

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)

REMOTE MAY 18, 2020 CITY COUNCIL AGENDA

The Portland City Council will hold a Remote Special City Council Meeting at 5:30 p.m. This meeting will take place remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday, May 4, 2020 at 5:30 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/87335103975>

Or iPhone one-tap :

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Or Telephone:

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

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Webinar ID: 873 3510 3975

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

Councilor Tae Chong will provide an update from the Governor's Economic Recovery Committee

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft May 4, 2020 City Council Minutes.

UNFINISHED BUSINESS:

Order 60-19/20 Approving Traffic Schedule Amendment Re: Two-hour Parking on Waterville Street - Sponsored by Councilor Spencer Thibodeau, Chair of the Sustainability and Transportation Committee

Waterville Street extends from Monument Street to Fore Street and is two-way with unrestricted parking on both sides of the street, except during weekly street cleaning events. The requested Council action would amend the Traffic Schedule to change unrestricted parking to two-hour parking between 9:00 a.m. and 6:00 p.m. for the entire length of Waterville Street. A map is included in the agenda backup.

This item must be read on two separate days. It was given a first reading on October 7, 2019. It was give a second reading on October 21, 2019 and referred to the Sustainability and Transportation Committee.

City staff described a new, formal notification process for all parking changes related to resident petitions to S&T Committee members.

Five affirmative votes are required for passage after public comment.

Order 174-19/20 Accepting and Appropriating Supplemental Community Development Block Grant and Emergency Solutions Grant Funding - Sponsored by Jon P. Jennings, City Manager

As part of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, the City of Portland received an additional allocation of Community Development Block Grant (referred to as CDBG-CV) and Emergency Solutions Grant (referred to as ESG-CV) funding from the U.S. Department of Housing and Urban Development. This item accepts and appropriates those funds.

Upon submission and approval of a Substantial Amendment to both the 2016-2020 Consolidated Plan and the 2019-2020 Annual Action Plan, the City will receive \$1,137,154 in CDBG-CV funding and \$573,734 in ESG-CV funding. These funds are to be used specifically on projects and activities that prevent, prepare for, and respond to the coronavirus pandemic.

A Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of these funds will be presented to the City Council at its meeting on May 18, 2020.

This item must be read on two separate days. It was given a first reading on May 4, 2020. Five affirmative votes are required for passage after public comment.

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. It was given a first reading on May 4, 2020. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 176-19/20 Approving Substantial Amendment to the 2016-2020 Housing and Urban Development Consolidated Plan and Fiscal Year 2019-2020 Annual Action Plan Re: Use of Supplemental CDBG-CV and ESG-CV Funding - Sponsored by Jon P. Jennings, City Manager

As a result of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Public Law 116-136), the City of Portland received supplemental Community Development Block Grant funding (known as CDBG-CV) in the amount of \$1,137,154 and Emergency Solutions Grant funding (known as ESG-CV) in the amount of \$573,734. These funds must be used to mitigate the impacts of COVID-19. In order to access the funds, the City must submit to the U.S. Department of Housing and Urban Development a Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of the funds. The City Manager's funding recommendations are summarized below and outlined in more detail in the spreadsheets included in the agenda backup.

ESG-CV \$573,734

Administration: \$57,3737

Shelter Operations & Essential Services: \$357,508

Street Outreach: \$158,853

CDBG-CV \$1,137,154

Administration: \$11,371

Portland Summer Camp Program \$50,000

Food Assistance: \$175,000

Rental Assistance Program: \$500,000

Non-Profit Shelter Assistance: \$20,000

Homeless Services: Amistad Peer Outreach Program \$75,000

Business Assistance and Microenterprise Assistance Programs: \$305,783

The food assistance and non-profit shelter assistance funds will be allocated through a competitive application program. The summer camp program will be facilitated by the City's Parks and Recreation Department. The Business Assistance and Microenterprise Assistance Programs will be administered by the City's Economic Development Department. Administration of the rental assistance program has not been determined as of yet.

The Housing Committee reviewed the draft rental assistance guidelines at their May 13, 2020. Staff requested guidance from the Committee regarding the monthly assistance amount provided through the program. The Committee elected to defer this decision to the full Council but indicated a desire to assist as many people as possible.

Five affirmative votes are required for passage after public comment.

**Order 177-19/20 Amending the Emergency Proclamation Re Closing Streets -
Sponsored by Jon P. Jennings, City Manager**

This order amends the City's Emergency Proclamation to allow for the temporary closure of streets, temporary expansion of existing outdoor commercial premises (e.g. dining and retail services) and establishment of new outdoor commercial premises to facilitate Portland's safe, effective economic recovery, in conjunction with Governor Mills' Restarting Maine's Economy. This amendment also extends the Emergency Proclamation to July 13, 2020.

Five affirmative votes are required for passage after public comment.

**Order 178-19/20 Accepting and Appropriating Federal Aviation Administration
CARES Act Grant for the Portland International Jetport - Sponsored by Jon P.
Jennings, City Manager**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748, Public Law 116-136) signed into law by the President on March 27, 2020, included \$10 billion in funds to be awarded as economic relief to eligible U.S. airports affected by the prevention of, preparation for, and response to the COVID-19 pandemic. The Federal Aviation Administration (FAA) is now issuing grants to all commercial service airports in amounts based on the number of passengers that board aircraft, the amount of debt the airport has, and the amount of money the airport has in reserve. The Portland International Jetport, based upon these metrics, has been allocated a Cares Act Grant from the FAA in the amount of \$12,162,498. This grant funding will be used to cover the Jetport's debt service and operating expenses. Unlike other FAA grants there is no local match required for this grant.

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:

**Possible Executive Session, Pursuant to 1 MRS 405(E), to Consult with
Corporation Counsel about Legal Rights and Duties with Respect to the Draft
Marijuana Ordinance**

ZOOM MEETING INFORMATION:

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Or Telephone:

Dial US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782

Webinar ID: 818 5301 2889

PLEDGE OF ALLEGIANCE:

ROLL CALL:

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

SPECIAL MEETING:

Special Meeting of the Corporator of the Portland Development Corporation (PDC) to review and approve three proposed program guidelines for loan and grant assistance to businesses affected by the COVID-19 crisis - Sponsored by Mayor Kate Snyder

Order 169-19/20 Approving the Portland Development Corporation COVID-19 Rapid Response Microloan Program - Sponsored by Mayor Kate Snyder

Councilor Chong recused himself as these items are CDBG related and his employer has applied for CDBG funding.

Motion was made by Councilor Duson and seconded by Councilor Ray for passage. Passage 8-0 (Chong recused).

Order 170-19/20 Approving the Portland Development Corporation COVID-19 Business Assistance Grant Program for Job Creation - Sponsored by Mayor Kate Snyder

Motion was made by Councilor Costa and seconded by Councilor Ali for passage. Passage 8-0 (Chong recused).

Order 171-19/20 Approving the Portland Development Corporation COVID-19 Microenterprise Grant Program - Sponsored by Mayor Kate Snyder

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 8-0 (Chong recused).

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

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft April 27, 2020 City Council meeting minutes.

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

UNFINISHED BUSINESS:

Resolution 12-19/20 Adopting the Fiscal Year 2021 Annual Action Plan Including Appropriations for Community Development Block Grant Program, HOME Program, and Emergency Solutions Grant Program and Certifications Pertaining Thereto - Sponsored by Jon P. Jennings, City Manager

Councilor Chong recused himself his employer has applied for CDBG Funding.

Motion was made by Councilor Costa and seconded by Councilor Ray for passage.
Passage 8-0. (Chong recused).

Resolution 12-19/20 Adopting the Fiscal Year 2021 Annual Action Plan, continued

Order 168-19/20 Accepting and Appropriating a \$29,250 Grant from the Federal Emergency Management Agency for the Bramhall Fire Station Generator - Sponsored by Jon P. Jennings, City Manager

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

ORDERS:

Order 172-19/20 Setting a Public Hearing on a Substantial Amendment to the 2016-2020 Housing and Urban Development Consolidated Plan and Fiscal Year 2020 Housing and Urban Development Annual Action Plan Re: Use of Supplement Community Development Block Grant (CDBG-CV) and Emergency Solutions Grant (ESG-CV) Funding - Sponsored by Jon P. Jennings, City Manager

Councilor Chong excused himself as this involves CDBG funding.

Motion was made by Councilor Ray and seconded by Councilor Mavodones. Passage 8-0 (Chong recused).

Order 173-19/20 Approving Amendments to the Citizen Participation Plan Included in the 2016-2020 Housing and Community Development Consolidated Plan Re: Amending Public Notice and Comment Period during the Response to COVID 19 - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Costa and seconded by Councilor Ray for passage.
Passage 8-0. (Chong recused).

Order 174-19/20 Accepting and Appropriating Supplemental Community Development Block Grant and Emergency Solutions Grant Funding - Sponsored by Jon P. Jennings, City Manager

This is a first reading

Order 175-19/20 Repealing and Retaining Certain Portions of the Proclamation Declaring the Continued State of Emergency and Requirement to Stay at Home - Sponsored by Mayor Kate Snyder

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

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

This is a first reading.

ANNOUNCEMENTS:

Councilor Cook announced that she had emailed the City Council and City Manager with a plan to start an inquiry about re-opening restaurants and retail businesses. She would like to develop a proposal working with members of the Business Community, Portland Downtown, Portland Trails and bring the proposal to the Economic Development Committee for review.

Councilor Costa announced that he would add an agenda item to the Economic Development Committee's agenda regarding the proposal of re-opening restaurants and retail businesses. The Economic development meeting is Tuesday May 5, 2020 at 5:30 via Zoom. Information is on the City's Website.

Motion was made by Councilor Ray and seconded by Councilor Ali to adjourn. Passage 9-0 at 7:27 P.M.

A TRUE RECORD.

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: April 21, 2020

SUBJECT: **Order 60-19/20 Approving Traffic Schedule Amendment Re: Two-hour Parking on Waterville Street - Sponsored by Councilor Spencer Thibodeau, Chair of the Sustainability and Transportation Committee**

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

PRESENTATION:

I. SUMMARY

The Department of Public Works requests City Council approval to amend the Traffic Schedule to convert the existing unrestricted parking spaces on both sides of Waterville Street to 2-hour time-restricted parking spaces between 9am and 6pm.

II. AGENDA DESCRIPTION

Waterville Street extends from Monument Street to Fore Street and is two-way with unrestricted parking on both sides of the street, except during weekly street cleaning events. The requested Council action would amend the Traffic Schedule to change unrestricted parking to two-hour parking between 9:00 a.m. and 6:00 p.m. for the entire length of Waterville Street. A map is included in the agenda backup.

This item must be read on two separate days. It was given a first reading on October 7, 2019. It was give a second reading on October 21, 2019 and referred to the Sustainability and Transportation Committee.

City staff described a new, formal notification process for all parking changes related to resident petitions to S&T Committee members.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The residents of Waterville Street have requested shorter term parking to allow for more turnover and to provide more options for residents. Staff met with several residents in the field who explained that they've

seen more and more vehicles parking on Waterville Street for extended periods of time. (See attached petition)

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result of this conversion is to provide parking turnover to this section of on street parking.

V. FINANCIAL IMPACT

The financial impact will be approximately \$1000 for staff time, \$1000 in materials, and the required DigSafe fees related to the installation of signage.

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

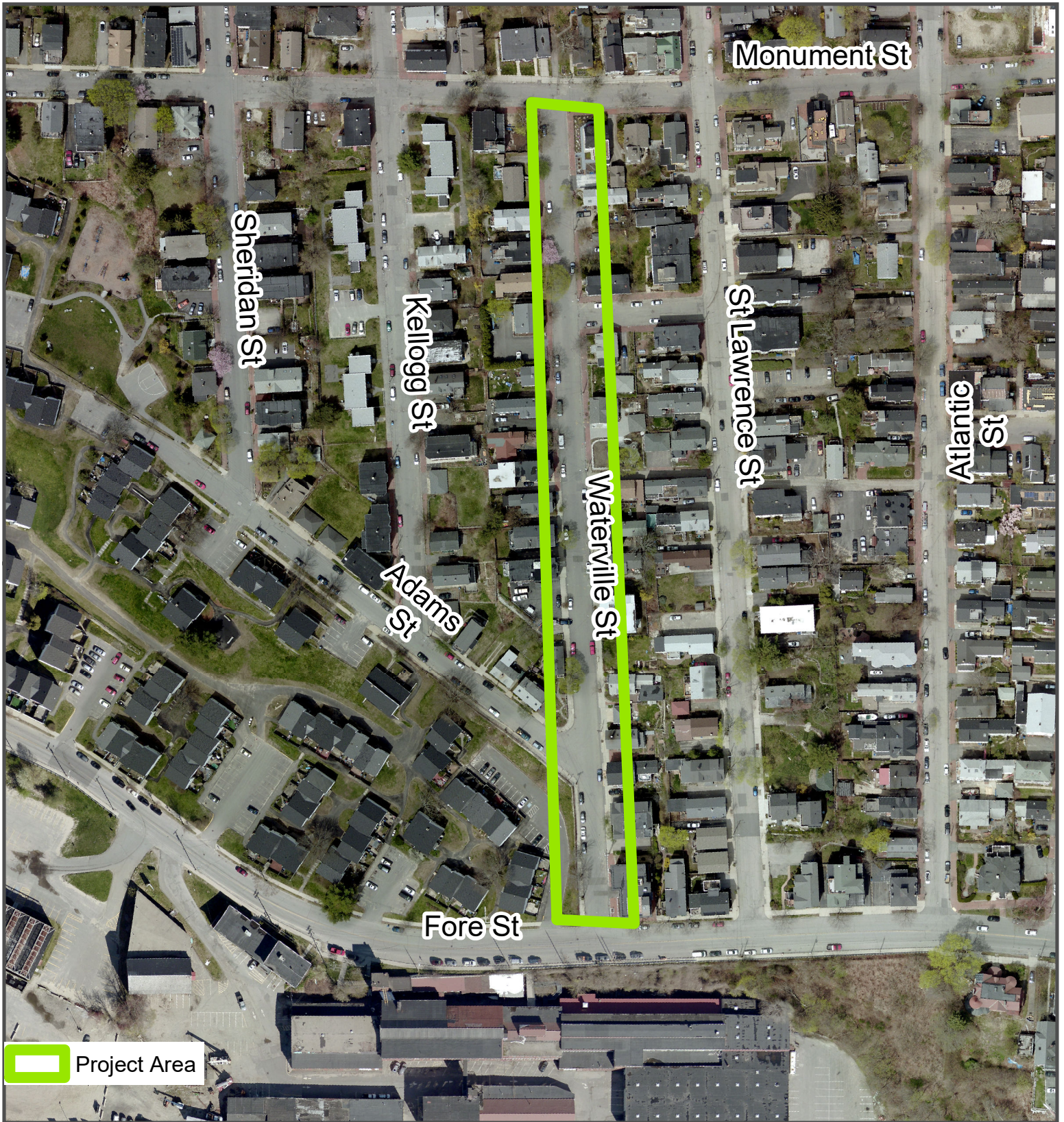
DPW staff, with support from the Parking Division, recommend this change.

VIII. LIST ATTACHMENTS

1. 1.Waterville_Street_Parking
2. 2.Petition_ParkingPermit_WatervilleSt_Opt
3. 3. K. Palmer Public Comment
4. 4. S. Reiche Public Comment
5. 5. E. Miller Public Comment
6. 6. L. Lisberger Public Comment (1)
7. 7. Schiffman Public Comment
8. 8. M. Casale Public Comment
9. 9. K. Snyder Public Comment

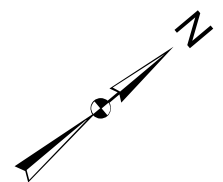
Prepared by:

Date: 4/21/2020



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

Waterville St Parking Changes



August 22, 2019

0 0.025 0.05
Miles

Petition for Time Limited Parking

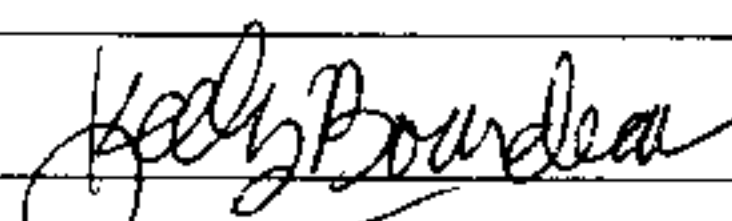
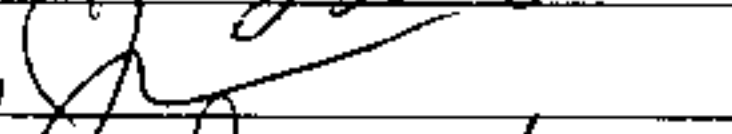
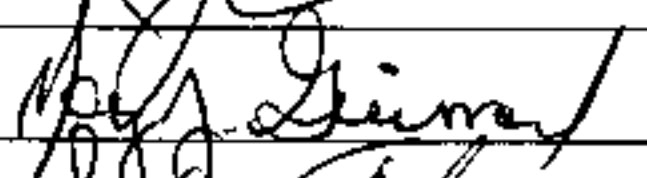
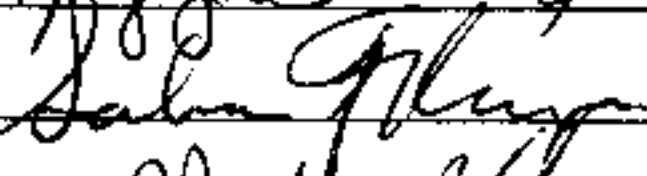
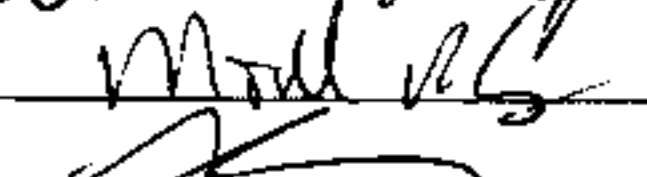
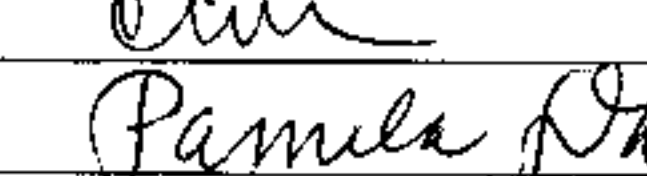
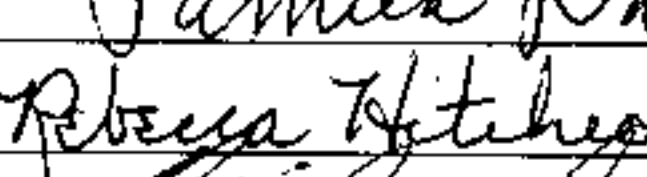
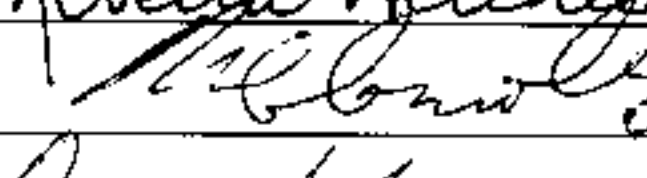
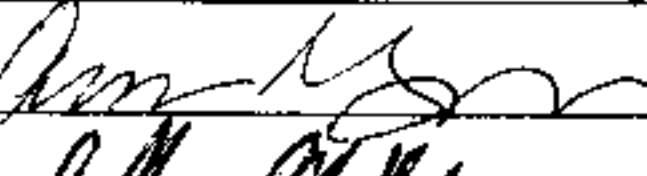
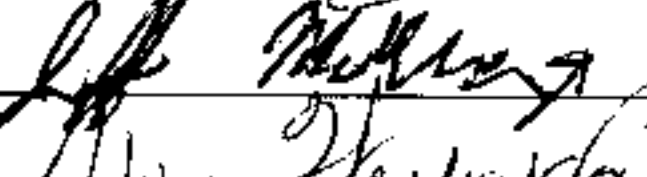
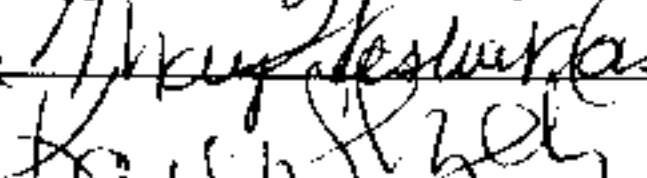
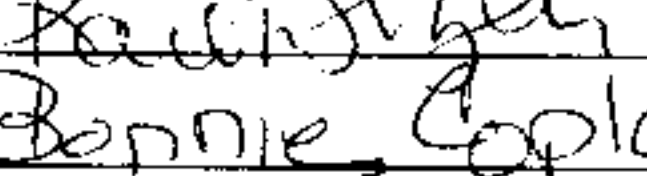
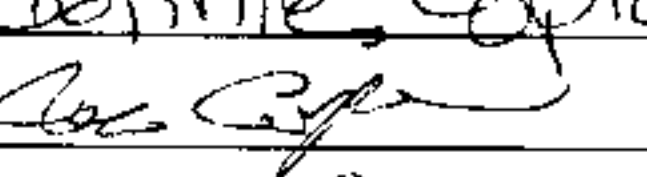
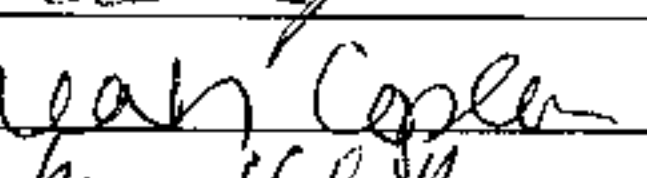
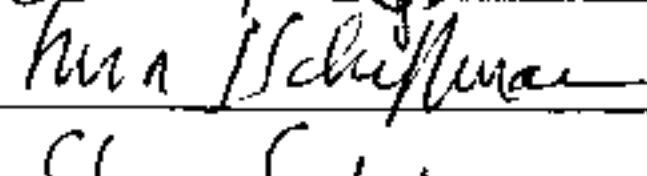
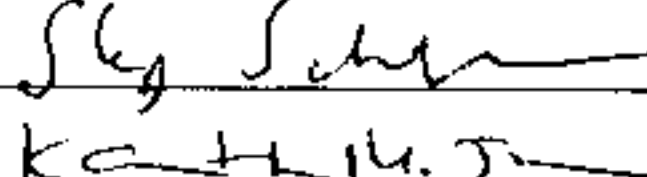
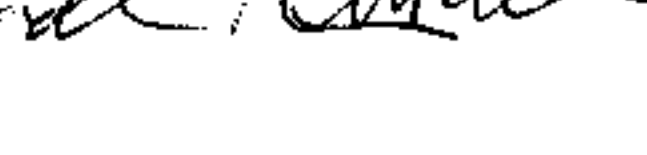
We, the undersigned, hereby petition the Portland City Council to implement time limited parking on:

Waterville Street

Name of Street or Portion of Street

We further state that:

1. Each signer is at least eighteen (18) years old; and
2. A resident or property owner on the specified street; and
3. Mary Westcott Casale, who has a mailing address of: 39 Waterville St
Portland Me, will act as a primary contact for future notifications.

NAME	SIGNATURE	ADDRESS	DATE	"X" IF OWNER
Kelly Bourdeau		17 Waterville St	Aug 5, 2018	X
Jacob Bourdeau		Same	8/5/18	X
Nancy J. Guimond		13 WATERVILLE ST.	8/5/18	
Sandra Flanagan		13 WATERVILLE ST	8/5/18	X
Michael R. Curren		41 Waterville St #7	8-10-18	
Jim Sweeten		13 Waterville	8/11/18	
Courtney Metson		13 Waterville	8/11/18	
Pamela Day		25 Waterville St	8/11/18	X
Rebecca Hitchcock		36 Waterville St.	8/14/18	X
Michael Connolly		36 Waterville St.	8/14/18	X
Amanda Guillemette		39 Waterville St.	8/17/18	
JEFF MORRISON		41 WATERVILLE ST #6	8/18/18	
Mary Westcott Casale		39 Waterville St	2/26/19	
Kevin Stetson		72 Waterville #3	3/1/19	X
Bonnie Coplon		9 Waterville #1	3/11/19	X
Michael Coplon		9 Waterville St. 1-C	3/11/19	X
Leah Coplon		74 Waterville St	4/12/19	X
LISA SCHIFFMAN		9 Waterville St. #3C	4/13/19	X
Stephen Schiffman		9 Waterville St. #3C	4/13/19	X
Katherine Jones		9 Waterville St #4C	4/16/19	
Patricia Jones		9 Waterville St #4C	4/16/19	
Philip von Staden		9 Waterville St 2C	4/17/19	X
Margaret von Staden		9 Waterville St 2C	4/17/19	X

Petition for Time Limited Parking

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We further state that:

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2. A resident or property owner on the specified street; and

3. Karen Snyder, who has a mailing address of: 12 Waterlilliest #3
Portland, ME 04101, will act as a primary contact for future notifications.

"X" IF

OWNER

[illegible]



Dena Libner <dlibner@portlandmaine.gov>

restricted parking on Waterville St

Katherine Palmer <kathy@thefishandbone.com>

Fri, May 1, 2020 at 9:08 AM

To: Dena Libner <dlibner@portlandmaine.gov>

I would support either one side with 2 hour restrictions, or both sides with guest permits, but not both sides with 2-hour restrictions.

[Quoted text hidden]

Begin forwarded message:

From: Sarah Reiche <sarahtreiche@gmail.com>

Date: May 1, 2020 at 1:57:06 PM EDT

To: dlibner@portlandmaine.gov

Subject: Waterville street parking spaces proposal

Hi Dena,

My name is Sarah Reiche and I live with my husband at 50 Waterville Street. I am emailing to comment on the May 18 proposal for 2 hour time restricted parking spaces on Waterville Street. I would like to vote against this please and keep parking how it currently is, without any restrictions. Thank you!

Best,

Sarah Reiche

----- Forwarded message -----

From: **elizabeth** <elizabethmiller1953@hotmail.com>

Date: Mon, May 4, 2020 at 12:05 PM

Subject: Waterville Street parking restrictions

To: dlibner@portlandmaine.gov <dlibner@portlandmaine.gov>

Dear Ms. Libner -

Delighted that the Council is considering introducing 2-hour time restricted parking spaces on both sides of Waterville Street, especially in light of how the street gets crowded with people going out to the islands and now workers at the construction sites along the Waterfront.

