the regeneration, management, utilization and conservation of forests to meet specified goals and objectives while maintaining the productivity of the forest.

Forest Road - A road owned by and under the jurisdiction of the Department of Conservation and Recreation, Division of Parks and Recreation.

Forest type - aggregations of tree species that commonly occur because of similar ecological requirements. Examples of major northeastern forest types include northern hardwoods, white pine, oak-pine, and spruce-fir. Syn. forest association.

Filter Strip - an area of forest land, adjoining the bank of a water body, where forest vegetation and undisturbed soils are retained to filter surface runoff..

Fragmentation, forest - the segmentation of a large tract or contiguous tracts of forest to smaller patches, often isolated from each other by non-forest habitat. Results from the collective impact of residential and commercial development, highway and utility construction, and other piecemeal land use changes. Indiscriminant heavy forest harvesting may also result in fragmentation of mature forest habitat.

Ford - a stream crossing using a stable stream bottom as the roadbed.

Fuel management - the act or practice of controlling flammability and resistance to control of wildland fuels through mechanical, chemical, biological or manual means, or by fire in support of land management objectives.

Girdling - a method of killing unwanted trees by cutting through the living tissues around the bole. Can be used instead of cutting to prevent felling damage to nearby trees. Girdled trees can provide cavities and dead wood for wildlife and insects.

GIS - Geographic Information System. A computer-based system for collecting, storing, updating, manipulating, displaying and analyzing geographically referenced data.

GPS - Global Positioning System. A satellite-based navigation system.

Grade - the angle of an inclined surface as expressed in terms of percent slope: vertical rise per 100' of horizontal run.

Grade, tree - A classification system for standing trees that is based on their potential for yielding high value lumber.

Growing Stock - For inventory purposes, all live trees that are between 5.0" dbh to 10.9" dbh and are greater than 50% sound. See **Management Potential**

Growth, net - The average annual net increase in the volume of trees expressed either as a per acre value or total value for a given unit of land. Mathematically it is expressed as follows: {[growth of the existing trees at the beginning of the period]+[ingrowth the volume of trees that have reached merchantability during the period]} – {(the volume of trees that have died during the period) + (the volume of trees that have become cull during the period).

Habitat - the geographically defined area where environmental conditions (e.g., climate, topography, etc.) meet the life needs (e.g., food, shelter, etc.) of an organism, population, or community.

High-grading - a type of timber harvesting in which larger trees of commercially valuable species are removed with little regard for the quality, quantity, or distribution of trees and regeneration left on the site; often results when a diameter limit harvest is imposed. See **Diameter Limit Cutting**.

Herbaceous - A class of vegetation dominated by non-woody plants known as herbs; [graminoids (grass), forbs and ferns].

Incidental taking - the taking of a rare species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Intermediate Cuttings - Operations conducted in a stand during its development from regeneration stage to maturity. These are carried out to improve the quality of the existing stand, increase its growth and provide for earlier financial returns, without any effort directed at regeneration.

Cleaning: a cutting made in a stand, not past the sapling stage, to free the best trees from undesirable individuals of the same age that overtop them or are likely to do so. See *weeding*.

Thinning: a cutting whose purpose is to control the growth of stands by adjusting stand density.

Salvage Cutting: a harvest whose primary purpose is to remove trees that have been or are in imminent danger of being killed or damaged by injurious agencies.

Weeding: a cutting made in a stand not past the sapling stage that eliminates or suppresses undesirable vegetation regardless of crown position. See *Cleaning*.

Landing - any place where round timber is assembled for further transport, commonly with a change in method. Generally, a cleared area where log trucks are loaded.

Legacy tree - a tree, usually mature or old-growth, that is retained on a site after harvesting or naturally disturbance to provide a biological legacy. See **Biological Legacy**

Management plan - a document prepared by natural resource professionals to guide and direct the use and management of a forest property. It consists of inventory data and prescribed activities designed to meet ownership objectives.

Management potential - For forest inventory purposes, a classification method in which a tree is rated based on the likelihood that it will develop into a tree that will be structurally sound, vigorous and yield products of high value. The three classes are as follows:

Preferred Crop Tree: the highest class; a tree with a dominant crown and no or minimal sweep or crook and no or few limbs in the butt 16' log.

Acceptable Growing Stock: a tree of codominant or greater crown class with moderate sweep or crook and a moderate number of limbs in the butt 16' log.

Unacceptable Growing Stock: Any tree not meeting the above criteria.

Also, see **Growing stock**

Mast - Seed produced by woody-stemmed, perennial plants, generally referring to soft (fruit) or hard (nut) mast.

Matrix, forest - The most extensive and connected landscape element that plays the dominant role in landscape functioning.

MBF - Abbrev. Thousands of board feet. See **Tree Volume**

Merchantable - of trees, crops or stands, of a size, quality and condition suitable for marketing under given economic conditions even if so situated as not to be immediately accessible for logging. See **Operable**.

Multiple use and value - a conceptual basis for managing a forest area to yield more than one use or value simultaneously. Common uses and values include aesthetics, water, wildlife, recreation, and timber.

Niche - the physical and functional location of an organism within an ecosystem; where a living thing is found and what it does there.

Old growth stand - A stand that has been formally designated as an old growth stand. These areas must meet a preponderance of the following four criteria: 1.) Be of a size that is large enough to be self sustaining. 2.) Show no evidence of significant post-European disturbance. 3.) Should have a component of trees that are greater than 50% of the maximum longevity for that species. 4.) Shall be a makeup that is self-perpetuating.

Old growth attributes - attributes often associated with old growth forests such as large amounts of coarse woody debris, large trees, etc. that are achieved through deliberate actions in a managed forest. See **Biological legacy**

Operable - trees, crops or stands that are both merchantable and accessible for harvesting. See **Merchantable**.

Patch - a small area of a particular ecological community surrounded by distinctly different ecological communities, such as a forest stand surrounded by agricultural lands or a small opening surrounded by forestland.

Poletimber - See **Size Class**.

Population - a group of individuals of one plant or animal taxon (species, subspecies, or variety).

Preservation - a management philosophy or goal which seeks to protect indigenous ecosystem structure, function, and integrity from human impacts. Management activities are generally excluded from "preserved" forests.

Raptor - A bird of prey.

Rare species - A collective term used to describe species that are uncommon, including

Endangered: native species which are in danger of extinction throughout all or part of their range (e.g., within state), or which are in danger of extirpation from Massachusetts, as documented by biological research and inventory.

Threatened: native species which are likely to become endangered in the foreseeable future, or which are declining or rare as determined by biological research and inventory.

Special concern: native species which have been documented by biological research or inventory to have suffered a decline that could threaten the species if allowed to continue unchecked, or which occur in such small numbers or with such restricted distribution or specialized habitat requirements that they could easily become threatened.

These definitions may vary depending on jurisdiction (e.g federal or state definitions).

Regeneration - the renewal of a tree crop, whether by natural or artificial means - may be broken down into those treatments that produce stands originating from seed (high forest) or from vegetative regeneration (coppice or sprouts) and create even-aged or uneven-aged stands. Syn. reproduction.

Regeneration Cutting - Any removal of trees intended to assist regeneration already present or to make regeneration possible. The operation creates either an even-aged stand or an uneven-aged stand. See **Even-aged stand** and **Uneven-aged stand**

Clearcutting; (even-aged) removal of the entire stand in one cutting with reproduction obtained artificially or by natural seeding from adjacent stands or from trees cut in the clearing operation.

Seed-tree: (even-aged) removal of the old stand in one cutting, except for a small number of seed trees left singly or in groups.

Shelterwood: (even-aged) removal of the old stand in a series of cuttings, which extend over a relatively short portion of the rotation, by means of which the establishment of essentially even-aged reproduction under the partial shelter of seed trees is encouraged.

Selection: (uneven-aged) removal of trees, throughout all size classes, either as single scattered individuals or in small groups at relatively short intervals, repeated indefinitely, by means of which the continuous establishment of reproduction is encouraged and an uneven-aged stand is maintained.

Coppice: (even-aged or uneven-aged) any type of cutting in which dependence is placed mainly on vegetative reproduction.

Release - removal of overtopping trees to allow understory or overtopped trees to grow in response to increased light.

Reserve tree - a tree, pole-sized or larger, retained in either a dispersed or aggregated manner after the regeneration period under the clearcutting, seed tree, shelterwood, group selection or coppice methods. Syn. Standard, legacy tree

Residual stand - trees remaining following any silvicultural operation.

Riparian Area - an area in close proximity to a watercourse, lake, swamp or spring.

Rotation - the planned number of years between the formation or regeneration of a crop or stand and its final harvest at a specified stage of maturity.

Rotation, extended - a rotation longer than necessary to grown timber crops to financial maturity or size and generally used to provide habitat or nontimber values.

Salvage Cutting - See **Intermediate cutting**

Sapling - See **Size Class**

Sawtimber - See **Size Class**.

Seed Tree Cutting - See **Regeneration Cutting**.

Seedling - See **Size Class**.

Seep (Seepage) - Groundwater (as opposed to surface flow) escaping through or emerging from the ground along an extensive line or surface, as contrasted with a spring where water emerges from a localized spot..

Selection cutting - See **Regeneration Cutting**.

Selective cutting - a cutting that removes only a portion of trees in a stand. Note: selective cutting is a loose term that should not be confused with cutting done in accordance with the selection method, is not a recognized silvicultural system and is often synonymous with or associated with High Grading.

Shelterwood Cutting - See **Regeneration Cutting**.

Silviculture - the theory and practice of controlling forest establishment, composition, structure and growth.

Silvicultural prescription - a detailed, quantitative plan, at the stand level of resolution, for conducting a silvicultural operation.

Silvicultural System - a program for the treatment of a stand throughout a rotation. An even-aged system deals with stands in which the trees have no or relatively little difference in age. An uneven-aged system deals with stands in which the trees differ markedly in age.

Site - the combination of biotic, climatic, topographic, and soil conditions of an area; the environment at a location.

Site index – See **Site Quality**.

Site preparation - Hand or mechanized manipulation of a site designed to enhance the success of regeneration.

Site quality - the inherent productive capacity of a specific location (site) in the forest affected by available growth factors (light, heat, water, nutrients, anchorage); often expressed as site index – the height of the average tree in an even-aged stand at a given age. In New England 50 years is generally used as the base age.

Size Class:

Seedling: a young tree, less than sapling size of seed origin.

Sapling: a tree greater than 1" dbh and less than 4.9" dbh.

Poletimber: a tree greater than 4.9" dbh and less than sawtimber size.

Sawtimber: a tree greater than 11.0" dbh having at least 8' of usable length and less than 50% cull.

Slash - tops, branches, slabs, sawdust or debris resulting from logging or land clearing operations.

Slope, steep - An area where the average, sustained slope is greater than 50%. See **Grade**.

Snag - a standing dead tree, greater than 20' tall, which has decayed to the point where most of its limbs have fallen; if less than 20' tall it is referred to as a *stub*. A hard snag is composed primarily of sound wood, generally merchantable and a soft snag is composed primarily of wood in advanced stages of decay and deterioration. See **Biological legacy**.

Special concern, Species of - see **Rare species**

Stand - a community of trees possessing sufficient uniformity as regards composition, constitution, age, spatial arrangement or condition to be distinguishable from adjacent communities, so forming a silvicultural or management entity.

Stand Structure - A description of the distribution and representation of tree age and size classes within a stand.

Even-aged, single-storied: Theoretically, stands in which all trees are one age. In actual practice, these stands are marked by an even canopy of uniform height characterized by intimate competition between trees of approximately the same size. The greatest number of stems are in a diameter class represented by the average of the stand. The ages of the trees usually do not differ by more than 20 years.

Even-aged, two-storied: Stands composed of two distinct canopy layers, such as, an overstory and understory sapling layer possibly from seed tree and shelterwood operations. This may also be true in older plantations where tolerant hardwoods may become established as management intensity decreases (burning and other means of understory control). Two relatively even canopy levels can be recognized in the stand. Both canopy levels tend to be uniformly distributed across the stand. The average age of each level differs significantly from the other.

Uneven-aged (sized): Theoretically, these stands contain trees of every age on a continuum from seedlings to mature canopy trees. In practice, uneven-aged stands are characterized by a broken or uneven canopy layer. The largest number of trees is in the smaller diameter classes. As trees increase in diameter, their numbers diminish throughout the stand. Generally, a stand with 3 or more structural layers may be considered as uneven-aged.

Mosaic: At least two distinct size classes are represented and these are not uniformly distributed, but are grouped in small repeating aggregations, or occur as stringers less than 120 feet wide, throughout the stand. Each size class aggregation is too small to be recognized and mapped as an individual stand. The aggregations may or may not be even-aged.

Stocking - the degree of occupancy of an area by trees. In even-aged stands, stocking levels are expressed as different levels (A, B and C) based upon stocking guides that use tree diameter, basal area and number of trees per acre. The A level represents the density of undisturbed even-aged stands. The B level represents the minimum density for maximum basal area and cubic foot growth. The C level represents both the minimum stocking of acceptable growing stock to make a stand suitable for management for timber products and represents 10 years growth below the B level.

Overstocked: stands above the "A" level of stocking for their forest type, tree density and size class.

Fully stocked: stands between the "A" and "C" levels of stocking for their forest type, tree density and size class.

Understocked: stands below the "C" level of stocking for their forest type, tree density and size class.

In uneven-aged stands, stocking is based on residual basal area, maximum tree size and a ratio known as "Q" which is a mathematical expression of the desired diameter distribution.

Structure, horizontal - the spatial arrangement of plant communities; a complex horizontal structure is characterized by diverse plant communities within a given geographic unit.

Structure, vertical - the arrangement of plants in a given community from the ground (herbaceous and woody shrubs) into the main forest canopy; a complex vertical structure is characterized by lush undergrowth and successive layers of woody vegetation extending into the crowns of dominant and co-dominant trees. (See *crown class*.)

Stumpage value - the commercial value of standing trees.

Succession - the natural series of replacements of one plant community (and the associated fauna) by another over time and in the absence of disturbance.

Sustained yield - historically, a timber management concept in which the volume of wood removed is equal to growth within the total forest. The concept is applicable to nontimber forest values as well.

Thinning - See **Intermediate cuttings**.

Threatened species - See **Rare species**.

Tolerance - a characteristic of trees that describes the relative ability to thrive with respect to the growth factors (light, heat, water nutrients, anchorage). Usually used to describe shade tolerance: the ability of a species to thrive at low light levels.

T.S.I. - timber stand improvement; a loose term comprising all intermediate cuttings made to improve the composition, constitution, condition and increment of a timber stand. The practice may be commercial; yielding net revenues or precommercial or noncommercial; where the cost of accomplishing the work exceeds the value of the products removed.

Unacceptable Growing Stock (UGS) - See **Management Potential**.

Understory - the smaller vegetation (shrubs, seedlings, saplings, small trees) within a forest stand, occupying the vertical area between the overstory and the herbaceous plants of the forest floor.

Uneven-aged stand - See **Stand Structure**

Vernal or autumnal ponds - a class of wetland characterized by small, shallow, temporary pools of fresh water present in spring and fall, which typically do not support fish but are very important breeding grounds for many species of amphibians. Some species are totally dependent upon such ponds; examples are spring peepers and mole salamanders.

Volume, tree - the contents of the merchantable portion of a tree, expressed either as 1.) Board foot volume, where a board foot is equivalent to a piece of wood 12" x 12" x 1" thick, excluding the waste inherent in processing; 2.) Cubic foot volume with no waste attributed to processing; 3.) Cord volume, where 80 cubic feet of solid wood are equivalent to one cord. One cord of wood contains 128 cubic feet of air, bark and wood or 4.) Tons of oven-dry wood.

Water Bar - a shallow depression, 12" to 36" wide, cut across a dirt road or skid trail at approximately a 30 degree angle to its alignment, for the purpose of diverting the overland flow of water from the surface of the road. See **Broad-based dip**.

Wildlife tree - a live or dead tree designated for wildlife habitat or retained to become future wildlife habitat.

Attachments

The following components of the management plan are included as separate documents:

Baxter Woods Soil Report, Natural Resource Conservation Service.

Maine Natural Areas Program & Department of Inland Fisheries and Wildlife Report

November 1, 2019

This report provides results from transect bird surveys conducted at Baxter Woods Park during the nesting season and fall migration 2019

Inquiries about this work and report may be directed to **Patrick Keenan** at:
patrick.keenan@briloon.org

Biodiversity Research Institute

276 Canco Road

Portland, ME 04106

Introduction

Biodiversity Research Institute conducted bird surveys at the Mayor Baxter Woods Park in Portland, ME. This property was donated by Governor Percival Baxter in 1946 for the purpose to “Forever to be held in trust for public purposes and as a sanctuary for wild birds.” At the request of the City of Portland Biodiversity Research Institute conducted bird surveys:

- Determine nesting or breeding bird species present
- Survey of migratory birds (fall)
- Provide recommendations for bird habitat improvements

Surveys occurred in the summer and fall of 2019 but not during spring migration or the winter.

The “Forest and Wildlife Habitat Management Plan for Mayor Baxter Woods” (18 May 2018 from Forest Synthesis LLC) (hereafter, ‘Management Plan’) provides an excellent description of the property and its habitats and outlines various goals and objectives to guide management activities for the property. Our focus is to provide information about birds on the property and align general goals with input specific to activities that will promote bird diversity and abundance on the property.

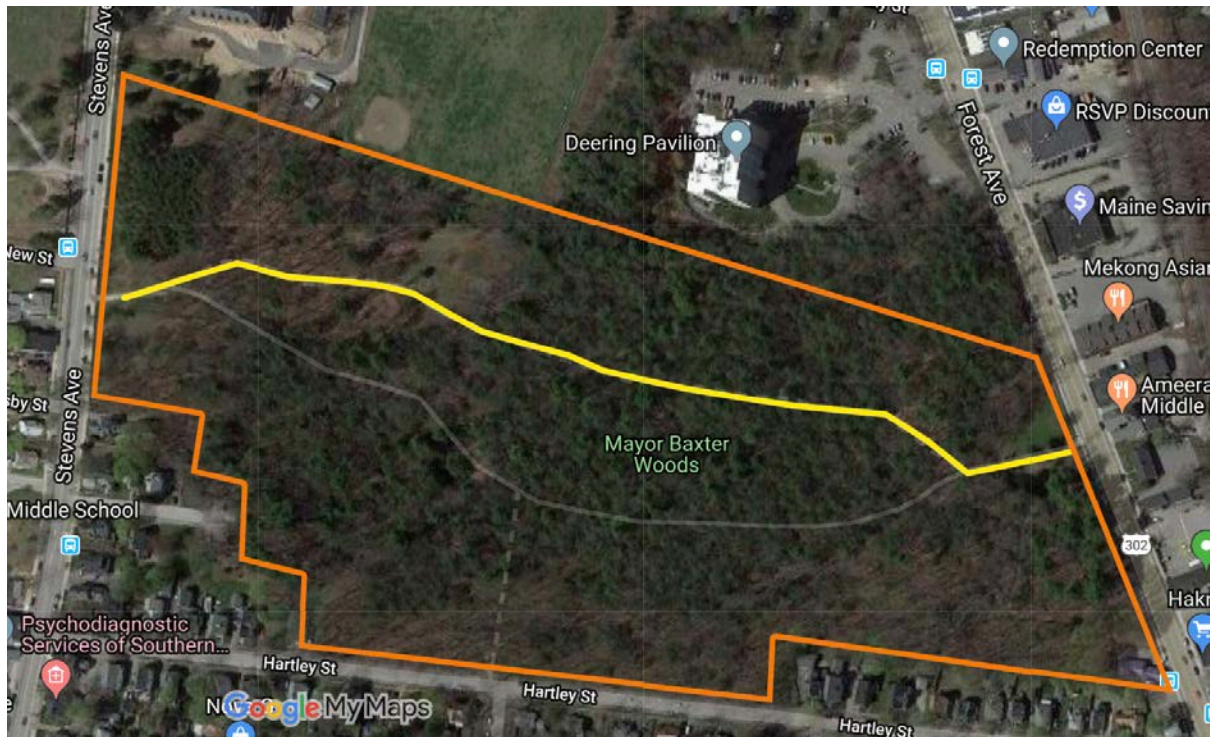
Mayor Baxter Woods Property

The management plan established the ‘cover type’ and ‘land use’ as shown in the following table. The property is approximately 32.46 acres and is dominated by mixed forest with portions of Coniferous and Deciduous forest. There are several access points / trailheads along Forest Avenue and Stevens Avenue and the property abuts backyards on Hartely Street.

Cover Type/Land Use	Area (acres)
Deciduous forest	5.57
Coniferous forest	1.03
Mixed forest	22.98
Meadow/shrub	0.87
Shade tree/mown grass	1.47
Pond	0.22
Parking	0.10
Abutter encroachment	0.22
Total	32.46

The forest patch represents forest dominated by Pine-Oak Woodland plant community with many large and old trees. It also includes stands of Hemlock. The forest of Mayor Baxter Woods is remarkably lacking in understory vegetation. This is likely due to the mixed use of recreation (dog walking-both on and off leash, biking, and child play) and the lack of defined trails. This has implications for the diversity of birds present in the forest.

The map image of Mayor Baxter Woods below provides the approximate outline of the property (orange) and the travel transect used for bird surveys (yellow).



Survey Methods

We used line transect surveys to determine the presence and abundance of birds in Mayor Baxter Woods. Surveys began at dawn in the breeding season and lasted 40 minutes. The exact positions of first detection for birds were recorded and we documented both the location along the transect and distance from the transect to define the spatial arrangement of animals. Every individual detected was recorded. Position along transect was estimated using a GPS. Birds were detected by sight and sound. Both sides of the trail were scanned visually to increase the chance of detecting a bird in that fashion. Finally, additional information on breeding status of the birds were included where relevant including finding nests, nest-

building activities, or carrying food for integration of these data into Maine's 2nd Breeding Bird Atlas.

Results

Family	Species (Common Name)	Species (Scientific Name)	Number of Surveys Encountered	Maximum Number Observed	Breeding Confirmed
Trochilidae	Ruby-throated Hummingbird	<i>Archilochus colubris</i>	1	1	
Picidae	Downy Woodpecker	<i>Dryobates pubescens</i>	1	2	yes
Picidae	Hairy Woodpecker	<i>Dryobates villosus</i>	2	2	yes
Picidae	Pileated Woodpecker	<i>Dryocopus pileatus</i>	2	2	
Tyranidae	Eastern Wood Pewee	<i>Contopus virens</i>	2	3	yes
Hirundidae	Tree Swallow	<i>Tachycineta bicolor</i>	1	1	
Corvidae	American Crow	<i>Corvus brachyrhynchos</i>	1	5	
Corvidae	Blue Jay	<i>Cyanocitta cristata</i>	1	1	yes
Paridae	Black-capped Chickadee	<i>Poecile atricapillus</i>	2	3	yes
Paridae	Tufted Titmouse	<i>Baeolophus bicolor</i>	1	1	
Mimidae	Gray Catbird	<i>Dumetella carolensis</i>	2	2	yes
Vireonidae	Red-eyed Vireo	<i>Vireo Olivaceus</i>	2	10	yes
Parulidae	Black-throated Green Warbler	<i>Setophaga virens</i>	2	2	yes
Parulidae	Chestnut-sided Warbler	<i>Setophaga pensylvanica</i>	1	1	yes
Icteridae	Brown-headed Cowbird	<i>Molothrus ater</i>	1	1	
Cardinalidae	Northern Cardinal	<i>Cardinalis cardinalis</i>	1	1	yes
Fringillidae	American Goldfinch	<i>Spinus tristis</i>	2	4	
Passerellidae	Chipping Sparrow	<i>Spizella passerina</i>	2	4	yes

Breeding Season. The following table provides details of the bird species detected in Mayor Baxter Woods during the breeding season. Surveys occurred on June 25 and July 4 in 2019.

We documented 11 species of nest bird species at Baxter Woods during our surveys. We detected an additional 7 species that were not confirmed to be breeding at the site during the nesting period. None of these species are unusual or listed as Endangered or Threatened by Maine Inland Fisheries and Wildlife Service (Appendix 1).

Fall Migration.

The following table lists bird species observed during fall surveys on September 13, October 3, October 21 in 2019. We show the Number of surveys each species was detected on and the maximum number of individuals detected.

Family	Species (Common Name)	Species (Scientific Name)	Number of dates detected of three	Maximum number of individuals detected
Anatinae	Mallard Duck	<i>Anas platyrhynchos</i>	1	2
Laridae	Herring Gull	<i>Larus argentatus</i>	2	1
Columbiformes	Rock Pigeon	<i>Columba livia</i>	1	2
Picidae	Downy Woodpecker	<i>Dryobates pubescens</i>	3	2
Picidae	Hairy Woodpecker	<i>Dryobates villosus</i>	1	1
Picidae	Northern Flicker	<i>Colaptes auratus</i>	1	2
Picidae	Red-bellied Woodpecker	<i>Melanerpes carolinus</i>	1	1
Picidae	Yellow-bellied Sapsucker	<i>Sphyrapicus varius</i>	1	1
Sittidae	White-breasted Nuthatch	<i>Sitta carolinensis</i>	3	3
Tyranidae	Eastern Phoebe	<i>Sayornis phoebe</i>	1	1
Corvidae	American Crow	<i>Corvus brachyrhynchos</i>	3	6
Corvidae	Blue Jay	<i>Cyanocitta cristata</i>	3	2
Certiidae	Brown Creeper	<i>Certhia americana</i>	3	2
Paridae	Black-capped Chickadee	<i>Poecile atricapillus</i>	3	13
Paridae	Tufted Titmouse	<i>Baeolophus bicolor</i>	1	2
Vireonidae	Warbling Vireo	<i>Vireo gilvus</i>	1	1
Mimidae	Northern Mockingbird	<i>Mimus polyglottos</i>	1	1
Regulidae	Ruby-crowned Kinglet	<i>Regulus calendula</i>	2	4
Turdidae	American Robin	<i>Turdus migratorius</i>	3	3
Parulidae	American Redstart	<i>Setophaga ruticilla</i>	1	2
Parulidae	Black-and-white Warbler	<i>Mniotilta varia</i>	1	3
Parulidae	Bay-Breasted Warbler	<i>Setophaga castanea</i>	1	2
Parulidae	Blackpoll Warbler	<i>Setophaga striata</i>	1	2
Parulidae	Black-throated Blue Warbler	<i>Setophaga caerulescens</i>	1	1
Parulidae	Black-throated Green Warbler	<i>Setophaga virens</i>	1	8
Parulidae	Common Yellowthroat	<i>Geothlypis trichas</i>	1	3
Parulidae	Nashville Warbler	<i>Oreothlypis ruficapilla</i>	1	4
Parulidae	Northern Waterthrush	<i>Parkesia noveboracensis</i>	1	1

MAYOR BAXTER WOODS BIRD SURVEYS

Parulidae	Tennessee Warbler	<i>Oreothlypis peregrina</i>	1	1
Parulidae	Yellow-rumped Warbler	<i>Setophaga coronata</i>	3	4
Cardinalidae	Northern Cardinal	<i>Cardinalis cardinalis</i>	1	1
Cardinalidae	Rose-breasted Grosbeak	<i>Pheucticus ludovicianus</i>	1	1
Fringillidae	American Goldfinch	<i>Spinus tristis</i>	3	2
Fringillidae	House Finch	<i>Haemorhous mexicanus</i>	3	2
Passerellidae	Song Sparrow	<i>Melospiza melodia</i>	3	1
Passerellidae	White-throated Sparrow	<i>Zonotrichia albicollis</i>	2	11
Passeridae	House Sparrow	<i>Passer domesticus</i>	2	4

Observations during surveys during fall migration detected 37 species at Mayor Baxter Woods. None of these species are unusual or listed as Endangered or Threatened by Maine Inland Fisheries and Wildlife Service (Appendix 1).

Discussion and Recommendations

Mayor Baxter Woods provides habitat for nesting birds and supports birds during fall migration. We did not observe species that are endangered or threatened in Maine. We did not conduct surveys during the spring or winter given the timeline for this project. Bird migration is seasonal and can be highly variable with large numbers of birds appearing one day and disappearing the next.

The absence of ground or near ground nesting bird species at Mayor Baxter Woods is striking but not surprising given the mixed recreational use of the park and the lack of understory vegetation. Indeed, the use of the property seems dominated by dog walkers (both on leash and off leash). Impacts to bird diversity and abundance due to disturbance by dog walking and is well documented (Mallord et al. 2007). Additionally, the urban park setting likely hosts other nest predators including raccoons, foxes, feral cats, and squirrels. Notably lacking were species of thrush (Veery, Hermit Thrush), Ovenbird, Song Sparrow, all of which are common in nearby forest patches but were not observed nesting at Baxter Woods.

Habitat enhancements to increase understory vegetation may increase bird use but should coincide with changed to other park regulations, such as clearly defining trails, allowing dogs only on leash, and providing information for public visitors that highlight the parcel as bird friendly and offer guidance to limit impacts to birds such as staying on trails and keeping dogs on a leash. Attracting birds through habitat modifications under the current recreational use plan may lead to birds attempting to nest but failing due to disturbance, or worse being predated.

In addition, as mentioned in the Management Plan, restoration of habitats should include native species and management of invasive species to offer higher quality bird habitat.

A review of e-bird data supports that compared to adjacent areas (Evergreen Cemetery and Capisic Pond trails) Baxter Woods is not routinely visited by birdwatchers. Evergreen Cemetery and Capisic Pond are well known birding hotspots with three birding hotspot location in ebird with 139 species and 181 checklists, 157 species and 525 checklists, and 197 species and 2355 checklist contributed by birdwatchers. Comparatively, birdwatchers have submitted 32 checklists that documented 32 species at Mayor Baxter Woods. Connecting these two nearby sites for birdwatchers may help increase the appreciation of this parcel by birdwatchers and the community more broadly.

References

Mallord, J. W., P. M Dolman, A. F. Brown, and W. J. Sutherland. (2007). Linking recreational disturbance to population size in a ground-nesting passerine. *Journal of Applied Ecology* 44:185-195.

Appendix 1

Maine Endangered and Threatened Bird Species

Maine's Endangered Bird Species

- American Pipit (*Anthus rubescens*) (breeding population only)
- Black-crowned Night Heron (*Nycticorax nycticorax*)
- Black Tern (*Chlidonias niger*)
- Golden Eagle (*Aquila chrysaetos*)
- Grasshopper Sparrow (*Ammodramus savannarum*)
- Least Bittern (*Ixobrychus exilis*)
- Least Tern (*Sterna antillarum*)
- Peregrine Falcon (*Falco peregrinus*) (breeding population only)
- Piping Plover (*Charadrius melodus*)
- Roseate Tern (*Sterna dougallii*)
- Sedge Wren (*Cistothorus platensis*)

Maine's Threatened Bird Species

- Artic Tern (*Sterna paradisaea*)
- Atlantic Puffin (*Fratercula arctica*)
- Barrow's Goldeneye (*Bucephala islandica*)
- Common Gallinule (*Gallinula chloropus*)
- Great Cormorant (*Phalacrocorax carbo*) (Breeding population only)
- Harlequin Duck (*Histrionicus histrionicus*)
- Razorbill (*Alca torda*)
- Short-eared Owl (*Asio flammeus*) (Breeding population only)
- Upland Sandpiper (*Bartramia longicauda*)

Habitat Restoration area in Baxter Woods

Robert Bryan <rrbryan.54@gmail.com>

Wed, May 29, 2019 at 1:40 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>

Cc: Eric Topper <etopper@maineaudubon.org>, Doug Hitchcox <dhitchcox@maineaudubon.org>, Jeff Tarling <jst@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>

During our May 17 field walk I agreed to make a base map that could be used for planning in the bird habitat restoration area.

Please review the attached map and make sure that it includes the entire area that we discussed and let me know if other changes are needed.

Among the ideas that we discussed and/or that are in the 2018 management plan:

- **Red Pine.** Possible thinning to encourage understory and midstory development. Consider closing the trail on the east side of this stand.
- **Red Oak and Red Oak-White Pine.** Understory development is generally good. Allow stand to develop naturally.
- **Shrub and Meadow.** Allow meadow to develop into old-field habitat. Options might include planting native wildflowers for pollinators and/or planting native cool season grasses to improve habitat. Develop and maintain shrubby margins; periodic brush cutting in some areas (for example, the sumac stand) can help maintain the shrub habitat type.
- **Red Oak - White Pine - Hemlock.** Promote understory development by planting shade-tolerant native shrubs. Take steps to limit impacts to the fringe of the vernal pool. Consider excavating the pool in the middle (to perhaps 2 feet in depth) to provide a longer hydroperiod. Protect selected hemlock legacy trees against hemlock woolly adelgid. Consider moving the walking path nearer to the north line to provide a larger area of undisturbed habitat in this area.

All areas:

- Dogs on leash during the bird breeding season throughout Baxter Woods. (I recall we discussed possibly more stringent regulations within the habitat restoration area).
- Control invasive plants
- Eradicate aggressive non-native plants, notably Linden (*Tilia cordata*)
- Use brush, downed logs, etc. to keep foot traffic and pets n trails
- Develop educational materials and programs.

[Quoted text hidden]

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Bird Habitat Restoration Area_Baxter Woods.jpg
1364K



MEMORANDUM

TO: Sally DeLuca, Director
Department of Parks, Recreation & Facilities

FROM: Jen Thompson, Associate Corporation Counsel

DATE: February 10, 2020

Re: Leash Restrictions for Dogs in Baxter Woods

I understand that the Sustainability & Transportation Committee is considering a recommendation, advanced by the Department of Parks, Recreation & Facilities, to amend Chapter 5 of the City's Code of Ordinances in order to place new restrictions on the presence of off-leash dogs in Baxter Woods. Currently, Chapter 5 of the City's Code permits dogs to be off-leash in Baxter Woods so long as they are under voice control. See Chapter 5, Section 5-15.1(e). The proposal now being advanced by staff seeks to impose limited restrictions on the presence of off-leash dogs in Baxter woods in order to better fulfill the City's charge to maintain Baxter Woods as a bird sanctuary and to address public safety concerns. Specifically, staff are recommending the following restrictions:

- April 1 through July 31, annually: Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- August 1 through March 31, annually: Dogs permitted off-leash and under voice control from 5am to 9am, and from 5pm to 10pm. From 9am to 5pm, dogs must be on 8-foot leash. During the July 18, 2019 meeting, the evening start time for off leash hours was amended from 5pm to 3pm.
- Habitat Restoration Area: In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year-round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas.

In connection with staff's recommendation and the Committee's consideration of the pending proposal, this office has been asked to provide guidance on the extent to which imposing leash restrictions for dogs in Baxter Woods is necessary or permissible under the City's Code and/or the 1946 deed from Governor Percival Baxter, conveying the land to the City of Portland.

As requested, I offer the following thoughts as guidance for the Committee and the Council:

The City Council has broad discretion to manage its parks as it sees fit, so long as it does so in a manner that is consistent with the City Code and any other regulations governing the use of those lands. It is under this broad authority that the City has long regulated where in the City dogs may be off leash and where leashes are strictly required. Those restrictions are outlined in Chapter 5 of the City's Code. As with all of its ordinances, the City Council is free to amend Chapter 5 in order to revise existing leash requirements as it sees fit in its legislative discretion – again, so long as it is not otherwise prohibited from doing so. Given the City's broad discretion under its police powers, the only restriction other than the

City Code that might limit the Council's regulatory authority over Baxter Woods is the language of the deed conveying the land to the City.

As the Committee is aware, one of the bases for staff's recommendation that off-leash dogs be restricted in Baxter Woods is a requirement outlined in the language of the deed that Baxter Woods be maintained as a "bird sanctuary." According to staff, the presence of off-leash dogs in the park have negatively impacted bird and wildlife habitat and breeding, particularly by ground-nesting birds, thereby inhibiting the City's ability to optimally satisfy the purpose of Governor Baxter's vision for the use of the land.