However, here's my concern: Parking for residents (including tenants) who can't jam into driveways. For example, our driveway can accommodate two cars side by side, but with three large apartments we usually have five or six cars connected with the building. Will there be parking permits for residents to exempt ourselves from the 2-hour restriction?

Many thanks -

Elizabeth Miller and David Body
46 Waterville Street #3
Portland 04101
207-878-8604

From: Lin Lisberger <lin.lisberger@gmail.com>

Date: May 5, 2020 at 7:03:25 PM EDT

To: dlibner@portlandmaine.gov

Subject: Waterville St restricted parking

As a group of three families who live in a three unit building on Waterville St we have some comments about the proposed parking restrictions proposed for our street.

1. We don't think we are quite at the tipping point where we need this.
2. We are concerned that guest parking is not addressed in the permitting.
3. We would still would like to see this addressed for the south side of the hill
as a whole. We do understand that the current ordinance allows for street by street petitions and that the requirements for that have been met.
4. If this has been proposed as a means to control short term vacation rentals, it is not the best way to do this. Better to do more to disallow short term rental of fully independent apartments.
5. If the intention of this is to cut down on commuters using residential streets, the council should have thought of that problem before allowing all of the nearby offices to be built without truly adequate parking. There are also much better ways to incentivize businesses to cut down on individual car commuters.

For all of these reasons we are opposed to this proposal at this time.

Lin Lisberger

lin.lisberger@gmail.com

www.linlisberger.com



From: Lisa Schiffman <lisaschiffman18@gmail.com>

Date: May 9, 2020 at 7:00:06 PM EDT

To: dlibner@portlandmaine.gov

Subject: Waterville Street parking proposal

Dear Ms. Libner,

As residents of Waterville Street, we are in favor of the 2-hour time-restricted parking proposal.

Thank you,

Lisa and Stephen Schiffman

9 Waterville Street

From: **MARY K CASALE** <dirtgirl1@aol.com>

Date: Mon, May 11, 2020 at 12:47 PM

Subject: Waterville St Resident Parking

To: Dena Libner <dlibner@portlandmaine.gov>

City Manager Jennings ,Mayor Snyder and Councilors ,

As a 42 year home owner on Waterville St I fully support the 2hour time restricted parking as proposed.

I have been working along with many of my neighbors to accomplish this for 4 years . We had met with Mr Jennings, Councilor Ray and numerous city staff . We followed the directions provided by the city to acquire the necessary signatures and had the support of city staff . I respectfully request the Council move forward with this now .

My only concern was the notification card mailed to Waterville St residents. There was no mention on the notice of the availability of Resident Parking Stickers. A few of my neighbors were bewildered -knowing that we had petitioned for timed parking and the availability of Resident Sticker Parking -and understandably interpreted this to mean that we as residents would be reduced to only 2 hour parking. I believe that more information (re:Resident Stickers) on the notice would have provided a clearer picture of the intent of the proposal .

Thank you for your consideration of this matter.

Mary Westort Casale

39 Waterville Street

Sent from my iPhone

From: **Karen Snyder** <karsny@yahoo.com>

Date: Wed, Apr 29, 2020 at 9:33 AM

Subject: May 18th-Waterville St. -Agree with 2 Hour Time Restricted Parking

To: dlibner@portlandmaine.gov <dlibner@portlandmaine.gov>

Cc: Belinda Ray <bsr@portlandmaine.gov>, John Peverada <jbp@portlandmaine.gov>

Dear Ms. Libner,

Even though I approve and agree with the proposed Waterville St. 2-Hour restricted parking limit, this notification card is very misleading for the following reasons:

1) This notification card does NOT provide a source link for additional clarification and/or explanation of this 2 hour time restricted parking regarding what it includes and doesn't include. *Note: The May 18th meeting agenda is not posted on the City website yet and probably won't be until the Friday before the meeting. Therefore, there is no source available for a Waterville resident to learn more about this effort.*

2) The notification card does NOT explain that residence will be able get residential parking stickers for their cars in which any current responses back that are negative or against this effort may be skewed because these residents were NOT informed of this important fact on this card.

In conclusion, I guess I am kind of surprised as to how vague this notification card that is shown below is. As such, how is a Waterville resident able to make an informed decision it if they are not provided all the facts on this effort?

Please advise.

Regards,

Karen Snyder

72 Waterville St.



On **May 18**, the City Council will consider introducing 2-hour time-restricted parking spaces on both sides of Waterville Street between 9am and 6pm.

To comment on the proposal:

- Attend the May 18 Council meeting, or
- Submit your comments in writing to Dena Libner at dlibner@portlandmaine.gov

Note: For information on whether the May 18 meeting will be held virtually or in person, view the meeting agenda at portlandmaine.gov/agendas

*To sign up to receive city news and alerts, Please visit:
portlandmaine.gov/stayconnected*

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: May 5, 2020

SUBJECT: **Order 174-19/20 Accepting and Appropriating Supplemental Community Development Block Grant and Emergency Solutions Grant Funding - 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?) A public notice will be posted identifying May 18th as a public hearing on the use of these funds.

PRESENTATION: (List the presenter(s), type and length of presentation) Mary Davis will be available for questions.

I. SUMMARY

This Order accepts and appropriates additional funding received from the U.S. Department of Housing and Urban Development Department through the CARES Act (\$1,137,154 CDBG-CV and \$573,734 ESG-CV).

II. AGENDA DESCRIPTION

As part of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, the City of Portland received an additional allocation of Community Development Block Grant (referred to as CDBG-CV) and Emergency Solutions Grant (referred to as ESG-CV) funding from the U.S. Department of Housing and Urban Development. This item accepts and appropriates those funds.

Upon submission and approval of a Substantial Amendment to both the 2016-2020 Consolidated Plan and the 2019-2020 Annual Action Plan, the City will receive \$1,137,154 in CDBG-CV funding and \$573,734 in ESG-CV funding. These funds are to be used specifically on projects and activities that prevent, prepare for, and respond to the coronavirus pandemic.

A Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of these funds will be presented to the City Council at its meeting on May 18, 2020.

This item must be read on two separate days. It was given a first reading on May 4, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, the City is eligible to receive additional CDBG and ESG funding specifically to be used to prevent, prepare for and

respond to the coronavirus pandemic. A substantial amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of these funds will be available for council consideration at the May 18, 2020 Council Meeting.

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

Staff recommends that the City Council vote to accept and appropriate these funds.

VIII. LIST ATTACHMENTS

1. CDBG re Additional Appropriations in FY2021 5.4.2020
2. Portland CDBG Cares Letter
3. Portland ESG Letter040220 council packet

Prepared by:

Mary Davis, Division Director

Date: 5/5/2020

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 ACCEPTING AND APPROPRIATING
SUPPLEMENTAL COMMUNITY DEVELOPMENT BLOCK GRANT
AND EMERGENCY SOLUTIONS GRANT FUNDING**

ORDERED, that Supplemental Community Development Block Grant (CDBG-CV) funding in the amount of \$1,137,154 and Emergency Solutions Grant (ESG-CV) funding in the amount of \$573,734 is hereby accepted and appropriated; and

BE IT FURTHER ORDERED, that the City Manager or his designee be authorized to:

- 1) Apply for, accept and expend the CDBG-CV Funds in the amount of \$1,137,154 and ESG-CV funds in the amount of \$573,734; and
- 2) Officially represent the City of Portland, Maine, in connection with the application, including the execution of contracts on behalf of the City; and
- 3) Act as the certifying officer for U.S. Department of Housing and Urban Development environmental documents related to these grants and to execute said documents and any other related documents necessary or convenient to carry out the intent of said grants; and

BE IT FURTHER RESOLVED, that the City of Portland, Maine certifies that it will comply with all of the assurances and provide such additional information as may be required by the U.S. Department of Housing and Urban Development.



ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

April 2, 2020

The Honorable Kate Snyder
Mayor of Portland
389 Congress Street
Portland, ME 04101-3529

Dear Mayor Snyder:

I am pleased to inform you of a special allocation to your jurisdiction of Community Development Block Grant funds to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis.

The CARES Act made available \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds. Of this amount, the Department is immediately allocating \$2 billion based on the fiscal year 2020 CDBG formula. The remaining \$3 billion shall be allocated based on needs using best available data, in the following tranches: \$1 billion shall be allocated to States and insular areas within 45 days of enactment of the CARES Act, and \$2 billion shall be distributed to states and local governments at the discretion of the Secretary. Up to \$10 million will be set aside for technical assistance. Given the immediate needs faced by our communities, the Department has announced the first allocation of funds. Your jurisdiction's allocation is \$1,137,154.

The CARES Act adds additional flexibility for both the CDBG-CV grant and, in some cases, for the annual FY2020 CDBG grants in these unprecedented times. The public comment period is reduced to not less than 5 days, grantees may use virtual public hearings when necessary for public health reasons, the public services cap is suspended during the emergency, and States and local governments may reimburse costs of eligible activities incurred for pandemic response regardless of the date.

In addition, the CARES Act authorizes the Secretary to grant waivers and alternative requirements of statutes and regulations the Secretary administers in connection with the use of CDBG-CV funds and fiscal year 2019 and 2020 CDBG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements can be granted when necessary to expedite and facilitate the use of funds to prevent, prepare for, and respond to coronavirus.

The Department is developing a notice that will further describe the CARES Act's provisions, a Quick Guide to the CARES Act flexibilities and other provisions, and other resources

to enable swift implementation of CDBG-CV grants. As these become available, they will be posted on HUD's website and distributed to grantees. The Department will also support grantees with technical assistance.

As you develop your plan for the use of these grant funds, we encourage you to consider approaches that prioritize the unique needs of low- and moderate-income persons and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. You should coordinate with state and local health authorities before undertaking any activity to support state or local pandemic response. CDBG-CV grants will be subject to oversight, reporting, and requirements that each grantee have adequate procedures to prevent the duplication of benefits. HUD will provide guidance and technical assistance on DOB and regarding prevention of fraud, waste, and abuse and documenting the impact of this program for beneficiaries.

The Office of Community Planning and Development (CPD) is looking forward to working with you to successfully meet the urgent and complex challenges faced by our communities. If you or any member of your staff has questions, please contact your local CPD Field Office Director or CPDQuestionsAnswered@hud.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John Gibbs', with a stylized, cursive script.

John Gibbs
Acting Assistant Secretary
for Community Planning and Development
U.S. Department of Housing and Urban Development



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

April 2, 2020

The Honorable Kate Snyder
Mayor of Portland
389 Congress Street
Portland, ME 04101-3529

Dear Mayor Snyder:

I am pleased to inform you of special Emergency Solutions Grants (ESG) Program funds HUD is allocating to your jurisdiction in the amount of \$573,734, as authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136. These special ESG-CV funds are to be used to prevent, prepare for, and respond to the coronavirus pandemic (COVID-19) among individuals and families who are homeless or receiving homeless assistance; and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19.

President Trump signed the CARES Act on March 27, 2020 to help the Nation respond to the coronavirus outbreak. The CARES Act made available an additional \$4 billion in ESG-CV funds to supplement the Fiscal Year (FY) 2020 ESG funding provided under the Further Consolidated Appropriations Act, 2020 (Public Law 116-94). Of this amount, the Department is immediately allocating \$1 billion for ESG-CV grants based on the FY 2020 ESG formula. The rest of the funding for ESG-CV grants will be allocated directly to States or units of local government by a separate formula developed by the Secretary. Up to \$40 million of the additional funds will be set aside for technical assistance.

Given the immediate needs faced by our communities, the Department has announced the first allocation of funds, which are subject to the following flexibilities and conditions provided by the CARES Act:

- The funds may be used to cover or reimburse allowable costs incurred by a State or locality before the award of funding (including prior to the signing of the CARES Act) to prevent, prepare for, and respond to COVID-19;
- The funds are not subject to the spending cap on emergency shelter and outreach under 24 CFR 576.100(b)(1);
- Up to 10 percent of funds may be used for administrative costs, as opposed to 7.5 percent as provided by 24 CFR 576.108(a);
- The funds are exempt from the ESG match requirements, including 24 CFR 576.201;
- The funds are not subject to the consultation and citizen participation requirements that otherwise apply to the Emergency Solutions Grants, however each recipient must

publish how its allocation has and will be used, at a minimum, on the Internet at the appropriate Government web site or through other electronic media;

- The funds may be used to provide homelessness prevention assistance (as authorized under 24 CFR 576.103 or subsequent HUD notices) to any individual or family who does not have income higher than HUD's Very Low-Income Limit for the area and meets the criteria in paragraphs (1)(ii) and (1)(iii) of the "at risk of homelessness" definition in 24 CFR 576.3;
- That recipients may deviate from applicable procurement standards when using these funds to procure goods and services to prevent, prepare for, and respond to coronavirus, notwithstanding 24 CFR 576.407(f) and 2 CFR 200.317-200.326;
- While we encourage you to offer treatment and supportive services when necessary to assist vulnerable homeless populations, individuals and families experiencing homelessness must not be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services for which these funds are used, notwithstanding 24 CFR 576.401(e).

In addition, the Act authorizes the Secretary to grant waivers of and specify alternative requirements for statutes and regulations the Secretary administers in connection with the use of ESG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). These waivers and alternative requirements can be issued when necessary to expedite and facilitate the use of funds to prevent, prepare for, and respond to coronavirus.

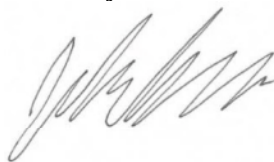
The Department is developing a notice that will further lay out the CARES Act provisions and other waivers and requirements to enable swift implementation of additional ESG-CV grants. This notice and any subsequent notices of waivers and alternative requirements will be made available on HUD's website and distributed to grantees. The Department will also support grantees with technical assistance.

As your jurisdiction develops its plan to use these grant funds, HUD encourages approaches that prioritize the unique needs of persons experiencing homelessness and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. Your jurisdiction should coordinate with State and local health authorities before undertaking any activity to support state or local pandemic response. HUD encourages you to share successes that may help other grantees. Like other supplemental funding, ESG-CV grants are subject to oversight and tracking, such as requirements to prevent the duplication of benefits. We look forward to working with you to prevent fraud, waste, and abuse and to document the impact of this program for beneficiaries.

Importantly, proper reporting in the Integrated Disbursement and Information System (IDIS) is critical to ensuring grantees are complying with program requirements and policies, providing demographic and income information about the persons who benefit from funded activities, and allowing HUD to monitor recipients. Your jurisdiction's ongoing attention is essential to ensuring complete and accurate reporting of performance measurement data.

HUD's Office of Community Planning and Development (CPD) is looking forward to working with your jurisdiction to successfully meet the urgent and complex challenges faced by our communities. If you or your staff has questions, please contact your local CPD Field Office Director or CPDQuestionsAnswered@hud.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Gibbs', with a stylized, cursive script.

John Gibbs
Acting Assistant Secretary
for Community Planning and Development
U.S. Department of Housing and Urban Development

MEMORANDUM
City Council Agenda Item

FROM: Adam Harr, Social Services

DATE: May 5, 2020

SUBJECT: **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**

SPONSOR: Sponsored by the Health & Human Services and Public Safety Committee,
Councilor Belinda S. Ray, Chair and the Economic Development Committee,
Councilor Justin Costa, Chair.

(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

PRESENTATION:

I. SUMMARY

The ordinance establishes the types of marijuana businesses that will be licensed to operate in the City, their rules, fee schedule, a 20-license cap on retail marijuana stores, a 250' buffer between retail marijuana stores, and the method of allocating retail licenses.

II. AGENDA DESCRIPTION

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. It was given a first reading on May 4, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The 2016 Marijuana Legalization Act gave municipalities the authority to regulate the operation of marijuana businesses. In preparation for retail adult use sales, which are anticipated to start by late spring, a staff working group researched and prepared marijuana business licensing recommendations. The Health and Human Services & Public Safety Committee and the Economic Development Committee met five times starting in August 8, 2019, and used the staff recommendations and public and industry feedback to create regulations that will govern marijuana businesses in the city including the licensing scheme businesses will use to enter this

new market. At the February 25, 2020 meeting, the committees finalized a recommendation to the full council that includes capping the number of retail marijuana stores in the city at 20 in order to avoid market disruption, requiring a 250' buffer between stores to prevent clustering, and also includes a scoring system to determine the order that completed and satisfactory applications are approved up until the cap is met.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intent is to set up a fair, successful marijuana market that is not oversaturated or clustered in one neighborhood, and that prioritizes the safety of employees, consumers, and the general public.

V. FINANCIAL IMPACT

Staff expects to add two staff members in the licensing office to manage applications, renewals, inspections, and complaints. Also recommended are the addition of 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 and safety 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. The fee schedule is intended to offset some of these costs.

VI. STAFF ANALYSIS AND BACKGROUND

The State of Maine has established two separate types of marijuana businesses – medical and adult use (recreational). 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 joint committee is recommending that licensing ordinance be adopted. 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 state has adopted extensive regulations for adult use marijuana uses, and is in the process of trying to harmonize the regulations for medical uses. However, the current regulations for medical uses are significantly less comprehensive, and there are political obstacles to increasing medical regulations, 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.

VII. RECOMMENDATION

Passage of the order.

VIII. LIST ATTACHMENTS

1. Marijuana Business Licenses Chapters 10, 11, 15 and 35 3.16.2020
2. Amendment 1 Councilor Ray Order 166-FY20 5.18.2020
3. Amendment 2 Councilor Ray Order 166-FY20 5.18.2020
4. Amendment 3 Councilor Ray Order 166-FY20 5.18.2020
5. Amendment 4 Councilors Ray and Mavodones Order 166-FY20 5.18.2020
6. Amendment 5 Removing Residency Points Order 166-FY20 5.18.2020
7. 2020-02-25 Marijuana Licensing (clean)
8. 2020-02-20 Marijuana - Ch. 11 FSE
9. 2020-02-20 Marijuana - Ch. 15 Fees
10. 2020-02-20 Marijuana - Ch. 10 Fire Code
11. Marijuana comparison memo from Anne Torregrossa 5.11.2020
12. 2019-08-02 Staff Memo on Marijuana Licensing
13. 2-28-2020 Memo to Committees and Backup
14. 2019-10-15 HHS Memo w.attachments

15. Marijuana Memo 11.26.2019
16. 2019-12-26 Staff Memo
17. 2-28-2020 Memo to Committees and Backup
18. Combined Marijuana License Testimony

Prepared by:

Adam Harr, Social Services

Date: 5/5/2020

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)

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 Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-2. 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.

35-3. 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.

35-4. 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.

35-5. Reserved.

35-6. Reserved.

35-7. Reserved.

ARTICLE II. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-8. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-9. Reserved.

35-10. Reserved.

35-11. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-12. 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.

35-13. 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.

35-14. 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> <u>1. Create at least five (5) 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>	
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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.

35-15. 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.

35-16. 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.

35-17. 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.

35-18. 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.

35-19. 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.

35-20. 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.

35-21. Reserved.

35-22. Reserved.

35-23. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-24. 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.

35-25. 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.

35-26. 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.

35-27. 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.

35-28. 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.

35-29. Reserved.

35-30. Reserved.

35-31. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-33. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-33. 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.

35-34. 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.

35-35. 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.

35-36. 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.

35-37. 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.

35-38. 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.

35-39. 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.

35-40. 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.

35-41. 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.

35-42. 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.

35-43. 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.

35-44. 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.

35-45. 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.

35-46. 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.

**AMENDMENT 1 OF ORDER 166-19/20
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR RAY
RE: NO PERFORMANCE GUARANTY FOR RETAIL STORES**

**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:

...

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

...

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

...

4. That the Portland City Code Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-16. Performance Guarantee Required.

- a. For all marijuana businesses, other than small scale caregivers, retail stores, 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.

...

**AMENDMENT 2 OF ORDER 166-19/20
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR RAY
RE: LICENSEES MAY RELOCATE**

***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:

...

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

...

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

...

4. That the Portland City Code Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-2. Definitions.

...

35-43. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

...

(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. Ownership transfers.

- a. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
- b. 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. 35-14(f)(4).
- c. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

2. Geographic transfers.

- a. A license may be transferred to a new location in the City provided that the new location complies with the Code.

**AMENDMENT 3 OF ORDER 166-19/20
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR RAY
RE: SIGNS COMPLY WITH STATE STATUTE**

**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:

...

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

...

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

...

4. That the Portland City Code Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-44. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, all signage in connection with a marijuana business, whether adult use or medical, shall comply with the requirements for signs under Title 28-B of the Maine Revised Statutes, and any regulations adopted thereunder.÷

~~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.~~

**AMENDMENT 4 OF ORDER 166-19/20
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR RAY AND COUNCILORMAVODONES
RE: REMOVING ROUNDS OF LICENSING**

**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:

...

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

...

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

...

4. That the Portland City Code Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-2. Definitions.

...

DIVISION 2. GENERAL LICENSE REQUIREMENTS

...

35-14. 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.

...

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.~~

~~2.1.~~ The City Manager shall establish an opening date and a closing date for applications in the initial year in which licenses become available for any given round of licensing. This shall be considered the First Round of applications for retail licenses.

~~3.2.~~ 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.

~~4.3.~~ 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	6
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promulgated by the City Manager based off of the Small Business Association Section 8(a) regulations.	
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 five (5) 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	4

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.	
--	--

~~5.4.~~ 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.

~~6.5.~~ 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.

~~7.6.~~ 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. In the first round of applications, all applicants placed on the wait list will be placed in order of their matrix point totals, from the highest to the lowest. Ties shall be broken via a lottery.

~~8.7.~~ 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.

8. 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.

9. Following the First Round of applications, the City Manager shall accept future applications on a first-come-first-served basis. However, if there are two or more applications that are submitted on the same business day and that cannot all be granted due to some limitation in this Chapter, the process set out in subsections (f)(2) through (f)(6) shall be followed to award licenses as between those applicants.

**AMENDMENT 5 OF ORDER 166-19/20
PREPARED BY CORPORATION COUNSEL
FROM STAFF RECOMMENDATIONS
RE: REMOVING RESIDENCY POINTS**

**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:*

...

*2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland
City Code are hereby amended to read as follows:*

...

*3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland
City Code is hereby amended to read as follows:*

...

*4. That the Portland City Code Sections 35-2 to 35-46 of
Chapter 35 of the Portland City Code are hereby amended to read
as follows:*

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-2. Definitions.

...

DIVISION 2. GENERAL LICENSE REQUIREMENTS

...

35-14. 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.

...

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)	6
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regulations.	
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 five (5) 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

4. Annual contribution of 1% net profits as a restricted donation to the City for youth education on substance use education and prevention.	
--	--

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.

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.

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 - 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>

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: City of Portland City Council; Mayor Snyder

FROM: Anne Torregrossa, Associate Corporation Counsel

DATE: May 11, 2020

RE: Summary of differences between Portland and South Portland Ordinances licensing marijuana

At the City Council workshop on May 4, 2020, the Council requested an overview of the ways that the draft Portland ordinance differs from the South Portland ordinance, particularly with respect to retail stores. Both ordinances are similar to the extent that they have similar performance requirements surrounding odor, waste, and security for marijuana businesses. Below is a general summary of some of the differences between the two ordinances.

General licensing differences:

- The draft Portland ordinance has two additional categories of marijuana licenses that South Portland does not have: testing facilities and small scale caregivers.
- Portland licenses will be granted administratively, while retail and cultivation licenses in South Portland are granted by the Council.
- Portland mirrors some of the state requirements for adult uses into its ordinance so that they apply equally to adult use and medical facilities in the City, including background checks, record retention requirements, labeling, certain restrictions on edibles, and some of the restrictions on signs.
- Portland prohibits those with a history of land use and licensing violations from qualifying for a marijuana retail license for a period of time (disqualifying violations).
- Portland requires written landlord permission for the marijuana use.
- Portland requires that the business designate a community relations liaison to respond to public inquiries.
- Portland has specific provisions surrounding mobile security.
- Portland has additional limitations on signage.

Differences for retail stores:

- Portland has capped retail licenses at 20 and requires a 250' separation between stores. South Portland has a 300' separation requirement. Portland's retail licenses are allocated through a "weighted lottery" while South Portland's are first-come-first-served.
- In Portland, no person may hold more than one retail license until January 1, 2025.
- Portland allows a 25% change of ownership for retail stores, and there is a potential amendment to allow for the geographic transfer of retail stores. South Portland does not allow the transfer of licenses.
- Hour of operation are limited to 7:00 am – 10:00 pm in Portland; South Portland limits hours to those for agency liquor stores or the particular zone requirements.
- Portland will require certain educational information to be posted in stores and on products.

- Portland also modeled some of its provisions after those adopted in Auburn, including annual training for retail employees, similar to the responsible service training required for alcohol servers, insurance requirements, and indemnification requirements.

Differences for other types of licensees:

- Portland requires sprinkler protection in hazardous manufacturing facilities.
- Portland requires additional gas detection in extraction facilities.
- Cultivation facilities are capped at 7,000 sq. ft. in Portland and 10,000 sq. ft. in South Portland.
- Portland requires a performance guarantee for manufacturing, cultivation, and retail facilities.

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.

Memorandum
January 28, 2020
Page 2

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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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.

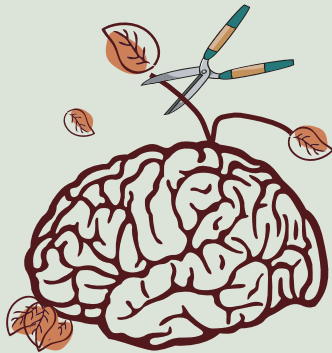
Who is this child?

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.

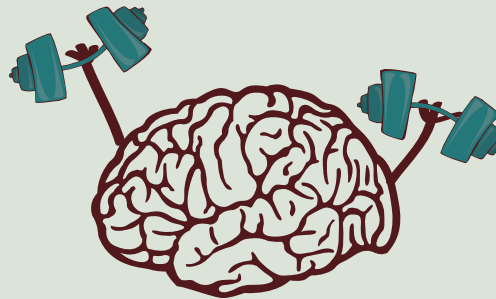
Sound familiar? You must be the parent of a teenager!

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.



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
Page 2

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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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

Special thanks to the industry experts whose contributions of time, insight, and materials made this report possible:

Hilary Bricken, Harris Moure

Erik Briones, Minerva Canna Group

Jordan Cornelius, Cornelius CPAs

John B. Davis, Northwest Patient Resource Center

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

Form 1065 U.S. Return of Partnership Income For calendar year 2013, or tax year beginning _____, 2013, ending _____, 20_____.		OMB No. 1545-0098 2013
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 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)	16 a 8,287.
	b Less depreciation reported on Form 1125-A and elsewhere on return	16 b 0.
	16c	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)	20 STMT -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.		
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 _____
Firm's name _____ Firm's EIN _____		Firm's address _____ Phone no. (303) 625-4077
Paid Preparer Use Only		BAA For Paperwork Reduction Act Notice, see separate instructions.

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 II 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.
		19	Distributions
12	Section 179 deduction		
	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

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

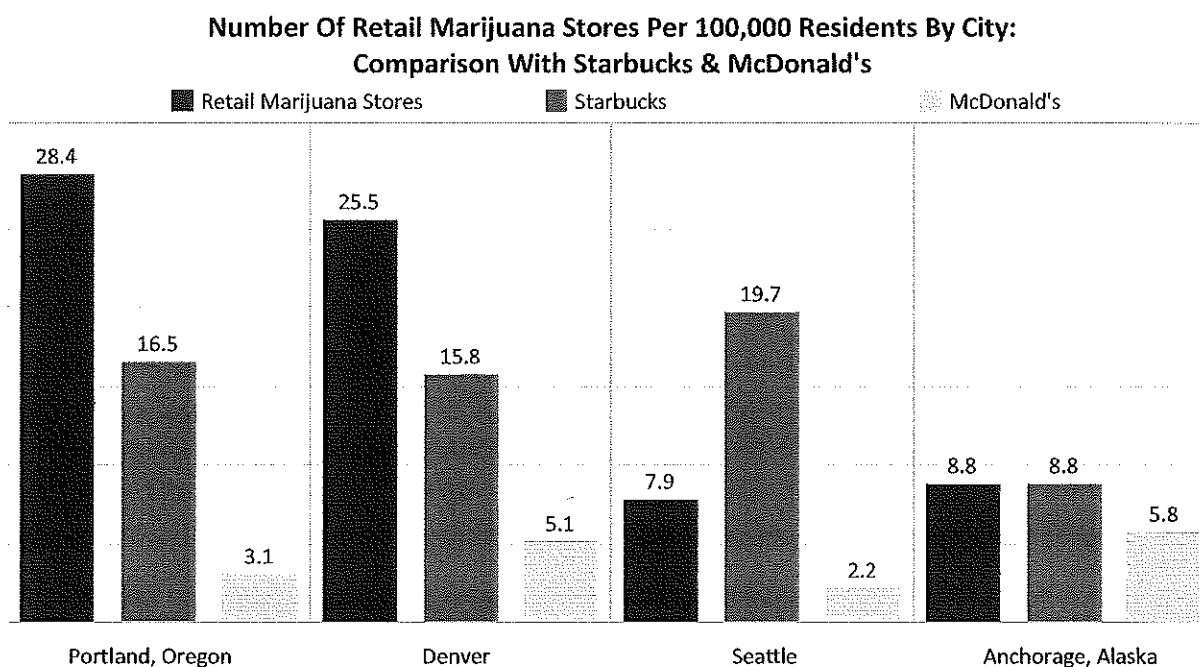
Partner 1

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.

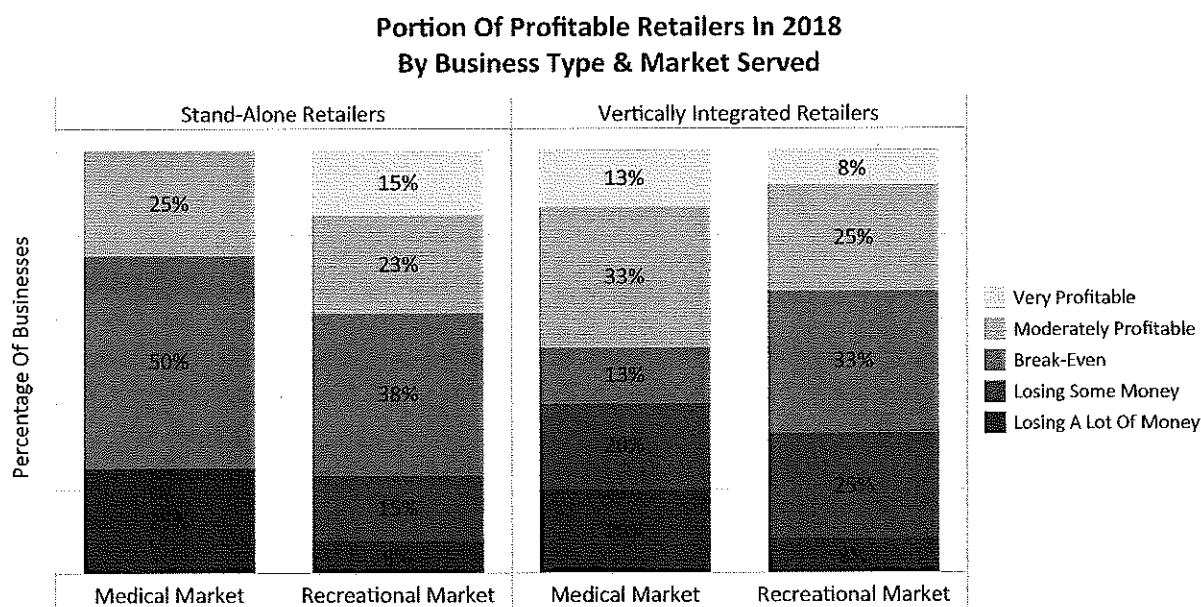
A marijuana retailer and a traditional retailer are allowed to adjust their taxable income based on the cost of goods sold (essentially a tax deduction), but this is the only adjustment a marijuana retailer can make.

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.

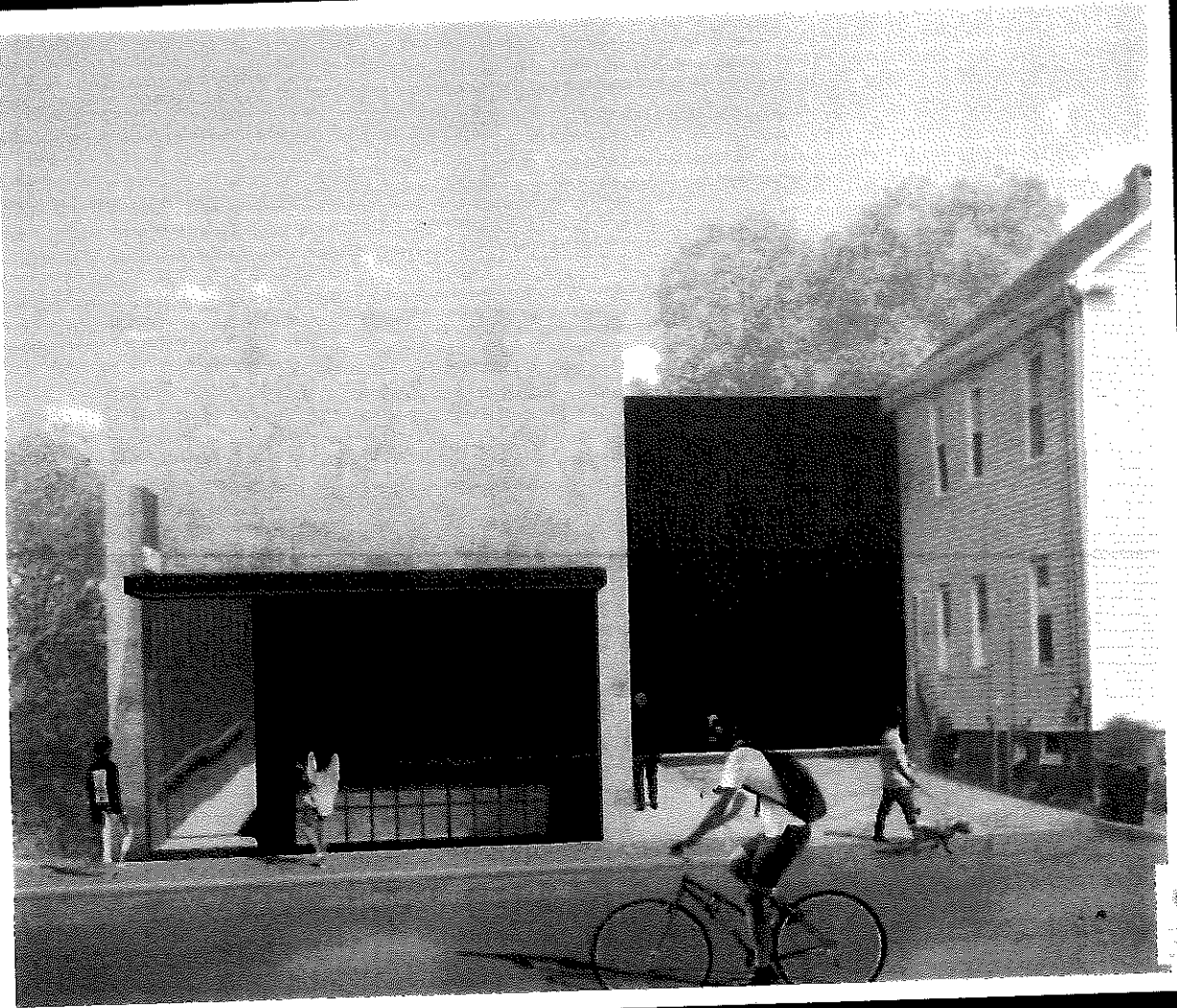
If such a use is allowed, I propose that hours of operation be considered and limited to 9 a.m. and 6 p.m.

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.

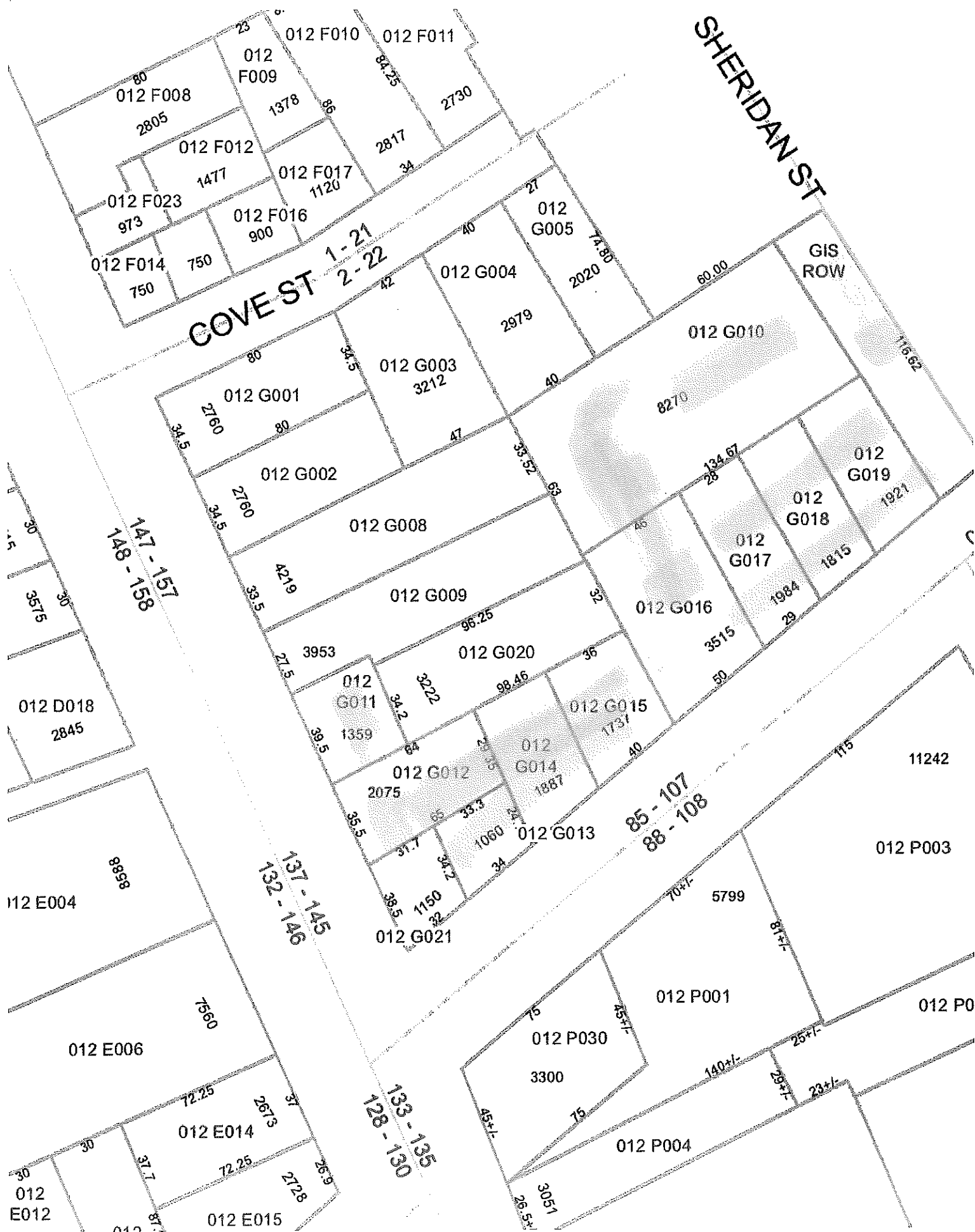
Most of the negative impacts of any new type of regulated business can be mitigated through thoughtful regulation.

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:

Hilary Bricken, Harris Moure

Erik Briones, Minerva Canna Group

Jordan Cornelius, Cornelius CPAs

John B. Davis, Northwest Patient Resource Center

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 Form 1065 Department of the Treasury Internal Revenue Service		OMB No. 1545-0098 2013	
For calendar year 2013, or tax year beginning _____, 2013, ending _____, 20_____. 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 insts)
			\$ 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 _____ 2			
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
	7 Other income (loss) (attach statement)		7
	8 Total income (loss). Combine lines 3 through 7		8 340,953.
EXPENSES FOR LIMITATIONS	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) \$MT		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. Signature of general partner or limited liability company member manager _____ Date _____		May the IRS discuss this return with the preparer shown below (see instrs)? ☒ Yes ☐ No	
Paid Preparer Use Only Print/preparer's name _____ Preparer's signature _____ Date 12/31/14 Firm's name > Cornelius CPAs Firm's EIN > Firm's address > 10200 E Girard Ave., Ste A-105 Denver CO 80231 Phone no. (303) 625-4077		Check ☒ if self-employed PTIN _____	

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		-39,185.
	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
[REDACTED]**B** Partnership's name, address, city, state, and ZIP code
[REDACTED]
Seattle, WA 98126**C** IRS Center where partnership filed return
e-file**D** ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner****E** Partner's identifying number
[REDACTED]**F** Partner's name, address, city, state, and ZIP code
[REDACTED]
Bellevue, WA 98004**G** ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member**H** ☒ 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
9b Collectibles (28%) gain (loss)	A -283.
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	19 Distributions
5,434.	
13 Other deductions	20 Other information
A 661.	A 2.
14 Self-employment earnings (loss)	
A 154,469.	

What was
earnedAmount taxed on...
30% is \$46,340.07
Amount to live on
would be \$7,029.00

*See attached statement for a

FOR
IRS
USE
ONLY

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	11 557,034
Deductions (See instructions for limitations on deductions.)	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	12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____ 26 _____ 27 0 28 557,034 29a _____ 29b _____ 29c 0
Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28 (see instructions) _____ 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 _____ 31 189,392 32 0 33 _____ 34 189,392 35 0 36 0
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	
Paid Preparer Use Only Print/Type preparer's name _____ Preparer's signature _____ Date _____ Check ☐ if self-employed ☐ PTIN _____ Firm's EIN _____ Phone no. _____ State AZ ZIP code _____		

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>	

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: April 22, 2020

SUBJECT: **Order 176-19/20 Approving Substantial Amendment to the 2016-2020 Housing and Urban Development Consolidated Plan and Fiscal Year 2019-2020 Annual Action Plan Re: Use of Supplemental CDBG-CV and ESG-CV Funding - 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 5/18/2020

Final Action 5/18/2020

Can action be taken at a later date: No (If no why not?) No. Public Notice of the meeting was published in the Portland Press Herald

PRESENTATION: (List the presenter(s), type and length of presentation) Mary Davis will be available for questions.

I. SUMMARY

This order approves a Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of additional funding received from the U.S. Department of Housing and Urban Development through the CARES Act. (\$1,137,154 CDBG-CV and \$573,734 ESG-CV).

II. AGENDA DESCRIPTION

As a result of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Public Law 116-136), the City of Portland received supplemental Community Development Block Grant funding (known as CDBG-CV) in the amount of \$1,137,154 and Emergency Solutions Grant funding (known as ESG-CV) in the amount of \$573,734. These funds must be used to mitigate the impacts of COVID-19. In order to access the funds, the City must submit to the U.S. Department of Housing and Urban Development a Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of the funds. The City Manager's funding recommendations are summarized below and outlined in more detail in the spreadsheets included in the agenda backup.

ESG-CV \$573,734

Administration: \$57,3737

Shelter Operations & Essential Services: \$357,508

Street Outreach: \$158,853

CDBG-CV \$1,137,154

Administration: \$11,371

Portland Summer Camp Program \$50,000

Food Assistance: \$175,000

Rental Assistance Program: \$500,000

Non-Profit Shelter Assistance: \$20,000

Homeless Services: Amistad Peer Outreach Program \$75,000

Business Assistance and Microenterprise Assistance Programs: \$305,783

The food assistance and non-profit shelter assistance funds will be allocated through a competitive application program. The summer camp program will be facilitated by the City's Parks and Recreation Department. The Business Assistance and Microenterprise Assistance Programs will be administered by the City's Economic Development Department. Administration of the rental assistance program has not been determined as of yet.

The Housing Committee reviewed the draft rental assistance guidelines at their May 13, 2020. Staff requested guidance from the Committee regarding the monthly assistance amount provided through the program. The Committee elected to defer this decision to the full Council but indicated a desire to assist as many people as possible.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

In addition to providing supplemental funding through the CDBG and ESG Programs, the CARES Act also provided several temporary waivers and regulatory alternatives to assist communities with expediting the use of the funds to prevent, prepare for and respond to coronavirus. The City is required by the CARES Act to ensure that funding is not be used to pay costs if another source of financial assistance is available to pay that cost.

The City Manager asked staff from the HCD office to work with other City Departments to assess the best use of the funds as it relates to the City's response to COVID-19.

ESG-CV: The focus of the ESG-CV funding will be Emergency Shelter (including shelter operations and essential services) and Street Outreach (including case management, transportation and urgent physical needs). Up to 10% of the grant will be used for administrative costs including the management and oversight of the program along with costs associated with the use of the HUD required data management system.

Guidance from the HUD office that administers the ESG program indicates that the city will be receiving additional assistance through a second round of ESG-CV funding. The amount of the additional assistance is unknown at this time.

CDBG-CV: The CDBG-CV funding recommendations were developed with assistance from staff from Economic Development, HHS/Social Services, and Recreation as well as with social service providers in the community. These recommendations focus on three main areas: rental assistance, business assistance and emergency services/homeless prevention.

The recommendations include direct funding for several programs (Summer Camps through Parks & Rec; BAP and Microenterprise program through Eco Dev; Amistad Peer Outreach Program). The Homeless Prevention and Food Assistance programs would be available to Portland social service agencies through a streamlined CDBG application process.

The budget for the rental assistance program was designed to assist as many people as possible. If the program

is administered by an outside agency, an administrative cost will be incurred. The program would provide up to three months of rental assistance plus utility costs, if necessary. The recommendation is \$750 per month for three months plus \$250 in utility assistance with a maximum allowance of \$2,500 per household.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Council approval of the Substantial Amendment to the 2016-2020 Consolidated Plan and the 2019-2020 Annual Action Plan outlining the allocations for the supplemental Community Development Block Grant Program (CDBG-CV) and the Emergency Solutions Grant Program (ESG-CV) funding received from the U.S. Department of Housing and Urban Development.

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

There is still funding available in the MaineHousing program. They allocated \$5 million to the program and expect to be able to help about 10,000 households. Program statistics are uploaded to the MaineHousing website everyday: <https://www.mainehousing.org/programs-services/rental/rentaldetail/covid-19-rental-relief-program>. Opportunity Alliance is administering the program in Cumberland County. As of May 13, they have received 1,380 applications, 622 of which have been approved for payment. MaineHousing did not yet have data on how many applications were from Portland residents.

The \$500 subsidy through the MaineHousing program is paid directly to the landlord. By accepting the payment the landlord is postponing the balance of the payment, not forgiving it, and agrees not to evict the renter for non-payment of rent during the month the payment rental relief payment was made. A tenant receiving assistance through the MaineHousing program would be eligible for other rental assistance.

Regarding public housing and Section 8 vouchers. Portland Housing's administration plan (Chapter 11), which is available on their website, requires that a family report interim changes within 10 business days from the day the change occurs. PHA can extend that time frame for good cause. If a family's share of the rent is to decrease, the decrease is effective on the first day of the month following the month in which the change was reported. The PHA typically begins processing the information within 1-2 days of receiving the notice from the tenant. The review and approval can be delayed if the tenant does not provide all the required documentation.

VII. RECOMMENDATION

Staff recommends that the City Council vote to approve the Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan.

VIII. LIST ATTACHMENTS

1. Substantial Amendment to HUD Annual Action Plan re CARES Act Funding 5.18.2020
2. ESG Funding HHS SS Rev. 05.05.2020
3. CDBG-CV funding table revised 5.8.20

4. Draft Portland CARES Emergency Assistance Payment Program 5.13.2020

Prepared by:

Mary Davis, Division Director

Date: 4/22/2020

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 SUBSTANTIAL AMENDMENT TO THE 2016-2020
HOUSING AND URBAN DEVELOPMENT CONSOLIDATED PLAN
AND ANNUAL ACTION PLAN
RE: USE OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
FUNDING**

ORDERED, a Substantial Amendment to the 2016-2020 Consolidated Plan and 2019-2020 Annual Action Plan outlining the use of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Public Law 116-136, supplemental Community Development Block Grant funding (CDBG-CV) in the amount of \$1,137,154 and Emergency Solutions Grant funding (ESG-CV) in the amount of \$573,734, substantially in the form attached hereto, is hereby approved; 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.

Total ESG -CV Funding : \$573,734
Up to 10% for Administration: \$57,373

All funds must be used to prevent, prepare for, and respond to COVID 19 and are subject to Duplication of Benefits rule. Funds are not subject to the consultation and citizen participation requirements that otherwise apply to the Emergency Solutions Grant, however each recipient must publish how its allocation has and will be used, at a minimum, on the Internet at the appropriate Government web site or through other electronic media

Emergency Shelter Shelter Operations and Essential Services	ACTIVITY	BENEFICIARIES	STAFF FUNDING RECOMMENDATION
	Maintenance, operation, utilities, repair, furnishings, security, supplies, equipment, out patient health services, case management, child care	Guests of the Oxford Street Shelter, Chestnut Street Family Shelter, and/or alternative wellness site (i.e. Expo)	\$217,602
	hotel/motel vouchers	Homeless individuals/families relocate to hotel/motels	\$139,907

Street Outreach Essential Services	ACTIVITY	BENEFICIARIES	STAFF FUNDING RECOMMENDATION
	Urgent physical needs	Unsheltered homeless	
	Engagement/case management	Unsheltered homeless	\$155,634
	transportation (bus pass/cab fare)	Unsheltered homeless	\$3,219

Administration	ACTIVITY		STAFF FUNDING RECOMMENDATION
	General management, oversight and coordination of the grant funds/HMIS costs	staff preparing reports and other HUD required documentation, monitoring of program activities, and other related costs. Additional HMIS license for staff to enter increased data	\$57,373

\$573,734

Total CDBG-CV Funding : \$1,137,154

All funds must be used to prevent, prepare for, and respond to COVID 19 and are subject to Duplication of Benefits rule. Funds are not subject to the consultation and citizen participation requirements that otherwise apply to the Community Development Block Grant, however each recipient must publish how its allocation has and will be used, at a minimum, on the Internet at the appropriate Government web site or through other electronic media

ADMINISTRATION 1% of funding \$11,371	ACTIVITY	ACTIVITY EXAMPLES	STAFF FUNDING RECOMMENDATION
	General Management, oversight, and coordination of grant funds	Preparing budgets, reports, and other HUD required documentation, related to COVID-19. Monitoring of program activities for compliance. Other related costs.	\$11,371

PUBLIC SERVICES \$820,000	ACTIVITY	BENEFICIARIES STAFF PROGRAM RECOMMENDATION	STAFF FUNDING RECOMMENDATION
	Child Care Services	Summer camp program serving children in grades K-5 from low/moderate income households earning at or below 80% AMI. Program funded: City of Portland Parks and Recreation Summer Camp Waiver Expansion	\$50,000
	Food Assistance	Low Moderate income individuals, 80% AMI. Program to be funded: Application process	\$175,000
	Homeless Prevention <i>Housing Assistance</i>	Beneficiaries: Low/moderate income households at or below 80% AMI. Individuals must not be receiving any other federal rent assistance. Individual will need to provide documentation showing an inability to pay rent or utilities as a result of loss of income due to COVID-19. Aid is capped at 3 months per HUD regulations; program cap would be no more than a TBD amount per month. Program to be funded: Portland CARES Program	\$500,000
	Homeless Prevention <i>Non-profit assistance</i>	Beneficiaries: Shelters operated in Portland by non-profits in need of financial assistance to prevent, prepare and respond to COVID-19 Program to be funded: Application Process	\$20,000
	Homeless Services	Beneficiaries: Homeless Individuals in Portland Program to be funded: Amistad Peer Outreach Program	\$75,000

ECONOMIC DEVELOPMENT \$305,783	ACTIVITY	BENEFICIARIES STAFF PROGRAM RECOMMENDATION	STAFF FUNDING RECOMMENDATION
	Special Economic Assistance	COVID-19 Business Assistance Program for Job Creation (Rehiring) (BAP) for local Portland businesses with 2 or more FTE employees on January 31, 2020. Program will provide a \$5,000 grant for the rehiring of 2 or more FTE employees that are low/moderate income individuals; COVID-19 Microenterprise Grant Program (MGP) for local Portland businesses with 0-1 FTE employee on January 31, 2020 plus the owner who must be a low/moderate income employee of the business. Program will provide a \$2,500 grant for working capital.	\$305,783

DRAFT
City of Portland
CARES Act Emergency Assistance Payment Program

In response to the Coronavirus Aid, Relief, and Economic Security (CARES) Act the City of Portland will make available up to three (3) months of rent, or utility payment(s) to alleviate the housing burden for low income households that have lost their employment income as the result of the COVID-19 pandemic.