The deed from Governor Baxter to the City requires that "Mayor Baxter Woods," so-called, must be retained by the City for the benefit of the people of Portland subject to a number of terms, restrictions, reservations and conditions. The restrictions enumerated in the deed include, in pertinent part, requirements that the land:

1. Shall forever be retained and used by [the City] in trust for the benefit of the people of Portland as a Municipal Forest and park and for public recreational and educational purposes the same forever to be known as "Mayor Baxter Woods;"
2. shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians . . .
3. shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom

Although the language of the deed expressly requires that the land be "kept in its natural wild state and as a sanctuary for wild birds," there is no mention of dogs or any requirement as to whether they be permitted or excluded. As such, it does not appear to me that the City Council is required to permit dogs to be off leash dogs in Baxter Woods, nor is it required to prohibit them. Rather, the Council is free to exercise its broad discretion to decide, as a policy matter, whether and to what extent it wishes to apply its leash laws in Baxter Woods, just as it does in other City parks. In making that decision, it is certainly free to weigh whether, as staff suggests, limiting off leash dogs will better allow the City to meet its obligation to maintain the park as a bird sanctuary or, as suggested by others, doing so would negatively impact its use as a "park . . . for public recreational . . . purposes." That consideration and balancing of differing policy objectives is entirely in line with the Council's authority over its public spaces and with its exercise of legislative discretion.

Baxter Woods Leash Law Implementation Timeline

February 2020

Consideration by Sustainability and Transportation Committee

March 2020

Pending recommendation from Sustainability and Transportation Committee, Corporation Counsel would review the actual text changes to the ordinance to be included with proposal to full Council. (Chapter 5).

April 2020

Consideration by full City Council

April--May 2020

Habitat restoration efforts begin with community plantings (regardless of Council action). Habitat restoration can take place on an ongoing basis into the future (not dependent on any action from Council)

April--May 2020

Water quality testing to be undertaken by the City. Possible Spring bird surveys could take place in the Spring as well (previous bird surveys covered summer and fall season, so spring data would be desirable so that impacts of policy changes can be measured in the future against this baseline data).

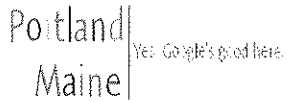
May 2020

Pending Council decision, May would serve as a month to educate visitors to Baxter Woods with signage, etc...

June 2020

Enforcement effective date June 1, 2020 (pending Council action).

Followup monitoring into the future: bird populations, water quality, forest ecology.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Adrienne Fine <adrienne.fine@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 6, 2020 at 8:29 AM

Thank you,

I am very glad to see that it is only 9am-3pm for leash laws. I thought it was until 5pm which was concerning. Ideally it would be 10am-3pm to allow folks a little more time on weekend mornings, especially in the winter when it is very cold before 9am.

I still think the 4 months during the nicest time of year where dogs must be on a leash all the time is overkill and a serious concern for those who live in the neighborhood. I think the restoration area makes sense though!

I appreciate your response and sending this to me.

Adrienne

On Thu, Mar 5, 2020 at 5:20 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Adrienne,

Thanks for the email.

You'll be glad to know that what is currently being proposed is to set specific hours and locations for off-leash voice control dogs in Baxter Woods. The current proposal does not aim to exclude them all together.

I've attached the proposal for you. It also includes a lot of information on your bird questions.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov



On Wed, Mar 4, 2020 at 10:25 AM Adrienne Fine <adrienne.fine@gmail.com> wrote:

Hi Ethan,

I hope you are well. I just sent the following email to the City Councilors regarding the Baxter Woods Leash Law but also wanted to send it to you, who I've communicated with before on this issue, to make sure it is part of any upcoming public hearing process.

I've been meaning to attend the City Council committee meetings on the Baxter Woods leash law issue, but have been unable to. I am writing to urge you to vote down the current leash law going to the council. I understand that some leash law will likely be implemented but the one proposed is very restrictive. Would the council consider leash law hours of 10am-3pm Monday through Friday all year, and at other times allow off leash dogs?

I live near Baxter Woods and have a small dog, who I walk in the woods multiple times a week. I understand that the schools use the woods and that some children are afraid of dogs, so I am fine with leash laws during school hours.

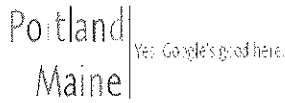
I have heard the bird sanctuary argument but I have never seen ground nesting birds in the woods. When Baxter Woods was deeded as a bird sanctuary I understand that was to prevent people from shooting birds or hunting birds in that area. There are many skunks and raccoons and even fox living in the woods so the likelihood of birds nesting on the ground doesn't make any sense due to these natural predators. Restricting dogs during a time of year or from certain areas due to birds seems useless considering these other predators.

Baxter woods was also deeded to be dog friendly. The availability of dog friendly and off-leash areas in the City is becoming more limited. Many people selected this neighborhood because it is dog friendly. Taking away off-leash entirely does not feel dog friendly. Most parks in Portland require dogs to be on a leash, so this is one of the few havens for working people to give their dogs some quick off-leash exercise throughout the week without having to drive outside of the City limits. Restrictive leash laws like those proposed will continue to drive people out of the City.

Please consider implementing leash laws only Monday through Friday 10am to 3pm, and if necessary those same hours on Saturday and Sunday too. Extending leash laws to 5pm or for all hours through the spring and summer months completely removes the dog friendly aspect of the Deering neighborhood. Who is going to use this park if it isn't dog owners? While I'm walking in Baxter Woods I'd say 95% of people have dogs.

Thank you,
Adrienne Fine

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

**Ethan Hipple** <ehipple@portlandmaine.gov>

Baxter Woods leash law proposal

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 6, 2020 at 12:47 PM

To: Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com>

Cc: Alex Marshall <amarshall@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi Carolyn,

Our dog waste numbers came from observations from Park Rangers during their regular patrols of the Woods. It is not meant to be a comprehensive count of every piece of dog waste in the park, but merely what we see while we make our routine visits. Thanks for your help in picking up dog waste! Every bit helps.

I have attached the current proposal for you. The hours and dates contained in this memo are what the Sustainability and Transportation Committee recommended at their 2/26 meeting.

There have been many questions about how to create an effective boundary to delineate the habitat restoration area without introducing fencing, etc... this was discussed at the Sustainability and Transportation Committee meeting. One effective way to establish that boundary is to make the Northern Carriage Path and all of the land north of the Northern Carriage Path off limits to off-leash dogs. This would have the effect of keeping off-leash dogs out of the Habitat Restoration area and providing an on-leash trail. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Tue, Mar 3, 2020 at 10:52 AM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:

Hi Ethan,

I hope that you are caught up, always tough after being away.

As I mentioned, I am wondering about a few things that were not clear from the information conveyed to me

from the meeting (I was unable to attend).

First, how was the poop data collected? I am not disputing the amount cited, as I go through periods of obsessively picking up every one I see and my numbers are fairly high. I just wonder how is it possible to arrive at an accurate count? The only way I can think of would be to divide the park into sections and have enough people to simultaneously count each section on a specific day. . . and then maybe repeat this procedure a few times. The noticeable poops vary quite a bit with weather, as they disappear after a storm and then reappear with a thaw. I can create a clean walk on my route only to have it sullied by a thaw (and/or some new visitors) by the next day. I know of some others who are diligent about picking up extra droppings, yet my fear is that new laws will do nothing to encourage compliance and may in fact have the opposite effect as our group may not be able to entice participation in frequent cleanup days.

Second, there is a lot of confusion about the off leash hours. The paper reported before 9 a.m. and after 5 p.m., while the proposal had been modified to off-leash after 3 p.m. No one seems to know for sure what was passed last week, although we do realize that the full Council could amend the proposal.

Finally, I have been hearing about blocking off-leash dogs from Stevens to Forest on the main path on the Motherhouse side. Again, there is a lot of speculation and confusion, and it would be helpful to learn what has actually been planned.

best wishes,

Carolyn

p.s. The trails have been treacherous this past week, as the cycle of thawing and refreezing results in glare ice with water, and the park has been relatively quiet as a result. I mentioned the issues around increased risks of falling with dogs on leash in my last email, and I do hope that consideration will be given to certification for dogs under voice control. This would at least offer owners motivation for both training and proving that their dogs are under voice control and so reduce their risk of injury if they have to walk in daylight hours.

On Sun, Mar 1, 2020 at 1:00 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks for your comments Carolyn. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov



On Wed, Feb 26, 2020 at 7:52 AM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:
another aspect of the leash law proposal that I would like to bring to your attention:

The Parks Department has repeatedly stated that they do not have the resources to enforce current rules and that they tried education (e.g., signage) and it did not work.

I would like to suggest that you give strong consideration to our proposed 10-2 (as compared to 9-3) on-leash compromise. This would provide the following positive benefits:

1. a significantly shorter time span for enforcement of new rules (which should, in turn, increase compliance and may be more feasible within the City's budget)
2. allow dog walkers more time during daylight and warmer hours during the cold, icy winter months
3. allow for parents of school-age children to walk their dogs after drop-off
4. give more time for shift workers to walk after work hours
5. enhance compliance, which in turn will help our Friends group in maintaining a cooperative relationship with the City (again, we would like to offer trainings, a means of communicating with school groups who might want to be in the woods prior to 10 a.m., regular clean-up days, etc.)
6. would still provide the dog phobic or those with reactive dogs on leash the prime hours of the day (I would gladly flip this around and take their hours!)

For reasons related to those cited above, I believe that more detailed analysis of the 4-month period of no dogs merits consideration.

Thank you for your consideration.

On Tue, Feb 25, 2020 at 3:41 PM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:
February 25, 2020

To: Spencer Thibodeau, Jill Duson, Belinda Ray
Cc: Ethan Hipple

From: Carolyn Ehringhaus (11 James St., Portland, ME 04103)

I am writing in support of keeping the most expansive off-leash rules as possible in Baxter Woods.

My greatest concerns focus on **health and safety**:

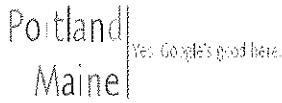
- 1: Baxter Woods is the only location that I dare walk with my dogs off leash due to the increasing prevalence of **tick-borne disease** such as Lyme, anaplasmosis, and babesiosis. Recent news releases highlight our local epidemic levels of these diseases, and there is no vaccination for humans (the canine vaccination is marginally effective, as many vaccinated dogs get Lyme). The lack of understory in Baxter woods is not conducive to deer who carry and drop huge numbers of reproducing ticks, as I have yet to see one in my 18 years of daily walks. All alternatives cited by the City for off-leash dogs are out of bounds for this reason (one of my two has a serious congenital heart disease and must be protected from all disease and injury).

2: Another topic that has received news coverage recently is the **increased injury rates among older adults due to falling while walking dogs on leash**. Walking, especially on the ice-covered trails as we see in BW throughout the winter, will be particularly dangerous even if wearing cleats. I do not go to the woods early and late in the day, as it is too cold and too dark and also does not fit with my other responsibilities. I rarely see many people during the daytime hours when I am there, yet I will now have to risk falling and breaking limbs every single day for months on end (I gave it a sample trial last week with my two dogs and almost went down a number of times – as a 67-year old woman with osteoporosis, my future prospects in getting my dogs their daily needed exercise are intimidating).

3: **Social connection:** Dogs are here to stay, with dog ownership increasing steadily; social scientists report greater happiness being reported by dog owners and many local seniors acquire dogs for company. With off-leash dogs, owners are able to connect with owners, dogs socialize with dogs, and everyone benefits. Dogs on leash changes this dynamic and greatly reduces any possibility of social interaction. **Social isolation** is real, and Portland's aging population will suffer as a consequence of the committee's precipitous decision. (This isolation is not limited to seniors as increasing numbers of younger adults work from home, stay-at-home mothers benefit from adult socialization during school hours, etc.)

On a different note, I can say that our #1 reason against leaving Portland has always been Baxter Woods, as we are fortunate to live nearby and have gotten to know most of our neighbors from our outings there. I have witnessed a number of other walkers say the same or even that they moved to this neighborhood because of the woods. The new laws will be a huge loss to many residents. Please reconsider, or at the very least delay until further data can be gathered concerning the actual day-to-day experiences of Portland's residents who rely on these woods. In addition, I hope that the Parks Department might consider working with the Friends of Mayor Baxter Woods group to pilot a **certification program** in order to have more leash-free time options in BW, as this could provide great incentives for responsible ownership.

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law Support

Ethan Hipple <ehipple@portlandmaine.gov>
To: Christopher Cutler <christopherjcutler@gmail.com>

Sun, Mar 1, 2020 at 12:59 PM

Thanks for your comments Chris. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 7:22 PM Christopher Cutler <christopherjcutler@gmail.com> wrote:

Greetings Councillors & Parks Department,

My name is Chris Cutler, I am a current resident of Portland, living on Clinton St. in the Deering Center neighborhood just a few blocks away from Mayor Baxter Woods. My fiancée, dog (Oscar), and I moved into our home this past September after a long search for dog-friendly residences in the area. We were drawn towards this particular neighborhood in no small part because of the beautiful public woods that are so easily accessible. Having this natural "escape" within walking distance has been an incredible aspect of our new location, especially because I work from home, and therefore take multiple walks to stretch my legs, clear my head, and decompress, every day. I bring Oscar walking with me as many times as I can, but lately it's become clear that Baxter Woods is not an inclusive space for dogs with moderate canine social anxiety such as him. A combination of vague rule definitions, little to no City enforcement, and inflexible park-goers has created an environment in which Oscar and I no longer feel welcomed or even understood. It is my intention to detail our experiences for you all to consider during your public committee meeting on Wednesday February 26th (unfortunately, I will be out of town on that date, but would otherwise make a public statement with content similar to what is in this email). I fear that there are many other citizens who have similar perceptions or experiences to my own, and who have not been appropriately

represented in the public dialogue as it relates to potential future leash law changes for Mayor Baxter Woods.

Our dog, Oscar, is a seven-and-a-half year old rescue, adopted by my fiancée in New Orleans while she was in undergrad at Tulane University. He was a "neglect" case, having been found as a stray multiple times before being taken in for good by the local ASPCA. He is an incredibly sweet and loving dog, always looking to make more human friends when we have guests over, or even while out on walks. That being said, Oscar generally does not have positive reactions when approached by unknown dogs. While he is more than able to have healthy and stable canine relationships (for example, with my parents' and my fiancée's parents' dogs), the introductions require some serious, intentional planning and execution. Obviously, we do not expect to have the luxury of these intentional introductions with every dog we encounter - normally, on streets or sidewalks, we are able to communicate to other dog owners that Oscar does not like to be approached. This has generally been a good strategy for avoiding canine conflicts with other leashed dogs, but it becomes an almost impossible task when encountering some off leash dogs (and their respective owners) in Baxter Woods.

In my opinion, one of the main reasons why these incidents continue to occur is the vague nature of the current off-leash rules/laws. As it stands now, owners are required to have their dogs within 50 feet, and "under voice control" at all times. Unfortunately, there seems to be a wide range of interpretations with respect to what it really means for a dog to be under voice control. I think that dog owners who let their dogs wander off-leash in Baxter Woods do genuinely believe that their dogs are responsive to voice commands, in a vacuum. However, based on my many experiences of having off-leash dogs approach me and Oscar (oftentimes with no owner in sight), it's apparent that the mere presence of another dog and/or human can interfere with the responsiveness of an otherwise well-behaved dog. In addition to the "squishy-ness" of this rule, the lack of enforcement within the Woods only encourages owners to continue their behavior. This can also lead to a sense of entitlement for those who may have technically not been following the rules, simply because they have never been told otherwise. I realize this attitude of some dog owners will make it challenging to make any changes to the current rules and/or enforcement, but it will certainly not be any easier to make these changes in the future if this "voice control" issue continues to go unaddressed. It is my hope that any future rule changes will be accompanied by strict enforcement of the new rules.

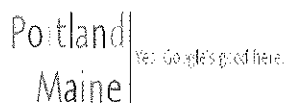
Ultimately, it is not my intention to entirely take away anyone's privilege to walk in Baxter Woods with their dogs off-leash. I think the compromise solution proposed by the Parks Department is a great option that would continue to allow for off-leash activities, while giving those people in similar situations to mine a time of day / time of year when we can feel comfortable walking through the Woods without fear of being approached. Having these specific, enforced, on-leash periods in Mayor Baxter Woods would greatly improve our current quality of life, and would solidify my fiancée's and my desire to remain in this neighborhood for years to come.

I appreciate the time and effort you've spent so far addressing this topic, and I thank you for reading and considering my experiences in preparation for your Committee meeting this Wednesday. If you have any questions in the meantime, don't hesitate to contact me via email (christopherjcutler@gmail.com), or by phone at (860) 808-9887. I look forward to your decision and further City Council discussion.

Best,
Chris Cutler

--

Chris Cutler
B.S.E. Acoustical Engineering & Music
University of Hartford '15
(860) 808-9887



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>

Sun, Mar 1, 2020 at 12:59 PM

To: Nellie Wood <wood.nellie@gmail.com>

Thanks for your comments Nellie. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 6:57 PM Nellie Wood <wood.nellie@gmail.com> wrote:

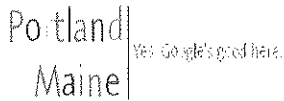
To Whom It May Concern:

I am writing in support of the compromise on the leash law in Baxter Woods.

I am a dog lover and in general I like that well-trained dogs have the opportunity to freely explore the outdoors, however, public parks should be able to be enjoyed by many different people. I live half a mile from the park and my sister was visiting with her 2 dogs, which were on leash. We were approached by two dogs without their owner in sight and were not able to move away from them, making one of the dogs very nervous. We were then yelled at by the dogs' owner for "not knowing the rules" and having leashed dogs in a leash-free park. It left me with a pit in my stomach and no interest in returning to the park anytime soon. I have other friends who live very close to the park but whose dogs have anxieties and have never been able to use this wonderful space.

A compromise would allow all dog owners, those who need to leash their dog, and those who don't, the ability to enjoy the park.

Thank you,
Nellie Wood



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law Support

Ethan Hipple <ehipple@portlandmaine.gov>
To: Tessa Wood <tessa.m.wood@gmail.com>

Sun, Mar 1, 2020 at 12:58 PM

Thanks for your comments Tessa. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 11:34 AM Tessa Wood <tessa.m.wood@gmail.com> wrote:
Hello Councilors and Parks Department -

My name is Tessa Wood. I moved to Portland (Deering Center) this past September. I love where I live now, not least because it is barely a block from the Mayor Baxter Woods. I have a very sweet dog named Oscar. He immediately falls 100% in love with every human he meets, but he is not quite the same with other dogs. I got him when he was 2 (he's 7 now), so he already had some baked-in anxieties around other dogs. That's not to say we haven't worked hard to make his "social anxiety" better, but to a certain degree (just like with some humans), it's just a part of his hardwiring. Oscar has plenty of canine friends, but to forge those relationships, it took a lot of intentional training and introduction. Beyond basic obedience classes, Oscar has earned two higher level training certifications: Canine Good Citizen (CGC), and Advanced Canine Good Citizen (CGCA), both tests administered and recognized by the American Kennel Club. He is a good dog.

When looking for a place to live in Portland, I was very excited to find not only a dog friendly home, but also one that was so close to such a lovely place for walking Oscar (on leash). Unfortunately, it quickly became clear to me that the Baxter Woods were not a safe place to take Oscar.

I had thought that dogs being allowed off-leash in the Baxter Woods would be ok for Oscar, since the dogs were required to be under voice control within 50 feet of their owners. However, this is rarely adhered to, and it is a problem. Of course, there are dogs who are refreshingly well-trained, who come to their owners immediately when called, even in the excitement of seeing another dog. In the Baxter Woods, it seems that

these are the exceptions that prove the rule, so to speak. I have encountered a poorly trained off-leash dog almost every single time I've gone into the Woods. I tell the owner from afar to please not let their dog approach Oscar, and they call the dog, but the dog continues to approach us, often bounding all the way up to us. This has happened more times than I can count, and that's not even getting into the number of times an off-leash dog has approached us without another human in sight.

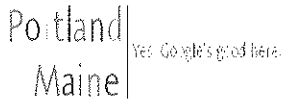
Both of these situations are stressful and deeply frustrating to me. I have stopped using the Woods altogether now, which breaks my heart; despite Oscar's anxiety in the face of being confronted by strange dogs, he loves the Woods when he feels safe, and so do I. But I don't feel that way.

I understand the appeal of having a place for one's dog to run free, and I understand why some other dog owners want to keep using the Baxter Woods the way they always have. But I want to be able to use the Baxter Woods at all. Right now, that is not possible.

Best,

Tessa M. Wood, RPT

Owner, Underdog Pianos
(207) 689-7848
www.underdogpianos.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash proposal

Ethan Hipple <ehipple@portlandmaine.gov>
To: ehowland@maine.rr.com

Sun, Mar 1, 2020 at 12:58 PM

Thanks for your comments Ethan. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Sun, Feb 23, 2020 at 10:46 AM <ehowland@maine.rr.com> wrote:

Dear Spencer,

I can't go to the Sustainability Committee's meeting on Wednesday so I am writing to ask that you turn down the proposal to require dogs to be on leashes in Baxter Woods.

The proposal does more harm than good. It would hurt a community of hundreds of dog walkers who help keep the woods a safe, clean place to walk, talk and soak up a small slice of nature. The bonds between the people using the woods spills over into all our lives and makes Portland a better place to live.

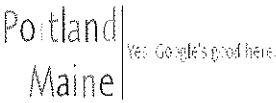
Meanwhile, current data indicate the bird population in the woods is similar to other areas such as Maine Audubon's Gilsland Farm in Falmouth.

If you don't reject the proposal, I hope you will table it to give the parks department more time to gather information about the bird population found in Baxter Woods.

Tabling the proposed ordinance would also give city staff time to work with the Friends of Baxter Woods to develop a balanced plan for how Baxter Woods is used that addresses everyone's concerns.

Thank you,

Ethan Howland
28 Mayland St.
828-5329



Ethan Hipple <ehipple@portlandmaine.gov>

baxter Woods

Debra Flynn <debra_ann@maine.usa.com>

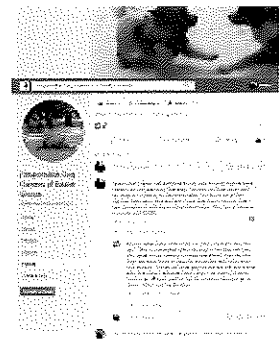
Thu, Jan 30, 2020 at 11:55 AM

To: "ehipple@portlandmaine.gov" <ehipple@portlandmaine.gov>

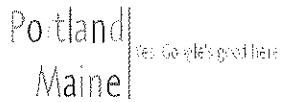
Hello,

The situation in Baxter Woods is now so unsafe that we can no longer go in there, even though we literally live next to it! I sent a screenshot of the latest, today, comment from another dog owner saying I should stay out of there. They do not live on this street, Hartley Street. Micheal who lives a doors up from me, also has been complaining as he has terriers that are molested constantly and has changed his walking habits as well due to these dogs. People are on their cell phones with ear pieces in not watching their off leash dog, not to mention them chasing the wildlife in a sanctuary as their owners talk umonst themselves. As you know I love these woods but now with the loose dogs even coming into our fewnced in portion of the yard it is way to stressful and unsafe please help. People are believing this is a dog park where they can bring their off leash dogs, not pick up after them or watch them.

Debra Ann Gorneault 207-387-3083
11 Hartley Street
Portland Maine



Screenshot_2020-01-30 Responsible Dog Owners of Baxter Woods - Posts.png
404K



Ethan Hipple <ehipple@portlandmaine.gov>

your email re baxter woods.

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Wed, Jan 8, 2020 at 11:40 AM

Thanks David,
I've received your comments and will pass them on to the Committee.

FYI, there are already rules regarding dogs and leashes in Baxter Woods. We are simply looking to change them to balance the needs of diverse park users and wildlife. However, we understand that there will be different opinions on the matter. Hopefully you can attend the meeting so you can learn more about the specifics and the rationale.

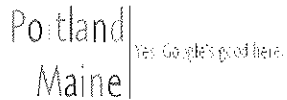
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 8, 2020 at 10:01 AM david victor <dvictor242@gmail.com> wrote:

I'm distressed by the proposal to have onleash rules for baxter woods, especially the restrictions in april through july 31. it's especially confusing since , from what i've gathered, the parks commission is planning to build a fence around an area to accommodate groundnesting birds. why restrict dogs then. it makes no sense. i certainly hope that , if the rules currently proposed are put into effect, the numerous outraged baxter woods community members consider alternatives, such as a referendum (a la peoples park) , to overturn this thoughtless revision that will effect so many for a minimal benefit.

david victor



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leashing

Jeff Levine <blumlevine@gmail.com>

Sat, Jan 11, 2020 at 5:36 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>, Troy Moon <thm@portlandmaine.gov>

Cc: "Ray, Belinda" <bsr@portlandmaine.gov>, "Thibodeau, Spencer" <sthibodeau@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>

To the Committee:

I am writing as a nearby resident who frequently uses Baxter Woods for recreation and exercise. I am also a dog owner. Until recently, I supported off-leash dogs in Baxter Woods. I was encouraged by the formation of a group to encourage responsible dog stewardship in the woods and hoped that the problem of a few bad apples wouldn't ruin things for all the responsible owners.

Unfortunately, I don't think the efforts to encourage good behavior have helped. This issue has been around for at least five years (see, for example, https://www.pressherald.com/2014/04/23/a_controversy_unleashed_/) and has not improved. I am still regularly run at by strange dogs, whose owners range from apologetic to indifferent. While I have not been physically hurt yet, I have had property damage. I don't see why people should have to continually put up with poor pet behavior when trying to have quiet enjoyment, in a place that is explicitly for quiet enjoyment. I have friends who will not allow their small children in the woods as a result of the loose dogs. I also have friends who are dog owners who will not allow their dogs in the woods, due to the loose dogs.

These woods were provided to the City for residents to share. I don't see why allowing dogs off-leash is such a high priority when there are other uses who suffer as a result. This is not the only place in the area that allows off-leash dogs. The woods behind Evergreen Cemetery are nearby, and much larger, without the inevitable conflicts that will occur in a small space such as Baxter.

The proposal for allowing dogs by time of day and year is a good first step, but I am not sure how that prevents the significant damage to the natural resources of the woods. I'd encourage the Committee to look at fencing off a portion of the woods as a dog park, perhaps the area right on Stevens or Forest Avenues, and leaving the rest as a leashed area. The bulk of the woods themselves should require leashing at all times of the day and year.

thanks,

Jeff Levine
10 Amherst Street



Ethan Hipple <ehipple@portlandmaine.gov>

Re: A compromise for dogs in Baxter Woods

shambaugh@gwi.net <shambaugh@gwi.net>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Jan 14, 2020 at 8:32 AM

Thank you!

On 2020-01-14 08:27, Ethan Hipple wrote:

Hi Ben,

Thanks for your thoughtful email. Your compromise proposal is very similar to the compromise proposal that will be presented to the Sustainability and Transportation Committee tomorrow night (5:30pm, Council Chambers). I've attached that for you. Hopefully you can be there.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Tue, Jan 14, 2020 at 8:19 AM <shambaugh@gwi.net> wrote:

Dear friends,

I am not able to make the hearing tomorrow and so am sending this to share a few thoughts and a possible compromise regarding dogs in Baxter woods. As you can see below, I have been walking dogs in Baxter Woods daily for more than 14 years. Since my dog died, I have been walking an elderly neighbor's dog there every morning. Just this morning, I had meaningful conversations there with people there who I would not know if it wasn't for walking dogs together. This is a crucible of community, the heart and part of what makes Portland great. A point worth mentioning -- somehow strangers will talk with others who have dogs, when they wouldn't do the same with those who don't. Dogs are wonderful "ice breakers" that help people connect.

There is great value to the community of dog walkers in the woods and a great joy in having the dogs off leash, something which not only helps train and socialize the dogs but also helps burn off some energy for those who are inside all day. Contrary to those who might say that this space from non-dog folks who want to walk or want to preserve a home for birds, I would point to Evergreen Cemetery, a huge, beautiful, dog-free and bird-full place, right next door -- in fact, even more accessible than Baxter Woods. (The roads are even plowed!) The back cove trail is likewise very close and only has dogs on lead.

I also understand that there are those who would like to enjoy the woods without dogs, that there are schools who use the space -- both for young kids doing "nature" walks and for older kids with cross country meets etc.

For a compromise, I suggest that you consider the model of dogs on beaches and have specific hours for off leash and specific hours when a leash is required (and maybe some where no dogs are allowed at all.) It works very well at the East End and Scarborough beaches. For example, say dogs off leash from 7-9 am and 5-9 pm, and maybe even no dogs at all from 10-12 (though this seems excessive if the leash rules are obeyed). Unlike the beaches, these guidelines might have to be "all year" and not just summer.

Thanks for listening and considering a solution that works for everyone and preserves what is one of the gems of Portland (not just the woods but the community of people who use it). Thanks for all you do to serve this wonderful city we call home.

Sincerely,

Ben Shambaugh

147 Clinton Street

Portland, ME 04103

207 400-7516

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner -- proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly.

These, however, are very limited and – as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today – a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh

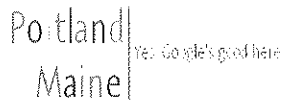
147 Clinton Street

Portland, ME 04103

207 400-7516

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 **Baxter Woods Off Leash Memo December 2019.pdf**
998K



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Baxter Woods Leash Rules Workshop 1/15/20 at Sustainability and Transportation Committee

Teresa Valliere <tvallier@maine.rr.com>

To: Ethan Hipple <ehipple@portlandmaine.gov>

Hi Ethan,

Thank you for handling the Baxter Woods issues so respectfully. I personally don't want to lose access to the park of disappointment should the vote go that way.

Governing the commons is a really hard job, and I think that the process has been fair and inclusive. I know many folks. Thank you for all you do and the respectful leadership you demonstrate.

Teresa

Teresa Valliere, LCSW, LADC, CCS

Valliere Counseling and Professional Support
phone 207.233.9276

<http://valliherecps.com>

MAILING LIST

FMI about counseling, supervision, training or consultation, please contact me at tvallier@maine.rr.com

<http://Therapists.PsychologyToday.com/rms/68128>

Office: 57 Revere Street #1
Portland, ME 04103

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On Jan 15, 2020, at 1:28 PM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hey Teresa,

When you click on the link to the specific agenda, look to the top left corner of the page where there is a tab for "Agenda" information and the proposal there.

Let me know if that doesn't work.

Take care,

Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 15, 2020 at 12:45 PM Teresa Valliere <woodfordscorner@gmail.com> wrote:

Hi Ethan,

I've been trying to find the actual proposal for the workshop tonight, but can't find it on line. I follow the link but it
Can you help?

~Teresa Valliere

President
Friends of Woodfords Corner

FMI call Teresa at 207-233-9276

MAILING LIST

PAYPAL for sponsorship/donation

email woodfordscorner@gmail.com

website Friends of Woodfords Corner

Facebook and Instagram

FMI call Teresa at 207-233-9276

Let's be the neighbors we want to have.

FWC is a 501c3 charitable organization comprised of residents, businesses and local organizations supporting the Woodfords Corner neighborhood.

On Jan 7, 2020, at 4:46 PM, Portland Parks, Recreation & Facilities Department <ehipple@portlandmaine.gov>

PORTLAND

PARKS, RECREATION & FACILITIES

Hello there,

You are receiving this email as you have expressed an interest in changes at Baxter Woods, or have submitted written comments. Please see below for an invitation to attend the Sustainability and Transportation Committee Workshop on this topic. Hope to see you there.

All the best,
Ethan Hipple

Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

Baxter Woods Leash Rules Workshop

City Council Sustainability and Transportation Committee

Wednesday, January 15, 2020, 5:30pm

City Council Chambers, City Hall, 389 Congress Street

During this workshop, the Committee will weigh whether the establishment of an off-leash season and specific hours for dogs is in the best interest of the city in order to increase wildlife habitat and address safety and other issues.

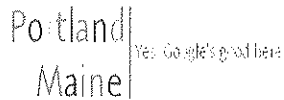
The public is welcome and encouraged to attend to lea
proposal. City staff will present background information c
the Sustainability and Transportation Committee will ask t
Woods to present information as well. As this is a Commi
will be no vote taken on this issue at this meeting, and th
comment. If and when the Committee takes a vote on tl
comment will be allowed at that time.

More information and specific proposal for rule
at: <http://portlandmaine.gov/586/Sustainability-Transpo>



This email was sent to woodfordscorner@gmail.com
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City of Portland Parks, Recreation & Facilities · 212 Canco Rd · Suite A · Por

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There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Question about bird survey for Mayor Baxter Woods

Patrick Keenan <patrick.keenan@briloon.org>

Tue, Jan 21, 2020 at 12:39 PM

To: Jordan Bailey <jordan@portlandphoenix.me>, Ethan Hipple <ehipple@portlandmaine.gov>, Marc Lesperance <baxterwoodsfriends@gmail.com>

Hi Jordan,

Thank you for your interest in the bird surveys that BRL conducted at Mayor Baxter Woods. These surveys are part of the cities effort to determine what species of birds use the property and habitats for breeding and during other times of the year. We conducted surveys in the summer and fall of 2019.

To answer your question, yes, that research that Mallord et al. is relevant. It is a study that documents impacts to birds and models the impact to a common European bird species, Wood Lark, at the population level. There are various studies highlighting recreational disturbance generally and disturbance and predation by dogs in a number of settings and habitats. This science is pretty consistent. Providing the citation was meant to help inform the reason(s) why we may not have found ground nesting birds at that property. I have attached another article here from a study conducted in Australia, that looked specifically at dog walking. It is important to recognize the larger picture here and the utility of the property so that the city and citizens may select management policies in line with their values as well as the intended use of the property.

I hope that it is OK that I have included Ethan Hipple at the City of Portland and Marc Lesperance of the Friends of Mayor Baxter Park here as they have supported and shown interest in the bird surveys respectively.

For added context and perspective, I have also shared Loss et al. paper investigating the impact of cats on wildlife. Also Loss, et al. related to bird-building collisions.

I hope this is helpful. Feel free to reach out if you have other thoughts/questions. My office number is 207 839 7600 x 242.

Be well,
Patrick

On Fri, Jan 17, 2020 at 4:32 PM Jordan Bailey <jordan@portlandphoenix.me> wrote:

Hello Patrick,

I'm reporting on the city's efforts to protect bird habitat in Baxter Woods and reviewed the bird survey you conducted.

I noticed that it says on page 7 that it is well documented that dog walking disturbs bird nesting, and then cites a 2007 study by Mallord et al. I looked at that study and it looks like it was conducted in England on Woodlarks. Can you tell me if you think the results of that study are comparable to the species and conditions in Baxter Woods? If not, are there any other studies you know of about dog disturbance on nesting birds that are more comparable?

Thank you,
Jordan

--

Jordan Bailey

Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Jordan Bailey
Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Patrick C. Keenan
Outreach Program Director, Biodiversity Research Institute, www.briloon.org
Products, Marketing, Business Support, Avinet Research Supplies, www.avinet.com
276 Canco Road, Portland, ME 04103
(207) 839-7600 x242

3 attachments



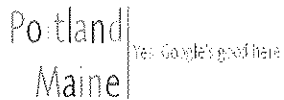
Banks and Bryant_biology letters.pdf
75K



Lossetal2013NatureCommunications-Impactofcatpredation.pdf
365K



loss_et_al_bird-building_collisions_condor_2014.pdf
353K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>
To: Janice Charek <jbcharek@gmail.com>
Cc: Justin Costa <jcosta@portlandmaine.gov>

Sun, Jan 26, 2020 at 8:32 PM

Thanks for your comments Janice. We will make sure they are passed along to the Council committee that is considering this proposal.

Take care,
Ethan

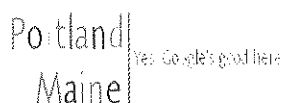
On Fri, Jan 24, 2020, 4:35 PM Janice Charek <jbcharek@gmail.com> wrote:
Dear Councilor Costa,

We are writing in support of the proposed leash law for Baxter Woods as outlined in the presentation by Ethan Hipple at the January 15th meeting of the Sustainability and Transportation Committee. Our backyard on Hartley Street abuts the Baxter Woods and we have two Jack Russell Terriers which must be walked on leash. As one of our dogs was attacked by a large off-leash dog when she was a puppy, she is naturally fearful when approached by off-leash dogs in the woods. Many times we avoid walking our dogs in the woods because of our inability to avoid stressful confrontations with off-leash dogs. It seems "voice control" as required by the current rules is more of a wish than a reality in many cases.

Should the compromise proposal be adopted we will look forward to being able to walk our dogs in peace during the hours of 9 a.m. - 3 p.m. for most of the year and at any time during the warmer months, and enjoy the wonderful resource we have in the Baxter Woods.

Sincerely,

Janice and Michael Charek
25 Hartley Street
Portland



Ethan Hipple <ehipple@portlandmaine.gov>

baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Jan 30, 2020 at 2:08 PM

To: Debra Flynn <debra_ann@maine.usa.com>

Cc: Alex Marshall <amarshall@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Thanks Debra. I will make sure your comments get passed along the Council as they weigh this decision.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Thu, Jan 30, 2020 at 11:55 AM Debra Flynn <debra_ann@maine.usa.com> wrote:

Hello,

The situation in Baxter Woods is now so unsafe that we can no longer go in there, even though we literally live next to it! I sent a screenshot of the latest, today, comment from another dog owner saying I should stay out of there. They do not live on this street, Hartley Street. Micheal who lives a doors up from me, also has been complaining as he has terriers that are molested constantly and has changed his walking habits as well due to these dogs. People are on their cell phones with ear pieces in not watching their off leash dog, not to mention them chasing the wildlife in a sanctuary as their owners talk umonst themselves. As you know I love these woods but now with the loose dogs even coming into our fewnced in portion of the yard it is way to stressful and unsafe please help. People are believing this is a dog park where they can bring their off leash dogs, not pick up after them or watch them.

Debra Ann Gorneault 207-387-3083

11 Hartley Street

Portland Maine



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Aimee Kudlak <akudlak@maine.rr.com>

Fri, Apr 5, 2019 at 3:18 PM

Thanks for the comments Aimee.
Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Fri, Apr 5, 2019 at 2:50 PM Aimee Kudlak <akudlak@maine.rr.com> wrote:

Dear Ethan,

Thank you for reaching out to all of us who love Baxter Woods. I too am a dog walker there. My 16 1/2 year old dog, Freddy, has outlived almost all of his former friends. There are a lot of both old and new dog owners walking in the woods these days. Some of the new dog owners need as much training as their dogs. But I can't imagine that there is so much damage being done by the dogs that they would have to be kept on leashes.

When I first started walking in Baxter, there was a huge forest of trees behind the Mother House on Stevens Avenue. These were cut down to make a ball field for Cathrine McAuley high school which was very rarely used. No one seemed to complain about the destruction of these woods and all the wildlife it destroyed. Now plans are in the works to build five or six buildings on this ball field. The noise and traffic and commotion coming from the construction will do more harm to the wild life in Baxter Woods than any dog can do, not to mention the influx of all the people that will be moving into those condos.

The dog walkers actually do a lot to clean up the woods. We do a poop cleanup weekend in the Spring, pick up broken bottles and trash and try to keep the woods as natural as we can. One time, someone tossed a bunch of metallic confetti on one of the paths. It took weeks to clean it up, but we did.

I hope this situation can be resolved in a way that will benefit all living things: dogs, cats (yes some people walk their cats), birds, squirrels, fox, raccoons, chipmunks, salamanders, frogs, fish, turtles, trees, but most of all the people who love Baxter Woods and want to keep it just as it is and has been for the past 73 years.

Sincerely,,
Aimee A Kudlak



Ethan Hipple <ehipple@portlandmaine.gov>

Re: A Baxter compromise — set hours

shambaugh@gwi.net <shambaugh@gwi.net>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Apr 5, 2019 at 5:02 PM

Thank you Ethan, for all your work and your love of the parks!

On 2019-04-05 12:55, Ethan Hipple wrote:

Thanks for the suggestion Ben.

We are looking at some compromise options and weighing that with the possible impact on safety and bird sanctuary habitat.

I appreciated the civility shown at the meeting last night by all involved. I know it is a tough topic that folks are passionate about.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Thu, Apr 4, 2019 at 6:09 PM Shambaugh <shambaugh@gwi.net> wrote:

Dear Ethan,

Thank you for a good hearing and your great research. I appreciate your points and suggest a possible compromise, which you mentioned but did not include in your bullets points. Off leash 7-9 and after 5 pm. Leashed at other times. That allows the middle of the day for all and does limit bird threats. It works on the beaches and Robinson woods and could work here too.

Thanks again
Ben Shambaugh

Sent from my iPhone

On Apr 1, 2019, at 3:44 PM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi there Ben,
Thanks for the thoughtful comments and sorry to hear about the loss of your dog Sasha.

We will make sure the Parks Commission gets a copy of your comments for the meeting this Thursday.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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On Mon, Apr 1, 2019 at 2:33 PM <shambaugh@gwi.net> wrote:

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner -- proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly. These, however, are very limited and -- as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today -- a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh

147 Clinton Street

Portland, ME 04103

207 400-7516

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter woods and Quarry Run dog park

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 8, 2019 at 11:10 AM

To: Audrey Bergeron <audrey.b.bergeron@gmail.com>

Thanks Audrey.

We are looking at possible compromises and studying whether that could have a positive impact on safety and the bird sanctuary issues.

Enforcement is still required during off-leash voice control times because many people do not comply with voice control rules (dog 50 feet from owner, must return when called).

But either way, we will be looking at alternatives.

Our Parks Maintenance crew is capping the debris that is exposed each Spring--most likely will happen next week. And the piece of metal will be removed sooner. Thanks for letting us know!

Take care,
Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Sun, Apr 7, 2019 at 9:42 AM Audrey Bergeron <audrey.b.bergeron@gmail.com> wrote:

To the Deputy Director, Dept of Parks, Rec, & Facility:

I would first like to thank you for all that you do to ensure that Portland has so many beautiful parks for the public to enjoy. I attended the public comment hearing regarding Baxter woods this past week and, although I disagreed with your suggestion regarding the leash law, I appreciate the time and effort you put into your presentation.

I have two requests for your department. The first is regarding Baxter woods and the second is regarding Quarry Run dog park.

My request for Baxter woods is to follow a model similar to East End beach where dogs must be on leash for a certain time (like 9-5) for certain months (April through October). This would be easier to enforce because it limits the enforcement period to 8 hours a day. It would also give people who want to enjoy the woods without meeting dogs a time of day to do so and this time lines up well with the school day and cross country meets. This would also encourage dog walkers to bring their dogs outside of these hours so they can let their dogs off leash. I know that you expressed concern over birds not knowing this schedule, but based on the research you presented, I don't believe you can definitively say the presence of dogs is the only thing affecting the bird population. For example, you compared the number of bird species to places like Wolfe's Neck, but these places do not experience the noise pollution from planes and traffic, the amount of people, or nearby construction that Baxter woods does.

My request regarding Quarry Run dog park has to do with the bricks and chunks of metal that are currently sticking out of the dirt in the open area at the top of the hill where people and dogs tend to congregate. My understanding is that this is an old land fill and this is a recurring issue. My concern is that the sharp corners of these bricks and metal parts are trip hazards for humans and could cut dogs' paws. Is there a plan with the weather warming up to fill in more dirt in this area or to have these items pulled out?

Thank you for your consideration.

Audrey Bergeron
14 Florence St Apt 2



Ethan Hipple <ehipple@portlandmaine.gov>

Question: Baxter Woods - Complaints about dogs, Support of a Leash Law in Baxter Woods...

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 8, 2019 at 6:33 PM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Cc: "sld@portlandmaine.gov" <sld@portlandmaine.gov>, "mlesperance@maine.rr.com"

<mlesperance@maine.rr.com>, Jessica Grondin <jgrondin@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>

Hi Marc,

I've answered your questions below in red. Jessica Grondin will be responding to your FOAA request.

Take care,
Ethan**Ethan Hipple**

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 8, 2019 at 4:17 PM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Mr. Hipple: I am following up on your presentation at the Parks Commission meeting last Thursday, April 4, 2019 and have a few questions for you and the Parks Department.

At the meeting on Thursday you mentioned that the City has received "many complaints" from Portland citizens about off leash dogs at Baxter Woods, and in your 3/7 memo (attached) to the Parks Commission – you note that the Parks Department "...regularly receive(s) verbal and written comments from the public about the current policy: primarily the comments are opposed to the off-leash policy, with a smaller number in favor."

While my unofficial tally of speakers at the Thursday meeting polled 24 who spoke against the leash law, I counted only 1 and possibly a 2nd person who favor the leash law in Baxter Woods. As a discounting of the overwhelming public response against the leash law at Thursday's meeting – both you and at least one member of the Parks Commission pointed out that the written comments submitted to the City and in the Commission's packets were more "50/50" in favor of the leash law.

Being compelled to verify the written complaints the City attests to, I reviewed the Public Comments pdf (attached) and tallied the following comments:

- 10 distinct complaints about off-leash dogs in Baxter Woods
- 11 neutral or general statements or communications about Baxter Woods (e.g. concerning tree trimming, replacing signage, ducks in the Baxter Woods Pond, etc.)

- 15 written comments in support of Baxter Woods as-is – and most directly against a full time leash law

I can provide a written summary of the comments tally if you'd like, but clearly the written comments are not, by the numbers, in favor of a leash law!

My questions are:

1. How does your statement in the 3/7 memo, that comments received are "...opposed to the off-leash policy" reconcile to the tally above of public comments released in the PDF (attached) and summarized above?

EH Response: I think most reasonable people would conclude that 10 written complaints about a single property would qualify as an issue worth addressing, but you are free to disagree. The tallies are interesting, but we are not aiming to simply count up which side has more "votes" in favor and going with that. Sometimes land management decisions require thoughtful choices that don't please everyone--our job as Park professionals is to try to balance the many uses of parks: open space, athletics, habitat, play, trails, access to water, accessibility, dog play areas, etc... The bottom line is that we receive many complaints about off-leash dogs at Baxter Woods, and we also have deed issues, so that prompted us to work with the Parks Commission on creating some reasonable recommendations to address that. As you know, public comment is encouraged as part of that process. One of the things the Parks Commission asked us to do is to explore possible compromises (such as designated off-leash hours, which you suggested in your earlier email), which we are currently evaluating and will discuss at the June meeting.

2. What did the Parks Department receive for verbal comments about off-leash dogs in Baxter Woods, and how does it tally and validate such complaints?

EH Response: Verbal complaints were generally made to our Rangers in the field, or phone calls to our office. We do not log verbal comments.

3. Will the Department release the verbal comments, or a summary of the verbal comments received about Baxter Woods (dog-related or not)?

EH Response: We do not log verbal comments.

4. The most recent written public comment (see PDF) was dated January 2019, and many go back as far as 2013 – will the Parks Department share new, previously unreleased public comments it has received since January 2019? I submitted an e-mail just last week, that you graciously acknowledged and forwarded to the Commission – and I am certain many others submitted written comments as well that should be tallied and considered before the Commission votes on the proposed leash law.

EH Response: Yes, our proposal has generated a lot of written public comment, mostly opposed to the proposed change, and we have shared all written comment we received with the Parks Commission prior to their meeting last week. Those comments also get posted as backup material on the agenda website. I've attached that for you in the meantime.

Lastly – I submitted a Freedom of Access Act request to Jessica Grondin earlier today (4/8/2019) for the City of Portland's communications with Forest Synthesis, LLC and/or Robert Bryan concerning the Forest and Wildlife Habitat Management Plan for Mayor Baxter Woods – report dated May, 18, 2018. I am seeking any City (Parks or other Department's) communications with Forest Synthesis, Robert Bryan or any other consultants related to the work Forest Synthesis and/or Robert Bryan did on the City's behalf as it relates to Baxter Woods. Please let me know if you have any questions about this FOAA request. **Good to know, thanks. Jessica will work with you on that.**

Thanks, Marc

Marc Lesperance, 103 Candlewyck Terrace, Portland, ME
04102

W: (207) 209-0517 | M: (207) 329-4953 | H: (207) 774-6584

marc.lesperance@anthem.com

[Quoted text hidden]

5 attachments



4, leash laws, and other concerns.pdf
162K



2019-01-10 City of Portland Mail - Fwd_ Baxter Woods concerns.pdf
125K



Public Comments Baxter Woods Off-Leash.pdf
1489K



Public Comments Baxter Woods Off-Leash 4-3-19.pdf
434K



Public Comments Baxter Woods Off-Leash 4-1-19.pdf
1243K



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: City Park Inquiry

Ethan Hipple <ehipple@portlandmaine.gov>
To: Avril Williams <adandyline@gmail.com>

Thu, Apr 11, 2019 at 4:34 PM

Hi Avril,
Presumpscot River Preserve is lovely (but a long walk in). Deering Oaks is another option, or Fore River Sanctuary.

Here is a good map of city parks and forests: <https://www.google.com/maps/d/viewer?mid=1a4gsFhxy7BDqsN0NtlS2IDkhsA&ll=43.663640789674496%2C-70.28501602131433&z=14>

Take care,
Ethan
Ethan Hipple
Deputy Director
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ehipple@portlandmaine.gov

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Portland, Maine | Yes. Life's good here.

On Thu, Apr 11, 2019 at 1:55 PM Avril Williams <adandyline@gmail.com> wrote:

Thank you so much for getting back to me! Curious if you know an area that would be better suited. Was interested in Baxter due to having a surrounding wooded area as opposed to a wide open park but not opposed to other options. Thanks so much for your time!

Avril Williams
A Dandy Line Studios

On Apr 11, 2019, at 9:26 AM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Avril,
Typically for yoga or fitness classes under 25 people, we don't require a permit, so you should be all set to do your class. Copying Rusty Groh, one of our Event and Permitting Coordinators who can get you more information if you need it.

FYI, Baxter Woods does have a high number off off leash dogs (and a high amount of dog waste), so just tread carefully! You are free to do the class there, just wanted you to be aware.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland

212 Canco Rd, Suite A
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207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

----- Forwarded message -----

From: **Ethan Owens** <eowens@portlandmaine.gov>
Date: Thu, Apr 11, 2019 at 8:44 AM
Subject: Fwd: City Park Inquiry
To: Ethan Hipple <ehipple@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>

Could one of you guys give her a shout?

Ethan Owens CPRP, CPSI, AOLCP
Parks Assistant Director, Athletic Facilities and Playground/Courts Manager
City of Portland - Parks, Recreation and Facilities Management Dept.
212 Canco Road Portland, Maine 04103 ~ USA
207-808-5400 eowens@portlandmaine.gov

----- Forwarded message -----

From: **Avril Williams** <adandyline@gmail.com>
Date: Fri, Apr 5, 2019 at 1:54 PM
Subject: City Park Inquiry
To: <eowens@portlandmaine.gov>

Hi! My name is Avril Williams and I'm a certified yoga instructor. I am looking for a space to teach outdoor yoga and was really interested in Baxter Woods as I think it would be amazing to offer a yoga class that is in nature while still being in the city! I would love to teach the classes regularly throughout the summer and early fall for one hour and offer them by donation, pay what you can. Is that possible? Do I need some kind of permit? Looking to start next month if possible so any direction you can offer would be so helpful. Feel free to read more about me on my web site, www.adandyline.com. Thanks for your time.

Avril Williams
A Dandy Line Studios

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: sarah furman <sarahfurman@msn.com>

Thu, Apr 11, 2019 at 10:02 AM

Thanks for the comments. We are working on some compromise proposals right now. I'll make sure the Parks Commission sees your comments.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Apr 10, 2019 at 6:40 PM sarah furman <sarahfurman@msn.com> wrote:

Dear Mr. Hipple,

I have been a resident of Portland for the last 20 years, and have been enjoying Baxter Woods for the last 14 years with my dogs. I walk my dog at Baxter Woods at least 4 times a week. We have met many people in the park, and many dogs. I have to say that all the dogs I have met have been well behaved, and the owners have been respectful of the park. Additionally, I have only seen one incident of drug use in the park. I do fear that if dogs are not allowed off leash, then this park will become a place for drug use and for the homeless to stay. I do hope you will reconsider the leash law that may go to vote in the future as it will certainly change the safe, clean, and friendly park that we all enjoy at Baxter Woods.

Thank you for your consideration,

Sarah Furman



Ethan Hipple <ehipple@portlandmaine.gov>

ground-nesting birds

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Thu, Apr 11, 2019 at 3:29 PM

Thanks David,

I did hear that comment at the meeting, but I can't vouch for the source or validity of it. If you're interested, I've attached our Management Plan, completed by licensed Forest Ecologist Rob Bryan.

We are working to protect habitat for ground nesting *and* ground feeding birds, which are not necessarily the same. There are also many birds that utilize the pond, which is at ground level.

Either way, we have two issues at Baxter Woods: dog and human safety issues, as well as a bird sanctuary issue. We are exploring some potential compromises that may help improve both. We'll discuss those at the June meeting.

Take care,
Ethan

Ethan Hipple
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ehipple@portlandmaine.gov

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Portland, Maine | Yes. Life's good here.

On Thu, Apr 11, 2019 at 3:00 PM david victor <dvictor242@gmail.com> wrote:

at last week's meeting, Mark said that there are only three ground-nesting birds that he knew of (in the area , I assume) , whippoorwills, killdeers and another , but that none of these was in Portland. I didn't hear you respond to this. have you verified this? do you know his source?

it seems to me that the question regarding how many ground-nesting birds we might expect has to be quantified. for example, if only one or two species would be coming to the woods ,if dogs were leashed is that a sufficient number to change this long-lasting situation so drastically?

we have to have a sense of proportion in a democracy or it doesn't work. and given the relatively few complaints (I've been told that the average per year is quite low) what remains of the argument that is pro-leashing?

david victor
portland



Baxter Woods Ecological Assessment and Plan FINAL 2018-5-18.pdf
5435K



Ethan Hipple <ehipple@portlandmaine.gov>

our email exchange yesterday on baxter woods

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Apr 18, 2019 at 11:36 AM

To: david victor <dvictor242@gmail.com>

Cc: Matthew Coleman <mcoleman@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi David,

There are many species of ground nesting birds in the Portland area, including oven birds, ground sparrows, wood cock, wood thrush. Maine Audubon estimates 10-12 species of ground nesting birds that can be found in the area, as well as hundreds of species of ground-feeding birds. Our goal is to create suitable habitat where these birds can live and reproduce, while balancing that with other community needs like biking, walking, and dog walking.

You are correct that the presence of barking dogs can scare away birds. That is one of the things we are working to address so that the woods can once again serve as a viable habitat "bird sanctuary" as stated in the deed.

You can read many of the complaints and comments we've received over the years in the [materials we submitted to the Parks Commission](#). That should give you an idea of the type of comments, and the quantity.

Thanks for letting us know about the trees--they were actually tapping pine trees, so they won't get too far making edible syrup! We did go address it though, thanks for the tip.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Fri, Apr 12, 2019 at 8:44 AM david victor <dvictor242@gmail.com> wrote:

thanks for your response, but you didn't answer a couple of my questions: 1. how many ground-nesting birds are in the portland area; Mark effectively said "none." is this true?, and 2. how many complaints about unleashed dogs in the woods are you receiving annually?

without quantifying , how can any justification be made for changing the rules.

it's also worth pointing out that ground-feeding birds would surely be alerted to the sounds of dogs bounding through the woods to get them and would quickly fly away. cats, which run free and our plentiful in deerling center, are surely a greater threat than lumbering and noisy dogs.

and finally, please remember that for almost five months of the year, the paths in the woods are ice-bound. the only people who are in the woods then are people walking their dogs off-leash. the woods would effectively be empty if leashes were required. often during the winter homeless people inhabit the woods and people presence is comforting.

incidentally, today we noticed that someone is tapping some of the maple trees in the woods. is this authorized by the city?

thanks for listening.

david victor



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Stanley Beretsky <beretsky4444@gmail.com>

Wed, Apr 17, 2019 at 8:39 AM

Hi Stanley,
Thanks for your message.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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Portland, Maine 04103
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Portland, Maine | Yes. Life's good here.

On Wed, Apr 17, 2019 at 8:35 AM Stanley Beretsky <beretsky4444@gmail.com> wrote:

Dear Mr Hipple

Please allow me to keep walking my dog offleash in Baxter Woods. Thank You.

Stanley



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Teresa Valliere <woodfordscorner@gmail.com>
Cc: Parks Commission <parkscommission@portlandmaine.gov>

Wed, Apr 17, 2019 at 8:47 AM

Hi Teresa,
Hope all is well with you. Answers below in red...
Take care,
E

Ethan Hipple
Deputy Director
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www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Wed, Apr 17, 2019 at 8:12 AM Teresa Valliere <woodfordscorner@gmail.com> wrote:
Hi Ethan,

Hope you are well!

Been following the Baxter Woods leash proposal and have some questions -

- when is the next public meeting? Will there be time for public comment at the meeting? **Next regular meeting is first Thursday in June. Final date TBD as some staff and commissioners may be out of town that day. Either way, it will be posted here. Public Comment will be allowed for folks who haven't already made public comment on the issue.**
- Is there a Parks Commission meeting on 5/2? There is your event about public spaces, so I am assuming the next regular meeting is on 6/6 **See above**
- still possible to send public comments via email? and to you or the commission? **You bet. We are sharing all email we get on the topic with the commission.**
- the article in the Forecaster you are quoted saying that dogs are allowed off leash at Evergreen. The friends of Evergreen site says dogs on leash (max 25'). I've been stopped with my dog off leash there by cemetery staff in the past, so I am confused. What is the rule? **The article misquoted me and they issued a correction last week. Off leash dogs are allowed in the Evergreen Woods, behind the cemetery. Dogs in the cemetery itself must be on 25-foot leashes.**

[Quoted text hidden]



Ethan Hipple <ehipple@portlandmaine.gov>

ground-nesting birds in baxter woods.

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Fri, Apr 19, 2019 at 10:59 AM

Thanks for the feedback David.

I also would remind you that we are proposing changes for a variety of reasons that have been brought up by the public: both safety/nuisance issues with off leash dogs, as well as the bird sanctuary issues.

Either way, you raise some interesting points. Human and dog activity have altered the natural habitat at Baxter Woods. Our understanding from the experts in the field is that Baxter Woods could serve as exceptional bird habitat if properly managed. Of course, we would have to monitor and evaluate whether that is true once changes are implemented.

We'll be sure to look at the issues you raise as we are coming up with the best possible policy.

Take care,
Ethan

Ethan Hipple
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www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Fri, Apr 19, 2019 at 9:15 AM david victor <dvictor242@gmail.com> wrote:

thanks for you response, but you neglected to mention the fact that a number of these birds do not like habitat like that of baxter woods. for example, oven birds like sites with little undergrowth (baxter woods is filled with undergrowth) and wood thrushes like habitats with running water. woodcocks like young forests. i'm sure that among the other species there are water birds and shore birds. so , how many species are we talking about here, especially when we factor in the urban area that the woods are situated in and the preferable area behind evergreen?

finally, you keep ignoring what I keep pointing out: there are feral cats in the deering center neighborhood and many domesticated cats that run free. cats are the biggest killers of birds, by far, in the u.s. why harp on dogs?

david



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods input

Ethan Hipple <ehipple@portlandmaine.gov>
To: E Hamlin <ehamlin@maine.rr.com>

Fri, Apr 26, 2019 at 8:31 AM

Thanks for the thoughtful comments. I will make sure the Parks Commission gets a copy.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Sun, Apr 21, 2019 at 8:34 PM E Hamlin <ehamlin@maine.rr.com> wrote:

Hi, Ethan,

My wife and I were not able to make the City meeting/discussion about Baxter Woods because of our work schedules, but I wanted to weigh in on it before the formal discussion happens in June. For the record, we do not own any dogs (or pets of any kind), but we do enjoy seeing wildlife.

In case you don't have the time or inclination to get through all that follows, I have thought about this quite a bit, and would vote **in favor of a requirement that dogs be leashed**.

If you are patient, my thoughts follow:

I understand how nice it is for dog owners to have a place where they can take their dogs to play and to visit with other dog owners. It is obvious that the trips to the park are absolutely the highlight of the day for the dogs and probably rank high with the owners, so I don't blame them at all for wanting so badly to keep the current system in place. In my experience, most of the dog owners are fairly responsible about keeping their dogs in line and cleaning up after them. Unfortunately, not all are so good, and when walking through the park it is not uncommon to have dogs run up to and sometimes jump up on us, and on a couple of occasions I have been approached by off-leash dogs and had the owners suggest that I not pet them because they are not good with strangers. Overall, a mixed bag.

When people come visit our house for the first time and note the location, I generally hear myself telling them that Baxter Woods is an off leash dog park. I realize there is more to it than that, but it very much feels like the park use is dominated by off leash dogs and their owners. As noted, many are great people and most of the dogs are nice - with a few painfully obvious exceptions. I discussed this with my wife, and we both acknowledged that we tend NOT to enter the park when we go for walks simply because it is usually full of dogs. I have no idea if others feel the same way, but most of the people I see entering the park have dogs with them.

I was surprised to read that Baxter had indicated a desire for the park to serve at least partly as a refuge for birds. I absolutely agree that the presence of off leash dogs is a deterrent to ground-nesting and to some

extend ground-feeding birds. Given the number of squirrels that I have seen with partially missing or obviously deformed or damaged tails and other injuries, I suspect the dogs are pretty rough on anything at or near the ground. The squirrels seem to thrive regardless, but I doubt other animals are as resilient.

I have been reflecting on the park and how it is used more frequently lately, largely because of the publicity around the upcoming discussion about off-leash dogs, but also in light of events where the park has been misused. A couple of these were recent; I think it was you who I corresponded with recently about the guy who backed his pickup over the sidewalk and into the woods to chainsaw and take wood from the side near Hartley Street. There was also a more recent discussion on a neighborhood social media site ("Nextdoor.com") about someone who drilled into some of the large pine trees in Baxter trying to tap them for resin to make some kind of folk medicine. These are a couple of the more egregious abuses I have seen, but because I live directly across from the wooded section of the park along Hartley, I am painfully aware of how many less responsible dog owners walk their dogs along the sidewalk and allow them to defecate in the park without cleaning it up. This happens frequently when I am home and happen to be looking out, so I assume it occurs many times throughout the day. I cringe every time I see a small child walk into that section of woods to pick up a stick or look at something, and on a rainy day when I have the windows open I can sometimes even smell it in my house or when walking by.

I also frequently see several people dumping their leaf and yard waste, plant material from old windowboxes, etc. I have also seen at least one person dumping other organics such as corn husks, vegetable scraps, and other material. Once this included a turkey carcass, but I retrieved that for proper disposal. I also occasionally see people cutting vegetation (something that looks like trout lilies, but I'm not sure that's what they are) and bagging it up to take away - one guy said he was feeding his animals...another one simply apologized and left. I have also seen people cutting small evergreen boughs in the early winter - presumably for holiday decor. Needless to say, all of this drives me a bit nuts. When I see it and have the opportunity I try to dissuade people, but doubt I am getting much traction. It is very frustrating to see how many people use or treat the park in a way that I feel damages or diminishes it.

I guess it's obvious that I have a number of gripes and concerns, but I think maybe some improved signs encouraging people not to take, cut, tap, or harvest things, and to clean up after their dogs might help. I also think that requiring dogs to be leashed would give the park wildlife a better chance to thrive and might encourage people who do NOT own dogs to use the park more.

Thanks very much.

Sincerely,

Eric Hamlin (90 Hartley)



Ethan Hipple <ehipple@portlandmaine.gov>

Keep Baxter Woods leash free, here's why

Al Ghanekar <al.ghanekar@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Apr 26, 2019 at 12:45 PM

Thanks for the info, Ethan.

Al Ghanekar 777
<http://alghanekar.com>
al.ghanekar@gmail.com 777

On Fri, Apr 26, 2019 at 11:15 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks Al. Appreciate the comments.
Just so you know, we have 495 acres of open space in Portland where dogs are allowed to run off leash.
[Check out our Parks page here to find them.](#)

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

[212 Canco Rd, Suite A](#)

[Portland, Maine 04103](#)

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Thu, Apr 25, 2019 at 11:16 AM Al Ghanekar <al.ghanekar@gmail.com> wrote:

Hello Mr. Hipple,

Please allow dogs to remain off leash at Baxter Woods. I've had my dog for 3 months and I alternate between Baxter Woods and two others in Sopo. A leash law would just force me to only go to Sopo.

I would never walk him around Baxter Woods on a leash because that would be pointless. Dogs need freedom and stimulation, playing with other dogs. They still are biologically wild animals and need to interact with their kind.

We Portland citizens can enforce people to pick up after their dogs if they are not doing it. Putting in a leash law will reduce these dogs' quality of life.

Al Ghanekar 777
<http://alghanekar.com>
al.ghanekar@gmail.com 777

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Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Best Park in Portland!!!!

Parks Commission <parkscommission@portlandmaine.gov>

Fri, May 10, 2019 at 3:17 PM

To: Dory Waxman <mermaidst@gmail.com>, Ethan Hipple <ehipple@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Please see below email.

----- Forwarded message -----

From: **Jason Kaplan** <jasonrkaplan@msn.com>

Date: Thu, May 9, 2019 at 6:12 PM

Subject: Best Park in Portland!!!!

To: parkscommission@portlandmaine.gov <parkscommission@portlandmaine.gov>

Hello to whom ever is reading this.

I just wanted to thank you for having such a wonderful park. The baxter woods park I have been walking threw my entire life. From as a Kid chasing my father threw it on my bike, walking to Deering High school for 4 years. And now as a just someone who enjoys a safe fun play to enjoy nature. The dog community there is wonderful!!! so many happy dogs. Every time you go there are respectful dogs there playing and so much fun to watch and enjoy. Even on the worst days I can go there and watch them play and frolic and feel better. On cold winter days when no one is in the park there are still the loving dog owners who are there clicking around with their cleats trying to stay upright on the ice. I am really sorry its easier for people to complain and people don't appreciate the finer things in life and wright you about all there happy experiences. It would be a real shame if you were to kick so many happy people out of the park with a dog leash law and create such a hostel and dangerous environment for humans and dogs there. I hope you guys have done more research then last time and learned that 25 foot leashes just don't work and are very destructive of the environment. I can't imagine going there and not seeing smiling faces watching people and there dogs playing threw the park like its intended to be. I know people take jobs and everyone wants to make a change that they can say "I made that happen" but leashes make dogs more aggressive and also less trained. Every time I've gone there its the dog crew, that have bought houses in the neighborhood so they could let there dogs play off leash there, that are picking up the trash from all the school kids and calling the cops when they see people drinking or smoking there. I remember the park before the dog people were there and it was not as nice and people didn't take pride in the park. You go there now and people smile when they say this is my park, "I walk my dog here twice a day and love chatting with my dog's friends owners". I understand your hoping that birds that don't exist there will hopefully move in but it doesn't make sense to pick on the dogs. What about the fox, cats, hocks, skunks.... I really hope your not going to try and leash them. It just seems sad to me to ruin something so positive that Portland has for maybe and what ifs. Its a safe park surrounded by friendly neighbors. It would be like suggesting to go to evergreen woods where its hard to see and homeless people pop out from around the bend and there are tones of ticks and no parking with limited hours. 25 foot leashes would be dangerous for dogs. They would

be able to play due to chocking/ strangulation, rope burns and it would make it hard for runners and bikers to enjoy the park. Theres no way they could predict a 25 foot leash. If your worried about the ground nesting birds maybe you could do something like they do for piping clovers. Where they put a fence and a top on it. So the birds won't at least eat them or their eggs. But its nature and thats why we love the park. Who are we to control nature and say who lives. We all wish we could live in harmony but everyone has an off day, even dogs and its not our job to ruin it for everyone but to just smile and say hi to people and hope by being kind we can make their day better.

I hope you don't ruin an amazing park for what ifs and what could be while bending the rules for yourself but you will do what ever you want to.

Thank you for your time and I hope you continue to allow me and everyone ells enjoy the amazing park Baxter provided for us.

Jason Kaplan.
Life time Portland resident

--

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>
To: Jennifer Baldwin <jenbaldwin563@yahoo.com>

Wed, May 22, 2019 at 12:28 PM

Thanks for your comments Jennifer. I'll make sure the Parks Commission gets them as well.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
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On Tue, May 21, 2019 at 8:58 PM Jennifer Baldwin <jenbaldwin563@yahoo.com> wrote:

Dear Ethan,

I have been a frequent visitor to Baxter Woods (minimum 1 often 2-3 visits per day) for the last two years since I got my first dog. Prior to that, I would often visit with my sister's dog while dog sitting him, we both live within walking distance of the woods. As I understand it, the developers of the property the abuts Baxter Woods were required to do some environmental impact study as part of the purchase of the previous Maine Girls Academy and determined that the presence of unleashed dogs had a negative impact on ground feeding birds. There are still birds in the woods. I've witnessed three different woodpecker species, turkeys, warblers, owls, crows and the famous falcon from Deering Park was sited there last fall.

I am both a dog lover and a bird lover. I've witnessed many species in the woods on our regular visits and don't believe dogs are negatively impacting the bird sanctuary, putting them on leashes will not change their patterns.

I am opposed to the suggestion that dogs should be required to be on leash at all times in Baxter Woods. It's not necessary. One of the things I love about my neighborhood is the access to the woods and the dog owners who frequent that space. My two year old dog and I have developed a social circle of dog walkers and dogs with various personalities during the last two years. It's often a respite from my high stress professional career and the challenges of family member dealing with Stage IV cancer treatment. Like-minded insofar as our interest in four-legged friends, we've developed a community. I fear this ruling should it pass would upset the patterns and the support I receive daily from my

neighborhood.

Both my dog and I were attacked by a dog (Sherman Rosenberg) who was not under voice command in the fall of 2017. We took this up with Rue and the prosecutor and several months later another neighbor was attacked by the same dog on a sidewalk near the woods. This unruly canine was on leash during the second attack but still exhibited similar aggressive behavior. While I don't think Sherman has the skills or the owner to command his behavior off leash, I'm not letting this experience keep me away from the woods.

I would much prefer some ruling that would limit the human practice of littering the woods both with trash and feces. That has presented a bigger issue for me in the past.

I doubt I will make it to the next public hearing on this topic but wanted to share my thoughts and support for keeping Baxter Woods as a safe area for responsible dog owners to let their dogs frolic off leash.

Thanks,
Jennifer Baldwin



Ethan Hipple <ehipple@portlandmaine.gov>

another Baxter Woods question

Ken Jones <KenJayJay@hotmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Sun, Jun 2, 2019 at 1:56 PM

Hi Mr. Hipple,

I wrote to you a little over a month ago for some information about dogs in Baxter woods. I appreciated your quick response to my questions.

I have another question now.

Amid the concerns about dogs in Baxter, I haven't heard any similar outcry about the campers in the woods leaving litter. Campers are what I call the people who sleep overnight in Baxter woods. Surely their presence on a regular basis must have some negative impact on the woods, I'm guessing even more so than people walking dogs.

I walk in the woods very early in the morning. I've seen individuals and hiking groups and bicycle groups sleeping in hammocks and tents. Since these campers mostly leave by the time the late morning regulars come through, I don't think many people are aware of them. But they do leave an enormous amount of litter behind. Actually, to be fair, the bicycle group that slept in hammocks did not leave any litter behind.

Last Friday morning (May 31), a couple set up a large tent off the field on the school side of the woods. several dogs started rummaging around at this camp site because of food the pair left near what looked like their camp fire from the night before. When another walker and I tried to get the dogs away, the man in the tent became quite rude and threatening.

I called the police. they showed up very quickly and had the pair take down their tent. the pair left the woods about an hour later, but they also did not remove their litter.

I've attached some pictures I took that afternoon. the pictures include a plastic garbage bag full of who knows what, drink cans, and a sawed off tree limb near their fire. Those white piece of paper you see in the one picture are used toilet paper. This is not the first time in the last year we've seen such evidence of people defecating in Baxter woods.

As much as some people seem outraged by dogs in the woods, I find it hard to believe this kind of thing doesn't seem to concern anyone.

So now to my question: Who is supposed to clean up stuff such as this mess the campers left last Friday? This mess was just from two people one night.

I pick up several beer cans weekly and often several pieces of clothing, even shoes and backpacks.

But I draw the line at cleaning up used toilet paper. There are several of the regular late morning dog walkers, much more ambitious than I am, who come through with trash bags and pick up litter.