Program Goal:

- To alleviate financial pressure for low income households as the result of the COVID-19 pandemic.
- To provide greater economic security to rental property owners.

Estimated Funding Available:

Starting on June 1, 2020, the City of Portland will make available \$500,000 through an Emergency Assistance Payment Program. The program will provide up to \$2,250 (\$750/month for 3 months) for rent assistance and a maximum of \$250 in utility expense assistance.

Eligible Applicants:

- Renters living in the City of Portland;
- Renters who receive rental housing assistance vouchers (Section 8 for example) or who live in public housing are not eligible. These renters should contact the agency or Public Housing Authority who provides the voucher.
- Household Income is at or below 80% of area median income as defined by the U.S. Department of Housing and Urban Development, as noted below;
- Lost household income as a result of COVID-19 (examples include being laid off, your place of employment closed, reduced hours of work, having to stay home to care for your children because your day care or school has closed);
- Provide documentation of income received as a result of any governmental response program due to COVID-19 (such as unemployment compensation); **and**
- A gap exists between household income prior to COVID-19 and now.

Number of Persons in Household								
	1	2	3	4	5	6	7	8
80% Income Limits	52,100	59,550	67,000	74,400	80,400	86,350	92,300	98,250

Type of Assistance:

Applicants that meet all of the criteria listed above are eligible to apply for an Emergency Assistance Payment for rent and may be eligible to receive up to a total of \$250 in utility assistance for current electricity or fuel costs for a period not to exceed three (3) months. All payments made on behalf of the applicant will be paid directly to the landlord, or utility company. Under no circumstance will the payment be made directly to the household.

Program Requirements:

- Applicants will be required to provide household income, assets and expenses for the timeframe prior to when the household member (s) were laid off or terminated; documentation of rent; documentation of the relief programs applied for including the history of benefits received or estimated benefits;
- Demonstrated gap between unemployment benefits and regular income;
- Sign and comply with a Declaration of Benefits (DOB) statement and agreement to pay City back if funding is received from another state, federal or local resource.
- Renter must provide documentation from the rental property owner that no evictions were pending prior to COVID-19;
- A signed Lease Agreement and a letter/email from the rental property owner indicating the amount of rent the tenant pays and a statement that the household was in good standing with the property owner and not subject to an eviction for failure to pay rent prior to January 20, 2020 (coincides with President declaring Maine a Major disaster)
- If the landlord agrees to participate in the program, the landlord is postponing the balance of the payment, not forgiving it. In addition the landlord is agreeing not to evict the renter for non-payment of rent during the month(s) in which the rental assistance payment is made.
- Participation in the MaineHousing COVID-19 Rental Relief Program does not prohibit participation in this program.
- Applicant must first apply for assistance through the MaineHousing COVID-19 Rental Relief Program.

Review and Approval:

The City will review the contents of the application and may use 3rd party verification methods to document income, assets, and expenses for all applicants. The City will use Part 5 Income Determination Method (Attachment 2: Income Inclusions and Exclusions of Part 5). Expenses provided by the applicant will be analyzed and a cash flow analysis will be prepared for the time prior to COVID-19 when the applicant was laid off to the current time frame. The analysis will be reviewed and signed by the applicant household. A write up will be prepared for the Division Director to review. Included will be an analysis of the gap payment, the amount the applicant is eligible for, and whether or not the household qualifies for utility assistance. The Division Director will approve or deny the assistance and the applicant will be notified of the decision. If approved, the Intake Coordinator will prepare the closing documents and contact the applicant.

If denied, the applicant will be provided a *“Notice of the Right to Appeal”*. This notice will detail the reasons for the denial and will provide instructions of the appeal process.

The applicant may appeal the Director’s decision to the Planning and Urban Development Department Director or her designee and will use the following procedure:

- The request for a hearing must be made in writing to the Department Director within 30 days of the date of decision.
- No new information may be presented by the applicant, only clarification of information that was originally provided, which, in the applicant’s point of view, may not have presented their complete financial condition.
- The applicant may provide a written explanation to the Department Director or may request a meeting, which may be on Zoom, conference Call or equivalent.
- The Department Director will review the information and make a determination on the appeal. The Department Director will contact the Housing and Community Development Division Director with the decision. The Department Director’s decision is final.

To Apply for the Emergency Assistance Payment Program:

If the program is approved by the City Council on May 18, 2020, the City of Portland CARES Act Emergency Assistance Payment Program will be marketed. Applications and supporting documentation may be submitted for program starting June 1.

Applications are available by calling the City of Portland’s General Assistance Department’s General Phone Number at 207.775.7911. Please leave a message of your name, address, and phone number. Once received, an application will be mailed to you at the address provided. In addition, the application will be available electronically on the City’s website, (Add link). Fill out the form completely and provide the necessary back up documentation, completed applications can be returned by mail to:

City of Portland General Assistance Office
196 Lancaster Street, Portland, ME 04101
Or emailed to (provide email contact).

Applications and back up documents must be complete to be considered for assistance.

Program Marketing:

- Public hearing on May 18, 2020 and Mayor announcement
- Notification to Landlords Association
- Website, social media, Press release

CDBG Eligibility and National Objective:

This program is eligible for CDBG funding under 570.207(b)(4) and the National Objective is LMI Limited Clientele 570.208(2)(C).

Environmental Review Requirements:

This program is considered to be classified as 24 CFR 58.35(b) (2) a Categorical Exclusion Not Subject to 58.5.

MEMORANDUM
City Council Agenda Item

FROM: Dena Libner

DATE: May 8, 2020

SUBJECT: **Order 177-19/20 Amending the Emergency Proclamation Re Closing Streets -
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 5/18/2020**

Can action be taken at a later date: No

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

I. SUMMARY

This proposed amendment to the Emergency Order seeks to facilitate Portland's small business community's resilience and recovery from the COVID-19 pandemic in a manner that protects and promotes public health and safety.

II. AGENDA DESCRIPTION

This order amends the City's Emergency Proclamation to allow for the temporary closure of streets, temporary expansion of existing outdoor commercial premises (e.g. dining and retail services) and establishment of new outdoor commercial premises to facilitate Portland's safe, effective economic recovery, in conjunction with Governor Mills' Restarting Maine's Economy. This amendment also extends the Emergency Proclamation to July 13, 2020.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intent of this amendment is to support Portland's economic resilience and recovery by helping dining and retail establishments maintain customer capacity while maintaining social distancing requirements. It is not the intent of this amendment to create public gathering or social space.

V. FINANCIAL IMPACT

The City will waive fees associated with applications for the temporary expansion of outdoor premises. All other permit and license fees will remain in place. Application fees related to parklets will also be greatly reduced.

VI. STAFF ANALYSIS AND BACKGROUND

Please see additional information in the back-up material, attached.

1. Supplementary Memo from Jon P. Jennings, City Manager
2. Street Closure Map

3. Memo re: Metrics for Street Closure Selection from Jeremiah Bartlett, Traffic Engineer
4. Revised Temporary Applications and Guidelines, Department of Permitting & Inspections
5. FDA COVID-19 Checklist & Best Practices
6. Restarting Maine's Economy: Industry Checklists
7. Stakeholder Feedback to Proposal
8. Food Truck Rules & Regulations

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Amendment to Proclamation Re Street Closings final 5.18.2020
2. Background material
3. Emails from Constituents 5.13.2020 to 5.14.2020

Prepared by:

Dena Libner

Date: 5/8/2020

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 AMENDING THE EMERGENCY
PROCLAMATION RE: CLOSING STREETS**

ORDERED , that the Proclamation Declaring the Continued State of Emergency and Requirement to Stay at Home, issued by the City Manager Jon P. Jennings on March 24, 2020, and renewed, extended, and amended by the Portland City Council on March 30th, April 13th and April 27th, 2020, and repealed with certain provisions retained on May 4, 2020, is hereby amended as follows to include provisions allowing the closing of certain streets; and

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

EMERGENCY PROCLAMATION

WHEREAS, there is currently an outbreak of novel coronavirus disease 2019 (“COVID-19”), a respiratory illness, first detected in Wuhan City, Hubei Province, China, and it continues to expand to a growing number of international locations, including the United States; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency to respond to COVID- 19; and

WHEREAS, on March 11, 2020, the World Health Organization (the “WHO”) declared that global health crisis involving COVID-19 is a pandemic; and

WHEREAS, on March 12, 2020, the State of Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 13, 2020, the City of Portland, Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 16, 2020, the City of Portland declared an emergency and issued an emergency proclamation wherein in, among other things, restaurants and bars were to be closed for in-person gatherings and only open for take-out dining; and

WHEREAS, on March 19, 2020 the Federal Cybersecurity and Infrastructure Security Agency issued guidance identifying 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to COVID-19 pandemic; and

WHEREAS, as of March 29, 2020, there are 253 cases in the State of Maine, and 74 cases in Cumberland County of COVID-19; and

WHEREAS, on March 18, 2020, the Maine Supreme Judicial Court issued a Revised Emergency Order and Notice from the Maine Supreme Judicial Court [Regarding] Courthouse Safety and Coronavirus (Covid-19), in which the Court ordered that cases involving Forcible Entry and Detainer (evictions, landlord/tenant) will not be heard or scheduled by any Maine court before May 1, 2020; and

WHEREAS, the City of Portland is the largest city in Cumberland County, and is the service center for the region; and

WHEREAS, COVID-19 has been detected in hundreds of thousands of people worldwide and is primarily spread from person to person; and

WHEREAS, COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety; and

WHEREAS, this worldwide outbreak of COVID-19 is emerging and rapidly evolving; and

WHEREAS, Governor Janet T. Mills issued an executive order on March 15, 2020 prohibiting gatherings of more than ten (10) people throughout the State, and closing all restaurants and bars dine-in facilities; and

WHEREAS, on March 24, 2020, Governor Mills issued further guidance to businesses and the public regarding COVID-19;

WHEREAS, under conditions of this emergency, the City of Portland recommends and encourages all landlords throughout the City to not undertake or process any evictions; and

WHEREAS, the City of Portland also recommends that persons not advertise or encourage the use or rental of short-term rentals throughout the City for vacation purposes or otherwise; and

WHEREAS, on April 30, 2020, Governor Janet T. Mills issued Executive Order Number 49 entitled “An Order to Stay Safer at Home;”

WHEREAS, the Constitution of Maine, Article VIII, Part Second and 30-A M.R.S. § 3009 empowers municipalities with broad authority to enact ordinances affecting life, health, or safety, including ordinances relating to pedestrian and vehicular traffic on City streets; and

WHEREAS, during this state of emergency, the City of Portland must consider the welfare of its businesses while protecting the health and welfare of its citizens; and

WHEREAS, in light of the foregoing, the Portland City Council deems it proper and necessary to temporarily suspend certain provisions of the Portland City Code of Ordinances relating to traffic, outdoor dining and retail service, and parking in City streets for the purposes of allowing businesses to reopen or continue operating without undue hardship while also maximizing physical distancing;

NOW THEREFORE, BE IT ORDERED, that the Mayor and City Council of the City of Portland, do hereby declare and order as follows:

1. A civil state of emergency continues to exist within the City of Portland.
2. This Proclamation is issued in accordance with, and hereby incorporates by reference, Governor Mills’ FY 19/20 Executive Order Numbers 14, 19, 28, 34, 49, as amended from time to time, and any other Executive Orders hereinafter issued by the Governor relating to Covid-19 and that, by their terms, are applicable to individuals and businesses within the City of Portland, and any interpretive guidance issued by the State regarding those Orders including, but not limited to, the implementation of the State’s Restarting Plan, which are all also hereby incorporated into this Order by this reference.

3. For the duration of this proclamation, and except as expressly stated herein, all provisions of the City Code permitting dogs to be off leash and under voice control on public streets or publicly owned or publicly accessible property are suspended during the hours between 10:00 a.m. and 5:00 p.m. All dogs on any public street or publicly owned property must be controlled by a leash of not more than the specified lengths permitted under Chapter 5 of the Portland City Code for particular parks or publicly owned property during those aforementioned hours, except that dogs shall continue to be permitted to be under voice control in the Ocean Avenue Dog Park and the Valley Street Park.
4. The laws and rules outlined in the Land Use Code, including, but not limited to, the Site Plan, Subdivision, Historic Preservation Ordinance, and other procedures applicable to the City planning and land use application and review processes contained in Chapter 14, to the extent they impose limitations on the amount of time permitted for the holding of public hearings, the certification of applications, the holding of neighborhood meetings, the submission of recommendations, any required or necessary voting, the taking of final actions, and the issuance of determinations, are suspended, and any such time limitations are tolled for the duration of this Proclamation.
5. The neighborhood meetings required in Chapter 14 of the City Code may be conducted by an applicant remotely through telephonic, video, electronic or other similar means of remote participation under the following conditions:
 - A. Notice of the neighborhood meeting has been widely given to the parties required by the City's code to receive notice by electronic, telephonic, or other means and includes the method by which the public and interested parties may attend;
 - B. The applicant and all individuals speaking on behalf of the applicant in the remote meeting are able to hear and speak during the meeting and members of the public attending the remote meeting are able to hear the applicant and its representatives; and
 - C. Members of the public attending the remote meeting are able to participate through telephonic, video, electronic or other similar means of remote participation.
6. For the duration of this Proclamation, unless earlier rescinded by the City Council, the City Manager may suspend, by written agreement with a person, entity, or service provider providing emergency and essential services, suspend the rules and laws relating to Buildings and Building Regulations (Chapter 6), Licenses and Permits (Chapter 15), and Fire Prevention and Protection (Chapter 10) for all projects or properties undertaking temporary emergency and essential services during the duration of the declared State and City State of Emergency. Any agreement shall outline programmatic details and demonstrate, to the Manager's satisfaction, that the property and land use being undertaken meets minimum life safety requirements and that the suspension of the rules and laws suspended hereunder and otherwise applicable will not

unduly impact the health and safety of the public.

7. The laws and rules outlined in the Licenses and Permits Code (Chapter 15) and the Vehicles for Hire Code (Chapter 30), to the extent they impose deadlines for renewing existing licenses, taking action on applications for new or renewal licenses, or issuing new or renewal licenses are suspended, and any such time limitations are tolled for the duration of this Proclamation.
8. No City-issued permit, license, application, or appeal shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a City ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of this Proclamation; provided, however, that the applicant and Permit Granting Authority may agree to alternative timing in writing.
9. A City-issued permit in effect or existence as of March 16, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit or time period for meeting a deadline or for performance of a condition of the permit, shall be tolled for the duration of this Proclamation.
10. Effective immediately, and continuing for thirty (30) days after the expiration of this emergency proclamation, the City adopts an Affordable Rental Housing Incentive Program pursuant to which any person who holds a short term rental registration for a non-owner occupied short term rental unit pursuant to Sec. 6-150 et seq., is entitled to a one-time payment of \$1,000.00 so long as that person:

(a) relinquishes their short-term rental registration for that unit;

(b) registers the unit as a long-term rental (or has an existing long-term rental registration for that unit); and

(c) provides evidence to the Housing and Community Development Division that the person has entered into an agreement to lease the unit to a tenant for a minimum of one (1) year, and that tenant will be receiving either Section 8 funds or General Assistance funds for the unit. The \$1,000 payment shall be paid out of the Housing Trust Fund but shall not exceed a total of \$25,000. These funds shall be distributed on a first come first served basis.

The provisions of Chapter 14 of the Portland City Code governing approval of the Council's Housing Trust Fund Annual Plan are suspended to permit the temporary addition and funding of the Affordable Rental Housing Incentive Program to the Housing Trust Fund Annual Plan for the conversion of short-term rental dwelling units to rental housing units during the period beginning April 28, 2020 until thirty (30) days after the termination of this Proclamation.

11. The tax payment due dates/deadlines specified in Order No. 245 (FY-18-19), the FY 19-20 Appropriation Resolve, may be extended by the City Manager, in consultation with the City Finance Director and the Mayor during the duration of the declared State

and City State of Emergency.

12. This Order is enacted as an emergency, and shall remain in effect through July 13, 2020.
13. Consistent with Governor Janet T. Mills' April 10, 2020 Executive Order, the municipal election scheduled for June 9, 2020 is hereby rescheduled to July 14, 2020 to reduce exposure to COVID-19 and to coincide with the July 14, 2020 primary election.
14. The City Manager in consultation with the City's Traffic Engineer is hereby authorized to temporarily close certain non-arterial streets to through traffic as necessary to protect the health and safety of pedestrians, employees and patrons of local businesses, and other members of the public, including by promoting effective physical distancing. The City Manager or his designee may promulgate rules and regulations relating to these temporary street closures as necessary to protect public health and safety.
15. Beginning on June 1, 2020 and continuing through either (1) the termination of this Emergency Proclamation or (2) November 1, 2020, whichever comes first, City ordinances and regulations related to the operation and licensing of dining and retail services shall be temporarily suspended in order to allow display, storage, or sale of merchandise and sale, service, and consumption of food and/or drinks, including alcoholic beverages, in certain temporary outdoor areas on public and/or private property subject to the following:
 - All retail or food establishment operations must be in accordance with existing ordinances and licensing requirements unless the Department of Permitting and Inspections has issued a temporary permit pursuant to the authority granted herein.
 - Food service establishments with frontage on City streets closed to through traffic by the City Manager may be authorized to add or expand their premises with outdoor dining in sidewalks, portions of street rights-of-way, or other public spaces by obtaining a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - Any food service establishment may apply for a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit authorizing outdoor dining on City sidewalks, parks, or in privately owned parking lots in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - The number, and location, and permitting fees for dining facilities in dedicated City parking spaces ("Parklets") will be governed by rules and regulations promulgated by the City Manager.
 - The City Manager is hereby temporarily authorized to modify the City's Traffic Schedule in order to change designated "parking" spaces to "no parking" spaces

as he, in consultation with the City's Traffic Engineer, deems necessary and appropriate to protect the public health and safety, including in order to allow the operation of additional Parklets throughout the City.

- Access required under the Americans with Disabilities Act shall be maintained.
 - In order to allow retail establishments to improve physical distancing capabilities after resuming operations, retailers may apply for a Temporary Sidewalk/Street Sale Permit authorizing outdoor display and sale of retail items in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - No street artists shall be permitted on any City street closed to through traffic under the authority granted herein. The City Manager may modify regulations governing street artists, including placing limits on location and operation, as he may deem necessary in order to maximize appropriate physical distancing in compliance with guidance from the Maine CDC, and to protect public health and safety.
16. The City Manager or his designee is authorized to temporarily modify or limit public access to City parks or other grounds as deemed necessary to protect the public health and safety. The City Manager is further authorized to modify existing rules and regulations relating to the sale of food and the operation of food trucks.
 17. For the duration of this proclamation, or October 1, 2020, whichever is later, upon application, the City Manager may waive the licensing requirements of Chapter 4, Article III, Division II, regarding entertainment licenses, so long as he is satisfied that the applicant has taken sufficient steps to minimize the impact of such entertainment on surrounding properties and that the entertainment will not disturb public health, safety, or welfare.
 18. Violation of or failure to comply with this Order is punishable by a fine of \$500.00 per occurrence plus the costs of prosecution.
 19. If any provision of this Proclamation or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Proclamation are severable.

MEMORANDUM

TO: City Council

FROM: Jon P. Jennings, City Manager

DATE: May 11, 2020

RE: Proposed Strategy and Guidelines for Restaurant and Retail Reopening Assistance

In conjunction with Governor Mills' Restarting Maine's Economy, which outlines the gradual stages of reopening, the City of Portland has put together a proposed plan to assist our small business community by facilitating the effective but cautious reopening of restaurants, retail establishments, and other commercial activity, scheduled for June 1, 2020 as allowed by the State.

The City's goal is to implement a number of *temporary* policy changes in order to support local businesses as they work to reopen or expand their operations safely and responsibly. If approved by the Council, businesses who take advantage of these temporary changes must follow all items required as part of the State's applicable COVID19 Prevention Checklist while doing so in order to safeguard public health and continue to mitigate the spread of COVID-19.

Permitting processes have been simplified and streamlined to allow businesses to take advantage of these policy changes as quickly as possible. All below-mentioned permits will be valid from June 1, 2020 to November 1, 2020.

By expanding outdoor capacity, the City hopes to support businesses in their efforts to re-open responsibly. These closures are not intended to create public gathering or social space. Businesses are required (according to the State's checklist) to have visible signage reminding visitors of proper social distancing and other COVID-19 recommendations. The following proposed plan constitutes a pilot program that will be reassessed as needed, based on data collection, observation, and public feedback.

Summary

- This proposal outlines four strategies to facilitate the safe reopenings of dining at restaurants and shopping at retail establishments:
 - Temporary street closures within the downtown area;
 - Temporary permits for dining or retail premises on public space (e.g. sidewalks and plazas) and private property (parking lots);
 - Permits for the extension of dining premises on public space (e.g. sidewalks and plazas) or private property (parking lots);
 - Parklets; when and where it is safe to establish them when the above-mentioned options are not feasible.

- Fees associated with the expansion of existing outdoor dining premises will be waived (see fee schedule on last page). Fees associated with parklet applications will be significantly reduced.
- Restaurants seeking a new license or a license renewal must pay all standard fees.
- Retailers seeking a sidewalk sale permit must pay all standard fees.
- These permit changes will be valid from June 1, 2020 to November 1, 2020.

Expanding Outdoor Commercial Activity

This proposal will allow restaurants and retailers to expand into or establish themselves in outdoor areas so they can increase the number of customers served while meeting social distancing requirements. This expansion will occur in several ways, depending on location:

- **Temporary Downtown Street Closures:** When it does not present a safety hazard or adversely impact traffic flow, and is within the City's authority to do so¹, streets with a high concentration of restaurants and retailers will be closed. The following streets have been identified as ideal locations for closure (map enclosed):
 - Cotton Street (from Spring Street to Fore Street)
 - Dana Street
 - Exchange Street (from Fore Street to Middle Street, and Middle Street to Federal Street)
 - Milk Street (from Exchange Street to Market Street, and Silver Street to Pearl Street)
 - Middle Street (from Franklin Street to India Street)
 - Wharf Street

Restaurants and retailers in these corridors may expand activity into the street to increase capacity while adhering to social distancing guidelines. ADA compliance must be maintained.

Operational considerations:

- **Hours of Street Closure:** Street closures will remain in place 24-hours a day, seven-days a week. Through-traffic and parking will not be permitted at any time during these hours. Temporary access will be permitted only for delivery vehicles and residents (see below).
- **Delivery Vehicle Access:** Commercial deliveries must be made before 11:00 AM. Temporary removal and replacement of barricades to permit deliveries is the responsibility of business owners.

¹ Per Chapter 28 of the Portland City Code, the City's traffic engineer has the authority to post temporary restrictions on through traffic where such traffic will pose a threat to pedestrians, drivers, or other persons. In light of the expansion of restaurant and retail activities into City streets during the state of emergency, this closure is necessary.

- **Resident Access:** Residents' vehicles may temporarily access the street for the purpose of loading or unloading items into/from their vehicle between the hours of 10:00 PM and 11:00 AM, as well as 2:00 PM to 3:30 PM. No parking will be permitted.
 - **Emergency Vehicle Access:** A 15-foot lane will be maintained in the center of closed streets to ensure emergency vehicle access as needed.
 - **Street Cleaning:** Businesses must remove all outdoor furniture weekly (Sunday night or Tuesday night, depending on which side of the street they are located) to facilitate regular street sweeping by Public Works.
 - **Barricades:** Barricades will be designed by DPW and reviewed in partnership with the Police Department. The PD will deter prohibited vehicles and allow temporary removal for residents, commercial deliveries, and emergency vehicles.
 - **Business Hours of Operation:** Hours of operation on closed streets must end by 10:00 PM for permitted retail and dining establishments.
- **Expanding Existing Outdoor Dining:** Restaurants with existing outdoor dining on streets that remain open may be allowed to expand their outdoor premises on adjacent property with a Temporary Extension of Premise-Outdoor Dining permit (enclosed).
 - **Expansion on private property:** a proposal must be submitted to the Department of Permitting and Inspections for review and consideration. The applicant must be able to prove the private property owner has given permission for use (if the applicant and owner are not the same).
 - **Expansion on public property:** expansion may be permitted down the length of a public sidewalk or into a public plaza. As part of its review, the Permitting & Inspections Department will consider the impact on adjacent businesses and residents, as well as ADA compliance.
 - **Establishing New, Temporary Outdoor Dining & Retail:** Restaurants located on a street that remains open and not currently permitted to serve customers outdoors may apply for a Temporary Outdoor Dining Permit (enclosed). Retailers may apply for a Temporary Sidewalk/Street Sale Permit (enclosed). Proposed plans must be submitted to the Permitting and Inspections Department for review.
 - **Expansion into Privately-Owned Parking Lots:** Restaurants and retailers may be permitted to expand business activity, including dining, into parking lots they privately own. Consideration will also be given for restaurants and retailers to expand business activity into adjacent parking lots privately owned by others, so long as sufficient documentation of an agreement with the adjacent property owner is provided.
 - **Parklets:** In areas where businesses are unable to locate outdoor dining on public sidewalks, abutting parks or private lots, and where there is adequate space to accommodate dining without compromising safety, dining may be offered in public parking or other public spaces. Applications for Temporary Parklet Outdoor Dining must

be submitted to the Permitting and Inspections Department for review (enclosed). The design of all parklets will be reviewed by DPW and PD to ensure safety and compliance.

The City encourages restaurants to pursue all other options prior to the establishment of a parklet (e.g. expanding or establishing outdoor dining on private property or public sidewalks).

Requests for other temporary installations, e.g. tents, will be considered on an expedited, as-needed basis by the Permitting & Inspections Department.

Additionally, food trucks may continue to operate in their designated locations, in accordance with existing rules and regulations. Mobile seafood vendors may park and sell products out of parking spaces typically designated for food trucks. Seafood vendors must abide by food truck rules and regulations (enclosed).

The fee schedule for the above-mentioned permits are as follows:

APPLICATION FEES FOR TEMPORARY RETAIL & RESTAURANT PREMISES <i>Applicants may delay their payment of fees for up to 60 days after their permit is issued.</i>	
Expansion of outdoor dining premises for restaurants with an existing permit	\$0
Extension of outdoor dining (private property)	\$125.00
New outdoor dining on public property	\$84.00 + \$2.00/square foot
New outdoor dining in City park	\$84.00 + \$6.30/square foot
Temporary Parklet	\$1092.00
Temporary Sidewalk Sale (Retail)	\$92.00

***Streets Proposed for Short-term Closure to Traffic
(Shown in Yellow)***

Exchange St from Middle to Federal

Middle St from Franklin to India

Exchange St from Fore to Middle

Cotton St from Fore to End

Milk St from Silver to Pearl

Milk St from Exchange to Market

Dana St from Fore to Commercial

Wharf St from Moulton to Union



200
Feet



CITY OF PORTLAND
Department of Public Works
Christopher C. Branch, P.E., Director

May 8, 2020

Jon Jennings
Portland City Manager
389 Congress Street
Portland, Maine 04101

RE: Street Closure Criteria for Dining and Shopping

Dear Jon,

The Department of Public Works, in consultation with senior staff from several other departments, have created a listing of recommended streets to be selected for temporary closures during this time of need for social distancing in associated with the COVID-19 pandemic. These closures are to take place from 11 AM to 10 PM daily beginning later this spring and will likely continue into the fall.

The driving criteria for these streets was as follows:

- 1.) *Street Functional Class, Volume, and Posted Speed:* All streets listed have, at most, a few thousand vehicles typically traveling on them per day. All are non state-aid (i.e. locally managed) streets, which allows for the City to manage and oversee their activities without MaineDOT review and approval. All are 25 mph streets, the lowest posted speed allowed as per state law.
- 2.) *Proximity and density of restaurants and businesses with challenges meeting social distancing requirements:* These streets also tend to have a significant density of restaurants and shops with small retail/dining footprints, which tend to make adherence to current social distancing rules challenging.
- 3.) *Sidewalk width:* In general, the sidewalk widths on these streets do not exceed 6-8 feet, which makes adherence to current sidewalk dining and vending rules difficult.

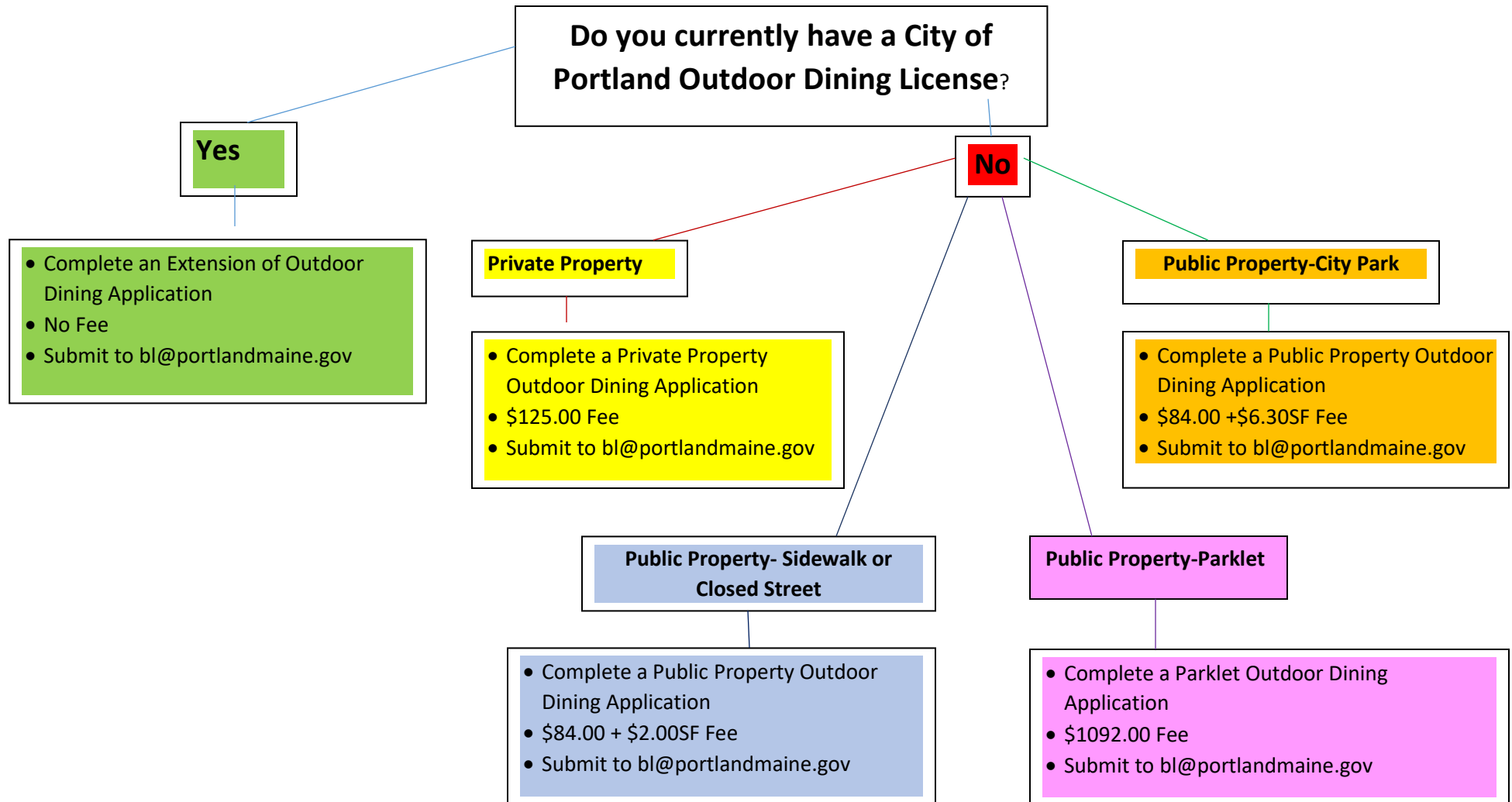
The selected streets, as shown on the attached map, are open for additional review, comment, and adjustment as needed, but should allow for a rapid shift to providing a more amenable environment for businesses seeking assistance in these challenging economic times.

Thank you,

Jeremiah J. Bartlett, PE, PTOE
Transportation Systems Engineer
Portland DPW

Guide to Outdoor Dining 2020

June 1, 2020- November 1, 2020



The Seal of the State of Maine is located at the bottom center of the page. It features a shield with a moose in the center, a pine tree to the left, and a fish to the right. Above the shield is a crest with a star and the word "MAINE". Below the shield is a banner with the word "MAINE".

EXTENSION AREA PREMISE DIAGRAM

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary / permanent license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including methods of monitoring and containment of certain area which you are requesting approval from the Division for liquor consumption.

For Office Use Only:

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

☐ Approved ☐ Not Approved

Subchapter 1: GENERAL CONDITIONS

§1051. LICENSES GENERALLY

3. Liquor not to be consumed elsewhere. Except as provided in paragraphs A and B and in section 1207, no licensee for the sale of liquor to be consumed on the premises where sold may personally or by an agent or employee, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises. The service and consumption of liquor must be limited to areas that are clearly defined and approved in the application process by the bureau as appropriate for the consumption of liquor. Outside areas must be controlled by barriers and by signs prohibiting consumption beyond the barriers.



CITY OF PORTLAND

Permitting and Inspections Department

Temporary Extension of Premise-Outdoor Dining

For Licensees that currently have Outdoor Dining with the City of Portland

Valid-June 1st-November 1st 11:00am-10:00pm

Classification	☐ Without Alcohol ☐ With Alcohol* must complete attached state application		
Type	☐ Public Property ☐ Private Property		
Business Information			
Business Name (d/b/a):		Phone:	
Location Address:	Zip:		
Mailing Address:	Zip:		
Contact Person:		Phone:	
Contact Person Email:			

Please Include:

- 8 1/2" x 11" Plot Plan showing:
 - Lot lines, where the building sits on the lot and dimensions of the building and lot.
 - Location of proposed outdoor dining area and its components (tables, chairs, barriers, etc.), including dimensions and total outdoor dining area in square feet.
- A drawing, photo and or specifications of any required barrier solutions.
- Proof of Public Liability insurance coverage. The permit holder is required to produce at the time of submission and maintain public liability insurance coverage of not less than four hundred thousand dollars (\$400,000) combined single limit for bodily injury, death and property damage, naming the City as an additional insured.

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

Signature _____ Title _____ Date _____

Please submit to bl@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





CITY OF PORTLAND
Permitting and Inspections Department

Temporary Parklet Outdoor Dining Supplemental Application Process

For Licensees that currently have Outdoor Dining with the City of Portland

The City has determined that, in some areas of the City where businesses are unable to locate outdoor dining on City sidewalks or public parks abutting their businesses and where there is adequate space in the street to accommodate outdoor dining without compromising safety, dining may be offered in public parking or other public spaces, in accordance with Section 25-27 of the City Code.

What is Needed to Apply:

- ☐ 8 ½" x 11" Plot Plan showing: (see design and construction section)
 - Lot lines, where the building sits on the lot and dimensions of the building and lot.
 - Street location and the intersecting streets.
 - Location of proposed outdoor dining area and its components (tables, chairs, barriers, etc.), including dimensions and total outdoor dining area in square feet.
- ☐ A drawing, photo or specifications of any required barrier solutions. Please request additional information if located on Wharf Street.
- ☐ Proof of Public Liability insurance coverage. The permit holder is required to produce at the time of submission and maintain public liability insurance coverage of not less than) one million dollars (\$1,000,000) combined single limit for bodily injury, death and property damage, naming the City as an additional insured.
- ☐ Outdoor Dining Supplemental application
- ☐ If Alcohol is to be served- Complete an Extension of Premise BABLO
- ☐ Fees

Please submit to bl@portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

**Temporary Parklet Outdoor Dining
Supplemental Application**
Valid June 1st-November 1st 11:00am-10:00pm
Fee \$1092.00

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License

Business Information			
Business Name (d/b/a):		Phone:	
Location Address:	Zip:		
Mailing Address:	Zip:		
Contact Person:		Phone:	
Contact Person Email:			
Manager of Establishment:	Date of Birth:	Phone:	
Owner of Premises (Landlord):			
Address of Premises Owner:	Zip:		

Owner Information

Corporate Name		Corporate Mailing Address	
		Zip:	
Contact Person:		Phone:	
Principal Officers			
	Title	Date of Birth	Residence Address

About Your Establishment

Class of License:	
Type of food served:	
Please circle all that will be served:	Beer Wine Liquor
Hours & days of operation:	
Number of Tables	
Number of Chairs	

Parklets Regulations

Pursuant to Chapter 25 of the City's Code of Ordinances, a permit is required for expanding food service to the outside of all properties. Outdoor dining permits for parking and other alternative public spaces will be issued under Chapter 25 and these regulations pursuant to the following requirements:

- Any food service operation located on City property pursuant to a permit issued hereunder must comply with state and local laws with respect to service of food and/or alcohol;
- Any movable items on the outdoor dining area must be secured against wind and theft and locked or removed when the business is closed.
- Any outdoor dining spaces permitted hereunder must be located immediately in front of the business. Where parking spaces are not striped (such as in multispace meter areas) the location of any outdoor dining space must be located to minimize loss of effective parking spaces
- Parking spot size is 8 feet by 20 feet.
- Any outdoor dining space must provide railings or other substantive barriers *along the edges* to protect patrons;
- Wheel stops satisfactory to the Permitting & Inspections Director must be placed at the front and rear sides of the outdoor dining platform, no less than 4 feet from the edges of the platform. In addition, flexible bollards shall be provided at the corners of the platform. If the street is open.
- No attachments to the pavement or curbing are permitted;
- No covers are permitted over the outdoor dining space other than umbrellas;
- No advertising other than labels identifying the business is permitted on the outdoor dining space;
- No permit shall be issued for outdoor dining in these locations if there is a feasible alternative space on the sidewalk or an appropriate public park;
- No outdoor dining space in the vehicular right of way is permitted within 15' of an intersection;
- No outdoor dining space will be permitted within the vehicular right of way on a high traffic street, as determined by Public Works. Generally, these streets have a speed limit of over 25 miles per hour, a traffic volume of over 5,000 AADT, or a functional classification of Arterial or above;
- In any street that is entirely closed to traffic at certain times of the day, the street may be used for outdoor dining subject to relevant requirements listed above, adjusting for the unique condition of an entirely closed street.

Barriers

- Shall not include commercial signage.

Maintenance and Operations

- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.



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

Signature _____ Title _____ Date _____



CITY OF PORTLAND
Permitting and Inspections Department

Temporary Outdoor Dining on Private Property
Supplemental Application Process

What is Needed to Apply:

- ☐ 8 ½" x 11" Plot Plan Showing:
 - Lot lines, where the building sits on the lot and dimensions of the building and lot.
 - Street location
- ☐ Location of proposed outdoor dining area and its components:
 - Space Dimensions including Square Footage
 - Table/Chairs
 - Fences/Barriers
 - Egress Dimensions
- ☐ A drawing, photo or specifications of any proposed barrier.
- ☐ If Alcohol is to be served- Complete an Extension of Premise BABLO
- ☐ Payment of fees (see application)

Please submit to bl@portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department
Temporary Outdoor Dining Permit on Private Property

Valid June 1-November 1

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License

☐ Outdoor Dining on Private Property \$125.00

Business Information			
Business Name (d/b/a):		Phone:	
Location Address:	Zip:		
Mailing Address:	Zip:		
Contact Person:		Phone:	
Contact Person Email:			
Manager of Establishment:	Date of Birth:	Phone:	
Owner of Premises (Landlord):			
Address of Premises Owner:	Zip:		

Owner Information

Corporate Name		Corporate Mailing Address	
		Zip:	
Contact Person:		Phone:	
Principal Officers	Title	Date of Birth	Residence Address



CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	
Type of food served:	
Please circle all that will be served:	Beer Wine Liquor
Hours & days of operation:	
Number of Tables	
Number of Chairs	

Design and Construction

- If you are building a structure or adding impervious surface for the outdoor dining area please contact the Permitting and Inspections Department for permitting requirements at permitting@portlandmaine.gov or 874-8703.

Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- No food shall be prepared in the designated outdoor dining area.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.

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

Signature _____ Title _____ Date _____



CITY OF PORTLAND
Permitting and Inspections Department
Temporary Outdoor Dining on Public Property
Supplemental Application Process

What is Needed to Apply:

- ☐ 8 ½" x 11" Plot Plan showing: (see design and construction section)
 - Lot lines, where the building sits on the lot and dimensions of the building and lot.
 - Street location and the intersecting streets.
 - Sidewalk location, width, and curbing location.
 - Setback dimension from the sidewalk to the building.
 - Location of proposed outdoor dining area and its components (tables, chairs, barriers, etc.), including dimensions and total outdoor dining area in square feet. An outdoor dining installation cannot prevent a clear passageway for pedestrians (4 feet minimum and 5 feet for a street corner).
- ☐ A drawing, photo or specifications of any required barrier solutions. Please request additional information if located on Wharf Street.
- ☐ Proof of Public Liability insurance coverage. The permit holder is required to produce at the time of submission and maintain public liability insurance coverage of not less than four hundred thousand dollars (\$400,000) combined single limit for bodily injury, death and property damage, naming the City as an additional insured.
- ☐ Outdoor Dining Supplemental application
- ☐ If Alcohol is to be served- Complete an Extension of Premise BABLO
- ☐ Payment of fees (see application)

Please submit to bl@portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

Temporary Outdoor Dining Permit on Public Property

Valid June 1-November 1

- ☐ Outdoor Dining on Public Property \$84.00 plus \$2.00 per Square foot \$2.00 X _____ SF = _____
- ☐ Outdoor Dining on Public Property in a City Park \$84.00 plus \$6.30 per Square foot \$6.30 X _____ SF = _____

Business Information			
Business Name (d/b/a):		Phone:	
Location Address:	Zip:		
Mailing Address:	Zip:		
Contact Person:		Phone:	
Contact Person Email:			
Manager of Establishment:	Date of Birth:	Phone:	
Owner of Premises (Landlord):			
Address of Premises Owner:	Zip:		

Owner Information

Corporate Name		Corporate Mailing Address	
		Zip:	
Contact Person:		Phone:	
Principal Officers	Title	Date of Birth	Residence Address

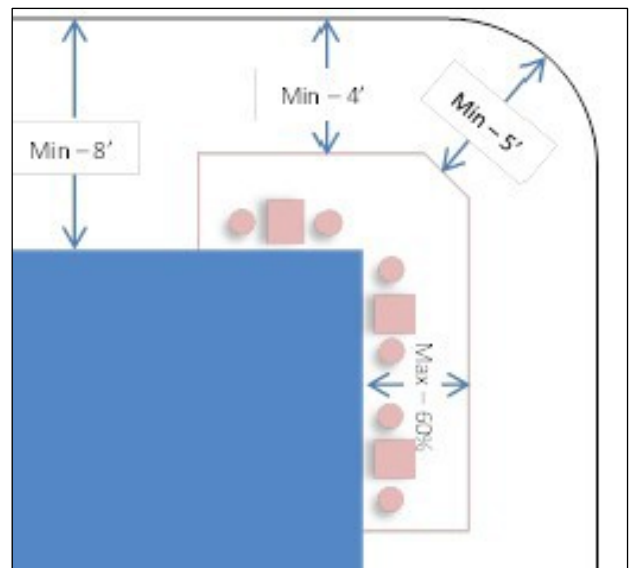


CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	
Type of food served:	
Please circle all that will be served:	Beer Wine Liquor
Hours & days of operation:	
Number of Tables	
Number of Chairs	

Design and Construction

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

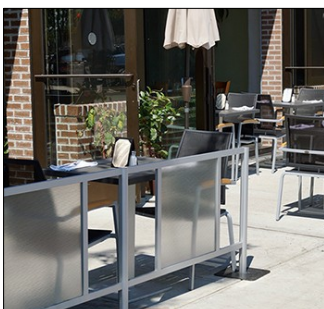


- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes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

Barriers

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

Example barrier types that meet regulation





CITY OF PORTLAND
Permitting and Inspections Department

Maintenance and Operations

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

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

Signature _____ Title _____ Date _____



CITY OF PORTLAND
Permitting and Inspections Department
Application for a Temporary Sidewalk/Street Sale Permit
Valid June 1st-November 1st 11:00am-10:00pm
License Fee \$92.00

You must submit proof of public liability insurance in the amount of \$400,000, naming the City of Portland as additional insured.

Business Information			
Business Name (d/b/a):		Phone:	
Business Location Address:			
Business Mailing Address:			
Contact Person:		Phone:	
Contact Person Email:			
Owner of Premises (Landlord):			
Address of Premises Owner:			
About Your Sidewalk Sale			
Describe the area of the sidewalk to be used:			
Describe merchandise/sale items to be placed on the sidewalk:			
Number of tables to be placed on sidewalk (No vehicles are allowed to park on City sidewalks):			
Dates of sale requested:	Time(s):		
Special requirements (electricity/water hookup):			

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.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

Signature _____ Title _____
Date _____

For more information, refer to the City Code of Ordinance Chapter 25 at: www.portlandmaine.gov.



CITY OF PORTLAND

Permitting and Inspections Department

Mobile Food Service Establishment License – Steps to Approval

After you submit your application to the Business Licensing Office:

- We will send your information out to the below listed departments.
- You may then proceed with arranging for inspections when your establishment is ready.
- When the Business Licensing Office has received all approvals from the required departments, we will issue your license. We will call you when the license is ready and any remaining balance is due. You may contact us for a license status update, **but please note that we must receive approvals directly from all departments on the accompanying “Steps to Approval” sheet before issuing your license.**

In order for the Business Licensing department to issue your license for a Mobile Food Service License, we must receive approvals directly from the following departments:

- Health Inspections
- Fire Inspections
- Treasury
- Police Department

You must also apply with the state for a Food License:

- ☐ Contact the Department of Health and Human Services at 287-5675 or the Department of Agriculture at 287-3841 to obtain the correct State of Maine food license for your business.

To schedule an inspections after you apply, please contact:

- ☐ Contact the City of Portland Health Inspections department at 756-8365 to arrange for an inspection (if applicable).
- ☐ Contact the City of Portland Fire Inspections department at 874-8400 to arrange for an inspection.

Once we have received approvals directly from the departments listed above, we will issue your license and contact you. Any balance of the license fee will be due before you receive the license. If you have any questions about this process, please contact Licensing and Registration, at 874-8557 or bl@portlandmaine.gov.



CITY OF PORTLAND
Permitting and Inspections Department
Mobile Food Service Establishment License Application
License expires annually on March 31st

- | | | |
|---|---|--|
| ☐ Application Fee: \$45 | ☐ Pushcart or Ice Cream Truck License: \$322 | ☐ Night Vending (10 p.m. to 6 a.m.): \$218 |
| ☐ Health Inspection \$150.00 | ☐ Food Truck License: \$546 | ☐ 3.5 sq. ft. cooler storage (pushcarts): \$38/cooler
Number of coolers (limit of 2 or 7 sq. ft.): |

Business Information				
Business Name (d/b/a):				
Mailing Address:				
Contact Person:				
Phone:	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%;"></td><td style="width: 10%;">Cell:</td><td style="width: 30%;"></td></tr></table>		Cell:	
	Cell:			
Email:				

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

Name of Owner(s)	Date of Birth	Residence Address

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

Corporate Name		Corporate Mailing Address	
Principal Officers	Title	Date of Birth	Residence Address



CITY OF PORTLAND
Permitting and Inspections Department
About Your Mobile Food Service Unit

Type of Food Served:	
Cart/Truck Storage Address at Night:	
Will you vend on private property? Yes No	If yes, list the address(es) of the private property locations*:
Will you be night vending? (10pm to 6am): Yes No	
Does the Issuance of this license directly or indirectly benefit any City employee(s)? Y/N	
If yes, list name(s) of employee(s) and department(s):	

The following must be included with your application:

- ___ Two photos of the unit from different angles
- ___ Insurance form (ACORD) showing at least \$400,000 general liability coverage and City of Portland listed as Additional Insured
- ___ Vehicle registration for the pushcart or food truck

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

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

Signature _____ Title _____ Date _____

For more information about Mobile Food Service Establishments, see Portland City Code Chapter 11 and Pushcart or Food Truck Rules & Regulations at: www.portlandmaine.gov

For Administrative Use Only

Amount: _____		Email / Approval	Notes: _____
Date Paid: _____	FD: _____	/	_____
CC _____ CA _____ CK _____	Health: _____	/	_____
	PD: _____	/	_____
Amount: _____	Treasury: _____	/	_____
Date Paid: _____	DHHS: N/A	/	_____
CC _____ CA _____ CK _____			

Best Practices for Re-Opening Retail Food Establishments During the COVID-19 Pandemic



We encourage retail food establishments and their employees to follow these best practices and refer to the [checklist](#) for more details. Work closely with State and local regulatory/health authorities where the business is located to ensure all requirements are met.

BE HEALTHY, BE CLEAN

	Stay home, if sick.
	Check for symptoms like fever, cough, difficulty breathing, and consider conducting health checks prior to starting work.
	Wash hands often with soap and water for at least 20 seconds.
	Don't touch Ready-To-Eat foods with bare hands.
	Wear cloth face coverings if Personal Protective Equipment is not required. Check State or local guidelines.

CLEAN & DISINFECT

	Clean and disinfect high-touch surfaces and common use areas more frequently, such as door knobs and handles, display cases, check-out counter, order kiosks, grocery cart handles, restrooms, and waiting areas. Clean and sanitize equipment like ice machines and ice bins.
	Prepare and use sanitizers and disinfectants according to label instructions.
	Avoid high-touch containers and items like ketchup bottles, utensils, salt/pepper shakers, and reusable menus by using single service items, when possible.

SOCIAL DISTANCE

	Restrict the number of workers, customers and visitors in sit-in dining areas, bars and in shared spaces like kitchens, break rooms, waiting areas, and offices to maintain at least a 6-foot distance between people.
	Increase spacing for customers and increase utensil disinfection and cleaning frequency at self-service stations/buffets.
	Minimize contact at check-out and pay stations. Mark 6-foot distances with floor tape and temporarily move workstations to create more distance, consider installing partitions, if feasible.

PICK-UP & DELIVERY

	Maintain food time and temperature controls.
	Initiate “no touch” deliveries and payments.
	Designate pick-up zones.

PHYSICAL FACILITY

	Ensure premises are operational and in good working order.
	Clean, disinfect, and sanitize throughout the facility before re-opening.
	Monitor for pests.

Best Practices for Re-Opening Retail Food Establishments During the COVID-19 Pandemic – Food Safety Checklist



U.S. FOOD & DRUG
ADMINISTRATION

FDA is providing a food safety re-opening checklist for previously closed retail food establishments or those that have been open with limited service related to the COVID-19 pandemic. This checklist addresses key food safety practices for retail food establishments to consider when re-opening and restarting operations. This is not a comprehensive list. We encourage retail food establishments to partner with local regulatory/health authorities to discuss the specific requirements for their retail food establishment prior to re-opening.

Facility Operations

- | | |
|--------------------------|--|
| ☐ | Are signs posted on how to stop the spread of COVID-19 and promote everyday protective measures? |
| ☐ | Are the premises in good order, including fully operational utilities and equipment? (<i>e.g. electrical, lighting, gas services, and proper ventilation; hood systems for fire prevention; garbage and refuse areas; and toilet facilities</i>) |
| ☐ | Are all areas of the food establishment, including restrooms and waiting areas, properly cleaned, stocked, sanitized, or disinfected, as appropriate? |
| ☐ | Are the facilities checked for pest infestation or harborage, and are all pest control measures functioning? |
| ☐ | Are ventilation systems including air ducts and vents in the facility clean, free of mold, and operating properly? |
| ☐ | Is there increased circulation of outdoor air (as much as possible) by, for example, opening windows and doors or using fans? (Do not open windows and doors if they pose a safety risk to children using the facility.) |
| ☐ | Are high touch self-service containers and items requiring frequent hand contact removed from use (<i>e.g. seating covers, table cloths, throw rugs, condiments such as ketchup bottles and salt/pepper shakers, and reusable menus</i>)? |

Water, Plumbing, and Ice

- | | |
|--------------------------|---|
| ☐ | Is potable water available throughout the facility? |
| ☐ | Are the water and sewage lines working? |
| ☐ | Is there hot and cold water? |
| ☐ | Are all water lines flushed, including equipment water lines and connections, according to the manufacturer's instructions? |
| ☐ | Are ice machines and ice bins cleaned and sanitized? |

Food Contact and Non-food Contact Surfaces (Clean, Disinfect, Sanitize)

- | | |
|--------------------------|---|
| ☐ | Are necessary sanitizers and disinfectants that meet EPA's criteria for use against SARS-CoV-2 available and used per label instructions to clean and disinfect the facility during hours of operation? |
| ☐ | Are food contact surfaces and counters cleaned and sanitized? (Wash, rinse, and sanitize food contact surfaces, food preparation surfaces, and beverage equipment after use.) |
| ☐ | Are common use areas such as restrooms being cleaned and disinfected more frequently? |

☐	Are high-touch areas and equipment <u>cleaned and disinfected</u> (e.g. door knobs, display cases, equipment handles, check-out counters, order kiosks, and grocery cart handles)?
☐	Are sufficient stocks of single-service and single-use articles (e.g. tableware, carryout utensils, bread wrappers, and plastic wrap) available? If not, ensure all reusable food service items are handled with gloves and washed with dish soap and hot water or in a dishwasher. Employees should wash their hands after removing their gloves and after directly handling used food service items.
☐	Are staff properly trained on cleaning procedures to ensure safe and correct application of disinfectants?
☐	Has a disinfection schedule or routine plan been developed? Ensure sufficient stocks of cleaning and disinfecting supplies to accommodate ongoing cleaning and disinfection.