Thanks for your help,

Ken Jones

4 attachments



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481K



thumbnail_IMG_1654[1].jpg
579K



thumbnail_IMG_1655[2].jpg
448K



thumbnail_IMG_1652[1].jpg
574K



Ethan Hipple <ehipple@portlandmaine.gov>

another Baxter Woods question

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Jun 3, 2019 at 3:40 PM

To: Ken Jones <kenjayjay@hotmail.com>, Jill Mulkern <jmulkern@portlandmaine.gov>

Hi Ken,

My Ranger informs me that the camp has been removed. Please let us know of any other issues that come up.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

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On Mon, Jun 3, 2019 at 6:52 AM Ken Jones <kenjayjay@hotmail.com> wrote:

Thanks, I appreciate your quick response.

Ken

From: Ethan Hipple <ehipple@portlandmaine.gov>**Sent:** Sunday, June 2, 2019 3:17 PM**To:** Ken Jones; Jill Mulkern; Matthew Coleman**Subject:** Re: another Baxter Woods question

Thanks for letting us know about the trash. Unfortunately, we are regularly cleaning up after people and removing campsites in Baxter Woods and throughout many parks and open spaces in the city.

Our Rangers will swing through and get this.

Take care,

Ethan

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Comment

Ethan Hipple <ehipple@portlandmaine.gov>
To: Logan Puck <logpuck@gmail.com>
Cc: Justin Costa <jcosta@portlandmaine.gov>

Tue, Jun 4, 2019 at 12:39 PM

Thanks for the comments Logan. We are working on a compromise proposal right now, to allow a limited amount of off-leash dog activity there.

Keep an eye on [Parks Commission agendas here](#) if you'd like to attend a meeting. Ultimately, any change to an ordinance will need to be considered and approved by City Council.

I will share your comments with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Tue, Jun 4, 2019 at 12:15 PM Logan Puck <logpuck@gmail.com> wrote:

Dear Deputy Director Hipple,

I was distressed to learn of the proposal to prohibit off-leash dogs from entering Baxter Woods. My family and I have lived in the Woodford's Corner area for three years now and we bring our dog to Baxter Woods four to five times a week. It's a great place for both us and our dog to exercise and socialize with others. I have made many good friends with other people who walk their dogs at Baxter Woods. I even regularly schedule walks with someone who I met at the park because both us and our dogs get along so well.

Baxter Woods is an ideal space for off-leash dogs. The wooded setting gives dogs the ability to run, meet other dogs, and explore, thus stimulating their minds, senses, and bodies. Additionally, having the dogs on a walking path gives them a purpose and thus reduces potential conflicts. I try to avoid fenced in dog parks with no real walking paths, such as the one on Valley Street, because the dogs get bored and often end up fighting with each other. Moreover, dogs that are leashed tend to become fearful and defensive when coming across one another as opposed to when they have the freedom to run away.

In addition, walking an off-leash dog is much more convenient for myself and many others who have infants and toddlers. Pushing a stroller through the park while also holding onto the dog with a leash can be quite an unwieldy experience. The elderly and people with disabilities may also have trouble walking their dogs on a leash and, therefore, Baxter Woods serves as an excellent space for them to take their dogs, exercise, and socialize with others.

Finally, most of the people I see in Baxter Woods are fellow dog walkers. Making it an unfriendly space for dog owners could turn the park into an unfrequented area that serves as an ideal space for individuals who want to

drink alcohol and do drugs out of view of the public and law enforcement.

I hope you will reconsider this proposal. Baxter Woods is a special space that promotes community, health, and well-being. Please don't take that away from us. Thank you.

Sincerely,

Logan Puck

83 Woodford St
Portland, ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - Off Leash Hi Tech Smartphone App Solution

Ethan Hipple <ehipple@portlandmaine.gov>
To: Joel Bolton <joelkbolton@gmail.com>

Fri, Jun 7, 2019 at 11:09 AM

Hi Joel,
Thanks for the email and the out of the box thinking!

We'll certainly look at that along with our other options. Right now we are considering a compromise to allow off-leash dogs during certain hours. There will be more info coming on that as the next public meeting gets closer. It's currently scheduled for July 18--[keep an eye on the Parks Commission Agenda here](#).

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Thu, Jun 6, 2019 at 5:11 PM Joel Bolton <joelkbolton@gmail.com> wrote:

Dear Ethan,

My wife and I are part of the "dog community" at Baxter Woods. Through the years we've had three Golden Retrievers. All have enjoyed off leash privileges there. As responsible dog owners... which seem to be the vast majority who bring dogs to Baxter... we clean up after our dog. We certainly leash up our dogs if we see others in the park who may be fearful of dogs, when we see small children, track teams running, or other groups enjoying the park. In our 15+ years of near daily trips to Baxter with hundreds of interactions of dogs (if not thousands actually), it is rare occurrence to see a dog act in a vicious manner to other dogs. And I don't think I've ever seen one vicious interaction with a human in those years. Good dogs bring together and good neighbors. Most all seem committed to respecting the underlying vision of Mayor Baxter's park. And I echo the many, many public comments that speak much more eloquently than I can as to how important Baxter is to providing a safe, beautiful space where dogs can be off leash for the exercise they crave without having to drive and further pollute our climate with carbon.

That said, I especially want to commend and acknowledge the signage placed in the park, especially the "Dog Ownership" signs. It's dignified language clearly states the expected behavior and spirit of park enjoyment by all that we as dog owners are responsible for. If all dog owners heed that sign, there should be no problem keeping Baxter an off leash park.

SOLUTION????? I would encourage the Council to consider a low-cost, hi-tech solution. How about putting Smart Lights (solar powered and wi-fi driven) at the various entry points to the park. Those lights when activated would indicate to dog owners the need to "leash up". Any school group, after school group, track team, or anyone sensitive/fearful of dogs who are entering the park could trigger the Smart Lights from their smartphone app... sort of like how I can control my Nest thermostat remotely. Dog owners who use the park could also receive an alert notification that they should "leash up". The alert would time out after perhaps 30 minutes or 1 hour if the "sensitive/fearful" group or individual fails to deactivate the alert or "renew" it. Might be worth exploring. Certainly the technology exists for this. And I suspect the City might even be able to engage

our school computer science programs in a competition to create this, and/or I've bet that many of us who want to keep Baxter off leash would fund a Leash Alert app.

Kind regards,
Joel Bolton - April Fry & Camper
149 Ashmont St.
Portland
207.221.7600



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods

Allison Carroll <acarroll@portlandmaine.gov>

Fri, Jun 7, 2019 at 1:51 PM

To: Amy Segal <amybellsegal12@gmail.com>, Ana Lagunez <analagunez@gmail.com>, Brian Batson <bbatson@portlandmaine.gov>, Caitie Whelan <caitie.whelan@gmail.com>, Chelsea Malacara <chelsea.malacara@gmail.com>, Colette Bouchard <coletteb1821@gmail.com>, Craig Lapine <craig@cultivatingcommunity.org>, Cynthia Loebenstein <cloebenstein@yahoo.com>, Dory Waxman <mermaidst@gmail.com>, Ethan Hipple <ehipple@portlandmaine.gov>, Marie Gray <mariegray263@aol.com>, Matt Coleman <mcoleman@portlandmaine.gov>, Michael Mertaugh <michaelmertaugh@gmail.com>, Nathan Robbins <npalmer.robbins@gmail.com>, Sally Deluca <sld@portlandmaine.gov>, Zack Anchors <zack.anchors@gmail.com>

Another comment from the public for your records.

Take care,

Alli Carroll

Senior Administrative Officer
City of Portland, Parks, Recreation & Facilities
212 Canco Road, Suite A, Portland, Maine 04103
207.808.5428

----- Forwarded message -----

From: **Peggy Akers** <kizzypax@maine.rr.com>
Date: Thu, May 23, 2019 at 7:02 AM
Subject: Fwd: Baxter Woods
To: <parkscommission@portlandmaine.gov>

Sent from my iPad

Begin forwarded message:

From: Peggy Akers <kizzypax@maine.rr.com>
Date: May 22, 2019 at 2:56:26 PM EDT
To: parkscommission@portlandmaine.gov
Subject: Baxter Woods

How disappointed I felt after the long meeting last month when so many of us shared our thoughts and feelings and concerns about changes in the leash law in the park. It seemed that emailing was more important than the passionate voices of the neighborhood dog walkers.

I have had the privilege of walking in that park for over twenty years and meeting so many wonderful friends and dogs. I am a nurse practitioner who works hard to help folks age in place. Older residents walk with their pets there daily and meet friends and comrades. They keep active both physically and mentally. It is a joy to

talk together while our dogs run and play.

I have read what Mr Baxter wrote and knowing that he was a big dog [lover](#) as are other members of his family...I do not believe this is what he was wanting for the use of the park. You have closed the Western Cemetery which was a most special place to be with dogs. I remember how fun it was to watch nuns and teens talk and laugh together as their dogs played. Now you will try and take this joy from us.....please please listen to all our voices. Evergreen cemetery is open for non dog folks and it is so beautiful. Let us have our one little corner of Portland.

Thanks for listening

Peggy Akers

[187 Concord street](#)

[Portland, Maine 04103](#)

207 232 7695

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Ethan Hipple <ehipple@portlandmaine.gov>

Question: July 18th Parks Commission Meeting...

D Leland <lelanddm@gmail.com>

Tue, Jun 11, 2019 at 8:10 AM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Cc: "sld@portlandmaine.gov" <sld@portlandmaine.gov>, "ehipple@portlandmaine.gov"

<ehipple@portlandmaine.gov>, Parks Commission <parkscommission@portlandmaine.gov>, Anne Callender <anne@whipplecallender.com>

Ethan and Sally,

I was negligent in not thanking you! I do appreciate our friendly conversation in the coffee shop. Thanks so much.

– Dawn

On Sun, Jun 9, 2019 at 10:02 AM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Sally, Ethan: First off thanks for meeting with Dawn and me on Friday, 5/31. We appreciate the extra effort the Parks Department is putting into the desired ordinance change for Baxter Woods. As we discussed briefly on 5/31, I am following up on our request to be allowed the opportunity to present PowerPoint slides at the 7/18 Parks Commission meeting, in support of off-leash dog-walking and our community of family walkers at Baxter Woods.

Since 5/31 I've reviewed the Ch.18 City Code Ordinance covering Parks Commission meetings, and see the following from Ch. 18:

(8) Adopting reasonable rules for the conduct of its meetings, which rules shall include provisions for public comment.

(Ord. No. 50-83, 6-20-83; Ord. No. 70-09/10, 10-5-09; Order 203-13/14, 5-28-2014; Ord. No. 116-14/15, 1-5-2015)

I haven't see anything in Ch. 18 or anywhere else in the City Code that precludes the Commission from granting anyone the right to make a presentation. Nor does our request seem unreasonable or improper given the impact of the ordinance change. But digging deeper into the City Code I found the Council's Rules of Procedure for conducting meetings – with the following provision noted that does allow the City Council to grant additional time for public comment:

*8. Persons addressing the Council on an item prior to start of deliberation on such item by the Council shall be permitted to speak only once on an item, and shall limit their remarks on each item to three (3) minutes. **From time to time, the Presiding Officer may grant an extension of this three (3) minute requirement.***

I would imagine the Parks Commission meetings would have the same or more generous allowances for public comment – especially as the proposed ordinance change in Baxter Woods will directly impact the daily devotions of over 1,000 Portland residents. We are seeking no more than 10-15 minutes of continuous presentation time at the 7/18 Parks Commission meeting, for which 5 or more people will gladly relinquish their public comment time.

We respectfully ask again that the Parks Commission allow us this additional time beyond the 3 minute allotments to present at the 7/18 meeting.

Thanks, Marc

Marc Lesperance, [103 Candlewyck Terrace, Portland, ME 04102](#)

Tel: 207-774-6584; **Cell:** 207-329-4953; **Work:** 207-209-0517

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
 To: Teresa Valliere <tvallier@maine.rr.com>

Mon, Jul 15, 2019 at 9:02 AM

Thanks Teresa,
 We will add to the record!
 Take care,
 Ethan
Ethan Hipple
 Deputy Director
 Parks, Recreation and Facilities Department
 City of Portland
 212 Canco Rd, Suite A
 Portland, Maine 04103
 207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
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On Mon, Jul 15, 2019 at 7:49 AM Teresa Valliere <tvallier@maine.rr.com> wrote:
 Hello Ethan and Parks Commission,

I'm hoping I can still offer my perspective on the **proposed leash law change for Baxter Woods** up for discussion this week. Unfortunately, I cannot attend the meeting due to conflict.

Here's why I think the current rules should remain in place

- Within a 15 min walk of Woodfords Corner there are 8 public green spaces, many underutilized. Baxter Woods is the only one where dogs can run off-lead and many dog owners use the space appropriately.
- The city comp plan promotes walkable neighborhoods, but to get to an "off-leash" dog park should Baxter rules change, people like myself will have to drive to one of the 2 dog parks in the city. This is a waste of gas and time for many people.
- The city wants people to use the green spaces - keeping parks active keeps them safer. The only folks in Baxter Woods in the early mornings are the dog walkers and some joggers.
- In the 17 years I've been walking there in the early mornings, I have never seen any problems with dogs interfering with kids, joggers, etc, nor have I ever seen people with small children in the park in those hours
- All the owners in the early morning have voice control of their dogs
- I hear and see birds within the woods every day (except deepest cold winter days) - birds are clearly nesting there. There are plentiful woods in the back of Evergreen, and there are multitudes of birds there as well and dogs are allowed off leash. I trust the birds figure it out.
- How this will be enforced if it should pass? Will the city waste resources monitoring something that doesn't require monitoring?
- I doubt Governor Baxter leashed his dogs on his walks in the woods. I read the materials presented from the city website, and believe the intention is to prevent the cutting of trees or removing the water features. There is no language about leashing dogs.

If the decision is to make a change, I propose that the rule be dogs off-leash, under voice command, until 9 AM all year round.

Thank you,

Teresa Valliere, LCSW, LADC, CCS

Valliere Counseling and Professional Support
phone 207.233.9276

MAILING LIST

<http://valliarecps.com>

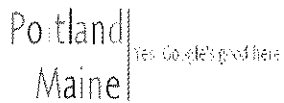
FMI about counseling, supervision, training or consultation, please contact me at tvallier@maine.rr.com

<http://Therapists.PsychologyToday.com/rms/68128>

Office: 57 Revere Street #1
Portland, ME 04103

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Teresa Valliere
tvallier@maine.rr.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods for dogs

Ethan Hipple <ehipple@portlandmaine.gov>

Wed, Apr 3, 2019 at 2:25 PM

To: Caroline Robinson <robinc@portlandschools.org>

CC!! Good to hear from you, and thanks for the comments. I'll pass them on to the Parks Commission.

It is a tough one--I've got many friends and neighbors (you included!) who love to use it as an off-leash dog area, but we are trying to balance that with other uses and the deed restrictions to preserve it as a bird sanctuary. Definitely a good case study of the challenges of balancing the multiple uses of public land.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Tue, Apr 2, 2019 at 10:26 PM Caroline Robinson <robinc@portlandschools.org> wrote:

Howdy!!!!

I hear you are the one sifting through everyone's perspective on the old Baxter Woods leash question!

As a massive fan of Baxter Woods (Lewis and I walk George in there twice a day!) I want to say that it's my favorite part of our neighborhood and watching George gallop around with his buddies is often the best part of my day. I am definitely in the 'please keep off leash permission there' camp.

The community of dog owners there is pretty awesome, very responsive and responsible, and fun to walk with.

That being said....I utterly respect cross country runners who want to not have dogs get excited when they fly through!

Good luck with this one....it's dear to the heart of many!

CC

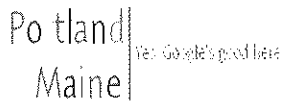
--

CC Davies Robinson
English Teacher
Senior Humanities Team
Casco Bay High School

"Love allows understanding to dawn, and understanding is precious. Where you are understood, you are at home." -John O'Donohue

*** Please Note: ***

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Ethan Hipple <ehipple@portlandmaine.gov>

Comptemplation of leash law in Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Apr 2, 2019 at 2:24 PM

To: Lita Semrau <lita@portcityarch.com>

Hi Lita,

I've attached a memo that we wrote to the Parks Commission that helps explain the reasoning. Hope it helps answer your questions. FYI... We allow off-leash dogs on approximately 495 acres in Portland. Valley St Dog Park and Quarry Run account for about 6 acres together, and Baxter Woods is 29 acres.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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www.portlandmaine.gov

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On Tue, Apr 2, 2019 at 12:21 PM Lita Semrau <lita@portcityarch.com> wrote:

Just want to know what would motivate even considering a leash law in Baxter Woods – there are already many place in Portland where leashes are required and very few where dogs can run . . . please do not mention the dog park below Maine Med (that place is overused and too small for an adequate walk for me) and we need to more spaces for humans and their dogs to be able to take in a little exercise at their own pace . . . las

Lita Semrau, AIA, NCARB, LEED AP

Port City Architecture

65 Newbury Street

Portland, ME 04101

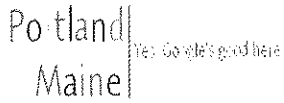
p: 207.761.9000

w: www.portcityarch.com





Baxter Woods Off Leash Memo 3-7-19.pdf
142K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods off-leash issue

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Apr 2, 2019 at 2:26 PM

To: Rochelle Spiegel <rochellespiegel@gmail.com>

Thanks for your comments Rochelle. I will pass them on to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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www.portlandmaine.gov

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On Tue, Apr 2, 2019 at 10:00 AM Rochelle Spiegel <rochellespiegel@gmail.com> wrote:

Hello Mr. Hipple,

I am writing to you because I am a small dog owner and I regularly take my dog off-leash into beautiful Baxter Woods. My husband and I bought our house in the neighborhood to live within walking distance of Baxter Woods. We are responsible dog owners and have always respected this place. Our dog is very well trained and always stays with 15 feet of us. We are also nature lovers and love admiring all of the trees, shrubs, wildflowers, mushrooms, mosses, and birds up in the trees.

We walk there in the mornings before work and I know our presence there has made many strange and or drugged-out homeless people feel very uncomfortable. I've seen them move on and pack up their sleeping bags because they see us coming. I've even called the police many times to report tents and crazy people acting oddly. We've even scared away groups of teenagers smoking pot on their way to school. Responsible and respectful dog owners make a huge difference in this park.

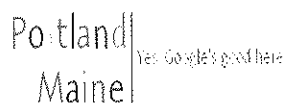
My elderly neighbor has lived in this neighborhood her whole life and will not set foot into Baxter, not because of the dogs, but because that is where the "Bad people hang out", because she only knows that drug addicts used to hang out in there. I try to tell her it's not like that anymore but she is terrified of being mugged or raped by a drug addict living in there.

If this park becomes a leash-only park I'm afraid it will turn into a homeless and druggie haven again, especially on the back trails. Personally, my husband and I would no longer use this park and I know many of us responsible people would just go somewhere else where our dog can run and play with other dogs.

Maybe a better solution would be to have a multi-use park by setting times of the day that are off-leash and leash only, like Willard Beach. This way everyone could use the park.

Please do not take this place from us.

Respectfully,
Rochelle Spiegel
503-307-4091



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods public comment

Ethan Hipple <ehipple@portlandmaine.gov>
To: Marissa Bodnar <marissabodnar@gmail.com>

Tue, Apr 2, 2019 at 3:54 PM

Thanks for the comments Marissa--we'll forward on to the Parks Commission.

Thanks,

Ethan

Ethan Hipple

Deputy Director

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On Tue, Apr 2, 2019 at 1:39 PM Marissa Bodnar <marissabodnar@gmail.com> wrote:

Hi Ethan,

I'm writing to weigh in on the proposed leash rule in Baxter Woods. I can't make it to the hearing on Thursday, but am hoping the committee will take this under consideration with the other public comments.

As a dog owner who visits these woods multiple times a week, every week, I strongly oppose this proposal. I can't really speak to the bird sanctuary part of the memo, but do feel it's important to share my experiences regarding "safety concerns."

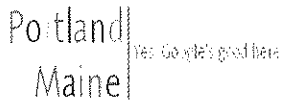
I've been bringing my rescue dog there for more than three years and have never worried for my safety or his. I don't doubt there are occasional incidents – sometimes a dog gets excited and jumps up on someone – but that can also happen anywhere, leash or no leash, rules or no rules. From my experience, the suggestion that dogs in Baxter Woods are "unruly" or a threat to people or other dogs is completely absurd. In fact, I actually see owners of less friendly dogs taking the preemptive step of putting them on a leash.

As a former resident of Deering Center, I can tell you this is the heart of the neighborhood for any dog owner. It's a wonderful community of people and dogs. I've made friends in these woods and so has my dog. The location is still five minutes away from our home and allows us to meet up with other folks to get some activity in, especially on busy work days and the part of the year when daylight is in short supply.

In my opinion, a 25-foot leash just makes for a tangled mess of a walk with brush and trees right along the trails, and as dogs greet each other. The questions I'm left with: How will this be enforced? And if passed, is the city willing to look at making other locations available for off-leash dogs?

Thanks for your time.

Marissa Bodnar (& Atlas)
207-653-3446.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - in support of off leash

Ethan Hipple <ehipple@portlandmaine.gov>
To: Adrienne Fine <adrienne.fine@gmail.com>

Wed, Apr 3, 2019 at 2:07 PM

Hi Adrienne,
Thanks for your comments, we will share with the Parks Commission.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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212 Canco Rd, Suite A
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207.808-5400
ehipple@portlandmaine.gov

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On Wed, Apr 3, 2019 at 2:05 PM Adrienne Fine <adrienne.fine@gmail.com> wrote:

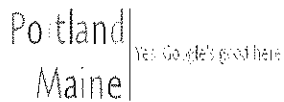
Hello Ethan,

Thank you for accepting emails prior to the meeting in regards to the Baxter Woods dog leash issue. I just wanted to email you as a citizen and neighbor to Baxter Woods (27 Florence St, Portland) to say that I am in support of continuing to allow dogs to be off lease within Baxter woods.

In general I see users of Baxter woods following the current rules of voice command, not letting your dog out of sight, and picking up after them (even off trail). It would be a shame to take away one of the few areas that dogs are allowed off leash within the City limits, especially one that is walking distance from many neighborhoods. Forcing dog owners who chose to buy homes in dog friendly neighborhoods walking distance to Baxter Woods to now drive to the City limits to get to other off leash areas is not favorable. Portland is a dog friendly City and removing this central off leash area would change that perception.

I appreciate your time on this matter.

Thank you,
Adrienne Fine



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Mollie Bash <mbash2@gmail.com>

Wed, Apr 3, 2019 at 3:50 PM

Thanks for the comments Mollie. We will share with the Parks Commission.
Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

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On Wed, Apr 3, 2019 at 9:05 AM Mollie Bash <mbash2@gmail.com> wrote:

Hi Mr Hipple,

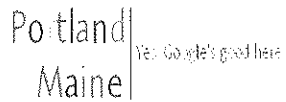
I am writing to you as a citizen of Portland who visits Baxter Woods daily with her two dogs. I live in Portland and am a Portland taxpayer. Baxter Woods is a fantastic off leash space for dogs to be able to play in Portland. As someone who visits daily, changing the leash law would have a significant negative impact on my quality of life as Portland citizen. Every dog owner that I have encountered there is conscientious about watching their dogs and cleaning up after them. There are very few places like Baxter Woods in Portland available for dogs and there are many more places for people to walk if they do not wish to be around dogs.

A far bigger concern in terms of the park being family friendly is the amount of broken glass that can be found in the Woods. This is something that I pick up whenever I see it and I know other people walking their dogs do the same. This will continue to be a bigger problem for children and families if the number of people walking their dogs decreases due to this proposed law.

I am unable to attend the meeting tomorrow due to work but it would be extremely disappointing to lose this space.

Thank you,
Mollie Goldenberg

Sent from my iPhone



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Debra Flynn <debra_ann@maine.usa.com>

Wed, Apr 3, 2019 at 4:03 PM

Thanks very much Debra, I will make sure the Parks Commission sees your comments.
See you tomorrow,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

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On Mon, Apr 1, 2019 at 11:07 AM Debra Flynn <debra_ann@maine.usa.com> wrote:

Hello,

I live on Hartley Street and I wanted to let you know that I will be there at the meeting to support the city in it's obligation as a trustee of Baxter Woods.

This is not only a public safety issue, a waste issue but dogs that are loose are detrimental to the environment. Baby birds learning to fly as well as other wildlife are at risk from loose dogs.

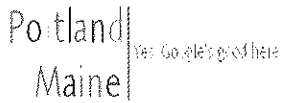
We have 2 greyhounds that have been attacked in the day in these woods, so much that they now refuse to enter or go near them during the day when there are loose dogs. We hear people all the time calling or whistling for their loose dogs. We've had loose dogs come into our yard, no person in sight or dogs come after us walking on the sidewalk past the woods. This isn't a dog park, yet people seem to forget how to be responsible for their pet.

Thank you for addressing this issue of Baxter Woods not being in compliance with the deed.

Debra Ann Gorneault

--

Sent from my Android phone with mail.com Mail. Please excuse my brevity.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash law change

Ethan Hipple <ehipple@portlandmaine.gov>
To: Anne Callender <anne@whipplecallender.com>

Wed, Apr 3, 2019 at 4:06 PM

Hi Anne,
Thanks for your comments and thoughtful letter. I will make sure the Parks Commission gets a copy.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

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Portland, Maine | Yes. Life's good here.

On Tue, Apr 2, 2019 at 3:03 PM Anne Callender <anne@whipplecallender.com> wrote:
Hello Ethan -

Please include my letter enclosed with the comments on proposed changes to the leash law in Baxter Woods.

I have enjoyed walking my dog in Baxter Woods for the past 15 months (at least twice a day) and have had many wonderful experiences and relationships because of it. Your proposal will deny me and my husband the happiness that we enjoy by having a place near by to let our dog run. Dogs bring a lot of joy and comfort to humans, and they are a big part of a healthy life. Your proposal will impact my life negatively.

Sincerely,
Anne Callender

April 1, 2019

Mr Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Road, Suite A
Portland, ME 04103

RE: Baxter Woods Off-leash Policy

Dear Mr. Hipple -

I am disappointed to read your recommendation of having dogs leashed in Baxter Woods. The study commissioned by the City solely looks at the use of the Woods from an ecological assessment bias that puts more weight on the "sanctuary for wild birds" than it does on the "benefit of the people of Portland for public recreational purposes".

I am frustrated that staff has not taken the time to survey users of Baxter Woods and appears to be heavily influenced by complaints rather than observing those who regularly use it and keep it vibrant. If you did, you would find that the regular users have formed a community that enjoys seeing each other on a regular basis for walks and while allowing their dogs to play. This might sound like a joke, but I used to have regular walks with a Rabbi, a Priest and a professed Communist, and found that we would enjoy each other's company discussing a wide range of topics. None of us would have ever had that opportunity to meet and form such a meaningful relationship if it wasn't for this park.

If the dog owners of Portland knew that we had to regularly write comments to staff about our love and joy of walking with and meeting other people in our community in Baxter Woods, we would fill your in box on a daily basis. The majority of the users are responsible in keeping their dogs under watchful eyes, picking up their feces, and keeping the play under control. The park has allowed us to socialize our dogs as well as ourselves. For over 15 years, I have enjoyed the benefits of this park, it seems capricious to change the rules now.

I disagree that there ample access to other open spaces for dogs to run free in Portland. Baxter Woods proximity to 3 streets has an advantage for my safety. I would not be comfortable walking alone in Evergreen Woods because of its lack of visibility and proximity from habituated areas. The same can be said for Canco Woods, and Valley Street doesn't present itself with a way for me to get exercise in unison. There are more dogs than children in the blocks surrounding Baxter Woods and it provides a welcomed break from walking dogs on leashes on the street.

In this era of disconnectedness, Baxter Woods has given me a way to connect with my neighbors and form bonds with my community that aren't available to me in any other form. Introducing leashes into the park will make it difficult to have the same interactions. Dogs behave differently on leashes when interacting with other dogs. Some appear more aggressive to protect their owners and themselves since they can't retreat to assess the situation. Dogs that enjoy playing with each other will get tangled up in leashes. Twenty-five foot leashes threaten to entangle more humans and do bodily harm.

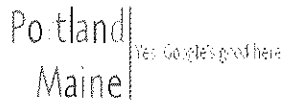
I respectfully request that you and the Parks Commission consider that the benefit for the people of Portland and leave the off leash provision in place. The report did not find that this park had any high-value plant or wildlife habitats. There isn't a lack of wildlife in Baxter Woods with its owls, woodpeckers, hawks, raccoons, squirrels, chipmunks, skunks, foxes and opossums. Evergreen Cemetery with its larger acreage and less light pollution is a greater draw for migrating birds. In 1946 when this land was deeded to the city, dogs could run free without much fear of being hit by cars or being lost or stolen. My mother's dog would walk her to school in the morning, return at lunch to walk her home, and repeat the exercise again at the end of the day. Those days are long gone and dog owners would like to have places to allow them to play with their dogs off leash. There is a big need and desire for these types of spaces and they should be accommodated in similar fashion to providing ballfields for another portion of the population.

Governor Baxter was a tremendous dog fan and I have a hard time believing that he won't have left the woods to the dogs if he knew how limited the options would be for them to roam free and play today.

Thank you for your consideration.

Respectfully,

Anne Callender and Dash the springer spaniel
138 Pleasant Ave
Portland ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Keep Baxter Woods off-leash!

Ethan Hipple <ehipple@portlandmaine.gov>
To: Stephan Spiegel <stephan@stephanspiegel.com>

Wed, Apr 3, 2019 at 4:35 PM

Thanks for your comments Stephan, I'll get them to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Wed, Apr 3, 2019 at 4:19 PM Stephan Spiegel <stephan@stephanspiegel.com> wrote:

Dear Mr. Hipple,

I'm writing to voice my strong opposition to the proposal to revoke the off-leash status of Baxter Woods.

I'm both a dog walker and a property owner. I walk my dog almost daily at Baxter Woods. While having to take my dog elsewhere for off-leash activity would be an inconvenience, I'm much more concerned about what the rule change would do to the value of my property.

My wife and I bought our house three years ago. We specifically wanted a home within walking distance to Baxter Woods, because of its status as an off-leash area. We paid significantly over asking for our home, in large part because of its location, and I know we're not the only home buyers in our neighborhood for whom this is the case.

Some of our long-time neighbors have not set foot in Baxter Woods since the 80s or 90s. They are afraid, not of dogs, but of "shady people" who supposedly hang out there. Having never seen anyone of that description in Baxter Woods, it's clear to me that the presence of dog walkers keeps drug users and urban campers out. In fact, some of the wooded areas immediately adjacent to Baxter Woods, on private property and thus off-limits to dog walkers, show signs of recently inhabited encampments.

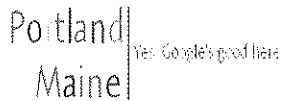
To summarize, I believe banning off-leash dogs from Baxter Woods will lower the surrounding property values in two ways: One, by making the area less desirable to home buyers who are also dog owners, and two, by making the woods themselves more attractive to drug users and homeless people, with the ensuing rise in crime and refuse.

Please don't allow the unattainable "unspoiled" woods imagined by some who would use it once or twice a year ruin it for those of us who use it daily, and to take money out of the pockets of all of us who own property around Baxter Woods!

Regards,

Stephan Spiegel

151 Prospect Street
Portland ME, 04103



Ethan Hipple <ehipple@portlandmaine.gov>

off leash policy - Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 2:29 PM

To: Gayl Anglin <ganglin65@gmail.com>

Thanks for your comments Gayl--I will make sure they are shared with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 1:48 PM Gayl Anglin <ganglin65@gmail.com> wrote:

Dear Ethan,

I received notice about the Parks Commission meeting this Thursday regarding the off-leash policy at Baxter Woods. Unfortunately, I am unable to attend due to another commitment, but wanted to at least send my input.

I am a Portland resident and dog lover. While I do not currently have a dog, I have had dogs most of my life and have always appreciated places where I could allow my dogs to run off leash. That being said, I knew the limits of my voice control with them and never had them in a place that would be disruptive to others or put them in a place where they could be injured or cause an accident. I have on three separate occasions since the beginning of this school year stopped to help people catch their errant dog who had run from Baxter Woods, on one occasion the dog was running in traffic. All three times the owners were exclaiming that "s/he never does this" however, all it takes is one time for a dog to get hit and/or cause an accident. Baxter Woods sits right on two major streets and is not fenced, which in and of itself does not lend it to being an off-leash park. Add to this, the level of voice command that is needed to keep a dog fully under control seems to often be interpreted liberally by dog owners.

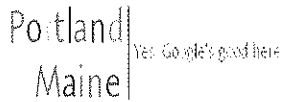
I recommend that Baxter Woods require leashes for dogs, for both their safety and also for the general public, unless the city were to extend a fence around the entire border of the park, which does not seem feasible.

Best regards,

Gayl M. Anglin, Ph.D.

ganglin65@gmail.com

"Hungry man reach for the book, it is a weapon." - Bertolt Brecht



Ethan Hipple <ehipple@portlandmaine.gov>

Please keep dogs free in Baxter Woods!

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 3:44 PM

To: shambaugh@gwi.net

Cc: Justin Costa <jcosta@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Brian Batson <bbatson@portlandmaine.gov>, "Kimberly M. Cook" <kcook@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>, "Mavodones, Nicholas" <nmm@portlandmaine.gov>, Ethan Strimling <estrimling@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi there Ben,

Thanks for the thoughtful comments and sorry to hear about the loss of your dog Sasha.

We will make sure the Parks Commission gets a copy of your comments for the meeting this Thursday.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 2:33 PM <shambaugh@gwi.net> wrote:

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the

Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner – proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly. These, however, are very limited and – as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today – a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh
147 Clinton Street
Portland, ME 04103
207 400-7516



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Christina Dalessio <cmd4567@gmail.com>

Mon, Apr 1, 2019 at 3:46 PM

Hi Christina,
Thanks for your comments. I'll make sure the Parks Commission gets a copy.
See you on Thursday.
Ethan H
Ethan Hipple
Deputy Director
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City of Portland
212 Canco Rd, Suite A
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On Mon, Apr 1, 2019 at 2:50 PM Christina Dalessio <cmd4567@gmail.com> wrote:

Ethan,

After moving to Portland in 1994, I purchased a home within walking distance of Baxter Woods back in 2003 ... expressly so I would be able to walk my dog there off leash.

Over the past 16 years I have visited the park almost daily and have directly observed during that time that off leash dog walkers are in fact the most frequent, caring and responsible users of the park. We pick up after our dogs and we pick up trash left behind by other visitors such as students and families with kids. We are literally the heart and soul of Baxter Woods.

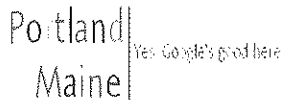
I'm told that you are concerned about ground birds. There has never been a ground bird population in this park since I moved to Portland 25 years ago, nor *would* there be if off-leash dogs were prohibited. There would still be people with kids and dogs walking everywhere in the park, not just on the trails, and there would still be people riding bikes through the park, large groups of students school running through the park, archeology groups digging holes and planting flags in the park, etc. The idea that prohibiting off-leash dogs would somehow prompt a miraculous ground bird revival at the park just doesn't make sense scientifically. The park already IS a bird sanctuary with many different species living there in concert with people and their pets. The dogs do not harm the birds, off-leash or on. In fact, watching and listening to the birds is one of the best parts of walking my dog there.

The tax-paying citizens of Deering/Rosemont/Deering Highlands/ Back Cove neighborhoods need space to run their dogs off-leash. There is simply no way to own a dog over 30 pounds and give it enough exercise on leash only. And other options around the city are not acceptable alternatives.

The woods behind Greenwood cemetery are remote, full of ticks and I do not feel safe walking there. There are literally homeless people living in tents back there. The Valley Street Dog Park is an unsanitary, filthy, dust bowl that is way too small to accommodate all the off leash dog walkers from our area of Portland. We need a place in in our neighborhood that we can walk to. And we have a perfectly good one. Please don't ruin it because of a few "squeaky wheels" who do not represent the majority of users.

In my opinion, the mindset of **exclusion** as a way to solve problems is really what's wrong with our country these days. Instead of **excluding** the people who are the most devoted and frequent users of the of the park, you should look for ways to find common ground and compromise among constituents. It's your job to work **with** us not against us.

See you Thursday.



Ethan Hipple <ehipple@portlandmaine.gov>

Meeting on Thursday

Ethan Hipple <ehipple@portlandmaine.gov>
To: David Little <authorartist775@gmail.com>

Mon, Apr 1, 2019 at 3:58 PM

Thanks for the comments David.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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www.portlandmaine.gov

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On Mon, Apr 1, 2019 at 1:52 PM David Little <authorartist775@gmail.com> wrote:

Hi Ethan. Sorry not to attend the meeting on Thursday.