Food Temperature Control

☐	Are all coolers, freezers, and hot and cold holding units functioning?
☐	Are all coolers, freezers, and hot and cold holding units clean, sanitized, and protected from contamination?
☐	Are calibrated thermometers available and accurate to check equipment and product temperatures to ensure food safety/HACCP plans are executed as designed?

Product Inspection, Rotation

☐	Has all food been examined for spoilage, damage, expiration, or evidence of tampering or pest activity? If needed, was such food appropriately discarded?
☐	Is food properly labeled and organized, such that receiving date and rotation is evident?
☐	Are all food, packaging, and chemicals properly stored and protected from cross contamination?
☐	Has contact been made with suppliers in the supply chain to ensure deliveries are scheduled and able to be fulfilled?

Warewashing Equipment

☐	Is your 3-compartment sink clean and equipped with detergent and sanitizer?
☐	Is your warewasher clean and functioning and equipped with detergent and sanitizer (single temperature machine, 165°F) or reaches 180°F rinse (high temperature)?
☐	Do you have sanitizer test strips available and are the test strips appropriate for the sanitizer being used?

Handwashing Stations

☐	Have you trained and reminded employees of effective hand hygiene practices including washing hands with soap and water for at least 20 seconds, especially after going to the bathroom, before eating, and after blowing their nose, coughing, or sneezing?
☐	Are all the handwashing sinks accessible and fully stocked (e.g. soap, paper towels, hand wash sign, and trash bins)?

☐	Are paper towels and trash cans available in the bathrooms so doors can be opened and closed without touching handles directly?
☐	Are all the handwashing sinks functional and able to reach 100°F minimum?
☐	Have you considered using hand sanitizers (minimum 60% alcohol), as appropriate, in multiple locations to encourage hand hygiene by both customers and employees to supplement hand washing?
Employee Health / Screening	
☐	Do you have a protocol to check employee health and personal hygiene practices within your food establishment?
☐	Are you following CDC guidance and practices for employee health checks/screenings?
☐	Have you checked CDC and local regulatory/health authority guidance for employees returning back to work?
☐	Is there a plan to monitor and respond to a higher than normal level of absenteeism?
☐	Is there a plan or policy for, and an adequate supply of, personal protective equipment (PPE) and/or cloth face coverings? Cloth face coverings should only be used if PPE is not required, and changed as needed if worn.
Social Distancing	
☐	Has the facility taken measures (e.g. tape on floors/sidewalks, partitions, and signage on walls) to minimize face-to-face contact that allows, to the extent possible, at least a 6-foot distance between workers, customers, and visitors?
☐	Have you limited offering self-serve food or drink options, such as buffets, salad bars, and drink stations? As local regulatory/health authorities lift levels of restrictions, limit use with additional monitoring.
☐	Have you restricted the number of employees in shared spaces, including kitchens, break rooms, and offices to maintain at least a 6-foot distance between people?

Additional references can be found here:**Food Safety and the Coronavirus Disease 2019 (COVID-19) Questions & Answers for Industry:**

- <https://www.fda.gov/food/food-safety-during-emergencies/food-safety-and-coronavirus-disease-2019-covid-19>

Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services During the COVID-19 Pandemic:

- <https://www.fda.gov/food/food-safety-during-emergencies/best-practices-retail-food-stores-restaurants-and-food-pick-updelivery-services-during-covid-19>

What Grocery and Food Retail Workers Need to Know about COVID-19:

- <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/grocery-food-retail-workers.html>

CDC COVID-19 Resources for Businesses and Employers:

- <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf>
- <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

List of EPA-registered Disinfectants:

- <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

FDA Food Code:

- <https://www.fda.gov/food/fda-food-code/food-code-2017>

Date Labels on Packaged Foods:

- <https://www.fda.gov/consumers/consumer-updates/confused-date-labels-packaged-foods>
- <https://www.fda.gov/media/125114/download>

Safe Food Handling:

- 4 Key Steps to Food Safety: Always — Clean, Separate, Cook, and Chill
<https://www.fda.gov/food/buy-store-serve-safe-food/safe-food-handling>

Employee Health:

- CDC Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19
<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>
- CDC Interim Guidance for Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>
- CDC Use of Cloth Face Coverings to Help Slow the Spread of COVID-19
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>
- FDA Use of Respirators, Facemasks, and Cloth Face Coverings in the Food and Agriculture Sector During Coronavirus Disease (COVID-19) Pandemic
<https://www.fda.gov/food/food-safety-during-emergencies/use-respirators-facemasks-and-cloth-face-coverings-food-and-agriculture-sector-during-coronavirus>
- FDA's Employee Health and Personal Hygiene Handbook
<https://www.fda.gov/food/retail-food-industryregulatory-assistance-training/retail-food-protection-employee-health-and-personal-hygiene-handbook>
- OSHA Guidance on Preparing Workplaces for COVID-19
<https://www.osha.gov/Publications/OSHA3990.pdf>



RESTARTING MAINE'S ECONOMY

COVID19 Prevention Checklist Industry Guidance

As the number of COVID-19 cases begins to decrease, the State of Maine is adopting a staged approach, supported by science, public health expertise and industry collaboration, to allow Maine businesses to safely open when the time is right.

This is one of many industry guidance documents for business that the State is preparing for businesses so they can be prepared to meet health guidelines and reopen safely. Please make sure you pair this document with the general guidance document that applies to all industries, which is available on maine.gov/DECD.

Please note: This document may be updated as additional information and resources become available.

Phase 1: Restaurants *Released May 8, 2020*

Employees

- Require employees to wear cloth face coverings and practice good hand hygiene.
- Good hand hygiene prevents spread of disease. The best hand hygiene is frequent handwashing. Remind employees to practice good hand hygiene with frequent handwashing and hand sanitizing especially between contact with customers and customer items.
- Gloves are not a replacement for good hygiene. If you wear gloves, change them frequently and wash between customers and activities.
- Hand sanitizer may not be used in place of handwashing for food production.
- Where possible, stagger employee shifts and meal breaks to avoid crowding in common work areas.
- Ensure employees stay 6 feet apart whenever practical.
- Adjust seating in break rooms and other common areas to reflect physical distancing practices.
- Prohibit gatherings or meetings of employees of 10 or more during working hours.
- Permit employees to take breaks and lunch outside, or in such other areas where physical distancing is attainable.
- Do not allow employee food or drink in food service areas.
- Limit interaction between employees and outside visitors or delivery drivers; implement touchless receiving practices if possible.
- Adjust training and new employee orientation to limit number of people involved and allow for 6 foot spacing; use virtual/video/audio training when possible.

- Limit sharing of handheld equipment, phones, desks, workstations, and other tools and equipment between employees to the extent possible.
- Provide employee training for:
 - physical distancing guidelines and expectations
 - monitoring personal health
 - proper wear, removal, disposal of Personal Protective Equipment (PPE)
 - laundering of face coverings and uniforms as listed below
 - cleaning protocols as listed below
 - how to monitor personal health and body temperature at home
 - guidance on how to launder cloth face coverings and uniforms: [see CDC, Cleaning and Disinfecting Your Facility, How to Disinfect: Laundry](#)
 - cleaning protocol, including how to safely and effectively use cleaning supplies.
- Consider employee training in safe de-escalation techniques.
- Entertainment personnel should follow the same physical distancing and cloth face covering guidelines as other employees.

Customers

- Inform your customers of your COVID policies and procedures in advance, if possible.
- Place signage at entrances and throughout the store alerting customers to COVID policies, especially to maintain 6 feet physical distance to the extent possible.
- Consistent with Executive Order 49 FY 19/20, customers should wear cloth face coverings when in a food service facility where social distancing is difficult (e.g., waiting in line for pickup, entering or exiting, walking to the restrooms). Customers do not need to wear face coverings when seated at the table.
- Use reservations with call ahead or online as a best practice.
- Establishments may call, use a text alert or intercom system to alert guests that their table is ready. Only one member of a party may wait inside in the waiting area and must remain at least 6 feet apart.
- Avoid crowding at restaurant entrance and maintain physical distancing in any waiting line.
- Maintain physical distancing protocols during guest check-in and seating.
- Communicate to customers that they should not come to the restaurant if they have a fever or cough.
- Consider offering exclusive early hours to seniors and other high-risk individuals.
- Consider adjusting store hours of operation, as necessary, to support social distancing efforts by limiting number of customers at one time.
- Minimize customer and staff interactions by assigning wait staff to 'areas' and tables. If possible, keep staff work groups to same days/shifts to minimize staff exposures.
- For contact tracing purposes, maintain records of customers, including one customer name and contact information per party and the server of the table.
- Limit restroom occupancy for group restrooms to incorporate physical distancing and avoid formation of waiting lines outside of restrooms.

- Menus should be laminated or plastic covered and sanitized after each use, or single use paper.
- Continue take out, curbside and delivery with beer, wine and cocktails.
- Maximum group party size of eight people.
- Dining room tables should be spaced at least 6 feet apart.
- The total number of people any one time should be no more than 50 people per room and each party must be 6 feet apart from other parties. This also applies to outdoor seating areas. Have a back-up plan for outdoor seating that adheres to physical distance requirements in case of inclement weather.
- Bar or counter service within restaurant establishments must follow physical distance guidelines. Provide physical barriers to protect customers and wait staff such as partitions or plexiglass barriers or face coverings plus face shields for staff if there is not 6 feet of distance between customers and counter staff.
- Establishments where counter service is combined with liquor service must also take measures to ensure customers do not congregate at the counter.
- Bar areas within restaurants must close at the same time the kitchen closes for dining patrons.
- Where practical, especially in booth seating, physical barriers are acceptable.
- Use EPA-approved cleaning and disinfectant products to wipe down dining room tables and chairs after each party.
- Provide only single use condiments at this time.
- Suspend salad bars buffets at this time.
- Minimize other self-service areas such as drink stations. To the extent possible, use contact-less dispensers to minimize hand touching. Replace multi-use condiments with single-serve packets. Other suggestions to minimize multi-touch surfaces include providing single-wrap utensils, straws, and lids provided at any take-out or self-seating point of sale. Self-service areas require frequent cleaning and disinfection.
- Allow expanded seasonal outdoor dining, with distancing protocols, in parking lots, sidewalks and expanded patios, etc.
- Use disposable napkins and table covers instead of cloth linens. If cloth linens are used, change between customers.
- Children need to remain seated with their party. No play areas or shared toys; single use crayons only.

Operations

- Consider ways to maximize air flow, if practical, to increase fresh air circulation (e.g., opening screened windows, or doors).
- Widen high-traffic areas to the extent possible.
- Note that staff or customer use of elevators or escalators will require regular attention to physical distance guidelines and frequent cleaning of high-touch surfaces.
- Minimize shared touch surfaces such as kiosks, tablets, pens, credit cards, receipts and keys.
- Establish protocols for regular disinfection and handling of received material shipments and inventoried materials.

- Establish protocols for handling and processing shipping and receipts (including disinfection).
- Advise contractors, drivers, and vendors that they are required by Executive Order #49 to wear cloth face coverings while on the premises.
- Notify vendors of re-opening, and any revised protocol as it relates to store entry, deliveries, paperwork, etc.
- Consider implementing measures to ensure vendor safety, including:
 - Disabling/suspending access (e.g., suspending all non-employee delivery drivers from entering restaurant).
 - Transitioning to contactless signatures/e-signatures for deliveries.
 - Where practical, adjusting store delivery times to spread out deliveries.
- Request that vendors direct their employees to follow all social distancing guidelines and health directives issued by the applicable public authorities.
- Require regular and frequent sanitization of high-touch areas like restrooms, handrails, doors, PIN pads, and common areas that are accessible to staff, customers, and suppliers.
- Ensure operating hours allow downtime between shifts for thorough cleaning.
- Provide sanitization materials, such as sanitizing wipes, to employees to clean handhelds/wearables or other work tools and equipment before/after use.
- Consider providing cleaning “kits” including disinfectant wipes or sprays, disposable gloves, paper towels, cloth face coverings, hand sanitizer and other cleaning supplies that are readily accessible throughout the restaurant for areas that will be cleaned periodically throughout the day.
- Note the focus areas of cleaning include:
 - Door and drawer handles
 - Light and other power switches (consider signage to keep lights on at all times, or utilizing exiting motion sensor capabilities)
 - Shared tools
 - Chairs, tables, and benches
 - Refrigerators, microwave, and other frequently touched objects and surfaces in service areas
 - Time clocks
 - Entry way
 - Cash register, including touch screens, keyboards, mouse
 - PIN Pads (touch screen, keypad, and pen)
 - Restrooms
 - Toilet bowl, toilet paper holder, and flush lever
 - Sinks and faucets
 - Paper towel holders and/or air dryers
 - Diaper-changing stations
- Utensils and dishes used by customers should be treated as potentially contaminated and should be handled carefully. Wash hands after bussing tables and handling used tableware.

- Note that vending machines are not recommended at this time due to the challenge of keeping surfaces clean.
- Provide hand sanitizer for customers and employee use, including restaurant entrance.

Sales

- Promote “Contactless” payment options:
 - On-line shopping
 - Contactless payment options (e.g., RFID credit and debit cards, Apple Pay, Google Pay, etc.)
 - Self-checkout
 - Pickup and delivery services
- Wash hands or use alcohol-based hand sanitizer (at least 60% alcohol) after handling cash.
- Consider increasing pickup hours to serve more online customers.
- Consider adding physical barriers such as partitions or plexiglass barriers at registers.
- Restaurants vary significantly in terms of size, models, such as wait service, self-service, counter and window service, take-out, as well as types of seating arrangements. In all cases, take appropriate steps to minimize risk to customers and employees through effective physical distancing, attention to hand hygiene, and facial coverings.



RESTARTING MAINE'S ECONOMY

COVID19 Prevention Checklist Industry Guidance

As the number of COVID-19 cases begins to decrease, the State of Maine is adopting a staged approach, supported by science, public health expertise and industry collaboration, to allow Maine businesses to safely open when the time is right.

This is one of many industry guidance documents for business that the State is preparing for businesses so they can be prepared to meet health guidelines and reopen safely. Please make sure you pair this document with the general guidance document that applies to all industries, which is available on maine.gov/decd/.

Please note: This document may be updated as additional information and resources become available.

Phase 1: Retail Businesses *Released May 8, 2020*

Employees

- Require employees to wear cloth face coverings and to practice good hand hygiene with frequent handwashing and especially between contact with customers and customer equipment.
- Where possible, stagger employee shifts and meal breaks to avoid crowding.
- Ensure employees stay 6 feet apart whenever practical.
- Adjust seating in break rooms and other common areas to reflect physical distancing practices.
- Prohibit gatherings or meetings of employees of 10 or more during working hours.
- Permit employees to take breaks and lunch outside, or in such other areas where physical distancing is attainable.
- Do not allow employee food or drink in retail area.
- Limit interaction between employees and outside visitors or truck drivers; implement touchless receiving practices if possible.
- Adjust training/onboarding practices to limit number of people involved and allow for 6 foot spacing; use virtual/video/audio training when possible.
- Discourage employees from using colleagues' phones, desks, workstations, radios, handhelds/wearables, or other work tools and equipment.
- Provide employees training:
 - physical distancing guidelines and expectations
 - monitoring personal health

- proper wear, removal, disposal of Personal Protective Equipment (PPE)
- laundering of face coverings and uniforms as listed below
- cleaning protocols as listed below (or per CDC)
- how to monitor personal health and body temperature at home.
- guidance on how to launder cloth face coverings and uniforms: [see CDC, Cleaning and Disinfecting Your Facility, How to Disinfect: Laundry](#)
- cleaning protocol, including how to safely and effectively use cleaning supplies.
- Consider employee training in safe de-escalation techniques.

Customers

- Customers should wear cloth face coverings.
- Inform your customers of your COVID policies and procedures in advance, if possible.
- Place signage at entrances and throughout the store alerting staff and customers to the required occupancy limits, six feet of physical distance, and policy on cloth face covering.
- Encourage customers to limit the number of people they bring into the business. Solo shop when possible.
- Support physical distance between customer and personnel by taping off 6 feet distance from counters, service desks, and sales stations.
- Consider installing plexiglass barriers to maximize physical distancing.
- Post signage if you have to limit quantities of certain items.
- Consider offering exclusive early hours to seniors and other high-risk individuals.
- Discourage people from touching merchandise they are not going to purchase.
- Consider adjusting store hours of operation, as necessary, to support social distancing efforts by limiting store traffic.

Operations

- Retailers will regulate the number of customers allowed in stores based on the following chart:

Tier	Sq. Ft.	Number of Customers
1	<7,500	5
2	7,500 - 12,000	15
3	12,001 - 18,000	35
4	18,001 - 40,000	45
5	40,001 - 60,000	70
6	60,000+	100

- Provide distance markers located outside of store for times when capacity limits are exceeded; this will allow for queuing while maintaining physical distance; employees can also be assigned to assist customers with waiting to enter.

- Consider ways to maximize air flow, if practical, to increase fresh air circulation (e.g. opening windows, or doors)
- Note that staff or customer use of elevators or escalators will require regular attention to physical distance guidelines and frequent cleaning of high-touch surfaces.
- Minimize shared touch surfaces such as kiosks, tablets, pens, credit cards, receipts and keys.
- Establish procedure for regularly disinfecting inventory and newly received deliveries.
- Establish protocols for handling and processing shipping and receipts (including disinfection).
- Advise workers, contractors, drivers, and vendors that they are required by Executive Order #49 FY 19/20 to wear cloth face coverings while on the premises.
- Notify vendors of re-opening, and any revised protocol as it relates to store entry, deliveries, paperwork, etc.
- Consider implementing measures to ensure vendor safety, including:
 - Disabling/suspending access (e.g., suspending all non-employee truck drivers from entering stores, warehouses and manufacturing plants).
 - Transitioning to contactless signatures/e-signatures for deliveries.
 - Where practical, adjusting store delivery windows to spread out deliveries.
- Request that vendors accessing your store locations direct their employees to follow all social distancing guidelines and health directives issued by the applicable public authorities.
- Require regular and frequent sanitization of high-touch areas like restrooms, doors, PIN pads, and common areas that are accessible to staff, customers, and suppliers.
- Ensure operating hours allow downtime between shifts for thorough cleaning.
- Provide sanitization materials, such as sanitizing wipes, to employees to clean handhelds/wearables, scanners, radios, or other work tools and equipment before/after use.
- Clean and disinfect high-touch areas routinely.
- Consider providing cleaning “kits” including disinfectant wipes or sprays, disposable gloves, paper towels, cloth face coverings, hand sanitizer and other cleaning supplies are readily accessible throughout store, including point of sale terminals and other stations that will be cleaned periodically throughout the day.

Purchases

- Promote “Contactless” Shopping Options
 - On-line shopping
 - Contactless payment options (e.g., RFID credit and debit cards, Apple Pay, Google Pay, etc.)
 - Self-checkout
 - Pickup and delivery services
- Wash hands or use alcohol-based hand sanitizer (at least 60% alcohol) after handling cash.
- Note that the use of customer reusable shopping bags is not allowed at this time.
- Consider increasing pickup hours to serve more online customers.
- Maintain physical distancing including at point-of-sale terminals and other workstations

Returns and Exchanges

- Consider suspending or modifying return and exchange policies.
- Establish procedures for processing, handling, disinfecting, and storing returns in isolation for a safe time period before returning them to sales floor.

Fitting Rooms

- Fitting rooms should not be open at this time.

Other Operational Considerations

- Widen high-traffic areas to the extent store configuration allows.
- Note that areas of cleaning focus for retail business include:
 - Shopping carts and baskets.
 - Door and drawer handles.
 - Light and other power switches (consider signage to keep lights on at all times, or utilizing exiting motion sensor capabilities).
 - Shared tools such as pricing guns, pallet jacks, tape guns, box cutters, etc.
 - Chairs, tables, and benches.
 - Refrigerators, microwave, and other frequently touched objects and surfaces in employee breakroom.
 - Time clocks
 - Point of sale/checkout:
 - Cash register, including touch screens, keyboards, mouse.
 - PIN Pads (touch screen, keypad, and pen).
 - Checkout counter and/or conveyor belt.
 - Checkout dividers.
 - Restrooms
 - Toilet bowl, toilet paper holder, and flush lever.
 - Sinks and faucets.
 - Paper towel holders and/or air dryers.
 - Diaper-changing stations.
- Note that vending machines are not recommended at this time due to the challenge of keeping surfaces clean.
- Provide hand sanitizer in the store for customers and employee use, including store entrance(s), and checkouts.
- Remove any flyers, sales brochures, pricing lists that multiple customers might handle unless intended for single-use only.
- Consider one-way aisles where practical.
- Suspend “self-service” food stations and the sampling of food or personal care products.
- Remove “tester” products such as hand lotion or perfumes.

- Recommend allowing only service animals in business at this time.
- Avoid special events/promotions that could draw large numbers of the public to the business at one time.

Special Protocols for Home Delivery/Installation Employees

- Wear protective cloth face coverings during in-home delivery and/or installation services.
- Wash hands or use alcohol-based hand sanitizer (at least 60% alcohol) between deliveries
- Ensure proper social distancing between employee and customer.
- Clean and disinfect any surfaces that will be regularly contacted throughout the duration of any installation.
- When delivery/installation is complete, clean and disinfect all surfaces that were contacted throughout installation.
- Clean and disinfect any tools or supplies used throughout delivery/installation upon leaving the home.



Dena Libner <dlibner@portlandmaine.gov>

Fwd: DRAFT Reopening Protocols for Retail and Restaurants

Jon Jennings <jpj@portlandmaine.gov>
To: Dena Libner <dlibner@portlandmaine.gov>

Mon, May 11, 2020 at 12:58 PM

----- Forwarded message -----

From: **Steve Hewins** <Steve@hospitalitymaine.com>
Date: Mon, May 11, 2020 at 9:50 AM
Subject: RE: DRAFT Reopening Protocols for Retail and Restaurants
To: Jon Jennings <jjp@portlandmaine.gov>, Quincy Hentzel <qhentzel@portlandregion.com>, Casey Gilbert <casey@portlandmaine.com>, Lynn Tillotson <ltillotson@visitportland.com>

Good Morning Jon,

I do not have any material issues with any of this and applaud you for moving this concept forward so quickly.

With regard to retail stores and dining establishments, I believe the governors reopening checklist released last Friday applies to Portland, as they do to all communities, with much of the same rules for indoors and outdoors. Moreover, it will also be applicable to hotels when those guidelines are issued, perhaps as soon as this week.

The city of Portland has a long history in operating programs like this. We only need to refer to 40 years of Old Port Festivals to reference how this has been accomplished successfully – the only difference being 5 months versus a weekend!

Thanks, Steve

Steve Hewins
President and CEO
HospitalityMaine
[45 Melville Street](#)
[Augusta ME 04330](#)

207-623-2178 O



Dena Libner <dlibner@portlandmaine.gov>

Fwd: DRAFT Reopening Protocols for Retail and Restaurants

Dena Libner <dlibner@portlandmaine.gov>
To: Dena Libner <dlibner@portlandmaine.gov>

Mon, May 11, 2020 at 5:41 PM

----- Forwarded message -----

From: **Quincy Hentzel** <qhentzel@portlandregion.com>

Date: Mon, May 11, 2020 at 4:15 PM

Subject: RE: DRAFT Reopening Protocols for Retail and Restaurants

To: Jon Jennings <jpj@portlandmaine.gov>, Steve Hewins <Steve@hospitalitymaine.com>, Casey Gilbert <casey@portlandmaine.com>, Lynn Tillotson <ltillotson@visitportland.com>

Cc: Joseph Marro <jmarro@portlandregion.com>

Good afternoon Jon – Attached please find a memo related to the city’s proposal to expand outdoor access for retail and dining this summer. Overall we do not see any significant concerns with this plan and are thrilled that the city has moved so quickly to make this happen prior to restaurants and retail opening in a few weeks. The attached contains a few questions and items for consideration.

As I have stated before, we will be vocal supporters of this proposal and will do what we can to mitigate any opposition and to address any questions of inequity. In the end, I know not every business will be helped with these changes but I much prefer to see the city doing something that can help many as opposed to doing nothing because it won’t help all.

Thank you Jon for your leadership through this entire pandemic and for spearheading this effort. It is greatly appreciated!

Best,

Quincy

Quincy H. Hentzel*Chief Executive Officer***Portland Regional Chamber of Commerce**

P: (207) 772-2811 ext. 231

F: (207) 772-1179



To: City of Portland, City Manager Jon Jennings
From: Portland Regional Chamber of Commerce
Re: City of Portland Draft Protocols for Reopening Retail and Restaurants
Date: May 11, 2020

Please accept the following feedback from the Portland Regional Chamber of Commerce on the City's Draft Protocols for Reopening Retail and Restaurants relating to traffic, outdoor dining and retail service, and parking in City streets. We are extremely grateful for the City's quick action to create expanded outdoor dining and retail opportunities to help businesses managing current restrictions due to COVID-19. The Portland Regional Chamber stands ready to help with the implementation of these changes in any way we can.

Permit process and fees

Will there be any fees associated with a Temporary Extension of Premise/Temporary Outdoor Dining Permits associated with this Order?

We encourage the City to develop a plan for outlining a clear, step-by-step application process and streamlining the approval process for the Temporary Extension of Premise/Temporary Outdoor Dining Permits. Ideally directions can be provided to interested businesses before applications are made available so businesses will know what they need to submit a permit application and to help prevent an influx of questions to the city.