I guess my issue with off-leash dogs in Baxter Woods is the multitude of dog doo deposits that lie hidden just off the trails. I can't tell you how many times I have stepped in dog shit while going off trail to look at a particular tree, pit and mound, view, and so on. Even setting up one's easel to paint in Baxter Woods can become unpleasant.

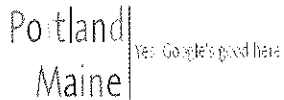
I have been wheeled around, and knocked over by dogs that don't obey voice commands or where the owner is out of sight.

I believe that were JPB alive today, he would be just fine with keeping dogs on leashes.

That's my 2 cents.

David Little

142 Brentwood St, Portland, Maine 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - public comment

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 4:00 PM

To: Sarah Hilzinger Kellogg <sarah.h.kellogg@gmail.com>

Hi Sarah,

Thanks for the thoughtful comments. The program in Boulder looks very interesting and worth looking into.

I'll share your comments with the Parks Commission.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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On Mon, Apr 1, 2019 at 11:07 AM Sarah Hilzinger Kellogg <sarah.h.kellogg@gmail.com> wrote:

Hello Ethan,

I am writing to share my perspective on the Baxter Woods leash vs. no leash debate since I will be out of town this Thursday night.

I am someone who walks in Baxter Woods many mornings before work (irrespective of whether it is 9 or 90 degrees). In fact, we walk there so frequently that when my dog and I walk out the door of our house in the Back Cove, she takes me straight to Baxter Woods.

I can unequivocally say that the community of dog walkers that use the park is exceptional. We moved to Portland 3 years ago and the community of people that use the park as part of their daily routine are some of the most kind and welcoming people I have met as we've started to put down roots here. It is one of the examples I often cite when telling family/friends about how Portland is different than most cities: there is a degree of implicit trust the city imparts on its people to do the right thing, and it is not uptight or overly restrictive (particularly in contrast to bigger East Coast cities where we grew up/moved from). I think of Portland as a city that aims to strike the right balance between the Maine "frontier" spirit (channeling the type of mindset that is more pervasive Downeast) with the realities of a growing city.

I urge you to consider this balance, trusting your citizens to do what's right (while nudging them in the right direction as needed) and making the woods a place where the greatest number of people and wildlife can co-exist in peace. I am strongly of the mindset that moving from the status quo to a leash-only environment would be a detriment to a robust community, not to mention disband a group that I imagine inadvertently prevents nefarious activity.

On the point of nefarious activity - I think it is critical to be realistic about the state of drug use in the city. We also walk frequently in other wooded areas and have unfortunately had to deal with the aftermath of our dog finding drugs. If we assume the imposition of a leash law would make a large portion (if not all) of the Baxter Woods dog walking community to go elsewhere for their morning and evening (rain or shine) walks, its possible this could have unintended consequences on the safety of the woods. While I appreciate dog poo is

not a minor nuisance... we can all certainly agree that needles and edibles are a more acute safety issue. The community of dog walkers are out in the woods early in the morning and evening, when the park may otherwise be empty, and also the vast majority of us are picking up garbage as we go. To think that the existing community will continue to use the woods in this manner and to this degree (just with their dogs on leashes) is not realistic - we will go elsewhere. I urge you to fully consider what this will mean for how the woods WILL be used.

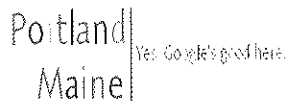
With this in mind, I feel strongly that there must be other ways to address the concerns that others have raised without jumping to a unilateral leash law. While I do not expect I have a full line of sight into the entire suite of concerns, here are just a few thoughts:

- On/off leash hours?
 - I am in full support of the neighboring schools feeling safe when they want to use the woods as outdoor exploratory space. I could fully understand and respect restricting a certain window of time during the school day where dogs must be on leash.
- Seasonal on/off leash?
 - I am not an expert, but I would expect ground bird nesting is particularly sensitive during certain times seasonally - restrictions that limit impact during sensitive times would also be entirely reasonable to me
- Bags/garbage bins?
 - I do not disagree that dog walkers can do a better job of picking up their dogs' poo. Bags and garbage cans at each entrance of the park can make a huge difference in this - there is 1 entrance without a garbage can, several without bags, and where bags are typically available they were not stocked most of this past winter.
- More publicity for park cleanup days?
 - One of the community members organizes this informally in the spring and fall, and a good group does get together to clean things up - but this type of effort may benefit from extra visibility (e.g., promotion by the city and/or Portland Trails)
- Off leash program?
 - I have heard some concern for walkers who do not have/like dogs feeling as if the off leash dogs are running wild and frightening. To address this, other cities have instituted off leash dog programs that allow dog owners that are responsible about off leash behavior to take advantage of it (rather than treat the woods like they are a "dog park"). Boulder (CO) is one example of a well established program that may be worth investigating, but the general model would be the cost of an off leash "tag" covers the cost of verifying that the dog has been trained to respond to basic off leash commands.

The easiest route forward would be to put in place a leash restriction and feel like the job is done. I urge you to take a route that endeavors to find a compromise on all fronts, which may be more challenging/more work, but also takes into account the positives that this community of dog walkers brings to Baxter Woods.

Thank you for your consideration!

Best,
Sarah Kellogg
908-399-9109



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: kevin@ktcole.net

Mon, Apr 1, 2019 at 4:40 PM

Thanks Kevin, we will pass your comments on to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

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On Mon, Apr 1, 2019 at 4:37 PM <ktcole@fairpoint.net> wrote:

Ethan, I'm not sure what's being suggested with respect to Baxter Woods. Unfortunately, I will be out of state when the meeting is to occur on Thursday, so I'm hoping I can add my two cents to the discussion via this e-mail.

Baxter Woods is one of the only really good off-leash areas in the city. I walk my dog there frequently. It's a pleasant stroll and I've not met anyone there who either caused a problem or expressed a complaint. The dogs almost always interact well with each other. I would be very sad to have the rules change to make the area less dog-friendly.

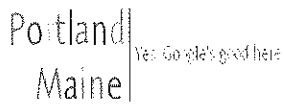
Thanks.

Kevin T. Cole

33 Fessenden Street



This email has been checked for viruses by Avast antivirus software.
www.avast.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Proposal

Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Wed, Mar 27, 2019 at 9:21 AM

Hello Ethan: I wrote to you last week regarding the proposal. After reading the materials from the links that you provided, I have written another letter for both you and the commission.

I had thought that the proposal to restrict dogs to leashes was due to negligent owners, particularly regarding waste disposal and dogs not being under voice control. Reading through the proposal documents, however, I see that the ecological report has major emphasis.

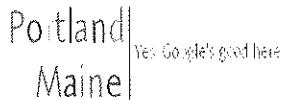
I would like to point out the following, keeping in mind the proposal's suggestion: *"Recreation use. Use trail cameras or other monitoring methods for fixed periods of time to quantify and describe recreation use and evaluate the potential impact of unleashed dogs on wildlife."*

1. Bird nesting: Regarding the ecological study, how many ground-nesting birds reside in or migrate to Baxter woods? I am not a bird expert, yet I do know that Baxter woods are not suitable for at least some of the more common New England ground nesters. We do have a diverse wildlife population, and I suspect that the dogs help to keep down some of the predators that kill birds, such as foxes.
2. Enforcement: With respect to the waste and voice control, signage is posted, yet nothing has been enforced. Additional patrolling and enforcing fines, possibly with the cameras suggested in the report, could quickly change behavior.
3. Previous incidents: As shown in the lengthy attachment documenting letters to the Park service, over a period of six years, there were actually very few letters concerning dog aggression incidents (again, monitoring can determine whether or not incidents occur with greater frequency in off-leash areas as compared to on-leash areas).
4. Alternatives: Baxter Woods is primarily a destination for local residents. It is not a "dog park" (Quarry or Valley St. are not options for many of us due to aggressive dogs and irresponsible owners). There is inadequate parking at these alternatives if Baxter users did switch, and neither Canco Rd. nor Evergreen are good options regarding space and/or parking. (Given the thicker growth behind Evergreen, wouldn't ground bird nesting be an issue?)
5. Dog waste: Lack of picking up has become a problem in Baxter woods and elsewhere. The PPH had an article about Hinckley Park (3/22/19) discussing this. Their Park ranger had planted 300 flags to encourage awareness and promote pickup prior to a predicted rain storm.

6. Lyme disease: In my 17 years of daily trail walking, including walking into growth to pick up waste, I have never found a tick. Given that Lyme disease is a serious health threat, the lack of tall grass and migrating deer in Baxter woods makes it a safer place for many residents and their dogs and/or children.
7. Safety: Prior to the woods becoming popular with dog owners, it was used by alcoholics, drug users, homeless people, and teenage partiers. I continue to pick up large quantities of broken glass, trying to keep the park clean and protect my dog's feet, as do other walkers. If dedicated dog walkers were not there daily taking care of the woods, glass and debris would only accumulate. Given the safety in numbers, there have not been incidents with aggressive humans, yet this could easily change without the presence of dogs.
8. Winter ice/falls: The paths have been covered with ice for much of 2018-2019 and recent winters due to the changing weather cycle. If dog walkers have to go elsewhere, the woods will be under-used much of the year. In addition, I have tried walking with my dog on leash under these conditions, and it is treacherous as even with cleats it is difficult to stabilize against the slightest pull. Many of the walkers are seniors, only adding to these potential human injury problems with increased risk of falling.
9. Quality of life: daily life for many of us has been enhanced greatly by being able to walk outdoors with our dog in Baxter Woods. Many of us walk to the woods and do not need to consume fossil fuels for transportation, and we value and take pride in this neighborhood asset.

I hope that, as a minimum, the council will decide to monitor the situation and will recommend increased patrolling before making any permanent changes. Although I care about wildlife, I think it is prudent to also consider resident quality of life.

Carolyn Ehringhaus
11 James St.
Portland, Maine 04013



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods On-Leash policy

Chelsea Malacara <chelsea.malacara@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Mar 28, 2019 at 10:50 AM

Thank you for the clarification.

On Thu, Mar 28, 2019 at 10:26 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Chelsea,

Yes, if the rule change is approved, we would enforce the rule using existing fines. \$75 first offense, and goes up from there.

Unfortunately, we have limited funds for Park Rangers, so it would be enforced at strategic times, not 24/7.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Mar 27, 2019 at 8:19 PM Chelsea Malacara <chelsea.malacara@gmail.com> wrote:

Ethan,

I just recently saw that there is going to be a council hearing on the proposed rule changes to Baxter Woods. Based on public concerns and most importantly, the ecological impact report, I fully support the decision to require dogs be on leash in Baxter Woods.

I was curious as to how the city intends on enforcing this rule? Will there be a fine, will there be new signage and rangers patrolling especially during peak times and the initial roll out?

Thank you for all your hard work.

Best,

Chelsea Malacara

--

Chelsea Malacara

chelsea.malacara@gmail.com

207-405-1009

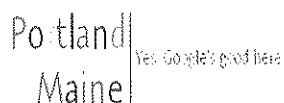
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--

Chelsea Malacara

chelsea.malacara@gmail.com

207-405-1009



Ethan Hipple <ehipple@portlandmaine.gov>

parks 4/4, leash laws, and other concerns

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 9:05 AM

To: D Leland <lelanddm@gmail.com>

Yes, we are proposing that dogs in Baxter Woods are on a 25 foot leash. See attached memo for more information.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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212 Canco Rd, Suite A

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ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Thu, Mar 28, 2019 at 7:19 PM D Leland <lelanddm@gmail.com> wrote:

Hi - Thanks! I'm reading this as leashing IS going to be proposed. Right?

— Dawn

On Thu, Mar 28, 2019 at 10:20 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks for your comments Dawn. I know it's a tough issue with strong feelings on both sides, so thanks for your efforts to find common ground.

I will share your comments with the Parks Commission.

Our primary concern here is abiding by the deed that calls for Baxter Woods to be maintained as sanctuary for wild birds. However, as you know, there are many properties within Portland where we do allow off-leash dogs, so this isn't an across the board policy change, it's just a change to how we manage this single property. We also hear from the public about dog safety issues at Baxter Woods.

You are correct that picking up feces is a separate, but important issue. I know you have been very instrumental in helping model positive behavior on that! We are working on enforcement, but with only a single full-time Park Ranger, we could use help from groups like yours, and we are always open to new ideas of how to increase enforcement.

We aren't proposing leash vs non leash times at Baxter Woods as that would address just the safety issues, not the underlying deed issues.

We currently have one full time Park Ranger and 4 seasonals that come on in the summer.

Hope this answers your questions.

Take care,

Ethan H

Ethan Hipple

Deputy Director
Parks, Recreation and Facilities Department
City of Portland
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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Mar 27, 2019 at 3:01 PM D Leland <lelanddm@gmail.com> wrote:

Hi Ethan,

I met you briefly some time ago at One Longfellow-- I do the Facebook page Responsible Dog Owners of Baxter... Please check out what I've been posting. I'm trying to strike a balance. Those who walk dogs there really do care about the park, the community it enhances, and having space for dogs to interact and run. And they're generally conscientious.

On the plus side

- It's a hub where we've gotten to meet others, and I have several friends I've met there.
- Some dog owners routinely pick up trash and beer cans, too.
- If drinking and drug deals go on, it's at night. There was an instance a year ago when one person saw some suspicious behavior and a group of us walked to the area and that seemed to be a deterrent to the people there. Then it occurred again, same thing.

Enforcement will always be with us

Enforcement is always an issue and it's not feasible to have park staff in there all the time.

- Some people didn't make a big effort over the winter to plow through a foot of snow into the trees to retrieve poop--and of course, that's where the kids go to do projects. The paths have also been littered with it.
- I've seen a couple men who have been unconcerned about picking up after their dogs or have been unpleasant in response to people not wanting dogs jumping on them or accosting their own dogs.
- Dog walkers have to be concerned about bikers who tear through the trails, often giving no warning, with little attention to whether people or dogs can get out of the way.
- We are adults and should know enough to behave--but we're talking about humans.

Some thoughts about leashing

I'm sure you know that most dog owners hate the idea but understand.

- Leashing won't stop people who won't pick up feces.

- What are the main issues that you/parks staff are hearing about? I know the environment is one. Is it any different than other parks? Worse? Better?
- If leashing is the goal, could there be consideration about off-leash times, such as 7-9 a.m. when dogs are most active, and use is greatest?
- What are the staffing and budget situations these days?

It would be lovely to have feedback that I could put on the FB page. Thanks so much.

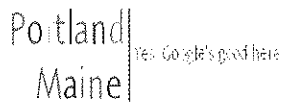
– **Dawn**

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Baxter Woods Off Leash Memo 3-7-19.pdf

142K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - Dogs Off Lease

Ethan Hipple <ehipple@portlandmaine.gov>
To: Rick Lorello <rick@informationssystemsmaine.com>

Thu, Mar 28, 2019 at 3:17 PM

Thanks for the comment Rick.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Thu, Mar 28, 2019 at 1:35 PM Rick Lorello <rick@informationssystemsmaine.com> wrote:

Hello

I don't agree with the request to make Baxter Woods a place to leash the dogs. No ground birds in the park.

--

Rick Lorello

Principal

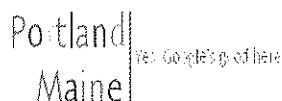
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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Dog Policy - Parks Commission April 4th Agenda

Brooks More <brooksmore@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 1:29 PM

Thank you Ethan.

Have a great weekend.

Regards,
Brooks

On Fri, Mar 29, 2019 at 12:47 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:
Thanks for your thoughtful comments Brooks. I will share with the Parks Commission.

Thanks,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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Portland, Maine 04103

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Fri, Mar 29, 2019 at 12:42 PM Brooks More <brooksmore@gmail.com> wrote:

Hi Ethan,

I saw your email address on some of the correspondence regarding Baxter Woods. So, I'm hoping that you can include these comments as part of the upcoming deliberations.

My name is Brooks More and I live at 7 Tremont St. in Portland. Our family owns a 2 year old dog and walk him every morning in Baxter Woods. In my experience, there is a consistent group of people that walk their dogs in Baxter every morning before work. For us, it is the only way for the dog to get a little bit of exercise in the morning (walking on-leash isn't really exercise for our dog).

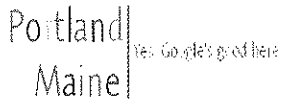
My sense of reading through the agenda materials is that the on-leash policy is inevitable and for good reasons. That being said, I'd like to ask if the Parks Commission could consider some compromises. For example, SoPo went through this type of issue with Willard Beach and decided to allow dogs off-leash for restricted hours and months. Rather than prohibit all off-leash activity in Baxter, would it be possible to limit it to a few hours in the morning? Say 6:00 a.m. to 8:30 or 9:00 a.m. After that window of time, all dogs would have to be on-leash. I realize that this may not address the bird sanctuary issues.

If all off-leash activity is prohibited, my expectation is that everyone will start driving over to the trails behind Evergreen. As a result of this consolidation of use, neighbors over there will then start complaining and it too will become off leash. If there is a chance for compromise, we would greatly appreciate it.

Thanks for your time and consideration.

Brooks

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Proposal

Ethan Hipple <ehipple@portlandmaine.gov>
To: Jessica Marino <jbmarino77@gmail.com>

Mon, Apr 1, 2019 at 9:39 AM

Thanks for your comments Jessica. I will pass them on to the Parks Commission for their meeting this Thursday. Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 8:37 AM Jessica Marino <jbmarino77@gmail.com> wrote:

Hello Ethan,

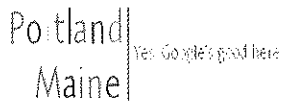
I'm not able to attend the meeting on Thursday night but wanted to share my thoughts. I've lived just blocks from Baxter Woods for 12 years and, even though I am a dog owner, I support enacting some kind of leash law and/or limiting times when dogs may be off leash there. I feel that I cannot safely walk my own dog there. I keep him on leash because he is a squirrel chaser and would gladly run into traffic after one. But we have had countless negative encounters where off leash dogs run up to him and get tangled in his leash. I have had those dog's owners scold me for bringing in a dog on a leash because "this is an off-leash dog park" and have had other times where an owner is nowhere to be found.

I have three children and when they were much younger their babysitter used to take them to the pond in the summer. A few years ago she stopped taking them because she felt like the number of dogs had increased and some were out of control and she didn't feel safe bringing the kids. One of my daughters did Cross Country running at Lincoln last year but after being chased by dogs during practice and during meets she did not sign up this year. There have been other cases where they have gone to Baxter Woods for science class and been approached by dogs with no owners in sight.

Most parents I know will not let their kids walk through Baxter Woods. Nobody will ride their bike there anymore.

I understand that Baxter Woods is a special place for dog owners who want to let their dogs off leash. But they are the minority. There is a huge community of people who cannot use those woods because of the influx of off-leash dogs. Baxter Woods is not a dog park. We have dog parks in Portland for those who want to let their dogs off leash. It is unfair that it is being used primarily by dog owners at a cost of the other neighborhood residents. It's a beautiful place and should be filled with walkers and bike riders. Nobody is saying dogs can't enjoy that park too, but everyone would be safer with those dogs on a leash. I would also support some kind of compromise; perhaps there could be times of day where dogs are allowed off leash and those times could be clearly marked.

Thank you for taking on this issue, which I know people feel passionately about on both sides.



Ethan Hipple <ehipple@portlandmaine.gov>

Dogs and Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Barbara Doughty <babsy1000@yahoo.com>

Mon, Apr 1, 2019 at 8:24 AM

Thanks Barbara. I will share your comments with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

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Portland, Maine | Yes. Life's good here.

On Sun, Mar 31, 2019 at 8:18 AM Barbara Doughty <babsy1000@yahoo.com> wrote:

Mr. Hipple:

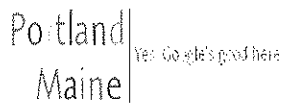
Please do not pass an ordinance that forces dogs to be on a leash in Baxter Woods. For years, I have enjoyed the beauty of that special place and especially seeing dogs running free and interacting with other dogs and humans.

This is a very special community of dog lovers. Incidents of bad behavior by dogs are so rare.

Governor Baxter proclaimed the Woods as a special place to be enjoyed by humans. As a dog lover himself, I can't believe he would have wanted to see them leashed. Doing so will deplete the Woods of many good folks who love to be there with their dog companions.

Barbara Doughty
35 Brook Road
Portland 84103

617-899-2583



Ethan Hipple <ehipple@portlandmaine.gov>

re: Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: J Godsey <joycegodsey@gmail.com>

Mon, Apr 1, 2019 at 8:27 AM

Thanks for your comments Joyce. I will send along to Parks Commission.

Take care,

Ethan H

Ethan Hipple

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Portland, Maine | Yes. Life's good here.

On Sat, Mar 30, 2019 at 11:04 AM J Godsey <joycegodsey@gmail.com> wrote:

I'm really aghast at this proposed leash restriction in Baxter Woods.

This is a case of a very tiny minority spoiling things for the majority of people.

We visit this park several times a week at various times of day.

And I have never experienced a negative incident in Baxter with my dog or other dogs!

This is a great place for dogs to learn to be social and learn to be off leash and under voice command. Fenced dog parks trap you and your dog with dogs that are unsocial and cannot behave off leash. I simply can't take my dog to a small fenced area, large unsocialized dogs tend to dominate smaller dogs.

It would be appropriate to TICKET people with unsocialized dogs who cause problems and ban those that are unsocialized. You KNOW that a proposed leash law will drive people with well behaved dogs from the park....and almost immediately be violated and you will end up trying identify people to ticket for letting their dogs BE dogs.

Nearly ALL walking and hiking trails on public land in the state are dog friendly. Imposing leash restrictions are usually dictated by the natural environment, to protect ground nesting birds or sensitive plantlife or erosion areas.

Imposing a leash restriction because a few people have caused problems is NOT a way to handle this situation.

From Personal Experience:

My dog and I hike and walk all over the state.

Our few negative experiences are with TOURISTS DOGS who aren't socialized and are off leash and FENCED DOG PARKS where people who refused to properly train their BIG DOGS bring them to wrestle with other untrained big dogs. I have literally had to pick my dog up and FLEE!

We love Quarry Run but that's just too far to go very often. It's practically in Falmouth!

Joyce Godsey
joycegodsey@gmail.com
BookRepairSupply.com
82 Devon St
Portland, Maine 04102
978-918-6031



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods/Dogs

Ethan Hipple <ehipple@portlandmaine.gov>
To: Mary Najarian <pickensmountainmama@gmail.com>

Mon, Apr 1, 2019 at 8:29 AM

Thanks for your comments Mary. I will forward your comments to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Sat, Mar 30, 2019 at 9:10 AM Mary Najarian <pickensmountainmama@gmail.com> wrote:

I understand there is a move on again to require dogs to be on leashes. I am strongly opposed. The woods make a healthy outlet for dogs to run, to be free to chase squirrels if so inclined or to chase each other. The owners enjoy a relaxing social time as well. Please do not impose this unnecessary restriction. Mary Najarian



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Toji Perlman <tojiperlman@hotmail.com>

Mon, Apr 1, 2019 at 8:30 AM

Thanks for the comments Toji. I will share your comments with the Parks Commission.

Thanks,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

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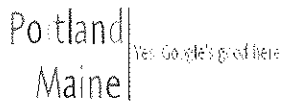
On Sat, Mar 30, 2019 at 4:02 PM Toji Perlman <tojiperlman@hotmail.com> wrote:

Hello,

I read the report concerning the leash laws in Baxter woods. I live next to the woods and walk my dogs there regularly. In the last 6 years, I haven't had one issue with unruly dogs. I think that the reason there have been more complaints than letters of support is because those who enjoy Baxter woods as it is don't feel the need to write to you. I think it would be a big loss for the residents around here to change the leash law. I also think it was largely due to more people using the the park to walk there dogs that pushed out those who where using the woods for sketchy purposes. Limiting its use for dog owners (mostly local families) not a good idea. Thank you for considering my thoughts.

Toji Perlman

Sent from iPad



Ethan Hipple <ehipple@portlandmaine.gov>

dog issues

Ethan Hipple <ehipple@portlandmaine.gov>
To: D Leland <lelanddm@gmail.com>

Mon, Apr 1, 2019 at 8:33 AM

Thanks Dawn. I'll make sure the Parks Commission sees your comments.
Take care,
Ethan

Ethan Hipple
Deputy Director
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212 Canco Rd, Suite A
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207.808-5400
ehipple@portlandmaine.gov

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On Sun, Mar 31, 2019 at 1:28 PM D Leland <lelanddm@gmail.com> wrote:

Hi Ethan

Maybe you can consider a couple things that came up:

- I tried out a 25' leash today. Did anyone ever actually do that? Dogs can't really play. Mine caught in brush beside the path and then tangled up and tripped another German shepherd and wrapped around people. The leash became covered in mud. It's laughably impractical and just got eye-rolls from people. Try to imagine 10 people with dogs on max. 25' leashes, trying to socialize their dogs.
- Ticks over at Evergreen appear to be an ongoing complaint and several folks mentioned that today. Is the city doing anything to eradicate them, aside from adding toxics to the environment? The deer aren't going away.
- Valley St. park is a poop swamp, a few responsible people come in the early morning, and many of those who do come sit on benches with cell phones and ignore dogs going off to the edges to poop. I've also found piles by the benches, and one day found THREE piles right by the gate.
- If you have a chance, check out (as I did a few weeks ago) the pathetic effort at a "dog park" over in Westbrook: A fenced square, with two broken gates, NO trees or shade or benches, and positioned at a busy intersection near Wm Clarke Dr. and the Hannaford. With snow a foot deep, nothing had been plowed. No one showed up while I was there.

There was nothing about it that said "community."

I realize the decision has probably already been made by those who heard only a few overheated complaints over the years, and no happy messages from those of us who enjoy the space with dogs. It would be interesting to see the place a year off and review the trash left in the woods, which walkers now pick up.

Attached: Leash fun, kids, regular walkers who pick up trash, walkers scouting for dog poop off-path. Enjoy.

Thanks!

— **Dawn**



Ethan Hipple <ehipple@portlandmaine.gov>

FYI: Baxter Woods - Fully eliminating the off-leash policy...

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 9:24 AM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Hi Marc,

Thanks for your thoughtful comments. I will send them along to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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Portland, Maine | Yes. Life's good here.

On Fri, Mar 29, 2019 at 8:59 PM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Mr. Hipple: I am writing to you out of my concern that the off-leash policy at Baxter Woods (BW) in Portland will be fully eliminated per the City's proposed ordinance change. My dog (Marco) and I are "regulars" in BW and I think I can speak for other "Regulars" in saying that - we all appreciate the hard work that the City staff and Portland Trails crews put in to keep BW safe, clean and gorgeous! First and foremost we dog owners realize how lucky we are to have BW as an off-leash place to enjoy with our canine loved ones! We respect and appreciate the City's role in protecting BW and honoring the deed governing how BW is to be maintained in perpetuity as a sanctuary for people and birds.

Marco and I walk in BW pretty much every day of the week, and even twice per day sometimes. Marco's ability to be off-leash in BW is a benefit to both he and I, as it allows us to each get the physical exercise and social experience we seek in the forest setting. Science shows that dogs are most fit and happy when they are allowed to sniff and mark territory freely. <http://digest.thefarmersdog.com/the-importance-of-letting-your-dog-sniff/> Requiring a 25ft. or shorter leash would drastically limit all dogs experiences in BW and generally make every one of our dogs lives (who love and need their woods romps) less rich and fulfilling.

If the off-leash allowance is fully eliminated - the thought of 25 ft. leashes being used by multiple dog owners during the same visit to BW causes me to envision people tripping over the long lines, dog leashes getting wrapped together potentially leading to dog fights, and dogs coiling their leashes around young trees or shrubs. People, likely dogs and possibly forest flora are going to get hurt! Even worse, with potentially dozens of leashed dogs around BW at peak use hours - passing runners, bikers or even pedestrians will be endangered. Requiring leashes on the BW setting will likely cause more problems than currently exist with the off-leash allowance.

Touching on the complaints and comments the City has purportedly received concerning off-leash dogs - I

have heard about and experienced first-hand some difficult situations in BW. I think I can speak to some people's concerns. While dog fights are not a common occurrence in BW, the worst I've seen happened when one of the dogs was actually on leash! Similarly – as I noted above – kids and people will not necessarily be safer in BW if a leash-law is enforced. Lastly on this topic - I've never heard of a dog biting a person in BW – so I trust that is not an argument for enacting a full time leash requirement. As for kids or other pedestrians being fearful of dogs – we handlers need to be aware of those situations and typically remove our dogs from the setting as needed. This too is not a reason to disallow off-leash dogs.

Looking at the history of Baxter Woods, I recall an initiative in the mid-1990s to ban dogs, and more recently in 2014, when citizen complaints caused the City to rethink the leash rules for BW. The City has considered leash rules before. But if you go back to the original intent, you may already know that both Mayor Baxter and Governor Baxter – namesakes of the BW park - were huge dog and animal lovers! You can see evidence of this at their Pet Cemetery on Mackworth Island – where a dozen or so dogs, horses and even cats I think are interred. While the BW Deed may not mention dogs – the Baxter's allowed their dogs a free run of their homestead on Mackworth Island. I believe the Baxter's would wholeheartedly support the current off-leash ordinance at BW. While there is no mention of dogs in the BW Deed, likely because Portland had no leash laws back in the 1940's - the Deed clearly disallows HORSES in BW and refers to BW as a bird sanctuary. I cannot imagine there is any evidence that ground-nesting or ground-feeding birds have been adversely impacted by off leash dogs in BW. Squirrels perhaps – but birds have not been threatened by the presence of dogs in BW in recent memory. I do not feel birds can be used as a reason to keep dogs on leashes in BW!

In closing I am ALL for keeping the BW off-leash/voice-command rules as is, but can live with an alternative or a compromise. I would suggest allowing dogs to be off-leash during certain hours in the morning and evening (e.g. 7-9am and 4-6pm per se) during the weekdays, with longer off-leash hours on weekends (say 7-10am and 4-7pm). I urge the City to reconsider fully eliminating the off-leash allowance in a wholesale manner! Allowing dogs to be off-leash for certain hours is a good compromise I think, and one that all impacted parties can find some agreement with.

Thanks, Marc

Anthem, Inc.

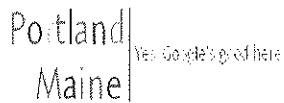
Marc Lesperance, 103 Candlewyck Terrace, Portland, ME
04102

W: (207) 209-0517 | M: (207) 329-4953 | H: (207) 774-6584

marc.lesperance@anthem.com

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash/off leash issue

Ethan Hipple <ehipple@portlandmaine.gov>
To: Shannon Wong <shannonmwong@hotmail.com>

Mon, Apr 1, 2019 at 11:10 AM

Thanks for your comments Shannon. I will pass along to the Parks Commission.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

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Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 11:08 AM Shannon Wong <shannonmwong@hotmail.com> wrote:

Dear Ethan Hipple,

As a lifelong citizen of Portland and a life long dog owner I'm passionate that we need to have access to off leash opportunities for our pets. Portland has such a great network of trails and park spaces yet, not all of them offer off leash opportunities. As a resident in the Highlands neighborhood, a great joy has been walking with my family and dog to Baxter Wood and letting him run off leash to socialize with other people and dogs. For me, this is one of the reasons Portland is such a great place to live. Our outside spaces are shared spaces, and Baxter Woods is a particular gem. These spaces are becoming fewer and fewer, so I urge you to help to find a way that this park can be maintained as a shared space for humans and off leash dogs.

I understand that the issue of owners not picking up after their pets is a concern. Perhaps, as in South Portland, a ranger could patrol and place flags where there are incidences and volunteer responsible dog owners can organize days to go in and pick up the mess. I know I'd be more than willing to go to the woods and spend an hour once a month to help maintain the cleanliness.

Baxter Woods has offered a special spot for my dog to socialize with other dogs, which is vital for his wellness, simultaneously offering opportunities for me to be social with other dog owners too which can sometimes be rare in the winter months. It's a space that the community can gather for a common purpose. This is a niche need for some people.

Just know that the site is such a valuable space for our particular family, and I know we are not alone. I'm sure we can come up with a way to compromise usage so everyone wins. Please don't take away the freedom of all the because of the short fallings of a few.

My best,

Shannon Wong

Shannon Wong

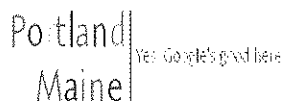
Massage & Pottery

Portland, ME

207-329-4386

<http://www.shannonmwong.com> (massage)

<http://www.wongpottery.com> (pottery)



Ethan Hipple <ehipple@portlandmaine.gov>

Comments regarding the Proposed Changes to Baxter Woods Off-Leash Rules

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 2:27 PM

To: Don Caton <dcaton@maine.rr.com>

Cc: "Mavodones, Nicholas" <nmm@portlandmaine.gov>, Justin Costa <jcosta@portlandmaine.gov>, "Kimberly M. Cook" <kcook@portlandmaine.gov>

Thanks for your thoughtful comments Don. I will share them with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

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www.portlandmaine.gov

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On Mon, Apr 1, 2019 at 1:04 PM Don Caton <dcaton@maine.rr.com> wrote:

My understanding is that you are encouraging public comment for the proposed changes that will require all dogs in Baxter Woods to be on a leash 25 foot or less. I have lived in the same house within walking a short distance of Baxter's Woods for 43 years. My children are the 5th generation of my wife's family that have lived in our house and 2 of them still live in the Deering Center neighborhood with children of their own. I have walked 4 generations of dogs in these woods and I am opposed to such a change:

- The large majority of dog owners are responsible and are self-policing. Each time that the Parks Dept. has brought up issues, things have improved. I doubt that adding another restriction will change the actions of any 'bad actors', only harm the responsible owners and their dogs.
- Baxter Wood's is a neighborhood meeting place for many of these dog owners, including a lot of our older residents. They walk together or meet at the field to let their dogs play, while they enjoy the outdoors and each other's company. Can you imagine what it will be like if groups of 2 or more dog owners try to gather or work together and have a discussion while their dogs play on 25 foot leashes? Someone will get hurt or just as bad: the conversations and gatherings of neighbors will just stop happening. Is that what the Parks & Rec Dept. is trying to achieve?
- During winter, the ice on the paths in the woods is a hazard. Walkers use "grippers" on their boots just to try to stand up. Adding leashes to the mix will cause injuries and force older residents to stop walking there completely.
- I find the argument regarding 'not qualifying' as a bird sanctuary to be a weak and laughable attempt to come up with reasons to leash the dogs. Has the Park & Rec Dept ever provided any education regarding any birds, let alone ground nesting birds, when they nest, or how to protect these nests the woods? There are signs describing trees in the woods – I've nothing to identify birds or that these woods are a bird sanctuary.

· You also state that there alternatives for off-leash. This is a lot like what the federal government did to the American Indians: slowly taking away all the available good land and forcing us to less than desirable alternatives: the woods behind Evergreen Cemetery have a lot of ledge and are more dangerous in the winter time when it is icy. The cemetery is gated and locked, it's hours are 8 am – 4:30 pm: open too late for people that work and not open late enough for those that want to walk after work. The other options mentioned are not very desirable.

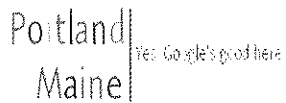
I have to admit that I do agree with the fact that these woods should be available for EVERYONE. I feel bad for those that are just plain scared of any dogs, but I don't agree that the majority of dog owners should be penalized for a few bad actors. Perhaps, you could look at some compromise, something similar to East End Beach: off-leash only before 9am and after 3:30pm (which as it turns out is when most dog owners walk their dogs there). It's not perfect, but it would provide plenty of worry-free access time for families with children, those afraid of dogs, school children.

I appreciate your willingness to request comments and hope your committee and the city council can consider the needs of the dog owners.

Don Caton

14 Holly St

Portland, ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Neighborhood Meeting

Ethan Hipple <ehipple@portlandmaine.gov>
To: Eva Humeniuk <evahumeniuk@gmail.com>

Mon, Apr 1, 2019 at 2:28 PM

Thanks for your comments Eva. I will share with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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207.808-5400

ehipple@portlandmaine.gov

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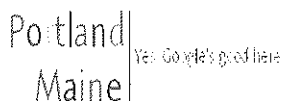
On Mon, Apr 1, 2019 at 1:09 PM Eva Humeniuk <evahumeniuk@gmail.com> wrote:

Hi Ethan, I won't be able to attend the neighborhood meeting on Baxter Woods but wanted to share my email thoughts and suggest a solution.

I walk through these woods quite often with my young children and pup. While, we have not had any bad experiences with dogs off leash I have no doubt others have.

One solution is that, perhaps the woods could have off leash "hours", similar to our beaches likes Willard. Perhaps a time early in the morning (before 7am) and evenings (after 7pm) dogs can be off leash but all other times dogs must be on a leash, (or whatever time everyone thinks is best).

Thank You, Eva



Ethan Hipple <ehipple@portlandmaine.gov>

Dogs in Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 12:54 PM

To: Michael Mertaugh <michaelmertaugh@gmail.com>

Cc: Sally Deluca <SLD@portlandmaine.gov>, "Waxman, Dory" <mermaidst@gmail.com>, Allison Carroll <acarroll@portlandmaine.gov>

Thanks Michael. Sorry to hear about the incident.

So the language we will use will be what is currently in Chapter 5 of City Code--we are simply proposing to move Baxter Woods from the "off leash/voice control" section (5.15-1(e)) to the "25 foot leash" section (5-15.1(c))
<http://www.portlandmaine.gov/DocumentCenter/View/1069/Chapter-5-Animals-and-Fowl---Revised-9182017>

See you on Thursday,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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Portland, Maine | Yes. Life's good here.

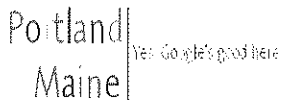
On Thu, Mar 28, 2019 at 1:37 PM Michael Mertaugh <michaelmertaugh@gmail.com> wrote:

Ethan,

I'd like to add my voice to the comments on dogs in Baxter Woods. I frequently ride my bicycle through Baxter Woods enroute to Pat's market on Stevens Avenue or the fish market on Forest Avenue. I was attacked by an off-leash dog there when I was bicycling on the path recently, and the dog owner limply explained: "I'm sorry, my dog freaks out over bicycles." I have seen many other examples of unwelcome behavior by dogs there.

I heartily support the proposed change, with a slight change in wording. I propose: "Dogs in Baxter woods are to be restrained at all times on a leash not exceeding 25 feet in length." This wording makes it clear that the dog owner is responsible for **restraining** his or her dog, which means much more than allowing any behavior within a 25 foot radius. We have all seen examples of aggressive behavior by dogs that are on leash but not restrained by their owners.

Michael



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods, Dogs, etc.

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 12:59 PM

To: Adam Victor <adam_victor@yahoo.com>

Thanks for the comments Adam--I'll pass along to the Parks Commission.

We do receive a lot of citizen comment on off-leash dogs at Baxter Woods--more than for any other open space in the city.

I'll see you at the meeting, and hopefully can answer some of your questions there.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 11:21 AM Adam Victor <adam_victor@yahoo.com> wrote:

Hi, Ethan,

I understand you've received some complaints about unruly dogs in the Woods. I'd be curious as to the volume of complaints -- I've spent a good amount of time there myself (have lived in the neighborhood since 2003), and certainly have seen some rambunctiousness, excitement, and exuberance amongst the dogs — they are dogs, after all — but I've never witnessed danger, attacks, or people cowering in fear. I'm sure it's happened, but it's certainly not characteristic of the space, the dogs, the owners, or even the non-dog-owning bystanders (like myself).

I noted that this morning's Press Herald article does not reference dog attacks, danger, or anything of the like. It does mention that a pregnant woman was "nearly knocked over," and the owner wasn't "apologetic." OK...um...well, that doesn't really sound like a crisis. Also, some middle school students were "terrified" of dogs. That sounds more like a people problem than a dog problem.

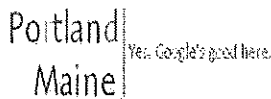
I understand the bird issues, but are we at the stage where if there there are negative consequences for any person, or group of birds, we need to make this kind of change? A change that impacts not only the hundreds of dogs and taxpayers who enjoy the park daily, but also the surrounding community?

If you've ever been in Baxter Woods at 7 o'clock in the morning, there is life, there is conversation, there is joy, there is animation, and there is community. People who look out for each other and their dogs. And it is all incredibly enhanced by the untethered nature of both dog and owner.

The net effect of making this change will be a reduction in the park's usage. It will become more sparse, less trafficked, less safe, and less of a community gathering place. Is that what Portland citizens want? I hope not.

See you Thursday night, and thanks for your consideration.

Adam Victor
224 Coyle St.
Portland, ME 04103
207-766-6807



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods concerns

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Jan 10, 2019 at 4:39 PM

To: Chelsea Malacara <chelsea.malacara@gmail.com>

Cc: Sally Deluca <sld@portlandmaine.gov>, Ethan Owens <eowens@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>, Joe Dumais <jdumais@portlandmaine.gov>, Jeff Tarling <jst@portlandmaine.gov>

Hi Chelsea,
Ethan Owens forwarded me your email...

Sorry to hear about your dog encounters at Baxter Woods. We are currently evaluating our leash policy at Baxter Woods. We do have a recommendation from our ecologist consultant that dogs be limited to on-leash so that we can comply with our deed restrictions to maintain Baxter Woods as a bird sanctuary. And anecdotally, we do receive many complaints of aggressive off-leash dogs in Baxter Woods. It is a complicated issue, with many emotions on all sides, so we don't take it lightly.

We will continue to evaluate the effectiveness of our current policy and report out to Parks Commission on any new recommendations. Ultimately, City Council would need to approve any proposed change to Chapter 5 of city code that regulates dogs on public property.

Feel free to let me know if you have any other questions or background info.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
o: 207.808-5400
ehipple@portlandmaine.gov

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----- Forwarded message -----

From: **Ethan Owens** <eowens@portlandmaine.gov>

Date: Wed, Jan 9, 2019 at 10:21 AM

Subject: Fwd: Baxter Woods concerns

To: Ethan Hipple <ehipple@portlandmaine.gov>, Joe Dumais <jdumais@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>, Tarling, Jeff <jst@portlandmaine.gov>

For you guys

----- Forwarded message -----

From: **Chelsea Malacara** <chelsea.malacara@maine.edu>

Date: Wed, Jan 9, 2019 at 9:50 AM

Subject: Baxter Woods concerns

To: <eowens@portlandmaine.gov>

Good Morning,

I wanted to reach out as a member of the Deering Center community and a commissioner on the Portland Parks Commission. Last summer there was talk about monitoring bird activity in Baxter Woods and possibly reevaluating whether or not Baxter Woods should be an off leash park.

As a dog owner myself, I never bring my dog there. The amount of dog bags seems to pile up and of more concern is the number of times myself or my dog has been accosted by other off leash dogs who are not well behaved.

I am currently pregnant and went for a solo walk, without my dog, through the park this morning knowing it wouldn't be busy. While it wasn't busy, I had two scary dog encounters. The first, two dogs came running at me and one jumped high, nearly knocked me over, and scratched my leg. The owner nonchalantly said "yeah the black one still jumps" and kept walking. Then about 5 minutes later, another dog approached me growling, looking like it was ready to bite. Again, another unapologetic owner just said "he's fine."

As someone who is passionate about park preservation, accessibility, wildlife, and dogs, I am curious about what progress or conversations, if any have recently taken place about changing the status of Baxter Woods but also changing rules about off leash dogs and having some type of enforcement. I would be supportive of turning a portion of Baxter Woods into an dog park but as it stands, with such a small footprint and irresponsible dog owner, I don't understand why it's still off leash.

I hope you can shed some light on this matter.

Best,

Chelsea Malacara

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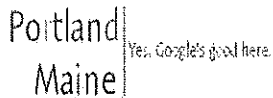
Ethan Owens CPRP, CPSI, AOLCP

Parks Assistant Director, Athletic Facilities and Playground/Courts Manager

City of Portland - Parks, Recreation and Facilities Management Dept.

212 Canco Road Portland, Maine 04103 ~ USA

207-808-5400 eowens@portlandmaine.gov



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Oct 10, 2017 at 5:15 PM

To: jackson.mcmann@maine.edu, Mike Murray <msm@portlandmaine.gov>

Hi Jackson,

Thanks for your inquiry. We have an ongoing city-wide park sign project, and Baxter will receive new signs as well. We developed special language for signs at Baxter to address dogs-at-large issues. They are currently in production at the sign company and will be up within a couple weeks of receiving them from the sign company.

Take care,
Ethan

Ethan Hipple, CPRP
Parks Director
City of Portland
212 Canco Rd.
Portland, Maine 04103
o: 207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
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----- Forwarded message -----

From: **Mike Murray** <msm@portlandmaine.gov>
Date: Tue, Oct 10, 2017 at 10:59 AM
Subject: Fwd: Baxter Woods
To: Ethan Hipple <ehipple@portlandmaine.gov>

Can you reach out to Mr. McMann on schedule?

Mike Murray
Assistant to the City Manager
City of Portland
389 Congress Street
Portland, ME 04101
207.756.8288

----- Forwarded message -----

From: **Jackson McMann** <jackson.mcmann@maine.edu>
Date: Sun, Oct 8, 2017 at 6:47 PM
Subject: Re: Baxter Woods
To: Mike Murray <msm@portlandmaine.gov>

Good evening,

Today in Baxter Woods I witnessed a bike that was moving very fast hit a dog. The dog was a little shaken up, but overall both the dog and the biker were okay. There are still no signs up. Signs could have prevented that from happening today. Please let me know if you still plan on putting up signs.

On Mon, Sep 11, 2017 at 1:20 PM, Mike Murray <msm@portlandmaine.gov> wrote:
To All,

Parks staff has recently been meeting on this very subject and will be installing signs at both entrances to Baxter Woods outlining current policy and expectations.

Mike Murray
Assistant to the City Manager
City of Portland
389 Congress Street
Portland, ME 04101
207.756.8288

On Mon, Sep 11, 2017 at 8:28 AM, Ethan Strimling <estrimling@portlandmaine.gov> wrote:
Thanks for the note. I have cc'd staff to have them look into this issue.

On Mon, Sep 11, 2017 at 8:24 AM Jackson McMann <jackson.mcmann@maine.edu> wrote:
Good morning,

My name is Jackson McMann and I have lived in Portland for all 22 years of my life. First, I want to say thank you for your career so far as a public official for our wonderful city. You are representing us well, and many of us appreciate what you have done.

I am emailing you to bring to your attention a problem in the heart of Deering: Baxter Woods. This beautiful community area is full of good people and friendly vibes, but there have been some issues surrounding dogs there. Dogs are allowed off-leash here, yet some still get into disputes over how much "off-leash" is allowed. Many bikers and runners get frustrated with people who are just letting their dogs run around. There are also incidences of small children who do not know how to act around dogs (e.g. running around letting the dogs chase them and then screaming when the dog gets a little excited), thus further causing problems. I have yet to meet an unfriendly dog in this community. What I have met, though, is a woman who is terrified of dogs yet continues to walk through Baxter Woods yelling at dog owners to keep their pets away from her.

Baxter Woods is a convenient area for dogs and their owners to take a stroll through nature in a place that is more known for its city environment. Being dog-friendly is a staple of this neighborhood and part of what makes it such a family-centered community. What I am asking is that a sign gets put at the entrance of the woods. Something that gives a friendly warning about off-leash dogs in the areas. There is also a beautiful, on-leash cemetery across the street with plenty of walking/biking paths for those who do not want any contact with dogs.

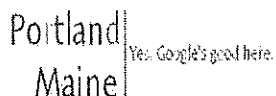
There is no reason that both bikers and off-leash dogs cannot get along. We each have to do our part by being aware of each other and properly training our pets. Either way, thank you for taking the time to read this.

Sincerely,

A Concerned Resident

—
Ethan Strimling
Mayor, Portland
389 Congress Street
Portland, ME 04101
207-874-8941

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Ethan Hipple <ehipple@portlandmaine.gov>