Is there a way for the City to allow tents and other temporary measures without businesses having to go through the entire building permitting process, while giving the City Manager enforcement authority to order the removal of tents which threaten public safety (i.e. not anchored, blowing in the wind, etc.)?

Street Closures and associated matters

Would the City consider also closing a portion of Federal Street – similar to what was done in the summer of 2015?

How will the City address noise complaints, assuming these complaints might arise due to increased outdoor activity? And would the City consider utilizing the guidelines around noise used for past events such as the Old Port Festival and others?

Parking Lots

The text of the order mentions the use of “privately owned parking lots,” – will the City consider opening city-owned lots for expanded outdoor dining, food trucks, retail, or other activities?

Currently, breweries/wineries/distilleries are not allowed to permit consumption in their parking lots. Could this be changed?

Other

Is there a possibility for the State to delegate authority directly to the City to authorize the expansion of alcohol sales and to authorize licenses to allow sales upon City approval rather than waiting for action from State authorities?

In relation to venues who host events, live music, theater performances, etc, we encourage the City to think creatively and work with this industry as the use of outdoor space is expanded (i.e. outdoor concerts, outdoor art shows, etc)



Dena Libner <dlibner@portlandmaine.gov>

Fwd: DRAFT Reopening Protocols for Retail and Restaurants

Jon Jennings <jpj@portlandmaine.gov>
 To: Dena Libner <dlibner@portlandmaine.gov>

Sun, May 10, 2020 at 2:04 PM

----- Forwarded message -----

From: **Casey Gilbert** <casey@portlandmaine.com>

Date: Sun, May 10, 2020 at 1:44 PM

Subject: Re: DRAFT Reopening Protocols for Retail and Restaurants

To: Jon Jennings <jpj@portlandmaine.gov>

CC: Quincy Hentzel <qhentzel@portlandregion.com>, Steve Hewins <Steve@hospitalitymaine.com>, Lynn Tillotson <ltillotson@visitportland.com>

Jon,

Thank you for sharing the attached documents. Many cities are enacting similar emergency orders in an effort to support the local business community. I commend you and city staff for pulling this together so quickly.

My initial thoughts are:

- Emphasizing that this is a pilot and that it may be adjusted along the way based on feedback, data gathered, etc would be important in the initial messaging.
- For those brick + mortar retailers who are not in the street closure area, but have ample sidewalk to display items (ie. LeRoux on Commercial Street for example or Material Objects on Congress Street), will they also be allowed to apply for the sidewalk sale permit? Making it expressly clear that the order extends to those with enough sidewalk space might also help avoid some additional pushback from those businesses who may see this as an 'unfair advantage' for those who are situated along streets with the temporary closures. I recognize that you won't be able to make everyone happy.
- Emphasizing that, per the Governor's orders, masks must be worn in these areas whether waiting in line, recreating, or just passing through.
- Emphasizing that in both the indoor and outdoor areas, businesses will need to comply with the State's measures for social distancing. (ie. if it is 25% occupancy inside, then it should also be 25% in the outdoor areas as well).
- Encouraging businesses to display signage about rules/regulations and to communicate to customers that they are following CDC and State guidelines for sanitization. On the IDA webinars I've been attending, I'm hearing that consumer confidence is key to having customers return. So, anything businesses can do to let their customers know that they are following safety guidelines is helpful to them and to the business community as a whole.

Questions:

- Will application and permit fees be waived?
- Are there established penalties for those who set-up in the public way without first applying for a permit?
- Would a representative from the City of Portland be willing to do a webinar or attend a Zoom meeting as a panelist for businesses who might have questions about the order once it is enacted?
- How else can Portland Downtown help? Please let me know, as I am ready to assist in any way I can.

I hope these initial thoughts and questions are helpful.

-Casey

On Sat, May 9, 2020 at 10:36 AM Jon Jennings <jpj@portlandmaine.gov> wrote:

Good Morning,

City of Portland

Food Truck Rules and Regulations

These Rules and Regulations are promulgated pursuant to Section 19-23 of the City Code:

1. An application must be submitted on a form provided by Business Licensing with colored pictures from at least two angles of the unit and a description that includes its maximum length and width.

2. Food trucks may operate from 6:00 a.m. to 10:00 p.m. Food trucks may operate on private property in all zones where food trucks are permitted with the permission of the property owner. Food trucks may operate in the following public locations:

a. On the following city streets on the Peninsula:

- West Commercial Street from Park Street to Danforth Street;
- Bayside along Marginal Way from Forest Avenue to East End Beach Trail, along Washington Avenue from I295 to Cumberland Avenue, along Cumberland Avenue from Washington to Forest Avenue and along Forest Avenue from Cumberland to Marginal Way;
- On the north side of Park Avenue between High Street and I295, except when there is a game or event at Hadlock Field, in which case food trucks are limited to Park Avenue along Deering Oaks Park until two (2) hours before a game or event and starting again two (2) hours after the game or event;
- Spring Street between Temple and Center Street;
- Commercial Street from Franklin Arterial to India Street and then along Thames Street;
- Eastern Promenade from Washington Avenue to Cutter Street;
- St. John Street from A Street to Valley Street and along Valley Street back to A Street and along A Street between Valley and St. John Street.
- In the metered parking spaces on the southeasterly side of Congress Street directly adjacent to Lincoln Park between Pearl Street and Franklin Street.

b. On city streets or in city-owned parking lots off the Peninsula:

- In the B-3, B-4, B-5, B-6, B-7 and Industrial Zones.

c. City Parks:

Food Trucks shall be allowed in City Parks according to the following rules and restrictions. For Parks not specifically listed here, operation of a food truck is limited to any legal parking space within that Park, or on city streets as outlined in Section 2A.

Food Trucks are explicitly prohibited from City Parks with no motor vehicle access, without express written consent from the Parks Division.

Customer lineup areas may not extend into walkways or roads at any location.

Parks Division Staff, Police, and City Code Inspectors shall have the authority to request a food truck to relocate if, in their opinion, the food truck is causing or contributing to an imminent public safety hazard.

During Special Events in Parks, the rules for the Park in question are temporarily suspended for permitted area and Food Trucks must abide by the locations and any additional fees set forth by the Event organizer.

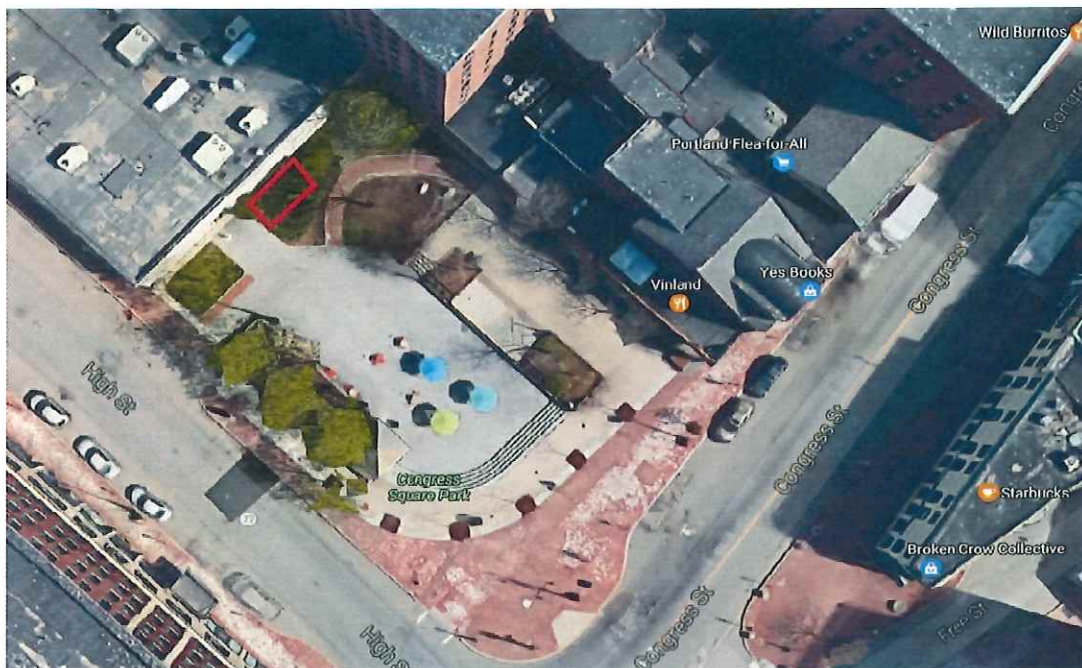
Back Cove

Two food trucks may operate along the curb ramp of the stonedust area between the handicap parking spaces noted in image below. Trucks must be parked parallel to the Back Cove Trail and must not block access to the ADA handicap ramps to the path. Trucks must park so that two trucks can fit in the provided space. Customer serving windows must face the Back Cove, not the parking lot.



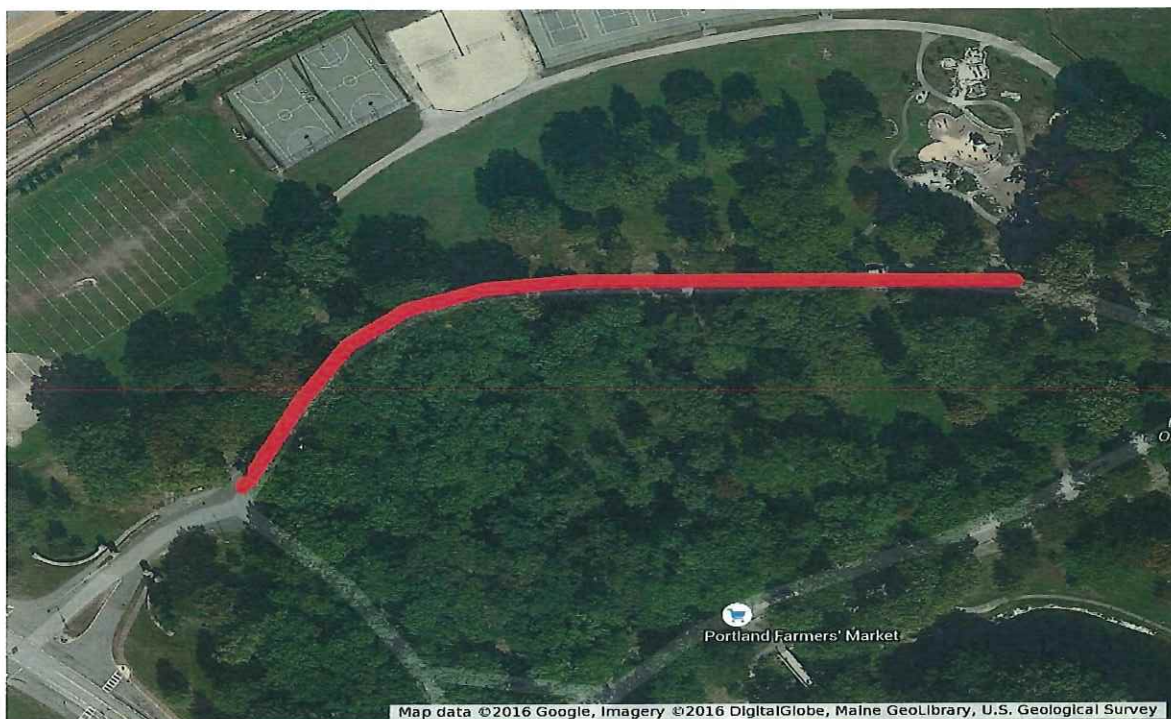
Congress Square Park

One food truck may operate along the northwest edge of the park, parallel to the hotel wall.



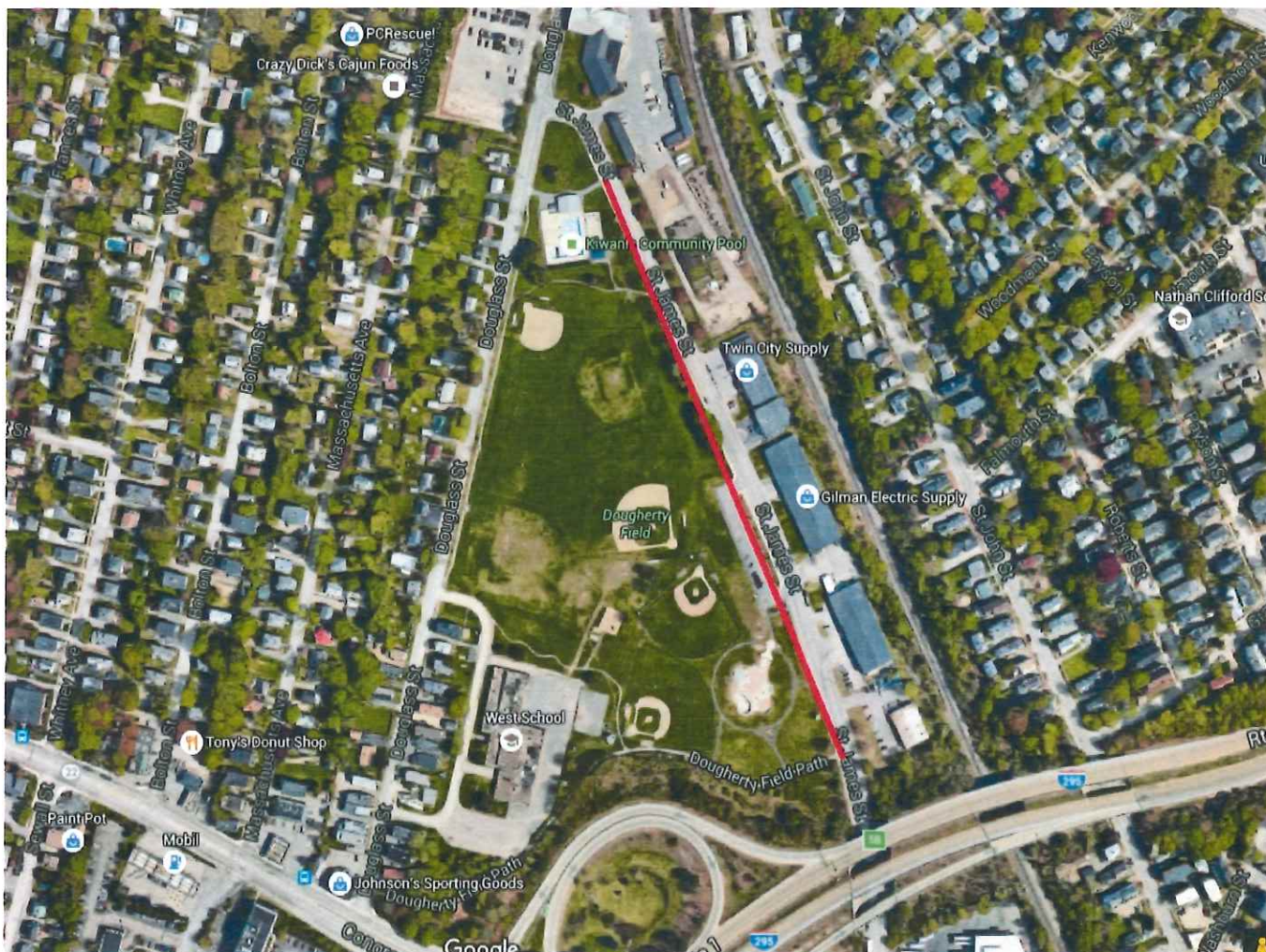
Deering Oaks Park

Two food trucks may operate along Tennis Court Road (the one-way park road running West to East from Deering Ave to State St. extension) in the zone from the Deering Avenue gateway to the playground entrance.



Dougherty Field/Kiwanis Pool/Skate Park

Three food trucks may park and operate in any available legal parking spot on St James Street from I-295 to Douglass St, adjacent to Skate Park and Athletic Fields.

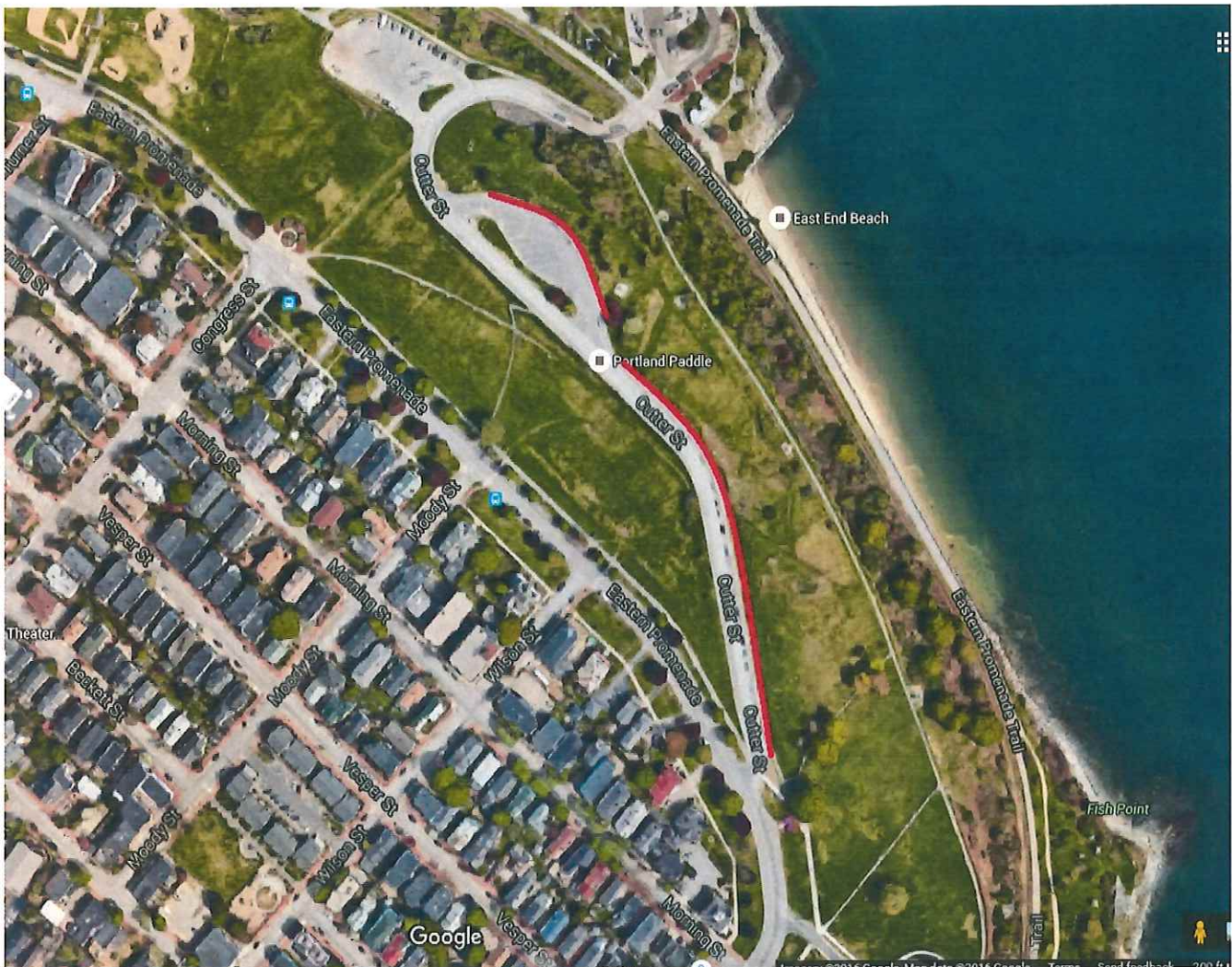


Eastern Promenade

Two food trucks total may operate within the Eastern Promenade Park in either of the following locations listed below. In addition to the two locations listed below, Food Trucks are also permitted along the Eastern Promenade from Washington Ave to Cutter Street, per the guidelines in section 2a.

- Cutter St: One food truck may take any legal parking space along Cutter Street between the Eastern Promenade and the upper parking lot (the first parking lot on the right as you descend Cutter Street from the Eastern Promenade).
- Upper Parking Lot: One food truck may take any legal parking space in the upper parking lot on Cutter Street (the first parking lot on the right as you descend Cutter Street from the Eastern Promenade).

Food trucks may use any legal parking space along the curb and must not take up any boat or trailer parking spaces.



Lincoln Park

No vehicular access in park. Food trucks already permitted along Congress Street (adjacent to Lincoln Park) per guidelines in section 2a.

Payson Park

Food trucks may park in any available legal parking spot within any parking lot, with no more than one food truck per parking lot. Food trucks may take one additional parking spot to accommodate lineup area.

Due to increased parking demand in May and June and public safety concerns, Food Trucks are not allowed during the months of May and June.



3. Night Vending: Food Trucks may operate in all non-residential zones where food trucks are permitted between the hours of 10:00 p.m. and 6:00 a.m., subject to the Separation Requirements in paragraph seven (7) of these rules. Additionally, the food truck shall obtain a Night Vendor's License from Business Licensing.

The Portland Police Department has the right to close down or request a food truck to relocate after 10 p.m. when in the opinion of the Department, the food truck vending is causing or contributing to an imminent public safety hazard.

4. Food trucks are not allowed on school grounds unless as part of a school authorized function.

5. Food trucks are not allowed in cemeteries.

6. Except as provided in Paragraph 2(a) above, food trucks are not allowed in residential (R) zones.

7. Separation Requirement:

a. On Peninsula: Except when operating in connection with a festival or special event approved pursuant to Section 19-22 of the City Code, food trucks must be located at least sixty-five (65) feet from:

- i. Any fixed-base food service establishment with an operating kitchen measured from the front door; and
- ii. Any hotel, bed and breakfast, motel, hostel, or inn measured from the nearest edge of the property.

b. Off Peninsula: Except when operating in connection with a festival or special event approved pursuant to Section 19-22 of the City Code, food trucks must be located at least two-hundred (200) feet from:

- i. Any fixed-based food service establishment with an operating kitchen measured from the front door; and
- ii. Any hotel, bed and breakfast, motel, hostel, or inn measured from the nearest edge of the property.

8. In addition to complying with the City's ordinances related to food trucks and these regulations, the owner and operator of a food truck is responsible for applying and obtaining all other necessary city licenses required for the service of food and beverages. The food truck itself must be in compliance with the motor vehicle laws of the State of Maine, and the owner is responsible for verifying that a specific location, other than those identified in paragraph 3(a), does not violate a City zoning ordinance.

9. Food truck locations, other than those on private property or those permitted through the City's competitive bid process, are based on a "first come, first served" basis. There will be no designated parking spots for food truck vendors.

10. On public property, where food trucks are permitted to operate, food trucks shall comply with all parking rules, except that food trucks otherwise operating lawfully and actively offering food for sale on city-owned property may, in any twenty-four (24) hour period, "feed" a parking meter once to extend the maximum parking time by two times (2x).

11. Food trucks may not be parked overnight on city streets or in city parking lots.

12. Size limitations: Food trucks must not exceed ten (10) feet in width, including any side extensions or awnings. Food trucks parking in metered parking spaces on city-owned property must not exceed twenty (20) feet in length, including the length of the trailer hitch, trailer, or other extension. Food trucks parking in non-metered parking spaces on city-owned property must not exceed twenty-four (24) feet in length, including the length of the trailer hitch, trailer, or other extension. If the food truck is parked on private property, then the food truck with attached trailer, or other extension, must not exceed forty (40) feet in length.

13. Food trucks must be self-contained when operating, except for the required trash and/or recycling receptacles, which shall be in contact with the food truck and shall not impede the free movement of automobiles or pedestrians.

14. Food trucks must serve to the sidewalk or esplanade next to a sidewalk when parked in spaces parallel to City sidewalks.

15. Only food and/or non-alcoholic beverages are allowed to be sold on City property.
16. Each food truck vendor must provide the City of Portland with a certificate of insurance to cover public liability in the amount of at least \$400,000.00.
17. The food truck base station must be inspected, and if food is prepared, then it must also be licensed.
18. Food trucks shall comply with the City's noise requirements pursuant to Section 17-20 of the Portland City Code.
19. Failure to adhere to the regulations for food truck is cause for revocation or suspension of your license by Business Licensing pursuant to Chapter 15 of the City Code.

Dated: 5/9/17

Signed: /s/ Jon P. Jennings

Jon Jennings, City Manager

Please call (207)756-8365 about Food Trucks in the City of Portland.



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Questions/Comments for Economic Development Committee Meeting

Jon Jennings <jpj@portlandmaine.gov>

Wed, May 13, 2020 at 12:31 PM

To: Dena Libner <dlibner@portlandmaine.gov>, Greg Mitchell <gmitchell@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

----- Forwarded message -----

From: **April Fournier** <aprilf207@gmail.com>

Date: Wed, May 13, 2020 at 11:17 AM

Subject: Questions/Comments for Economic Development Committee Meeting

To: Justin Costa <jcosta@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, <nmm@portlandmaine.gov>, <sthibodeau@portlandmaine.gov>, Greg Mitchell <gmitchell@portlandmaine.gov>

Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

Good Wednesday to you! I hope this finds you healthy! I'm very excited about the new proposed plan for extending outdoor seating to help our Portland small businesses reopen and bring money back in! With the increased amount of time for work I need to be online and also support the kiddos I'm not sure I can make the meeting so I wanted to forward some questions, concerns and comments that I had and others have shared with me. I encouraged them to also attend the meetings and bring up on their own as well.

So questions I have:

- -parking is already an issue downtown (in the press release "city officials" say adequate parking available, I disagree), what sort of support or ideas are coming up around using Metro to bring people in town for dining while not encroaching on physical distance if they are using Metro?
- -thinking about those who work in town and would need to move vehicles to accommodate, what's the possibility to give more of an incentive off-peninsula parking and again using Metro?
- -what does enforcement/compliance from a non-police perspective look like? It's nice to dine in open air but wouldn't want to do that surrounded by officers.
- A community member "with open-air dining, this still means that people are able to eat inside the restaurant right?"
- A community member "who's responsible for cleanup. Are restaurants going to be cleaning the streets, or the city? Because if every restaurant in Portland starts doing outdoor seating, it's going to get messy fast."
- Another community member-"How will they establish and maintain a climate of safety? The incidents and episodes nation wide of employees being bullied and even physically harmed by irate, non-compliant and unruly customers is alarming."
- One community member states-"It will only help a very small portion of the businesses and it sounds like it might cost them too. I know the city has lost a lot of revenue but if restaurants have to buy the permits is it really helping the biz?"
- And finally from someone outside of Portland who has their own small business and travels in town "I worry to that if they close down the streets then we won't be able to go in and get takeout. I know personally I wouldn't dine out in public right now even if they did open up dining on the streets. It sure would keep us from getting takeout as well if we can't get into town"
- What does this look like as weather gets increasingly warmer and more people head into Portland from a tourist perspective?