February with Parks, Recreation & Facilities

Stacey Dand <swd@portlandmaine.gov>

Thu, Feb 16, 2017 at 3:19 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>

FYI, just a comment on Baxter woods

~~~~~  
Stacey Willis Dand  
Marketing Consultant  
City of Portland -- Public Assembly Facilities Division  
P: 207.808.5436  
E: swd@portlandmaine.gov

----- Forwarded message -----

From: **Kevin Donoghue** <kjdonoghue@gmail.com>

Date: Thu, Feb 16, 2017 at 1:36 PM

Subject: Re: February with Parks, Recreation & Facilities

To: "Portland Parks, Recreation and Facilities Department" <swd@portlandmaine.gov>

Love the newsletter. I've found Baxter Woods to be pretty poor for skiing with kids as it's essentially become an off-leash dog park.

[Quoted text hidden]

[Quoted text hidden]

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This email was sent to kjdonoghue@gmail.com

*why did I get this?*   unsubscribe from this list   update subscription preferences

Recreation Department, City of Portland, Maine · 134 Congress St · Suite 2 · Portland, Me 04103 · USA

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#4611363 (<https://seeclickfix.com/issues/4611363>)

www.esri.com) | Esri, HERE, Garmin, INCREMENT P, NOAA, USGS  
43.6726907770178, -70.2883749661866

Replace Leash Law Signs!

86 Concord Street Portland, Maine

Created Date:

06/27/2018 1:16 PM

Details

Replace Leash Law Signs!: I am a dog owner in Deering Center. I reported this issue last year and received no help. All of the leash law signs are either gone or illegible. Recently there have been several aggressive dogs off leash that have attacked othe...

*This request has no associated secondary questions.*

1
 2

## Comments

All

Public Only

Internal Only

Category:

Replace Sign

Recategorize

Status:

Acknowledged

Change Status

Assigned to:

Public Works

Assign

Due Date:

07/19/2018

Change Due Dat

SLA Expires at:

07/19/2018

Priority:

Normal

Prioritize

(<https://seeclickfix.com/issues/4611363>)

## Status Log

Opened:

06/27/2018 1:16 PM

Acknowledged:

06/27/2018 3:17 PM

## Integration Info

Cityworks AMS

Next poll at:

in an hour

Status:

Succeeded

Remote ID:

69152





**Concord St Resident**   
(<https://seeclickfix.com/users/1568725>) | Registered User

Opened

Replace Leash Law Signs!: I am a dog owner in Deering Center. I reported this issue last year and received no help. All of the leash law signs are either gone or illegible. Recently there have been several aggressive dogs off leash that have attacked other dogs, cats, and even children! This is no longer just a Baxter Woods issue, the majority of incidents that I have seen were near Concord/Norwood. Please put up new signs and replace the ones that are unreadable. If not, I fear that you will have a dead dog, cat, or even child on your hands. I'll look forward to seeing swift action. Thank you.

06/27/2018 1:16 PM



**Fix It! Portland**   
(<https://seeclickfix.com/users/873807>) | Verified Official

Assignment

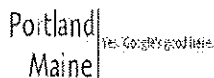
Fix It! Portland assigned this issue to Public Works

06/27/2018 3:17 PM

Check integration

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods



Jeff Tarling <jst@portlandmaine.gov>

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**Fwd: RE: Baxter Woods**

1 message

Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:24 AM

>>> Randy Billings <rbillings@mainetoday.com> 4/15/2014 12:09 PM >>>

Thanks for forward, Jeff. But could you please forward the original emails? I would like to reach out to these people. If you need me to file a formal Freedom of Access Act request, I would be more than happy to do so; just let me know.

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**From:** Jeff Tarling [mailto:JST@portlandmaine.gov]  
**Sent:** Friday, April 11, 2014 12:20 PM  
**To:** Randy Billings  
**Cc:** Joe Dumais; Troy Moon  
**Subject:** Re: Baxter Woods

Hi Randy -

Attached our Mayor Baxter Woods park information, including the dedication plaque, MBW brochure which includes a brief description of the prescribed uses by the donor, Governor Percival Baxter, the 1936 Park map, & a draft of a possible new sign that could help educate visitors to the park (the sign mockup was donated by a frequent visitor to the park and dog owner / sign graphic professional).

Baxter Woods has a variety of uses / visitors including - hiking / walking, mountain biking, nature viewing of trees, flora & fauna; outdoor environmental education, and visitors with dogs. While all uses are up in Baxter Woods as it is in all of Portland's

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

park system, dog use seems to increased exponentially due to popularity. As with any use, for example if the current dog visits where switched with say mountain biking we would likely hear from dog walkers or other groups that there are too much of that activity. Problematic dog visits seem to be limited to small numbers but indicative of the overall use increase.

In the email below also included the requested recent complaints received. In a nutshell - the park has many types of uses and visitors. Mayor Baxter Woods is unique due to donor guidelines or conditions set in the deed to the City by Governor Baxter. "A sanctuary for Wild Birds" was one of the primary uses along with a "held in trust for the people of Portland as a Municipal Forest and Park for public recreational and educational purposes..." kept in a natural state and as a sanctuary for wild birds", the deed mentions use of pedestrians and horses in the use. (see the attached brochure)

I cc'd Troy Moon and Joe Dumais who may have more information on parks & policy etc. More details soon on our proposed public meeting.

Jeff

>>> Randy Billings <rbillings@mainetoday.com> 4/11/2014 9:43 AM >>>

Hi Jeff,

This is a follow-up to our conversation. If you could please send me whatever background material, including the complaints the city has received, about dogs in Baxter Woods, I would greatly appreciate it.

Randy Billings

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4/2/14

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

Jeff:

I hope the early spring is treating you well. I took my 6th grade students to Baxter Woods this morning and once again encountered the problem of many off-leash dogs. Many of our students who come from immigrant and refugee families are terrified of dogs. Extremely terrified of them. Despite my coaching every time we head to Baxter to stay still if a dog is coming at them, most run in fear and the dog chases them thinking it is a game. Once again, I had a boy in tears today, terrified, hiding behind a tree crying. I asked the seemingly oblivious dog owner to please keep the dog from chasing our students. I did not see any action on his part. There was a small girl walking the woods today with her family, huddling next to her mom scared when she saw a different pair of off-leash dogs in the forest. I saw these same dogs poop in the forest and the dog owner do nothing about it. Actually, he wasn't even watching the dogs as they were running in the direction of the family. Just about every time I take students to the woods we encounter these problems many times throughout the day, particularly with my morning classes. I understand it is difficult balancing the desires of dog owners with the other community uses of the space, however, I am wondering where the conversation is at regarding dogs in the woods. Is there an expectation that dogs need to be on-leash? If so, could we add some signage about this and enforce it? I would really like to use the woods this spring and want to find ways for it to be a positive experience for all of my students. Aside from the dog issues, the students had a blast today and asked to go to the woods for the rest of our science classes for the year.

Any help you could offer is much appreciated.

Thank you,  
6th Grade Science  
Lincoln Middle School

=====

12/15/13

Hoping you can help keep; there's talk in the Deering hood that the schools are attempting to enforce a leash law in Baxter woods. All of the doggy wood hood over here are concerned! These woods are our daily stomping grounds and we want to keep them leash free for our pups to pounce and play.

We've heard it's being sent to the council for a vote...could you message me when you see it up on the council agenda...we plan to organize against this.

Also, wondering if you could help guide me...I'd like to get a copy of Baxter's deed to the city for this patch of wood...how do I go about finding it????

=====

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

9/13/13

Hello,

I obtained your email from Jamie Parker, who was returning a message I left regarding my recent experiences at Baxter Woods park off of Forest Ave. He suggested I forward my comments and concerns to you.

I have been frequenting that park for about two years since moving to Portland. Since spring has arrived however, it has become more and more something of a glorified dog park where various breeds run around unleashed and well beyond the means of their owners reach. I usually visit with my 4 year old who is unfortunately terrified of dogs after having been bitten, yet even if she wasn't afraid, I myself would not like to be caught unawares by the several dogs who inevitably will run up to us while we walk the paths. Owners usually beckon their pets to no avail and they cannot grab them when they are 10-15 feet ahead and quite frequently sometimes show no wish to contain them. I almost always get the supposed reassurance that their dogs 'are really friendly' or that they 'love children'.

I must admit, it's not my desire to please strangers' dogs. For the sake of their happiness and freedom, my particular family, and I believe many others, are negatively affected while visiting what should be a peaceful slice of nature. The dogs eagerly sniff, lick, jump and prod. I am forced to quickly pick up my daughter as she freezes in fear and hides behind me. Sometimes with a drink in my hand or other items, this isn't possible and I shouldn't have to do this. I always immediately inform them my daughter is afraid of dogs and they usually apologize and maybe try to go after their dog, but the damage is done and increasingly my daughter is afraid of who's around the corner and I'm more and more angered, to the point I looked up the park website, obtained the number and left a message that Jamie kindly answered.

The rules of the park clearly state the dog must be leashed OR under voice command, which I take to mean heeding carefully their owner's commands. This is almost never the case. These are animals after all and are eager to explore, and who can blame them when their owners put their needs before other people. I don't believe Gov. Baxter intended these lands to be an animal park. It should be the exception not the norm to see an unleashed dog, especially throughout trails that meander and are sometimes well disguised with summer foliage.

My daughter and I love to identify plants, leaves and wild edibles and we're genuinely on edge to get on our knees and do so, when several dogs in a half hour period will come in contact with us in a way that invades our private time and personal space. It could be a small breed, but we have come across a Great Dane two weeks ago who was unleashed. It is extremely selfish and entirely intentional that owners unleash their dogs; the dogs are almost always leashed entering the park (of course due to traffic), they are then set free to have their fun once under cover of trees. There have been only two occasions where I have been upset enough to vocalize my feelings to the owners themselves and they weren't well received because for some reason it's seen as abnormal to not want to greet every unknown dog with cheer. Not everyone is a dog lover. Humans rights should come before animals. Again, if it was an occasional

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

occurrence I would not think twice, however my daughter has been enrolled in a local preschool, Roots-N-Shoots on nearby Clinton Ave. and part of their curriculum is to regularly visit Baxter Woods. I would be very angered to know that this is still an issue while toddlers are exploring the woods. There are several places in Portland where dog owners may take their pets for their pleasure. Not every natural space should automatically be one. It's not exclusive to Baxter Woods; even the Eastern Promenade is experiencing a lot of unleashed dogs running up and down the hills just adjacent to a children's playground. However, it's more of an issue when as I mentioned the trails and paths are significantly more hidden.

I appreciate your reading these concerns. If you would like to contact me for any reason, please do so here or at 978-489-4982. Thank you again.

Regards,

Yael

Staff writer

Portland Press Herald/Maine Sunday Telegram

Desk: 207-791-6346

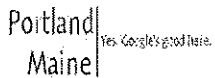
Cell: 207-615-5271

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1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an idea!



Jeff Tarling <jst@portlandmaine.gov>

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**Fwd: Re: Yes to dogs in the woods - an idea!**

1 message

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Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:43 AM

>>> Ben and Shari Shambaugh <shambaugh@gwi.net> 5/5/2014 5:45 PM >>>

Hi Jeff,

As you may have noticed, Baxter woods is looking great these days. Dog owners are listening and they care about their woods, their city, and fellow Portlandians! I have a suggestion, which is to keep the rules as they are (allowing dogs off leash) and enforce them. At \$250 a fine for not picking up after your dog, the city staffer will pay for their summer job many times over -- and if the person shows up at random times and issues fines, people will get the hint. After a few summer months, it will not be needed any more and will not cost the city anything or take valuable city council and citizen involvement time!

At the same time, I would put signs and a trash can at the entrance most used by the neighborhood, the entrance on James Street.

Thanks for listening  
Ben Shambaugh

Feb 11, 2014 02:13:51 PM, shambaugh@gwi.net wrote:

>

Thanks Jeff. I just ran into our mutual friend Norm Buttrick who gave me the gist of what you said. Thank you for your care and oversight of the forests of Portland! I would enjoy a walk through with you some time. Let's try to find a time that works.

>

>

All the best,  
Ben Shambaugh  
761-1569

on Feb 10, 2014, Jeff Tarling <JST@portlandmaine.gov> wrote:

>

>

Hi Ben -

First, thanks for visiting 'Mayor Baxter Woods' so frequently, that is exactly the intent of Percival Baxter

<https://mail.google.com/mail/u/0/?ik=5cb7043df0&view=pt&search=all&permthid=thread-f%3A1622383044896611723&simpl=msg-f%3A1622383044896611723>

1/3

1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an ideal

and role of having a forest in the city.

In the past few weeks Forestry crews have been removing invasive Norway Maple trees in Baxter Woods. Our top two primary goals in managing the trees at Mayor Baxter Woods is safety and keeping the woods as 'natural' as possible. The tree removal mentioned targeted Norway Maples as they will tend to overtake or out compete the native Red & White Oaks, Yellow Birch and Beech trees. (They likely seeded into the park from trees planted along Stevens Avenue.)

Recently in January the students at McAuley High School began working on a survey for Hemlock Woolly Adelgid another exotic pest from 'away' that threatens our native Hemlock trees which make up the largest tree type in the woods. Unfortunately the pest was found the first day. Thus our work at removing the Norway Maples to remove the seed source to hopefully keep the Norway Maples from spreading into new areas if we loose our Hemlocks.

I would be glad to meet you at the park someday for a walk. Also attached some Baxter maps & information. The first one is the View of Deering from 1886 where you can see the old 'Forest Home', the 1932 map of the woods, 'Forest Home', our recent brochure of the park.

Thanks,

>Jeff Tarling

Info on Norway Maples -  
[http://www.na.fs.fed.us/fhp/invasive\\_plants/weeds/norway-maple.pdf](http://www.na.fs.fed.us/fhp/invasive_plants/weeds/norway-maple.pdf)

>

>>>> Cheryl Leeman <cal4161@yahoo.com> 2/7/2014 7:43 AM >>>

Good morning, Ben. thank you for your thoughtful comments regarding Baxter Woods. It is indeed one of the jewels of the city's park system By copy of this email, I am asking Jeff Tarling, City Arborist to respond to your concerns. Appreciate hearing from you. Best, Cheryl

>

>

On Wednesday, February 5, 2014 6:38 PM, Ben and Shari Shambaugh <shambaugh@gwi.net> wrote:

>

>Dear Cheryl,

Thank you for your continued great work on behalf of all of us!

I am writing with a question about Baxter Woods. Like many in Deering, I am in Baxter Woods not once but several times a day with my dog (walking or today on cross-country skis!). It is a treasure for the neighborhood and the city and for me a place of spiritual solace and connection with nature, neighbors, and new friends. I am pleased that Baxter woods is well cared for, with bridges, paths, and recently sand added when walkways were icy.



1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an ideal

My question is about a series of tree cutting over the past few weeks. I understand needing to thin for the health of the woods. This, however, seems excessive and contrary to Mayor Baxter's intention for this special place. I have looked and have found no notice or other explanation, only more and more red dots - an ominous portent of more cutting to come. Do you know what is planned? Is there anyway that this could be shared with the users of the park?

Thank you much. Hope to see you around.

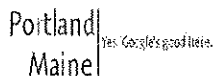
Ben Shambaugh  
147 Clinton Street  
761-1569  
(You may remember me as the dean from St. Luke's Cathedral)

>Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

>  
>

1/11/2019

City of Portland Mail - Fwd: WHAT?!! no dogs off leash in Baxter Woods! What would Gov. Baxter say?



Jeff Tarling <jst@portlandmaine.gov>

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**Fwd: WHAT?!! no dogs off leash in Baxter Woods! What would Gov. Baxter say?**

1 message

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Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:41 AM

>>> Bonnie Washuk <bwashuk@sunjournal.com> 4/23/2014 12:06 PM >>>

Hi Jeff, After reading today's story in the Press Herald I emailed Leslie Bridgers. She gave me your contact email.

Like a lot of people, I take my dog, a black lab named Lucy, to Baxter Woods 3 or 4 times a week. Before I let her off leash I spent many hours training her. She's good with recall now, helped my the fact I always have treats in my pocket. (Lucy loves to eat.)

I do plan to speak or oppose plans to no longer let dogs off leash in Baxter Woods. Remembering how the late Gov. Baxter LOVED dogs, I'm guessing he would not approve of banning off-leash dogs.

I'm usually in and out of there in 20 minutes, quick, but I really love the ability to enjoy nature so close to home. The woods is very well kept, I do my part to keep it that way. (pick up always).

It's a great resource to let Lucy sniff and run free. We both enjoy mingling with other dogs and dog owners. From what I observe, it is a community of responsible dog lovers.

That said, there's always room for improvement. Not everyone picks up after their dog, which is wrong.

One day there was a class from the school, I called Lucy, leashed her until the little ones passed. A few Somali students seemed scared even though Lucy didn't do anything and was on leash. Other students came up and asked if they could pet her, which they did. If it's a culture issue for immigrant students, maybe they could be taught that dogs are pets here.

Anyway, can you keep me informed of when any meetings will be held?

I will probably share my sentiments with Mayor Brennan and councilors.

Many thanks,

Bonnie Washuk Zaccaro and Rick Zaccaro, 22 Aiden Circle, Portland.

Home: 773-3243.

Like Page

Responsible Dog Owners of Baxter Woods Dogs

November 5, 2018 ·

Posting to you all from Sarah Maloney: Good morning RDOOBWD!! Saw your post about german shepard puppies playing...lately I've noticed on several occasions out-of-control dogs who's owners do nothing to control them. I am a dog person, but last week one lunged at me aggressively and attacked my dog, and this AM an owner with two dogs did nothing when his dogs ruthlessly hounded mine when he was headed in opposite direction- he had no voice control over the dogs, and one of them made a point to turn back to attack mine several times- another friend reported she was also scared by an aggressively behaving dog towards her last week...we need to make sure the woods stay safe for all, and being able to be leash free doesn't mean your dog can act all wild and crazy...if I post this I'll be a nag, but maybe you guys could put in a public service announcement for well-controlled and well-behaved dogs in the woods?? Thank you!!!

Liz Miraglia McGranahan Unfortunately that's the risk you take when taking dogs to unleashed dog parks, which Baxter Woods is not, by the way

2

Manage

LikeShow more reactions

· Reply

· 10w

Responsible Dog Owners of Baxter Woods Dogs Liz, Baxter is indeed for unleashed dogs.

Manage

LikeShow more reactions

· Reply

· 4w

Write a reply...

Jenny Siler Thank you Sarah Maloney!

Responsible Dog Owners of Baxter Woods Dogs

August 31, 2018

This from Jeremy, a fellow dog walker:

"I don't think there's anything that can be done but I'm noticing a fair amount of unfriendly leashed dogs in Baxter Woods. I appreciate that they're leashed but I'm constantly forced to grab my dog and leash him up so he doesn't get bit by a dog that probably shouldn't be taking walks in an off leash dog park."

[ DEAR WALKERS - I've heard this comment from a few people. First, be glad they're LEASHED. It's the unleashed ones with disagreeable owners that are worrisome. Yelling at them just makes it worse. Maybe first ask them to control their dogs, then asking that they be more considerate. READERS, HOW HAVE YOU HANDLED THIS SUCCESSFULLY?]

Gini Monsell I've heard this said by so many people, but Baxter woods is NOT an 'unleashed dog park'. We are lucky enough to be able to use it as such, but there are stipulations to the rule. Unleashed dogs MUST be within 50 feet of their owner and must be under STRICT voice control. If you are following these rules, one shouldn't have to 'grab my dog and leash him so he doesn't get bit.' Everyone in the neighborhood has the right to use that park. It is not intended for the use of unleashed dog walkers only. It is also for the local schools, walkers, bikers, cross-country skiers, etc. and they all have a right to enjoy it without being disturbed by off leash dogs and their poop. This "It's an unleashed dog park, don't come here if you don't like it" mentality is going to ruin it for us all one day. (I'm sure this comment won't win me any popularity contests in this group but oh well, its the truth lol).

5

Manage

LikeShow more reactions

• Reply

• 19w

Judy Ann Haas Yes! My thoughts exactly. Well said.

1

Manage

LikeShow more reactions

• Reply

• 19w

Gini Monsell \*\*\*Also: a dog with leash aggression towards a loose dog running up on them, doesn't mean the dog is unfriendly. Furthermore, some people keep their dogs leashed not because the dog is aggressive, but because they dog is a runner. Either way they still have a right to be there.

6

Manage

Like

• Reply

• 19w

Jeremy Conn I understand all these factors they weren't relevant to my experiences however

Manage

LikeShow more reactions

• Reply

• 19w

Paula Gates I no longer live in Portland but when I did I was deeply grateful for a place like Baxter Woods. Having to call my dog in a couple of times during each walk seemed an acceptable price to pay for such a treasure of a place.

I have a pitbull and often called her in simply to allow others who seemed uncomfortable to be comfortable again...who wants to rock such a lovely boat

2

Manage

LikeShow more reactions

• Reply

• 19w

June Delano Many dogs (including mine) only bark aggressively when leashed. Hopefully, people will have patience (and remember that our wonderful pets are also territorial canines.)

1

Manage

Like

• Reply

• 19w

1 Reply

Mike Margate Been going there for years until recently. Went today and saw a sign for leashed dogs. When did that happen?

Manage

Like

• Reply

• 19w

Responsible Dog Owners of Baxter Woods Dogs Mike - Leashed or voice-controlled dogs has always been the rule. The signs are new.

Responsible Dog Owners of Baxter Woods Dogs

January 12, 2018 •

Spooky morning at Baxter! Plus lots of poop to pick up. Please, please pick up any you see, in addition to your own dog's. It's pretty disgusting to be dodging it on the path.

And my two dogs each brought me a dead squirrel within 5 minutes of each other. Thoughtful. They didn't have wounds but I'm thinking they froze to death and fell.

Dogs and hysteria

People, I think it's time to bring it down a notch. And especially, we should not be doing it in this forum. Keep in mind that we two-leggeds do a lot more damage to each other than the dogs

ever do.

We're all grateful for a respite from the world that's offered by Portland's parks. I'm in Baxter Woods frequently and find that HUMANS go there for community, and for their dogs. Over the years I've met a lot of nice people --and dogs-- and have made a few friends. 99% of the time all goes well and often dog owners will gently remind others of the need to pick up or to watch their dogs. Some of us control our dogs too much, others are more generous both with dogs and others. We humans all need to do a better job being responsible. Let's not make this another us-versus-them situation.

26 Feb 17 · 19 neighborhoods in General  
ThankReplyReply

Andrea Gaines  
Andrea Gaines, Deering Center · 26 Feb 17  
Thanks, Dawn. You speak very well to the issue.

Ron Harrity  
Ron Harrity, Deering Center · 26 Feb 17  
Respectfully, I can't think of a better use of this forum than to discuss our shared green spaces.

Robyn Brown  
Robyn Brown, Deering Highlands · 26 Feb 17  
This is the appropriate forum to serve as a reminder that there is a leash law in Portland. It is also required that you pick up after your dog.

Andy Graham  
Andy Graham, Rosemont · 26 Feb 17  
As has been stated before, Baxter Woods and Capisic Pond Park are two of the very, very few places that dogs can be off-leash legally in Portland.. Robyn, while there may be a leash law in Portland, dogs are allowed off-leash while under voice control in both of those places. There are many, many, many acres of public space available for you folks who are timid around dogs - please leave those of us who are responsible dog owners those few spots we have left. Help us police irresponsible dog owners, but don't insist on regulating every public acre in Portland.

Kevin T. Cole  
Kevin T. Cole, Oakdale / USM · 26 Feb 17  
Baxter Woods is a designated off-leash area. We still must pick up after our dogs.

Dawn Leland  
Dawn Leland, Rosemont · 27 Feb 17  
I could have stated my initial comment better -- discussion, yes, but not mean-spirited,

us-vs.-them comments that I felt were not productive.

Lorrie Ferrari

Lorrie Ferrari, Rosemont Triangle-27 Feb 17

I have always lived with dogs and never expected tax payers to provide for them - there are 2 dogs parks (I also don't use them but they do exist) and I don't feel that my dog or myself have the right to limit others enjoyment of public spaces because they are afraid of dogs and packs of dogs. Unfortunately "responsible" doesn't mean the same thing to everyone but I'm sure none of us wants our dog harmed or killed by a responsible dog owners dog

mary emmons

mary emmons, Valley-27 Feb 17

I was walking my 2 little dogs the other day (on leash and poop bags in hand) in the city. as I was walking by a gentlemen he tried to kick my dog which was doing nothing. As I have said portland is becoming very unfriendly to dogs. He is very lucky I just called him alot of vulgar names. As a taxpayer in Portland and paying way too much in taxes etc . I find portland is not a nice place to live anymore. I respect people who dont like dogs but I also would like them to respect me and my dogs. As far as dog parks they are over crowded and dangerous for my little ones. We need more open spaces for our pets. As a TAXPAYER who pays alot I would like a little open space to let my dogs be free if only for a few minutes . I try to get to ocean ave once in awhile but it is hard for me to get there. Sooo respect goes 2 ways

Sarah Maloney

Sarah Maloney, Deering Highlands-27 Feb 17

Hello neighbors, I'm saddened by the comments in this feed and the un-neighborly feel of several of them- As a dog owner I greatly value Baxter Woods for what it offers me: a safe and beautiful space to allow my young dog to run free which aids greatly in his overall demeanor and my ability to own him and have him as a companion.. I also typically go between 6-7 AM or late in the day when no one is really there except the regulars. He is not aggressive towards anyone and ignores humans completely. I do understand however that this is not a DOG park, this is a city park, and perhaps it will become necessary at some point to create dog walking hours similar to Willard Beach and other shared human/dog spaces. One thing that would really help in the park is more containers to dispose of poop, IMO- I try to be hyper vigilant about where he goes and will frequently go off trail to tromp after his toileting to get it picked up- but it is a HUGE problem, agreed. I would hope as this discussion continues that this not become and us versus them between dogs and humans, again, it is a city park and as a dog owner in the neighborhood I thank my lucky stars it exists and would hate for it to go away.

Kevin T. Cole

Kevin T. Cole, Oakdale / USM-27 Feb 17

My sympathy for those with an irrational fear of dogs was destroyed when I was physically assaulted and injured by a person with such a fear. It's really a mental health issue and should be treated as such.



The only reason there is a taxpayer cost for dogs is because our city has decided to have a leash ordinance, which resulted in demand for creation of off-leash areas and dog parks. When I was a child in Portland, neither existed. Dogs roamed free. The biggest issue with that seemed to be that dog poop showed up on lawns--big deal. Now, the only place in Portland where I am allowed both to let my dog run free and to smoke a cigar is the forest behind Evergreen Cemetery.

Portland has changed a lot.

Bringfido.com

Baxter Woods

555 Stevens Ave, Portland, ME, US, 04103-0000

Share

Save

Website

Reviews

Directions

Or call (207) 874-8801 for more information.

Description

Baxter Woods is a forested retreat in the midst of residential neighborhoods where you and your dog can enjoy a stroll along the primary or secondary trails. Dogs must be leashed at all times and humans must clean up after their dogs.

Reviews

BringFido Traveler Rating

Baxter Woods has received a rating of 4.0 out of 5 bones by 1 dog owner on BringFido.

Gwen

More than one year ago.

We like it!

This park has a bunch of trails and an open space for dogs to romp. It is off leash, but make sure dogs are close when there are small children around as kids love running up to try to pet

my dog and I have to tell them not to. During the week it is pretty quiet and that's when I usually go.

Gayl Anglin

December 10, 2018 ·

Dear People that walk your dogs in Baxter Woods:

PLEASE put them on a leash. This morning was the second time in a month that I became part of an improptu dog rescue of someone's baby that took off on a wild run. And while I get that they may "never do this," all it takes is one time for them to get hit by a car. The dog this morning barely missed getting hit, save for me running out into the street to wave my arms frantically at the car who slowed and swerved at the last minute. This is an urban park and your babies need to be on leash.

Signed: Your neighbor and fellow dog lover

1515

7 Comments

Like

Share

Comments

Margie Arnett

Margie Arnett People refusing to use leashes drive me NUTS!

Manage

Like

· 5w

Alicia Hicks Olsen

Alicia Hicks Olsen First rule of owning a dog. Never say never. They will prove you wrong.

Manage

LikeShow more reactions

· 5w

Kayla Cavallaro

Kayla Cavallaro YES. omg YES

Manage

LikeShow more reactions

· 5w

Christine Lashua

Christine Lashua Hi, can you set it up so that I can share this. So important.

1

Manage

LikeShow more reactions

· 5w

Gayl Anglin

Gayl Anglin Yes!

Manage

LikeShow more reactions

· 5w

Penny Von Helmolt

Penny Von Helmolt Good work as usual Gayl. I remember you crawling on the 10 Freeway in LA- rescuing a poor little fellow. Bravo!

1

Manage

LikeShow more reactions

· 5w

Gayl Anglin

Gayl Anglin Ha. Those were the (crazy) days.

Responsible Dog Owners of Baxter Woods Dogs

June 13, 2018 ·

Does anyone know details of a rumored "bike camp" that may include Baxter Woods?

New signs are there at entrances. Oddly they do NOT include any "no smoking" notice. Again today we spotted a young woman smoking and politely said to her that it was not allowed. She kept on walking. What is it about timber and dry leaves that smokers don't get?

Responsible Dog Owners of Baxter Woods Dogs

June 4, 2018 ·

Does a poop bag in COLOR left on the path for a walker's return-trip pickup, more incline you to take it to the trash? Just wondering.

Also, found leash. \*\* Not- purple poop bag was pictured under this post\*\*

my note

Responsible Dog Owners of Baxter Woods Dogs

May 18, 2018 ·

Rochelle sent this 5/15:

This morning we noticed a Maillard duck family with very new tiny ducklings in Baxter pond [near Forest Av.]. They are very vulnerable in that small pond and helpless if dogs go after them. I'm hoping you can post something letting people know about them so they don't allow their dogs to harass them. Last spring, I witnessed people laughing while their dogs swam around chasing ducks in that pond.

I know someone else who witnessed teenage boys throwing things at them early this evening. She has called Maine Audubon about it.

Anyway thanks for listening and I hope you have time to ask people to keep their dogs out of the pond.

5/18: Unfortunately, I think they have already been eaten. We checked on them this morning. Dad was alone and then flew away while we walked around the pond looking for mom and babies.

Responsible Dog Owners of Baxter Woods Dogs What time was it that you saw these critters? Would love to time my walks to see them (dogs on leash of course).

Manage

Like · Reply · 34w

Liam Sullivan

Liam Sullivan I saw the 10 baby ducks tonight around 6pm with the mother duck. They are pretty amazing creatures and we are lucky to have them in our neighborhood

1

Manage

Like · Reply · 34w

Responsible Dog Owners of Baxter Woods Dogs

Responsible Dog Owners of Baxter Woods Dogs Oh good!

Manage

Like · Reply · 34w

Liam Sullivan

Liam Sullivan Update: Asher and I saw the ducklings this morning with what I am assuming are their parents; 1 duck and 1 drake. They look like they are healthy, growing and noticeably a lot more independent, but I only counted 8 ducklings today. Okay; back to work!

Responsible Dog Owners of Baxter Woods Dogs

March 19, 2018 ·

Way too much poop on the path, folks. Watch what your dog is doing!

How much more trouble would it be to just type two letters "th" instead of ' ' ?

Responsible Dog Owners of Baxter Woods Dogs

Responsible Dog Owners of Baxter Woods Dogs Of course the problem is how police are distributed in the community-- dog poop isn't high on the list. The park rangers do come in periodically but there aren't enough of them either to be everywhere, all the time. Just reality in what is not a police state. Luckily, emergency calls (see previous post) do get a quick response.

1

Manage

Like · Reply · 43w

Debra Ann Flynn

Debra Ann Flynn if people truly got fined for not watching their loose dogs, having no control of them in attack mode or for their waste I think all the parks would be better :)

Responsible Dog Owners of Baxter Woods Dogs

March 11, 2018 ·

Someone added a smile to the snowperson! Good idea. Except that another storm is due Tuesday. No smile for that. A few determined daffodils are peeking through the melted areas elsewhere.

A sudden flurry of people occurred, some having forgotten the time changeover. Two girls had to be told (nicely) not to smoke in the woods. Fire's unlikely now but the place is full of pine pitch AND smoking in parks is illegal.

A person came with a small female dog in heat, running loose, causing a brief rumble among the males. A couple people pointed out it's not a great idea to bring her loose like that, both for the dog's safety and to avoid a fight. Owner just ignored it all and walked on.

Responsible Dog Owners of Baxter Woods Dogs

March 10, 2018 ·

Dogs found a newly killed squirrel on the path. They were curious. I took it and stashed it under some logs. Then Joe ran back, dug it out, and went to a new location and dug a new hole, dropped in the squirrel, and covered it, using his nose in lieu of the missing front leg. Then he came back to me. What IS that? Reverence for the dead? Saving for a snack later? A commentary on my choice of burial?

# Complaints rising over unleashed dogs in Portland's Baxter Woods

[pressherald.com/2014/04/23/a\\_controversy\\_unleashed\\_/](http://pressherald.com/2014/04/23/a_controversy_unleashed_/)

By Leslie Bridgers

April 23, 2014

It takes only a short stroll into the trees from the entrance on Stevens Avenue to see who rules Portland's Mayor Baxter Woods.

On Tuesday afternoon, dozens of dogs romped through the park, some sprinting down the trails, a few fetching balls in a field and others ambling by their owners' sides – almost every one without a leash.

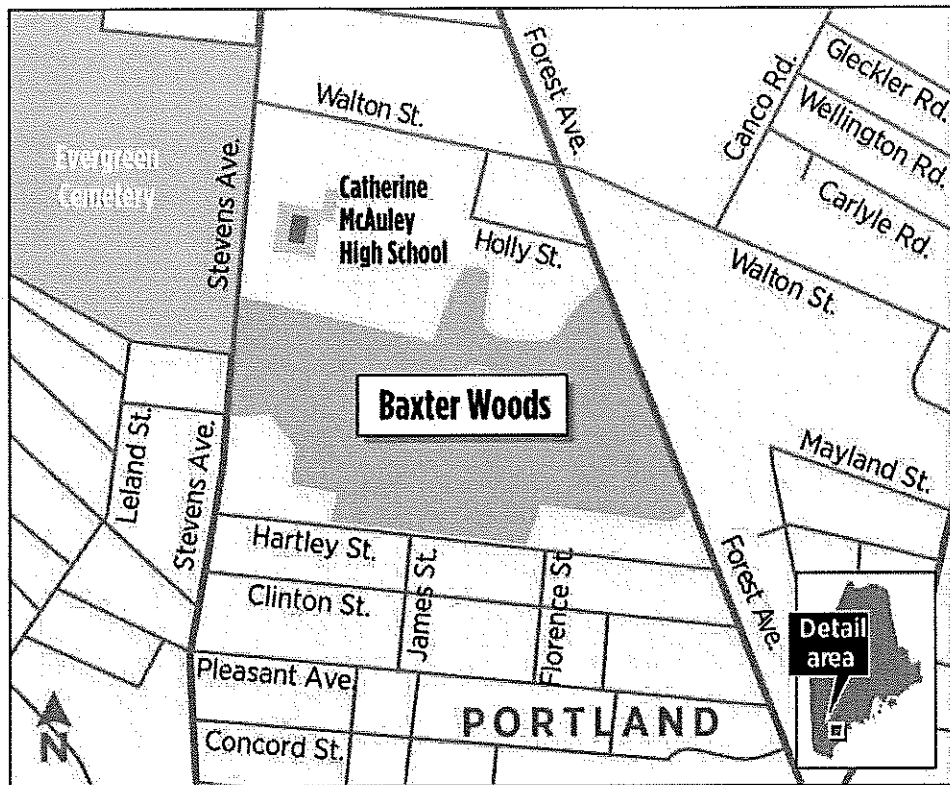
## Additional Photos



Moriah Duval of Portland walks her dog Penelope, center, and a friend's pooch, Kyra, during a visit to Mayor Baxter Woods in Portland on Tuesday. Dogs are allowed off-leash in the park if they're under voice control, but some visitors to the woods complain about the effect loose dogs can have on children and others. Shawn Patrick Ouellette/Staff Photographer



Tammy Riley of Portland walks her dogs Noelle, left, and Sophie off leash during a visit to Baxter Woods on Tuesday. City officials say they want to balance the needs of all of the park's users. Shawn Patrick Ouellette/Staff Photographer



STAFF GRAPHIC | MICHAEL FISHER

Dogs may not rule for long, however.

Complaints that loose dogs have chased and frightened children, among other things, have thrust the popular park into the recurring conflict between dog owners who want their pets to run free and people who, for various reasons, prefer them on a short leash.

The city is about to post signs and hold a meeting to warn dog owners to be respectful of other park users. If those efforts don't work, the signs warn, the city could require leashes in Baxter Woods.

While officials hope to avoid it, similar conflicts have escalated into culture clashes over dogs' access to beaches, parks and other public areas, dividing neighborhoods and communities in southern Maine, including in Portland and South Portland.

Most recently, dog owners in Scarborough forced a special election to overturn leash rules adopted to protect shorebirds such as piping plovers, one of which was killed by an unleashed dog on Pine Point Beach last summer.



The number of dogs in Baxter Woods has been on the rise since Portland banned dogs from Western Cemetery in 2001, the outcome of an early and bitter clash between pet owners and those who felt overwhelmed by loose dogs.

The number of complaints about dogs in Baxter Woods has risen, too, said Jeff Tarling, the city's arborist.

Dogs are allowed off-leash in the park if they're under voice control, Tarling said, but people's definitions of voice control vary. City code says an off-leash dog in Baxter Woods, or any other public area where leashes are not required, must be within 50 feet of its owner and immediately return to the owner's side when called.

Although dogs that use the trails regularly far outnumber the people who are opposed to them running loose, Tarling said, everyone should be able to enjoy the park peacefully.

"We're just looking at this to be so that all visitors have the same experience," he said.

Within the next month, the city plans to post signs at the park's four entrances and hold a public meeting to make dog owners more aware of the effect their animals can have on other people in the park.

That includes Yael Ashtari's 4-year-old daughter, who has been scared of dogs since she was bitten by one.

"The dogs eagerly sniff, lick, jump and prod. I am forced to quickly pick up my daughter as she freezes in fear and hides behind me," Ashtari wrote in a letter to the city in August.

Robin Lea, a sixth-grade science teacher at Lincoln Middle School, wrote to Tarling this month, saying she had taken students to nearby Baxter Woods "and once again encountered the problem of many off-leash dogs."

Lea said her immigrant and refugee students are particularly scared of the dogs – presumably because they're not familiar with them as pets. Many Muslims consider dogs unclean and avoid them.

Despite Lea's instructions for her students to be still, she said, "most run in fear and the dog chases them thinking it is a game."

And that could cause more than tears.

Two years ago, Tarling said, a middle school student who was running through the woods with the cross-country team was bitten by an unleashed dog.

There's no mention of dogs in the terms laid out by Percival Baxter in 1946, when he conveyed the 30-acre park to the city in honor of his father, James Phinney Baxter, a former Portland mayor. Rather, he deemed it a place for recreation and education, as well as a sanctuary for birds.

"There's no question it's probably not a place that birds are going to find inviting right now," Tarling said.

Before requiring leashes for dogs in the woods, he said, the city will try to educate dog owners and balance the needs of the park's various users. He hopes people will start policing themselves.

Baxter Woods is not yet a battleground similar to Scarborough's beaches, but David Victor can see the same thing happening if the city considers a leash requirement.

"People would come out," he said. "It would be like Scarborough."

Victor has been bringing his black Lab, Lily, to Baxter Woods twice a day for 10 years. Because of her taste for other dogs' excrement, he keeps her on a leash. But that doesn't mean he's fine with a leash requirement.

He fears that people who want to let their dogs run loose would stop coming, and the character of the park, as a place for dog owners to meet and mingle, would change completely.

"There's community here," he said.

*Leslie Bridgers can be contacted at 791-6364 or at: [\[email protected\]](#)[\[email protected\]](#)Twitter: [@lesliebridgers@lesliebridgers](#)*

# Friends of Mayor Baxter Woods (BW) Leash Law Proposal Responses

The Friends of Mayor Baxter Woods group is submitting this document to provide new information to Councilors and City Staff regarding the City's leash law proposal, and in particular, our responses to the reasons why City Staff is asking Council to revise the leash laws in the City Code only for BW. We ask you to review the data we have collected, and to consider the gathering of more information to determine what is actually happening in BW before the proposed ordinances changes are enacted into law.

## Table of Contents

- Page 2:** Executive Summary that includes our suggestions to modify the City's leash law proposal
- Pages 3 – 12:** Full Responses to City's leash law memo and reasons cited by City Staff for leash law
1. Complaints: Pages 3-4
  2. Bird Habitat: Pages 5-8
  3. Other Places to walk dogs off-leash: Pages 8-9
  4. Deed Issues: Pages 10-12
- Page 12:** Our Final Thoughts & Suggestions
- Pages 13 – 15:** Summary Bird Count Data compiling the City's reports and relevant eBird.com data

## References

1. Please refer to the 33-page document packet handed out at the 1/15 S&T Comm. Mtg. that includes: Our Case for more study of BW; a PowerPoint Slide Deck; the Deed; our essay about Gov. Baxter, 1946 Press Herald articles about BW; supporting documents on the bird counts/comparison charts, our request for a delay in the process, and our presentation at the 1/15 Committee Meeting
2. Visit our Friends Group's website at [www.baxterwoodsfriends.com](http://www.baxterwoodsfriends.com) for more information about Mayor Baxter Woods, Gov. Baxter and his legacy, and the City's leash law proposal.
3. Gov. Baxter's book "My Irish Setter Dogs" can be accessed here:  
<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t88g98v5n&view=1up&seq=1>  
Our essay about Gov. Baxter and his Legacy: <https://www.baxterwoodsfriends.com/baxters-deed.html>
4. The City's leash-law documents (Memos, the Management Plan, FFMB, etc.) for the 1/15/20 S&T Comm. meeting: <https://portlandme.civicclerk.com/Web/Player.aspx?id=1203&key=-1&mod=-1&mk=-1&nov=0>,  
7/18/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=95&key=-1&mod=-1&mk=-1&nov=0>,  
4/4/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=92&key=-1&mod=-1&mk=-1&nov=0>
5. Journal of the American Medical Association study on senior injuries related to leashed dog walking:  
<https://www.mnn.com/family/pets/stories/seniors-dog-walking-study-tips-avoid-fall>
6. Reporting on ticks and tick borne diseases: <https://www.pressherald.com/2020/01/03/tick-borne-illnesses-lyme-anaplasmosis-increased-in-maine-in-2019/>

## **Executive Summary – Friends Group Responses to the City’s Baxter Woods (BW) Leash Law Proposal**

The Friends of BW kindly asks City Council to delay the final vote on this proposal so that City Staff, in collaboration with our group and other members of the community, can collect all the data, work on strategies to identify and resolve issues, and produce a workable and acceptable plan for Council to consider. We pledge to work in consort with City Staff, offering a committed group of volunteers to assist in collecting data. It is our belief that together we can come up with a better proposal, one that will be accepted by the entire community that reflects collaboration rather than conflicting presentations.

### **A. CITY’S REASONS FOR THE LEASH LAW & OUR RESPONSES**

#### **1. Complaints against off-leash dogs – Pages 3-4**

- We recognize issues exist (everywhere); request delayed leash law; collect data, develop plan
- Most complaints internal to City Staff, from years back, no City enforcement/education efforts
- Staff ignored 430+ surveyed by Friends group (98% support daily off-leash hours)

#### **2. Bird Habitat impacted by off-leash dogs – Pages 5-7**

- No evidence of any “negative impact” by dogs, conjecture only; bird population is healthy
- City Memo and presentations misrepresent information from its Management Plan
- City did not follow their own Management Plan’s guidance – “Societal Considerations”
- City’s Management Plan lists natural reasons why BW is not a suitable habitat for nesting birds

#### **3. Other “more appropriate” places in Portland to walk dogs off-leash – Pages 8-9**

- The health of our established community in BW will be negatively impacted by the leash law
- What about the other places? They are all less safe, less accessible and further away than BW
- City says BW “sanctuary” should be “on-leash”; Robinson Woods & other places allow off-leash

#### **4. City may be in violation of the 1946 BW Deed – Pages 10-15**

- City did believe it was out of compliance initially. Does it still?
- What was the intent of the words in the 1946 Deed? Gov. Baxter’s actual words as a guide
- Again - the actual bird count data show that BW is a fine “sanctuary for wild birds” already!
- If leash-law passes as it stands now, then the City WILL be out of compliance with the Deed

### **B. THE CITY’S LEASH LAW PROPOSAL & OUR SUGGESTED MODIFICATIONS**

#### **1. On-leash only from April 1<sup>st</sup> through July 31 annually**

- Strike this section or amend to annual off-leash hours (See 2.), bird populations are healthy

#### **2. Off-leash hours from August 1<sup>st</sup> to March 31<sup>st</sup> annually (off-leash 5am-9am and 3pm-10pm)**

- Suggest amending this section; add 2 hours of off-leash hours as follows: 5am-10am, and 2pm-10pm off-leash hours to accommodate night workers, elderly walkers and stay-at-home parents

#### **3. Establish 5.5 acre “Bird Habitat Restoration Area” (BHRA) in NW corner of BW (fenced and log/brush\_barrier)**

- This section, if enacted as drafted will put the City in the position of being out of compliance with the Deed – where BW is not “kept in a natural wild state” as required in the Deed
- Additional compliance issues - pedestrians “undisturbed”, “no fancy works”, no “landscaping”
- At a minimum, the BHRA should be delayed until the five-building construction project immediately adjacent to the proposed BHRA is completed.
- See Pages 10-12 for more information on the Deed and Gov. Baxter’s timely, written guidance

## **Friends of Baxter Woods – Responses to the Parks Department’s Reasons for the leash law**

In its Memo dated December 2019 – the City presents four “reasons” for its BW leash law proposal, and seeks enactment of the ordinance by April 1, 2020. Below is our feedback to those reasons – none of which we believe rise to the level of requiring the changes to City Code that Staff are seeking.

Further, we also believe this is an unnecessarily quick turn-around time for City Council to review the data presented and consider whether there truly is a justification for this action right now. City Staff noted at the 1/15 S&T Committee meeting this is not an emergent situation requiring expedited action by the Council. We contend the City does not make its case for the ordinance changes. More data should be collected, and the current proposal be put on hold until all of the relevant data is gathered and considered ahead of any ordinance changes being made to the City Code. Here are our responses to the City’s reasons as listed in the December 2019 Memo.

### **1. COMPLAINTS AGAINST OFF-LEASH DOGS**

The first reason for enacting the new leash law (cited by City Staff) is based entirely on complaints about “packs” of unruly dogs.

**A. We are ready to work together to identify the issues at hand!** We recognize that some situations around dogs create anxiety for people, and to that end, the Friends of Mayor Baxter Woods is ready to work with City Staff and the community to gain a better understanding about why some people avoid BW because of the long time (>65 years!) off-leash dog activity there. The Friends of Baxter Woods group kindly requests that Council grant it more time to work with all affected parties (teachers, kids, daycare operators, etc.) at determining what the problems truly are, and to work together to develop a plan that resolves all the perceived issues. We therefore ask for a delay in the implementation of the proposed leash law so that City Staff, our group and others can coordinate the collection of data (interviews, surveys, monitoring, etc.) and put a plan into action. The City has a resource in our Friends group of hundreds of potential volunteers, who are people committed to making BW a safe and welcoming place for everyone.

**B. Complaints** - Were daycare and school groups really “turned back” from BW because of “unruly dogs”? (*City Memo – p.2*), or did something different happen? Our group has communicated with staff from local Daycare Centers and a Lincoln Middle School teacher, all who visit BW with students – none of whom have ever been “turned back” or denied access to BW by dogs! This alarming accusation made in the City’s memo is not supported in any of the complaints – whether prior to or after the leash law was initially proposed. Our interactions with educators and daycare operators - who regularly use BW without incident and love the park setting, report having positive interactions between their kids and dogs. The science is clear on how dogs have a therapeutic effect on most people, and can enhance the overall educational and developmental experiences of children. We believe this is something to build on and develop, not limit, restrict or rescind.

One Lincoln Middle School teacher we contacted, who wished to remain anonymous regarding her original complaint from 2013 about dogs interrupting her classes’ visits to BW, never intended for the City to enact a leash law in BW because of her complaint. Rather, she hoped that City Staff would help get the word out to BW dog owners to help steer their dogs away or leash pets during her class’ visits to BW. **This is something that our group would love to work on with educators and others.** We strongly believe that together we can effectively resolve any issues identified without a change to the City ordinances. We are eager to work with City Staff (Parks Department, Portland Schools, etc.) to establish an effective policy that will allow all BW Park users to feel safe and still enjoy all the forest has to offer.

Outreach to the Police Department recently disclosed that the PPD has no record of any problems in BW. Even Parks Staff admits that no tickets or citations have been issued in BW for any dog -

related violations in many years. **If BW has been this unsafe place, where unruly dogs are repeatedly threatening children – surely the City would have acted in some way to protect its citizens – long before seeking a change to the City Code leash law ordinance.** However, in fact – City staff has done little or nothing to change behaviors in BW, other than place a few signs asking for dog-owners to be respectful of others who use BW.

Did the City boost enforcement in BW or monitor activity in any way? The answer is **NO!**

Did the City host a public forum to educate the users of BW about the issues? **NO!**

Did the City meaningfully inform the community about the supposed public safety issues? **NO!**

Did the City work with the users of BW in any way to problem-solve solutions prior to seeking a leash law ordinance change? Yet again, the answer is **NO!**

Regardless – we are ready to work with City Staff and all interested parties at identifying the issues that affect citizen's experiences in BW, and collaborating to determine the best course of action to resolve them. We want everyone to experience this unique park in Portland. We urge Councilors to make its decision on this leash-law proposal based on facts, a full understanding of the incidents, and the overall public benefit and general sentiments about citizen's perceived experiences. One group's views should not be discounted over the others. Councilors did not need to be presented with this frustrating, muddled, and inaccurate portrayal of BW – one that is reliant on errant assumptions, some alarmist language, and conflated or incomplete data to make its case. We can and should do better than this when impacting people's lives!

**C. Not a representative vote** – Despite repeatedly telling users that this proposal is not a popularity contest, City Staff (hypocritically and erroneously we add) notes in the proposal memo that:

*“Before a (leash law) policy change was first publicly proposed in March 2019, the majority of public comments have been opposed to the current permissive off-leash policy”. City Memo p. 1*

How could BW users have known to call the City to provide complimentary data (about off-leash dogs) when the proposal had not been publicly announced at the time? If this is not a popular vote, why does the City even make this assertion in its proposal memo?

Despite the City's intentions of proposing the leash law still being a secret, and with only inside individuals or the complainants themselves knowing about the coming initial leash-law proposal – even then there were still more positive comments about BW current policy when City Staff issued the initial proposal. A rudimentary review of the first PDF summary of communications received by the City (*a document not provided to the Committee on 1/15, but shared in July 2019*), prior to the initial proposal's roll-out in March 2019, reveals 32 communications about BW, breaking out as follows:

- 10 are indeed complaints about dogs in BW (4 internal from City staff or officials)
- 14 communications supporting the current off-leash dog walking policy
- 8 were general questions about BW signage, tree cutting, ducks in the pond, etc.

Therefore, by the numbers, **complaints were not the majority** of comments received by City Staff before the initial leash law proposal was released. As the City has acknowledged, after the proposal was released comments supporting the existing policy skyrocketed, with up to 98% supporting the current off-leash policy! Regardless of how many people have complained and how many people support the existing law – the VAST MAJORITY of citizens have stepped up to say the City's proposal is just not acceptable. We believe there should be further study about what is currently happening in BW, and a common-sense solution developed collaboratively to ensure all voices are heard and considered!

## 2. BIRD HABITAT IMPACTED BY OFF-LEASH DOGS

Next, the City contends that off-leash dog activity is having a “negative impact on ground-nesting and ground-feeding birds” in BW.

- A. **No documented evidence of the supposed “...negative impact...”**: The City memo misstates what the Management Plan actually says; the premise is that off-leash dogs are some sort of a “threat” to birds in BW. The Management Plan actually reads as follows (emphasis added),

*“Off-leash dogs are **likely** having a negative impact on ground-nesting and ground-feeding birds as well as the associated shrubs and small trees. A related concern is that **the high density of trails and foot traffic adds to wildlife disturbances whether or not dogs are leashed.**” Management Plan, p.6*

Unfortunately, in the Management Plan, there is NO evidence that dogs have harmed any birds, damaged any shrubs or trees, or even “likely” had a “negative impact” on the natural habitat of BW. The City’s assertion is just not supported anywhere in the Management Plan, or other City documents for that matter. We even Googled “dogs damage bird habitat”, and what comes up are reports of feral dogs harming habitats in Third World countries, where foraging for food affected some bird and mammal species. We suggest our domesticated, well fed and much loved family pets are not negatively affecting the bird population of BW. None of the pronouncements in the City’s Management Plan, memo or leash law proposal provides any evidence or observations to support the claims made. We are a neighborhood City Park with hundreds of pet cats nearby and many predator species often observed in BW. These are the real threat to birds in BW and elsewhere as cited in the City’s Management Plan, the BRI study and world-wide-web.

- B. **“likely having a negative impact...”** - Even so – when the draft Management Plan was released by the author, one member of the City Parks Staff requested that the word “likely” be removed from the report to indicate that (emphasis added) “off-leash dogs **are having** a negative impact...”. The e-mail below, secured by the Friends group via a Freedom of Access request in April 2019, illustrates this interaction between City Staff about the Management Plan and how it has been utilized by the City (emphasis added)...

**From:** [Joe Dumais](#)  
**Sent:** Thursday, February 15, 2018 8:52 AM  
**To:** [Jeff Tarling](#)  
**Cc:** [Ethan Hipple](#)  
**Subject:** Re: Management plan draft

*I read the whole thing, let's make some signs and require dogs to be on leash April 1 through July 30 as prescribed on the bottom of page 54. **We should go in saying year round then negotiate the limited restriction. (or not)** because they are going to go nuclear when we do this. I do wish he would not say "likely having an impact" and would say are definitely having an impact, can you get him to change that, he says it a couple times.*

*This is great stuff, good luck with implementation. (I'm not being sarcastic here, I mean it)*

*Saw two typos pg 6, sort should be short, & page 16, ever should be never.*

The word “likely” as written in the Management Plan is important, because it shows that the author/forester was not certain himself if dogs were truly having a negative impact on BW. That is why he advised the City to conduct further study to confirm if his assertion was indeed correct. **The City has done no further analysis or study of this in any way** as illustrated below.

**C. City did not adhere to the Management Plan's suggestions & there was no user input...**

- 1. A full-time leash-law?** A full time (24/7/365) leash-law was not something suggested in the Management Plan, but it was the very first thing City Staff initially proposed at the 4/4/2019 Parks Commission meeting. Then, only after it was urged to do so by the Commission Chair did City Staff then draft and submit the "compromise" proposal for consideration by the Parks Commission at the 7/18/19 meeting. That second version of the proposal was amended again, to include user suggestions of an earlier start time to off-leash activity in the afternoons, but other suggested amendments (a later end time for off-leash activities in the morning and off-leash allowed in the 4-1 – 7/31 period) were either ignored by City Staff or were subverted inappropriately by the Commission Chair.
- 2. Commission vote:** Although the revised proposal passed by a 10-1 vote at the 7/18/2019 meeting – the final vote was taken out of order and was therefore rendered meaningless. In the midst of the Commission's deliberations the Chair interrupted a Commissioner, who held the floor, and who we have confirmed was in the process of further amending the proposal (to remove the April 1 – July 31 full-time on-leash requirement – much to our delight). Our enthusiasm was quashed though – as the Chair cut-off the Commissioner and quickly redirected to a vote on the proposal as amended – resulting in the 10-1 vote, with the interrupted Commissioner being the sole "No" vote. The "compromise" proposal (a compromise only with itself), was therefore not even fully heard by the Parks Commission, and certainly wasn't done in consultation with the actual users and caretakers of Baxter Woods.
- 3. Presentation:** While our group appreciated being allowed to present at the 1/15/2020 S&T Committee Workshop, this was the first time we were given a voice in this entire process. Back in May 2019, when we met with Staff to learn about the "compromise" proposal – we were told we could make a presentation at the 7/18 meeting if we met certain criteria. Despite jumping through several hoops to be allowed to make a brief presentation, we were denied the opportunity to speak beyond our individual three minutes of public comment, even when we requested additional time for one individual to speak, if others gave up their 3 minutes of public comment time. City Staff denied us this reasonable request as well. The City has excluded our unified voices and denied the Commission an opportunity to hear our point of view and witness the evidence we have collected. Is it not clear why this process has been perceived as anti-democratic by a majority of the 250+ citizens on our e-mail list, who are consistent BW caretakers?
- 4. Shut out:** From the outset the actual daily users of BW were shut out of this process. We were not consulted with or even appraised of the City's desire to enact a leash law, or that the City had even contracted with a consultant to develop a Management Plan for Baxter Woods. We first learned of all this in late March 2019, just weeks prior to the first Commission meeting on 4/4. Perhaps most discouraging, the Management Plan included a section suggesting a public review of the plan before it was finalized:

**Societal Considerations**

Public forest management should include opportunities for members of the public to ask questions about and provide comments on draft plans before they are finalized. **Management Plan, p. 34**

The City ignored this consideration of it' own Management Plan, never consulting with the users of BW until the "compromise" leash proposal had already been developed in May 2019 – over one year after the Management Plan had been finalized and the initial proposal published.



5. **The meeting:** In its memo City Staff says it met with BW users, but that was only after the initial proposal was published. The request for a meeting went to one user of Baxter Woods (who runs a BW Facebook Page on social media), who graciously invited a second user to attend. That meeting took place on 5/31/19 and was more a one-way communication than a collaboration or problem-solving session. City Staff was not interested in or receptive to any suggestions our user group offered at the meeting, and discounted all of our requests.

D. **What does the Management Plan really say?** Back to the purported “likely negative impact” off-leash, dogs may have on the BW habitats. The Management Plan actually does say a few things.

1. **No ground cover/under-growth:** A deeper review of the forest analysis in the Management Plan reveals the true reasons why Baxter Woods is not a suitable/preferred habitat for forest birds. One reason is that 81% of BW acreage (24 of the 30 acres) has little or no undergrowth due to the Hemlock/Pine/Oak high canopy blocking sunlight from reaching the lower canopy and ground level.

*“Nearly all stands have moderate to full canopy cover of mature trees...which limits the light available for forest regeneration. While attractive from a visual perspective, the lack of understory cover **limits the habitat for species that nest and forage in the lower canopy layers.** Old field, shrub, and young saplings, and important habitat type for some species, represent less than 3% of the area (in Baxter Woods).” **Management Plan, p. 25***

2. **BW size diminishes the habitat:** As reported in the Management Plan and the Audubon Forestry for Maine Birds (FFMB) manual (see the City’s documents linked at p.1), the key forest birds to watch for locally likely prefer nesting and foraging in larger forest blocks >250 acres in size. BW, a forest of just 30 acres is too small in size for the key species.

*“This stand provides habitat values of mature mixed hardwood-conifer forest, but has a minimal understory and ground cover layers favored by some species, and **(bird) species characteristic of larger forest blocks are unlikely to nest here.**” **Management Plan, p. 43***

3. **The shape of BW even diminishes the habitat:** The City’s own documents clearly show that the context of forest shape and landscape impacts the habitat for forest bird species:

*“The size and shape of a forest block matters to many bird species. A long, thin block of forest has less interior and more edge compared to a square block, and many birds are sensitive to these features. **Wood thrush, tanagers and ovenbirds prefer forest interior and avoid edges.**” **FFMB, p. 70***

BW is approximately 10 acres (L) x 3 acres (W), running between Hartley Street and the sprawling 100+ unit Motherhouse Complex (under construction) and the 200 unit/11 story Deering Pavilion apartment building. This narrow woodland park provides little “interior” forest that most wild bird species prefer. All of BW is essentially dangerous edge forest where wild birds are at more risk from their common predators – cats, hawks, owls and even raccoons or squirrels who will raid nests. Lastly – other than in the City’s Management Plan, dogs are not mentioned in any of the City’s other reference documents as a threat to forest birds. The two studies referenced in the BRI document (one from Australia and the second from Great Britain) conclude that dogs are no more of a risk to wild birds than human activity, such as bird watching. There is just no evidence indicating that domestic dogs (cats are a whole other matter) are a serious or even recognized danger to wild, forest bird populations.

### 3. THERE ARE “MORE APPROPRIATE” PLACES TO WALK DOGS OFF-LEASH

The City contends there are other “**more appropriate locations**” where people can walk their dogs off-leash in Portland.

- A. Our community** - While we agree there are other places to walk dogs off-leash in Portland, BW is where we have built our community and established our club so to speak of active walkers, runners and riders. Foremost, BW is where we have developed friendships, fostering relationships over years that transcend our dog’s lives, the lives of family-members, and even our own lives. We take care of each other, our families and our pets. We celebrate one another and we have mourned the passing of dear friends. You cannot just recreate or relocate to a different place in the City, the kinship and community we have developed in BW! The City should not force us to relocate to other places unless there is an urgent public need or crisis at hand.

In fact, many of BW Seniors face significant safety hazards by being tethered to their dogs during walks – especially in the icy winter months. Most relevant to our situation, a comprehensive, up-to-date investigation into fracture risk in older adults who use leashes when walking dogs has shown that fractures related to walking dogs on leash have more than doubled between 2004 and 2017 in patients 65 and older, with hip and upper extremity breaks being the most common . (Kevin Pirruccio; Yeo Myoung Yoon; Jaimo Ahn, MD; JAMA Surgery, 2019).

Research by the National Institutes on Aging has linked social isolation and loneliness to higher risks for a variety of physical and mental conditions, including high blood pressure, heart disease, obesity, weakened immune system, anxiety, depression, cognitive decline, and even death. BW’s dog-walking community is an essential aspect of life for many of Portland’s adults, offering an opportunity to meet and socialize within their local community. (National Inst. Of Health, 2019)

- B. What about all those other places the City says we can go to walk our dogs off-leash in Portland?** Speaking just to the acreage and aesthetics of BW – it is unlike any other park in Portland. Easily accessible to thousands of people in the third-densest zip code in Maine, the wide and relatively flat central trails of BW naturally accommodate many: elderly walkers, the handicapped, strollers, bicyclists, XC skiers/runners and snowshoers. There is also a gentle slope from Stevens to Forest Ave. for a bit of an uphill climb or downhill run or both if you make the full circuit. BW is big enough to find solitude if desired on the secondary trails, but small enough to run into friends for communing and connection. BW also has ample parking, again with easy access to the trails for elderly walkers or the disabled.

While the City notes in its memo there are 495 acres of City space for off-leash walking, it does not say that just 200 acres are woodland forest spaces like BW. Here is a table of the forest/woodland areas where off-leash dogs are allowed that shows the other locations do not compare:

| City Woodland Parks        | Acreage   | Notes about the Parks                                                                      |
|----------------------------|-----------|--------------------------------------------------------------------------------------------|
| Evergreen Cemetery Woods   | 100       | Ticks, Steep, <b>Rough, Steep Terrain</b> , Limited Parking                                |
| Presumpscot River/Oat Nuts | 40        | Ticks, Steep, <b>Rough/Steep Terrain</b> , Limited Parking                                 |
| Canco Woods Park           | 10        | Ticks, Steep, <b>Rooted Terrain</b> , No Parking, Small                                    |
| Riverton Trolley Park      | 20        | Ticks, <b>Very Steep, Rough Terrain</b> , Safety concerns                                  |
| Virginia Woods/Landfill    | 30        | Ticks, <b>Rooted Terrain</b> , No Parking, Pollutants, Safety Concerns                     |
| Hall School Woods          | 5         | Steep, <b>Rough/Steep Terrain</b> , Small, No Parking                                      |
| Pine Grove Park            | 5         | Steep, <b>Rough Terrain</b> , Small, No Parking                                            |
| <b>Baxter Woods</b>        | <b>30</b> | <b>Minimal Ticks*/Fleas, Level Trails, No Roots, Ample Parking, NO Safety Concerns Now</b> |

\*Please note that ticks are rarely seen in BW, most likely due to the lack of understory. In 2019, the Maine Center for Disease Control and Prevention reported a record number of Lyme disease cases. As the Director of the Maine CDC noted in a press release:

“Lyme disease and other tickborne diseases (e.g., anaplasmosis and babesiosis ) are on the rise, so Mainers need to proactively protect themselves.” **Portland Press Herald, 1/3/2020**

All alternative sites recommended by the City are known for having abundant tick populations, and we are very concerned about being forced to walk in these habitats.

- C. Other off-leash sites - an apples-to-oranges comparison:** BW 30 acres accounts for approximately 15% to 20% of the available woodland acreage – but BW is by far the hands-down best place for walking dogs off-leash in the Portland, ME. The City's assertion that we can go elsewhere does not take into account that all other dog parks or off-leash areas are just not up to the quality of BW. Some of the issues identified above apply to other parks as well – see our PowerPoint for pictures and more info. Comparing BW to all locations and acreage just doesn't make sense – since most of the acreage sighted by the City is not woodland/forest space like BW, and most of it is miles away from our Deering Center neighborhood. The other places are not as accommodating to our elderly population. Our large group of Deering Center Seniors who frequent BW – typically during the late morning and early afternoon hours - are an inspiration to us “late-boomers” who hope to be as active and vibrant in our senior years. The leash law will be a severe disruption to the lives of many of Portland's most vulnerable midday-walkers!
- D. Does BW need to be a managed as a wildlife or conservation preserve?** In its December 2019 Memo the City contends that BW is a stand-alone wildlife sanctuary in Maine that allows off-leash dog activity. This is not the case, as Robinson Woods, one of the preserves cited by the City does allow off-leash walking as noted at its website (link below):

**\*NOTICE FOR DOG OWNERS**

Please keep dogs within sight at all times and remove all dog waste. Please keep dogs out of sensitive habitat areas. Reminder: Maine Law requires dog license and rabies tag on collar at all times.

**\*\*NOTICE FOR DOG OWNERS:** Off-Leash use is regulated on this property. **Dogs are allowed off-leash at Robinson Woods II Pond Trail before 10am daily. Dogs are allowed off-leash at Robinson Woods I after 4pm daily (3pm daily during standard time – November – March).** Dog waste bags are available at the kiosk at Shore Rd. Please clean up after your dog. Please do not allow dogs to swim in ponds or streams. <https://www.capelandtrust.org/properties-trails/property/robinson-woods-preserve/>

While Robinson Woods allows year-round off-leash dog activity, the City's leash law proposal for BW would only allow off-leash walking for 8 months of the year – much more restrictive and certainly not one that is “innovative” or “stand-alone” (City Memo p. 5), or again, collaborative.

Once more, we are ready and willing to work with the City on making BW welcoming to all who may not feel it is to their enjoyment now. We seek a stay or delay on enactment of the leash law, until a more reasonable, workable and less disruptive proposal is developed collaboratively – so all voices can be heard. We are a group of citizens who hold annual clean ups, and a group who wants to be a part of the solution, to help!

#### 4. CITY MAY BE IN VIOLATION OF THE 1946 DEED

In its initial proposals, City Staff contended that it was out of compliance with the 1946 Deed, asserting that BW was not being preserved "...as a sanctuary for wild birds."

- A. The City has said it is not compliant with the Deed.** While it did not clearly make this argument in its December 2019 Memo to the Council, City Staff did make the assertion that it was out of compliance with the Deed in its presentation to the S&T Committee on 1/15/2020, and in its prior two leash law memos issued in March and July 2019. In its current Memo the City does mention the Deed on 3 occasions, finally alluding that it would be "better in compliance" with the Deed if the leash law were to be enacted.

As we have said before - we disagree with both contentions City Staff have made, that it is currently out of compliance, and that it will be in better compliance with the Deed if the leash law is passed. We further argue that should the leash law pass as currently proposed –the City will become out of compliance with the Deed for several reasons as detailed below.

- B. What did the Deed mean to Gov. Baxter and the City in 1946?** As a land grant contract, we believe the 1946 Deed must be considered in context to the times when the Deed was written. It should honor the express written intent of Gov. Percival Baxter as publicly communicated to the City and people of Portland upon the presentation of BW to City officials in April 1946. What did Gov. Baxter mean by a "sanctuary for wild birds" in the 1946 Deed? It is clear that he meant to preserve BW as a place where there was to be NO HUNTING, and where birds and other wildlife could live in a natural state, undisturbed by the City commotion and development outside the confines of the park. The historical definition from the time is here:

*"It has long been recognized that refuges and sanctuaries, in which no shooting is permitted at any time, are needed as resting places for game birds. Moreover, with the constantly increasing use of the land for lumbering, grazing, agriculture or settlement, it becomes a pressing necessity to set aside portions as "wilderness areas" in which all wildlife may work out its natural balance under the closest approach to undisturbed conditions..." Compton's Encyclopedia - Vol. B, p.208 (1957)*

To gain a better understanding of what Gov. Baxter's intents were for his gift of BW to the City and the 1946 Deed – we have timely documents available and newspaper articles from the day to guide us (*see 33 pg. document, p.7*). This is how the City received BW as a gift, how the City has historically managed BW as a park and City property since 1946. We contend that since 1946 the City has generally taken care of BW how Gov. Baxter intended. Only a few times over the years has the City stepped across a line on projects inside the boundaries of BW, but for the most part it has been prudent and well in compliance with the BW Deed.

**What do we know about Gov. Baxter and off-leash dogs?** We know that he took his dogs everywhere he went, and always off leash. That included to Bowdoin College – from the dorm, to his classrooms, and even the chapel for Sunday services or convocations. Later he took his off-leash dogs (plural) to the Governor's Mansion and the State Capitol Building in Augusta. He also traveled extensively and took his dogs with him abroad and to U.S. cities such as New York and Philadelphia – always off-leash. Gov. Baxter believed dogs had "rights" like humans and should be allowed to run free with their humans. We believe Gov. Baxter would oppose the leash law being proposed by the City.

In his book "My Irish Setter Dogs", Gov. Baxter documented many stories about his dogs and their daily life, including many off-leash romps in the "Woods". It is clear to us that by naming "Mayor Baxter Woods" a "Woods" in the 1946 Deed – clearly exemplifies Gov. Baxter's intent that BW be a place where off-leash dogs would be welcomed forever.

- C. What about the birds?** Clearly, Gov. Baxter honored birds and wanted them to be safe in BW. We contend that they are and always have been, and that our off-leash, well fed, cared for and loved, domesticated dogs pose little or no risk to forest birds, song birds or any other birds in BW.

To rebut the City's assertion that the bird population of BW is impaired - please consider the eBird data and BRI comparisons we have provided (*see pages 13-15 in this document*). Using data contracted for by City Staff (utilizing over \$10,000 in Motherhouse developer funding), we feel the data shows that BW is already a thriving bird sanctuary, and well in line with the species observed at other parks in Portland and outside the City – whether dogs visit them or not. We have normalized the data to show information for 20 species of forest bird identified in Audubon's FFMB as referenced in the City's Management Plan. Here is a summary of the bird study and eBird data we have compiled for the 20 species at four local forest areas (see p.13 for details).

| <b>Audubon's FFMB - 20 Forest Birds Watch List</b><br>(See p.13 for details) | <b><u>Gilsland Farm-Audubon</u></b><br><b>50 acres/ No Dogs</b><br>(eBird, FFMB) | <b><u>Baxter Woods</u></b><br><b>30 acres / +Dogs</b><br>(BRI Study/eBird) | <b><u>EvergreenCem. - Ponds</u></b><br><b>100 acres / +Dogs</b><br>(eBird Data only) | <b><u>Hinckley Woods</u></b><br><b>50 acres / +Dogs</b><br>(eBird data only) |
|------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>Forest Bird Species Observed</b> (BRI Study – late June – early Oct):     | <b>16 species by 3570 eBird Observers</b><br>(all seasons)                       | <b>11 species by 36 Observers</b> (Study – late June - Oct only)           | <b>17 species by 529 eBird Observers</b>                                             | <b>18 species by 418 eBird Observers</b>                                     |
| <b>Nesting Forest Birds Observed:</b>                                        | <b>4 regular nesters</b><br>7 occasional nester<br>9 never nesters               | <b>3 nesting species obs</b><br>No data –Occasional and Never nesters...   | No data – Regular/ Occasional and Never nesters...                                   | No data – Regular/ Occasional and Never nesters                              |

Variations in the data show the following:

- BW has 3,534 fewer observers than Gilsland Farm, or just 1% of Gilsland's observers
- Despite having only 36 observers, BW still has 11 of the 20 key species documented, with 3 actually observed nesting by the BRI observers in June/July 2019.
- If 3,500 more observers visited BW, how many more bird species would be observed?
- No bird study was completed in BW during the busiest (April – June) period in 2019, we contend depressing the full count of key species observed in BW
- Audubon's Gilsland Farm has 16 of the 20 key species observed, with 4 nesting regularly (just 5 more observed than BW, and only 1 more nesting species) – and no dogs EVER!
- More of the key species have been observed at Evergreen-Ponds and Hinckley Park (where off-leash dogs are allowed), than at Gilsland Farm – with just 1/7<sup>th</sup> the observers at those dog-friendly places
- These bird counts clearly refute the assertion that dogs hamper bird observations in the Woods, or negatively impact the habitats for wild forest birds!

The City's Bird Survey report admittedly missed the busiest part of the spring/summer nesting season, the three months from April through June. We contend before making any ordinance changes the City should first conduct the April - June bird count and collect the data. Only after the City has the full set of data and the accurate count of bird species and nesting species in BW should the leash law proposal be considered. We predict if surveyed properly the data will show that BW bird counts for the key forest birds will mirror those of Gilsland Farm and other local birding hotspots. We further contend the full collection of data will demonstrate that off-leash dogs do not detract from the number of bird species observed, and that BW is a fine "sanctuary for wild birds" as it currently exists.

- D. The City will be out of compliance with the Deed** – If the proposed ordinance is passed, we contend the City's proposal to erect a fence or develop landscaping around the "Bird Habitat Restoration Area" in the northwest corner of BW is itself a clear violation of the Deed. In his letter

to the City that accompanied the 1946 Deed (gifting BW to the people of Portland) Gov. Baxter wrote (emphasis added),

*“The conditions imposed upon this gift are simple and understandable. I want it to remain in its natural wild state for the use of pedestrians only, without what may be called “landscaping”. (And) there should be no fancy work of any kind. I want it to remain about as it is now...so that people undisturbed may enjoy its simplicity, its beauty and it’s quiet...”. **Portland Sunday Telegram, 4/14/1946 p. 1a and 2a***

Clearly erecting fencing and blocking off trails through brush piles, equate to “fancy work” and inappropriate “landscaping” that do not comport with the “wild natural state” requirement of the Deed. Fencing and landscaping are also most assuredly “disturbances” to pedestrians, another violation of the Deed. We believe the City is not now in violation of the BW Deed, but for these reasons and the above – if the ordinance change is enacted as it is currently worded, the City will become out of compliance with the Deed.

We therefore urge Councilors to vote no on this proposal as it is currently drafted. We also ask that Council request City Staff to work more closely with the Friends and other local groups to collect more data about BW before any restrictions to off-leash dog walking are considered. **The time to collect data is BEFORE the leash law is passed – NOT AFTER.**

## OUR FINAL THOUGHTS AND SUGGESTIONS

The Friends of BW kindly ask City Council to **delay the implementation of this proposal for one-year**, so that City Staff, in collaboration with our group and other members of the community, can collect data, work on a strategy for resolving the issues identified and present a more workable and viable plan to Council.

**Missing data:** As key April – June data is missing from the City’s analysis of bird populations, we request that this survey data be collected to complete the annual bird survey before the Council votes on the leash law proposal. In addition, the City has no data on park usage, visit timing or visit types. We offer to work with City Staff to collect the information needed for Council to be truly “informed” and make a sound decision about BW – only after it receives this information.

**The Management Plan:** The City did not follow the Management Plan’s suggestion for user input, and ignored the advice in the plan to collect data. Open the process up to citizen input.

**The Deed:** If the proposal is enacted as it currently stands, the City will be out of compliance with the “natural wild state” requirement of the Deed, and furthermore dishonoring the express written wishes of Gov. Percival Baxter!

We pledge to work in consort with City Staff and offer a committed group of volunteers to assist in collecting data and developing the plan. It is our belief that together we can come up with a better proposal, one that will be acceptable to the whole group as a true compromise. We ask you to please not take a vote on and implement this proposal before gathering and considering all relevant data!

Short of a delay in implementation, we ask that the following changes be made to the proposal:

1. The 4/1 through 7/31 full time leash law (24/7 on-leash only) be removed from the proposal
2. Off-leash hours be amended to go from 5am-10am, and 2pm-10pm (10am-2pm on-leash only)
3. Establishment of the Bird Habitat Restoration Area be removed from the proposal

Thank you!

## Bird Count Data (Baxter Woods and other forests with off-leash dogs vs. Audubon's Gilsland Farm)...

This table summarizes the City's Biodiversity Research Institute (BRI) Study and eBird (eB) data for Baxter Woods (BW) and three other local forest areas. Three areas welcome off-leash dogs: BW, Evergreen Cemetery—Ponds (EC-P), and Hinckley Woods (HW). The fourth, Audubon's Gilsland Farm (GF) has not allowed any dogs on its property since the 1980's. Our focus at these four locations is on 20 species of forest birds identified in Audubon's Forestry for Maine's Birds (FFMB) Manual, as referenced in the City's Management Plan (p. 50). It is our position that the key variance in the data relates to the number of observers documented – with 35 eBird observers for BW, versus GF's 3,570 observers and roughly 500 each at EC-P and HW. It is well understood that with increased observers more species will be observed over time at any location. We therefore contend City Staff has wrongfully concluded that Baxter Woods is deficient as a "sanctuary for wild birds". The data below shows it is evident that BW is already a healthy and thriving sanctuary for wild birds! The collection of new data in the spring and early-summer season, we contend will show the actual bird population in BW is comparable to the other locations, and will demonstrate that dogs are NOT having a "negative impact" on the natural habitat of Mayor Baxter Woods.

| <b>Audubon's FFMB - 20<br/>Forest Birds Watch List...</b> | <b>Gilsland Farm<br/>50 acres/ No Dogs<br/>(eBird, FFMB)</b>     | <b>Baxter Woods<br/>30 acres / +Dogs<br/>(BRI Study/eBird)</b>      | <b>Evergreen- Ponds<br/>100 acres / +Dogs<br/>(eBird Data only)</b> | <b>Hinckley Woods<br/>50 acres / +Dogs<br/>(eBird data only)</b> |
|-----------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------|
| <b>Forest Bird<br/>Species Observed:</b>                  | <b>16 species by<br/>3570 Observers</b>                          | <b>11 species by<br/>36 Observers</b>                               | <b>17 species by<br/>529 Observers</b>                              | <b>18 species by<br/>418 Observers</b>                           |
| # Canada Warbler                                          | 1                                                                |                                                                     | 1                                                                   | 1                                                                |
| * Chestnut-sided Warbler                                  | 1                                                                | *1(BRI) +3 (eB) = 4                                                 | 1                                                                   | 2                                                                |
| ^ Mourning Warbler                                        |                                                                  |                                                                     |                                                                     | 1                                                                |
| ^ Black-throated Blue<br>Warbler                          | 1                                                                | 1(BRI) + 1(eB) = 2                                                  | 1                                                                   | 1                                                                |
| ^ Bay-breasted Warbler                                    | 1                                                                | 2 (BRI)                                                             | 1                                                                   | 1                                                                |
| * Black-throated Green<br>Warbler                         | 1                                                                | *10(BRI)+1(eB)=11                                                   | 1                                                                   | 1                                                                |
| ^ Blackburnian Warbler                                    | 1                                                                |                                                                     | 2                                                                   | 1                                                                |
| ^ Magnolia Warbler                                        | 1                                                                | 0(BRI) + 1 (eB)= 1                                                  | 1                                                                   | 3                                                                |
| ^ Yellow-bellied Sapsucker                                | 1                                                                | 1 (BRI)                                                             | 1                                                                   | 1                                                                |
| # Scarlet Tanager                                         | 3                                                                | 0(BRI) + 1 (eB)= 1                                                  | 2                                                                   | 1                                                                |
| * Ovenbird                                                | 1                                                                | 0(BRI) + 1 (eB)= 1                                                  | 1                                                                   | 2                                                                |
| ^ Woodthrush                                              | 1                                                                |                                                                     | 1                                                                   | 1                                                                |
| # Northern Flicker                                        | 1                                                                | 2(BRI) + 1(eB)= 3                                                   | 3                                                                   | 1                                                                |
| ^ Veery                                                   |                                                                  |                                                                     | 1                                                                   | 1                                                                |
| # Woodcock                                                | 1                                                                |                                                                     | 1                                                                   | 7                                                                |
| * Eastern Pee-Wee                                         | 1                                                                | *3(BRI)+1 (eB)= 4                                                   | 1                                                                   | 2                                                                |
| # Northern Parula                                         | 1                                                                | 0(BRI) + 1 (eB)= 1                                                  | 2                                                                   | 1                                                                |
| ^ Black-sided Woodpecker                                  |                                                                  |                                                                     |                                                                     |                                                                  |
| ^ Boreal Chickadee                                        |                                                                  |                                                                     |                                                                     |                                                                  |
| ^ Olive-sided Flycatcher                                  | 1                                                                |                                                                     | 2                                                                   | 1                                                                |
| <b>TOTAL Species Observed</b>                             | <b>16 species/18 count</b>                                       | <b>11 spec/ 31 count</b>                                            | <b>17 species/ 21 count</b>                                         | <b>18 species/ 29 count</b>                                      |
| <b>Nesting Forest Birds<br/>Observed:</b>                 | * 4 common nesters<br># 7 occasional nester<br>^ 9 never nesters | * 3 actual nesting birds<br>#,^ No data occasional<br>/never nester | *,#,^ No data for<br>reg./occasional/never<br>nester                | *,#,^ No data for<br>reg./occasional/never<br>nester             |

\* = Observed nesting in Baxter Woods (2019) by BRI (3 species)// Common nesters at Audubon's GF per the FFMB (4 species)

# = 7 species - occasional nesters at Audubon GF – and we assume all the other locations as well – no data available online...

^ = 9 species - never observed nesting at GF per J. Witham, 2016 - See the City's Management Plan and FFMB. No other data...



## Baxter Woods Portland, ME

My Home | Agendas & Minutes Center | Portland | A rare serious post from me... | Mayor Baxter Woods | eBird Hotspot

eBird.org/hotspot/L5960768

Suggested Sites: Democratic Underg... | From The Communi... | Google | HuffPost | Crooks and Liars | Portland Press Herald | Daily Kos | Common Dreams

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### Mayor Baxter Woods

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**70 Species** | 35 Checklists Updated 11 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME           | COUNT | DATE        | BY            |
|---|------------------------|-------|-------------|---------------|
| 1 | Hairy Woodpecker       | 1     | 9 Dec 2019  | Erin Barber   |
| 2 | Black-capped Chickadee | 3     | 9 Dec 2019  | Erin Barber   |
| 3 | Carolina Wren          | 2     | 9 Dec 2019  | Erin Barber   |
| 4 | American Goldfinch     | 2     | 9 Dec 2019  | Erin Barber   |
| 5 | Rock Pigeon            | 8     | 22 Nov 2019 | Doug Hitchcox |

Evergreen Cemetery

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Recent Visits

9:37 AM 1/10/2020

## Gilsland Farm (Audubon HQ – no dogs allowed at all) in Falmouth, ME

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eBird.org/hotspot/L251783

Suggested Sites: Democratic Underg... | From The Communi... | Google | HuffPost | Crooks and Liars | Portland Press Herald | Daily Kos | Common Dreams

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### Gilsland Farm Audubon Center

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**258 Species** | 3570 Checklists Updated 8 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME           | COUNT | DATE       | BY         |
|---|------------------------|-------|------------|------------|
| 1 | Mourning Dove          | 6     | 7 Jan 2020 | Turk Duddy |
| 2 | Downy Woodpecker       | 2     | 7 Jan 2020 | Turk Duddy |
| 3 | American Crow          | 1     | 7 Jan 2020 | Turk Duddy |
| 4 | Black-capped Chickadee | 2     | 7 Jan 2020 | Turk Duddy |
| 5 | Tufted Titmouse        | 3     | 7 Jan 2020 | Turk Duddy |

Portland Country Club

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## Evergreen Cemetery in Portland, ME

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< Hotspot Map

### Evergreen Cemetery--ponds

Cumberland County, Maine, US — Get Directions

All Months | All Years | Set | Submit Data

Overview | Recent Visits | Illustrated Checklist

**157 Species** | 529 Checklists Updated 7 sec ago

Last Seen | First Seen | High Counts | Bar Charts | Printable Checklist | Show All Details

|   | SPECIES NAME     | COUNT | DATE        | BY              |
|---|------------------|-------|-------------|-----------------|
| 1 | Mallard          | 7     | 22 Oct 2019 | sophia r        |
| 2 | Hooded Merganser | 1     | 22 Oct 2019 | kieran r        |
| 3 | Great Blue Heron | 1     | 22 Oct 2019 | sophia r        |
| 4 | Downy Woodpecker | 1     | 20 Oct 2019 | Peter Carpenter |
| 5 | Blue Jay         | 2     | 20 Oct 2019 | Peter Carpenter |

Recent Visits

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Evergreen Cemetery

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## Hinckley Park in South Portland, ME

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Suggested Sites | Democratic Underg... | From The Communi... | Google | HuffPost | Crooks and Liars | Portland Press Herald | Daily Kos | Common Dreams

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< Hotspot Map

### Hinckley Park, South Portland

Cumberland County, Maine, US — Get Directions

All Months | All Years | Set | Submit Data

Overview | Recent Visits | Illustrated Checklist

**159 Species** | 418 Checklists Updated 12 sec ago

Last Seen | First Seen | High Counts | Bar Charts | Printable Checklist | Show All Details

|   | SPECIES NAME           | COUNT | DATE        | BY              |
|---|------------------------|-------|-------------|-----------------|
| 1 | Herring Gull           | 1     | 25 Nov 2019 | Donald Thompson |
| 2 | Downy Woodpecker       | 1     | 25 Nov 2019 | Donald Thompson |
| 3 | American Crow          | 3     | 25 Nov 2019 | Donald Thompson |
| 4 | Black-capped Chickadee | 7     | 25 Nov 2019 | Donald Thompson |
| 5 | Tufted Titmouse        | 5     | 25 Nov 2019 | Donald Thompson |

Recent Visits

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South Portland

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KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 12  
RE: REPEAL OF SINGLE-USE CARRY-OUT BAGS ORDINANCE**

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

*1. That Sections 12-230 to 12-237 of Chapter 12 of the  
Portland City Code are hereby amended to be struck in their  
entirety:*

**Art. I. In General, § 12-1--12-15**

**Art. II. Garbage and Solid Waste Removal/Recycling, §§  
12-16--12-45**

**Art. III. Health Nuisances, §§ 12-46--12-60**

**Art. IV. Public and Private Dumps, §§ 12-61--12-74**

**Art. V. Junked Motor Vehicles, §§ 12-75--12-99**

**Art. VI. Solid Waste Disposal, §§ 12-100--12-119**

**Art. VII. Rendering Wastes, §§ 12-120--12-205**

Div. 1. Generally, §§ 12-120--12-149

Div. 2. Waste Transportation Licenses, §§ 12-150--12-199

Div. 3. Construction and Operation of Rendering Facilities,  
§§ 12-200--12-209

**Art. VIII. Polystyrene and Plastic, §§ 12-210--12-229**

Div. Polystyrene §§ 12-211--12-219

Div. Plastic §§ 12-220--12-229

~~**Art. IX. Waste Reduction, §§ 12-230--12-237**~~

**Art. X. Abandoned Bicycles, §§ 12-238--12-241**

...

~~**ARTICLE IX. WASTE REDUCTION**~~

~~**Sec. 12-230. Findings; purposes.**~~

~~The city council hereby finds as follows:~~

~~(a) The City Council has a duty to protect the natural  
environment and the health of its citizens and  
visitors; and~~

- ~~(b) The use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and~~
- ~~(c) Despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled; and~~
- ~~(d) Numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains, and endangering wildlife; and~~
- ~~(e) The City of Portland's taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and~~

~~The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy landfill) and supports efforts to achieve State recycle goals; and~~

- ~~(g) From an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping; and~~
- ~~(h) Whereas the City Council of the City of Portland aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and~~
- ~~(i) Evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as those business are defined in this Ordinance; and~~
- ~~(j) Studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags; and~~

~~(k) The City Council of the City of Portland believes that residents and visitors should use reusable bags and that prohibiting the free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and~~

~~(l) It is in the best interests of the health, safety and welfare of citizens and visitors of Portland to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Ordinance.~~

## **~~12-231. Definitions.~~**

~~As used in this Ordinance the following terms have the following meanings:~~

~~*Single-use carryout Bag.* Single-use Carryout Bag means a bag other than a Reusable bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs.~~

~~*Produce bag or Product bag.* The terms produce bag or product bag mean any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.~~

~~*Reusable Bag* means a bag that is:~~

~~(a) Designed and manufactured to withstand repeated uses over a period of time;~~

~~(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;~~

~~(c) That is at least 2.25 mil thick if made from plastic;~~

~~(d) Has a minimum lifetime of 75 uses; and~~

~~(e) Has the capability of carrying a minimum of 18 pounds.~~

~~Store. The term Store means any of the following retail establishments located within the City of Portland:~~

~~(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.~~

~~(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.~~

~~Store does not mean:~~

~~Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business' gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.~~

## **~~12-232. Single-Use Carryout Bag~~**

~~(a) No Store shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.~~

~~(b) A Store may make available for sale to a Customer a Single-Use Carryout Bag for a minimum charge of five cents (\$0.05).~~

~~(c) All monies collected by a Store for Single-Use Carryout Bags under this Chapter may be used by the Store for any lawful purpose.~~

~~(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.~~

~~(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless~~

~~the amount of the sale of the Single-Use Carryout is separately itemized on the sale receipt.~~

- ~~(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection (b).~~

#### **~~12-233. Exemptions.~~**

~~A Store shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety.~~

#### **~~12-234. Record Keeping and Inspection.~~**

~~Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout Bag, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information including incomplete records or documents to the City shall be a violation of this Article.~~

#### **~~12-235. Violations and enforcement.~~**

~~— The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.~~

~~— Violations of this Article shall be punishable by fines as follows:~~

- ~~(a) A fine not exceeding \$250 for the first violation in a one-year period;~~
- ~~(b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.~~

#### **~~12-236. Effective Date~~**

~~—The provisions of this ordinance shall become effective on April 15, 2015.~~

**~~12-237. Severability.~~**

~~—If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.~~

Editor's Note: By Order 168-19/20 approved as an emergency on April 6, 2020, Sections 12-230 to 12-237, Article IX Waste Reduction, which regulated the distribution of single use carry-out plastic bags, were repealed. The ordinance was repealed in light of LD 1532 Public Law Chapter 346 becoming effective on April 22, 2020. This state law imposed state-wide prohibitions on the distribution of single-use carry-out bags and was expressly intended by the Legislature to "occupy the field" with respect to regulation of single-use bags in Maine, expressly rendering void all local regulation of such bags.

## MEMORANDUM

**TO:** Troy Moon, Sustainability Coordinator

**FROM:** Jennifer L. Thompson, Associate Corporation Counsel

**DATE:** March 9, 2020

**RE:** Portland's Single Use Bag Ordinance

---

As you know, in June 2019 the Governor approved an amendment to state law aimed at reducing the use of single-use carry-out bags. That statute, a copy of which is attached, goes into effect on April 22, 2020. Although a number of municipalities, including the City of Portland, have adopted ordinances in recent years regulating single use bags at the local level, the new state law is intended to make more uniform the regulation of single-use carry-out bags, statewide. Consistent with that objective, Section 5 of the state law provides:

5. Preemption. To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carryout bags at retail establishments beginning April 22, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning April 22, 2020, any ordinance or regulation that violates this subsection is void and has no force or effect.

In light of this stated intent to “occupy the field” and language making it clear that any local ordinance intending to regulate single-use carry-out bags will automatically be deemed void and of no force or effect, this office is recommending that the Council affirmatively repeal the City’s ordinance (Sections 12-230-12-237). By repealing and removing those sections from the City’s Code (which will be rendered void as of April 22, 2020), the City can avoid confusion on the part of local retailers and shoppers as to their obligations and ensure that the City’s Code is current and contains only those ordinances that remain in force and effect.



## STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 1115 - L.D. 1532

## An Act To Eliminate Single-use Plastic Carry-out Bags

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 38 MRSA §1605**, as repealed and replaced by PL 1991, c. 475, §1, is repealed.

**Sec. 2. 38 MRSA §1611** is enacted to read:

**§1611. Plastic bag reduction**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable, and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified.

B. "Point of sale" means a check-out stand, cash register or other point of departure from a retail establishment.

C. "Post-consumer recycled material" means a recycled material that if not recycled would otherwise have been destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused in, an original manufacturing and fabrication process.

D. "Recycled paper bag" means a paper bag that:

(1) Is 100% recyclable; and

(2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds.

E. "Restaurant" means an establishment that sells prepared food directly to the consumer.

F. "Retail establishment" means a store, a restaurant or a temporary business.

G. "Reusable bag" means a bag with handles that:

- (1) Is designed and manufactured to withstand a minimum of 75 repeated uses;
- (2) Is machine washable or made from a material that can be cleaned and disinfected regularly;
- (3) If made from plastic is at least 4 mils thick; and
- (4) Has the capability of carrying a minimum of 18 pounds.

H. "Single-use carry-out bag" means a bag that is made of plastic, paper or other material provided by a retail establishment at the point of sale for the purpose of transporting merchandise away from the retail establishment and that is not a recycled paper bag or a reusable bag.

I. "Store" means a retail store that engages in the retail sale of merchandise, including food, goods, products and clothing. "Store" includes grocery stores primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and convenience stores engaged in the sale of a limited line of goods, including milk, bread, soda and snack foods, and prepared foods intended to be consumed off the premises.

J. "Temporary business" means a seasonal or nonpermanent retail establishment such as a farmers' market or fair that sells merchandise including food, goods, products or clothing.

**2. Prohibition; exemptions.** This subsection governs the use of single-use carry-out bags.

A. Except as otherwise provided in this subsection, beginning April 22, 2020, a retail establishment may not provide a single-use carry-out bag to a customer at the point of sale or otherwise make single-use carry-out bags available to customers.

B. The prohibition in paragraph A does not apply to:

- (1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store;
- (2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag;
- (3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants;
- (4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses;
- (5) Newspaper bags;

(6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste;

(7) Bags used to contain live animals, such as fish or insects sold in pet stores;

(8) Bags used for vehicle tires;

(9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment;

(10) Bags used by a hunger relief organization such as a food pantry or soup kitchen to distribute food directly to the consumer at no charge;

(11) Bags that customers bring to the retail establishment for their own use or for carrying away from the retail establishment goods that are not placed in a bag provided by the retail establishment.

C. A retail establishment may make single-use carry-out bags made of plastic that are exempted in paragraph B available to customers to bag products within the retail establishment other than at the point of sale only if the retail establishment:

(1) Locates inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and

(2) Ensures that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics.

**3. Recycled paper bag fees and reusable plastic bag fees; exemptions.** This subsection governs fees assessed on recycled paper bags and on reusable bags made of plastic.

A. Beginning April 22, 2020 a retail establishment may use a recycled paper bag or a reusable bag made of plastic to bag products at the point of sale as long as the retail establishment charges a fee of at least 5¢ per bag.

(1) All amounts collected pursuant to this paragraph are retained by the retail establishment and may be used for any lawful purpose.

(2) A retail establishment may not rebate or otherwise reimburse a customer any portion of the fee charged pursuant to this paragraph.

B. The requirement to charge a fee under paragraph A does not apply to:

(1) Stores at which less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area;

(2) Restaurants; or

(3) Hunger relief organizations engaged in distributing food directly to consumers at no charge.

A retail establishment exempt from charging a fee under this paragraph may charge a fee for a recycled paper bag or a reusable bag made of plastic.

**4. Violations.** A retail establishment that violates a provision of this section is subject to civil penalties under section 349.

**5. Preemption.** To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carry-out bags at retail establishments beginning April 22, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning April 22, 2020, any ordinance or regulation that violates this subsection is void and has no force or effect.