Thank you so much for thinking outside of the box and coming up with creative solutions to help small businesses try and reopen safely. Looking forward to additional information as we reopen our city.

Best,
April Fournier
Washington Ave
207-332-6764

--

Jon P. Jennings
City Manager
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Lori Paulette <ljn@portlandmaine.gov>

Fwd: Proposed Strategy and Guidelines for Restaurant and Retail Reopening Assistance

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:26 AM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

----- Forwarded message -----

From: **Ann Marie Malone** <riemalone@gmail.com>

Date: Wed, May 13, 2020 at 12:20 PM

Subject: Proposed Strategy and Guidelines for Restaurant and Retail Reopening Assistance

To: <ksnyder@portlandmaine.gov>, <sthobodeau@portlandmaine.gov>, <tchong@portlandmaine.gov>, <jcosta@portlandmaine.gov>, <nmm@portlandmaine.gov>

Good morning,

I am the owner of [39-47 Middle St](#) and 59 Middle St and the parking lot in between the two buildings. My tenants include 3 restaurants, 5 other businesses and 4 residential apartments. As a result of Covid 19, my tenants have struggled, particularly the restaurants who were unable to pay rent in April and some of whom have paid partial rent for May. Who knows what the future will bring. We have done our best to work out financial arrangements with these business in order to support their continued operation. The situation is quite tenuous for all involved, as you can imagine. The economic hardship for me, the landlord, and my tenants, the restaurant owners in particular, is concerning.

With that in mind, I would like to state my support for the proposed strategy to close certain streets in the city to support outdoor dining and retail service. I support efforts to assist our fellow citizens who are so profoundly affected by the Covid 19 crisis. There are a few operational considerations that I feel must be carefully considered in order to provide benefit rather than additional economic burden.

We are in the middle of 3 expensive renovations to these buildings, including renovation of an apartment, a retail space and adding a sprinkler system to the building that includes the combination of restaurants and residential spaces. Construction vehicles that are involved in these renovations need temporary access to the parking lot between the two buildings, at least between certain hours. Tenants who live in the building and businesses who operate there have parking spaces that they are entitled to by virtue of a lease and would need at least limited access to these spaces. Restaurant delivery trucks and dumpster service vehicles would also need some sort of access to the property. I appreciate the innovative action to support local business. Please allow for a certain amount of flexibility so this proposal does not cause additional hardship to folks who are already struggling to make the best of a bad situation.

Respectfully,

Ann Marie Malone

Ann Marie Malone
[30 Highland Street](#)
[Portland, ME 04103](#)
207.415.1020
riemalone@gmail.com



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Street Closures

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 11:26 AM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Feedback

----- Forwarded message -----

From: **'Sal Scaglione' via City Manager** <citymanager@portlandmaine.gov>

Date: Thu, May 14, 2020 at 11:07 AM

Subject: Fwd: Street Closures

To: <citymanager@portlandmaine.gov>

Sent from my iPad

Begin forwarded message:

From: Sal Scaglione <guyincharge@ymail.com>**Date:** May 14, 2020 at 10:38:09 AM EDT**To:** adam@portlandmaine.com**Subject:** Street Closures

Hello,

We are VEHEMENTLY opposed to street closures. Only a few would possibly benefit from it at the expense of everyone else. It is a foolish and ill conceived idea. As someone who has three locations in the Old Port, I can say it would be costly and discriminatory to us. And NO, the Old Port Festival is not a successful event for everyone.

*Delivery and pick up scheduling nightmare.

*Most businesses can not utilize outdoor commerce.

* Handicap and elderly access almost impossible.

* Not the free flow of a prime location we agreed to in leases and contracts.

Sal Scaglione
ABACUS (other)

Sent from my iPad



Lori Paulette <ljn@portlandmaine.gov>

Fwd: FW: Cotton Street Closure

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:37 AM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

Dena Libner
Assistant to the City Manager for Constituent Services
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From: **Jon Jennings** <jjp@portlandmaine.gov>

Date: Wed, May 13, 2020 at 2:01 PM

Subject: Fwd: FW: Cotton Street Closure

To: Dena Libner <dlibner@portlandmaine.gov>, John Peverada <jbp@portlandmaine.gov>, Jessica Hanscombe <jhanscombe@portlandmaine.gov>

----- Forwarded message -----

From: **Lamson, Catherine** <clamson@memic.com>

Date: Wed, May 13, 2020 at 11:07 AM

Subject: FW: Cotton Street Closure

To: jjp@portlandmaine.gov <jjp@portlandmaine.gov>

Dear Jon:

First let me say that I have followed you for some time and want to thank you for your service to Portland. Your leadership has been beneficial for not only the citizens of Portland but the business community as well.

I note that Cotton Street is on the list of streets that could be closed for retail and restaurant openings in the near term and although I support the initiative, I have serious concerns with the complete closure of Cotton Street.

Casco View Holdings III, LLC is the owner of the only buildings on Cotton Street. The parking associated with these buildings has its access on Cotton Street. The only parking gate for access and egress to the parking lot that supports the 2 Cotton Street office building and the Rivalries restaurant building is on Cotton Street. With the street closed, the tenants would not have access to the parking lot. (The upper parking lot is completely separate from the lower lot and has it's access on Center Street.)

The complete closure of Cotton Street will be a hardship on the Casco View Holdings III, LLC tenants in those Cotton Street Offices and restaurants. We would respectfully request this be reviewed for adjustment to allow access to the parking lot.

Catherine F. Lamson, SPHR, SHRM-SCP, WCP®
Senior Vice President
Chief Administrative Officer

The MEMIC Group
(207)791-3304

clamson@memic.com



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(207) 874-8669 Fax
jpj@portlandmaine.gov
www.portlandmaine.gov



Nancy English <nle@portlandmaine.gov>

Fwd: Closing Streets for Outdoor Dining

1 message

Dena Libner <dlibner@portlandmaine.gov>
To: Nancy English <nle@portlandmaine.gov>

Thu, May 14, 2020 at 3:52 PM

Feedback

Dena Libner
Assistant to the City Manager for Constituent Services
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From: **Greg Mitchell** <gmitchell@portlandmaine.gov>
Date: Thu, May 14, 2020 at 3:47 PM
Subject: Fwd: Closing Streets for Outdoor Dining
To: Christopher Branch <cbranch@portlandmaine.gov>, Dena Libner <dlibner@portlandmaine.gov>, Grondin, Jessica <jgrondin@portlandmaine.gov>, Heather Brown <hbrown@portlandmaine.gov>, Jessica Hanscombe <jhanscombe@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

FYI.

----- Forwarded message -----

From: **Douglas Fuss** <doug@bullfeeneys.com>
Date: Thu, May 14, 2020 at 3:39 PM
Subject: Closing Streets for Outdoor Dining
To: <gmitchell@portlandmaine.gov>

Hi, Greg! It has been a while as until recently I have not have been as active in local affairs. I hope you are holding up ok through all of this.

In general I support closing streets for outdoor dining. Going back to my time in the city of Chicago department of planning, I know the kind of impact it can generate, attracting tourists, clustering activity and getting people to come downtown during times when the shoreline tends to win out. Nevertheless, I have some concerns and objections to the proposed plan.

First the little picture: 15 feet of emergency right of way on Exchange Street leaves only 3 feet on either side. If you include the sidewalk that leaves 12 feet of dining space, barely enough for a four top with six foot separation. You probably didn't know this but Bull Feeney's has an entrance on Exchange Street where we could benefit from the ordinance, but we could only fit at most three four tops and maybe only two, as we would have to leave room for customers to enter City Beverage and a barrier between our space and Holy Donut. This is in about thirty feet of frontage.

Now the big picture: I think this effort is premature by one month. We are all in the process of figuring out how to operate under the state's detailed requirements for restaurant operations. We could all use some time to get adjusted to that before opening a new, outdoor space. I know it is up to us to decide when we use the space, but it is the natural tendency

of restaurants to generate as much activity as possible.

Also, and more importantly, we do NOT want to encourage loitering in concentrated areas, yet, and we especially do not want to attract the attention that it will generate, yet. Everyone is dying to go outside because we've been cooped up for months. Tourists from other, more dangerous states are already heading to Maine. I saw license plates from New York, New Hampshire, Massachusetts and for the second time in two weeks someone who took off his license plate to hide his state of origin because of quarantine. Let's give social distancing measures another month to reduce confirmed cases of COVID-19 through the entire, driveable region. Then, once we have figured out how to enforce social distancing in restaurant environments, we can open up outdoor space, helping to safely generate sales for restaurants during a time when required occupancy levels are much lower.

I'll tune in at 4p. See you then.

Stay safe and healthy,

Doug

Douglas Fuss
Publican
Bull Feeney's
207-653-8445 c

--

Greg A. Mitchell, Director
Economic Development Department
[City of Portland](#)
[389 Congress Street](#)
[Portland, Maine 04101](#)
Tel. 207.874.8945
Fax 207.756.8217



Nancy English <nle@portlandmaine.gov>

Fwd: EDC Hearing 5-14-2020

3 messages

Dena Libner <dlibner@portlandmaine.gov>
To: Nancy English <nle@portlandmaine.gov>

Thu, May 14, 2020 at 3:51 PM

Feedback

Dena Libner
Assistant to the City Manager for Constituent Services
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E: dlibner@portlandmaine.gov

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From: **Jon Jennings** <jpj@portlandmaine.gov>
Date: Thu, May 14, 2020 at 3:28 PM
Subject: Fwd: EDC Hearing 5-14-2020
To: Dena Libner <dlibner@portlandmaine.gov>

----- Forwarded message -----

From: **Jim Brady** <jameshbrady@gmail.com>
Date: Thu, May 14, 2020 at 3:26 PM
Subject: EDC Hearing 5-14-2020
To: Justin Costa <jcosta@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Nicholas Mavodones <nmm@portlandmaine.gov>, <tchong@portlandmaine.gov>
Cc: Jon Jennings <jpj@portlandmaine.gov>

Dear Councilors,

I am writing to you regarding the proposal by City Manager Jon Jennings regarding temporary measures to enhance business operations within the City of Portland during these difficult COVID-19 times.

As the managing member of the Press Hotel, located on Exchange Street, I wanted to comment on the proposed plans and order before you at the EDC meeting later today.

As you may recall, we obtained City approval for the closure of Federal Street between Exchange and Market Streets during the summer of 2014 (the year we opened the Press Hotel) for what was called the "Federal Street Folly". It is my view that this was a successful test case for these type of temporary ROW closures, to provide for new programming in the City right of way, including streets. While I know some nearby businesses were skeptical, I believe that most felt it was a positive trial run in the end.

With the pandemic wreaking havoc on the many small businesses in the City who rely not only on tourism, but local visitation, I am encouraged by the consideration the City Manager and Council is considering as a means toward supporting the various downtown business including retail and Food & Beverage outlets.

I have also seen very successful "pop-up parks" taking over traditional parking spaces in the sides of slow moving roads (less than 25mph max), I am hopeful that these too can be expanded and considered. At the Press Hotel are considering requesting such a "pop-up park" on Federal Street immediately adjacent to the Press Hotel (south or waterfront side), occupying two parking spaces, where we may be able to expand our seating capacity for outdoor food and beverage consumption.

With the limited indoor capacity to accommodate the proposed social distancing, we will be losing significant seating capacity and while an outdoor expansion is not critical to our business at the hotel, the fact is that guest who come to stay in Portland partly are drawn to the walkable streets with small local retail and world renown culinary and beverage outlets. Without the draw generated from the retail and F&B in the Old Port, the demand for hotel accommodations would also be more limited.

In addition, having the opportunity for people to be outside (during good weather) is something which I believe people who have been holed up in their house for weeks are greatly looking forward to.

I encourage you to continue looking at the plan to allow expansion of business into the sidewalks and streets (and private lots), particularly side parking spaces while also maintaining accessibility thru clear paths of travel for both pedestrians as well as vehicles where needed, to ensure the safety of all.

Should you have any questions, please do not hesitate to contact me.

Regards,

Jim Brady
Fathom Companies
www.fathomcompanies.com
PO Box 7486
Portland, ME 04112
207.808.8787 work
[207.653.9990](tel:207.653.9990) mobile
jbrady@fathomcompanies.com
jameshbrady@gmail.com

--

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>



Lori Paulette <ljn@portlandmaine.gov>

Fwd: closing streets in old port

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:07 AM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

Dena Libner
Assistant to the City Manager for Constituent Services
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From: **Jon Jennings** <jjp@portlandmaine.gov>

Date: Wed, May 13, 2020 at 12:51 PM

Subject: Fwd: closing streets in old port

To: Dena Libner <dlibner@portlandmaine.gov>, Jessica Grondin <jgrondin@portlandmaine.gov>

----- Forwarded message -----

From: **Don Burke** <donblcpc@gmail.com>

Date: Wed, May 13, 2020 at 8:38 AM

Subject: closing streets in old port

To: <jjp@portlandmaine.gov>

I appreciate you are trying to help some businesses by doing this, but i am sure you know that the statement that there is plenty of parking in the old port is not accurate. Especially if you were to add the word affordable parking. Anyone who has looked for a parking space in the summer or really any season knows this is not true. Garages are very expensive and often full. This will be a nightmare for any of us who depend on people being able to find accessible parking where they can get in and get out with minimal hassle. There are large numbers of professional offices that really need this type of availability and even some of the stores that you are trying to assist count on this type of parking resources that you will be gutting. Losing any of theses spaces will cause great hardship on many of us and our clients.

I guess you do what you have to do but in doing it you will force many of us out the city we have worked in for many years.

Don Burke LCPC, LADC, CCS
[57 Exchange Street Portland, Maine 04101](#)
[Suite 402](#)
207 370 5148

--

Jon P. Jennings
City Manager
[City of Portland](#)
[389 Congress Street](#)

5/14/2020

City of Portland Mail - Fwd: closing streets in old port

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jpj@portlandmaine.gov
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Lori Paulette <ljn@portlandmaine.gov>

Fwd: Street closings suggestion and Feedback

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 8:34 AM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Feedback

Sent from my iPhone

Begin forwarded message:

From: Jon Jennings <jpj@portlandmaine.gov>**Date:** May 14, 2020 at 8:28:31 AM EDT**To:** Dena Libner <dlibner@portlandmaine.gov>, John Peverada <jbp@portlandmaine.gov>, Jessica Hanscombe <jhanscombe@portlandmaine.gov>**Subject:** Fwd: Street closings suggestion and Feedback

----- Forwarded message -----

From: Ellen K <ellen@dobrateame.com>**Date:** Tue, May 12, 2020 at 8:25 PM**Subject:** Street closings suggestion and Feedback**To:** <jpj@portlandmaine.gov>

Hi Jon,

I've reviewed the proposal for street closures. I'm not sure if you are the person to send responses and ideas to. Let me know if there is another method for accepting feedback.

I own the teahouse on 89 Upper Exchange St.

Though we would love to serve customers at tables outside, I don't see the need to close the entire street for most of the business day. Also, on cloudy or rainy days, this would not be useful to our customers or us.

I am writing to suggest different options:

That the closure start later in the day - 3 or 4PM into the evening. That way retail business customers which are open usually only during the day, be allowed quick access to parking during that time, and restaurants, most of which don't open until later in the afternoon, would have the street open to them when they are actually open.

If that might be a problem in clearing the streets of cars midday, perhaps considering a closure Fri - Sun? Another option, maybe allowing the restaurants with space in front of their business to set up parklets without further permitting expense to the business if they already have an outdoor dining/sidewalk permit for outdoor tables/chairs, as we do. I understand the city is looking for a way to maintain the requirements of Social Distancing in re: restaurants.

I'm trying to come up with an option that makes both restaurants and retailers happy, as I've heard from a couple of retail shops that full day closure doesn't work for them.

Thanks for reading.

Ellen Kanner

Portland Buy Local Board Member & Owner, Dobra Tea

--

Jon P. Jennings
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Lori Paulette <ljn@portlandmaine.gov>

Fwd: Re-opening the Old Port

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:38 AM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

----- Forwarded message -----

From: **Astrid Vigeland** <amvfolly@aol.com>

Date: Wed, May 13, 2020 at 3:41 PM

Subject: Re: Re-opening the Old Port

To: Kate Snyder <ksnyder@portlandmaine.gov>, <jpj@portlandmaine.gov>

On May 13, 2020, at 3:40 PM, Astrid Vigeland <amvfolly@aol.com> wrote:

Re: Old Port Street Closings

To Whom It may Concern:

I am the owner of **folly 101** a shop at [101 Exchange Street](#) which has been in business for the past 18 years - I will be addressing my thoughts for this particular block given the recently published proposed street closings June - November.

Below are some of these concerns and questions as this potential decision could have a hugely negative impact on my ability to operate my shop.

General:

- Can you provide the details of who the city included from the large population of independent retailers and business owners in the Old Port to contribute thoughts and concerns to help determine this proposal? This plan seems far more suitable to restaurants than the retailers and given the need for distancing it doesn't seem to add up that outdoor seating will accommodate a substantial addition of patrons. We are in challenging economic times and while you have suggested that retailers can simply bring their wares outside to increase sales potential, from my viewpoint, it is not feasible. I will be staffing my shop at a minimum, as I have no idea what business will look like and I am in need of recouping the lost revenue from the past 2 -3 months. Having merchandise out on the street would require an additional 2 employees to monitor goods and wait on customers—this is not possible. Also, as patrons will be eating and drinking and will not be wearing face masks, that could jeopardize any employees stationed out on the street who would be at high risk of exposure to this. This approach also negates the possibility for retailers relying on curbside pick up. And, in the big picture, the overall ambience of the unique and distinguished Old Port area seems at risk.

Specific Concerns:

- As there are 8 restaurants on upper Exchange Street, how exactly will you limit outside table boundaries? What is the distance these need to be from each other? Will they be on sidewalks; in the middle of the street? Will there be benches to sit on? Can anyone choose to sit there, similar to a public park? Are you looking at the aggregate total of potential customers?

- Where do customers wait to be seated; How do other shop keepers insure that their street frontage is kept free and clear; What happens if there are long waiting lines at restaurants - who is monitoring these lines? My store will not be able to accommodate people "killing time" before their table is ready as we have in the past.

- How will trash be addressed? If tables need to be bussed in a timely fashion, will there be food and dishes left out on tables?
- Will tables and chairs be put away every evening? If not, who's to prevent someone from tossing one through a store window at night?
- How will deliveries be handled? Not only UPS and FEDEX but all the food, beverage, uniform suppliers?
- How will public safety vehicles be accommodated in an emergency?
- Do the restaurants have the right to play music on Exchange Street?
- Who's policing this overall?
- What is the outdoor alcohol policy?
- Parking is a huge issue! Even when we have on-street meter parking it is a challenge. I wonder now how many people will realistically go in the garages - the city owned garage across the street is often full and now with the Exchange Street entrance and exit no longer available I would imagine the wait on Temple Street will be fairly long. We also have customers who are elderly or have special needs and being near the entrance was helpful - this presents a whole host of difficulties.
- Why this is extended until November?

Safety Protocols and CDC Guidelines:

- Our number one concern is going to be the safety and well being of staff and customers - we are still in the most unknown part of this virus and we are in some ways making ourselves quite vulnerable. What guidelines are being mandated to ensure our safety? Are masks and gloves required for both staff and patrons in all businesses by law? How many people can be permitted in a retail space to ensure proper distancing? How do we enforce if people don't comply?

I think it's important to consider all sides of the economic engine of the Old Port - as a longtime contributor to the Portland business scene, I don't feel that my voice, and others like it, are being recognized.

While re-opening is vital, and I appreciate all you have to consider going forward, my shop will be doing so under very compromised conditions --- Portland merchants need your all-in support of our plight!

Thank you for your attention and consideration, I look forward to hearing your detailed response.

Sincerely,
Astrid Vigeland
owner, folly 101



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Closing city streets

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:40 AM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Feedback

----- Forwarded message -----

From: **Laurie Latham** <laurielatham@aol.com>

Date: Tue, May 12, 2020 at 6:06 PM

Subject: Closing city streets

To: <jpj@portlandmaine.gov>

I just saw in the paper you are planning on closing some city streets for the restaurants. It mentions Exchange from Federal st to Fore....how are we supposed to access the temple street parking garage. We monthly parkers need access on weekends And before they open in the morning to go to work and the only access would be exchange st. We pay \$170 a month for 24/7 access. Sorry for the restaurant's but they are not the only people trying to make a living during these times. I have lived and worked in Portland For the last 40 years And have for the last 40 years paid my fare share of taxes. Please rethink this

Thank you
Laurie Latham
[118 Colonial Rd](#)

Sent from my iPad

--

Jon P. Jennings
City Manager
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
(207) 874-8689 Office
(207) 874-8669 Fax
jpj@portlandmaine.gov
www.portlandmaine.gov



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Portland Street Closures and Outdoor Dining Business Licensing

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 9:39 AM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

----- Forwarded message -----

From: **Old Port Sea Grill** <oldportseagrill@gmail.com>

Date: Wed, May 13, 2020 at 3:23 PM

Subject: Portland Street Closures and Outdoor Dining Business Licensing

To: <jhanscombe@portlandmaine.gov>

Dear Ms. Hanscombe -

I read this morning in the Portland Press Herald that the Economic Development Committee is considering a proposal to temporarily close several streets in the Old Port to allow for more outdoor dining and retail space.

I am requesting that Custom House Road also be added to the list of streets currently under consideration by the committee.

Our business, the Old Port Sea Grill and Raw Bar, is located at [93 Commercial Street](#), on the corner of Commercial Street and Custom House Road. We have taken a devastating financial hit, as I am sure you are aware, due to the COVID-19 business shutdown.

Currently, our restaurant capacity indoors is 110 people. With the new state guidelines for reopening, we will have to reduce our capacity to 50 people, which is a loss of over 50% potential revenue for our business during the busiest time of the year. With this reduction of revenue, we are fearful that we may not be able to financially survive. We are a reputable establishment that has been a well-known staple for locals and tourists alike in the Old Port for 18 years. It would be a shame if our restaurant became another casualty of the COVID crisis.

If Custom House Road were closed through the summer months, that would afford us the opportunity to expand our outdoor dining, and I promise you, that we would turn this area into a spectacular and aesthetically pleasing space while still providing enough social distancing space for our guests.

I understand that one concern might be the loss of the 1 or 2 parking spaces reserved for federal employees of the Custom House Building. Our proposed solution is to either move these parking spaces around the corner to Commercial Street, or to just close one side of Custom House Road so that those parking spaces do not have to be moved at all.

This could be a game-changer for us, and it could save our business and the livelihood of our hard-working employees. Your advice on how I should proceed with this request is much appreciated.

Best Regards,
Justin C. St. Louis
General Manager

--

Old Port Sea Grill and raw bar

[93 Commercial St.](#)[Portland, ME 04101](#)

(207)879-6100

oldportseagrill@gmail.com



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Support for Certain Street Closings Order from Exchange St businesses

Dena Libner <dlibner@portlandmaine.gov>

Wed, May 13, 2020 at 5:05 PM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Additional background material below

Dena Libner
Assistant to the City Manager for Constituent Services
Executive Department
389 Congress Street
Portland, ME 04101
E: dlibner@portlandmaine.gov

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From: **Jon Jennings** <jjj@portlandmaine.gov>
Date: Wed, May 13, 2020 at 4:38 PM
Subject: Fwd: Support for Certain Street Closings Order from Exchange St businesses
To: Dena Libner <dlibner@portlandmaine.gov>

----- Forwarded message -----

From: **Jesse Thompson** <jesse@kaplanthompson.com>
Date: Wed, May 13, 2020 at 4:30 PM
Subject: Support for Certain Street Closings Order from Exchange St businesses
To: Phil Kaplan <phil@kaplanthompson.com>
Cc: <ksnyder@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, <tchong@portlandmaine.gov>, Justin Costa <jcosta@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>, <nmm@portlandmaine.gov>, <pali@portlandmaine.gov>, <jjj@portlandmaine.gov>, Adrienne Stauffer <adrienne@kaplanthompson.com>

City Councilors,

We operate two businesses on the second floor of [102 Exchange Street](#) that employs 16 people, just a block below City hall. We are writing in **full support** of the proposed pilot street closure of Exchange Street.

Our neighbors downstairs are primarily restaurants whose businesses have been devastated by the pandemic while our upstairs office businesses are all safely working from home and not at risk. Anything we can do to support our business neighbors' economic survival should be tested as soon as possible.

We are not concerned at all about losing car access to Exchange Street for the future (even beyond the summer) if it means we walk one extra block to our office (once it re-opens) and this could allow these businesses to thrive again.

Thank you for your support of this concept,

Jesse Thompson

PRINCIPAL, AIA, LEED AP, CPHC

Maine Licensed Architect

Kaplan Thompson Architects

[102 Exchange Street, Portland, ME 04101](#)

office: (207) 842-2888 x202

direct: (207) 536-4672

cell: (207) 210-8253

[kaplanthompson.com](#)

--

Jon P. Jennings

City Manager

[City of Portland](#)

[389 Congress Street](#)

[Portland, ME 04101](#)

(207) 874-8689 Office

(207) 874-8669 Fax

jpj@portlandmaine.gov

www.portlandmaine.gov



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Support for Certain Street Closings Order from Exchange St businesses

Dena Libner <dlibner@portlandmaine.gov>

Wed, May 13, 2020 at 5:05 PM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Additional background material below

Dena Libner
Assistant to the City Manager for Constituent Services
Executive Department
389 Congress Street
Portland, ME 04101
E: dlibner@portlandmaine.gov

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----- Forwarded message -----

From: **Jon Jennings** <jjj@portlandmaine.gov>
Date: Wed, May 13, 2020 at 4:38 PM
Subject: Fwd: Support for Certain Street Closings Order from Exchange St businesses
To: Dena Libner <dlibner@portlandmaine.gov>

----- Forwarded message -----

From: **Jesse Thompson** <jesse@kaplanthompson.com>
Date: Wed, May 13, 2020 at 4:30 PM
Subject: Support for Certain Street Closings Order from Exchange St businesses
To: Phil Kaplan <phil@kaplanthompson.com>
Cc: <ksnyder@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, <tchong@portlandmaine.gov>, Justin Costa <jcosta@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>, <nmm@portlandmaine.gov>, <pali@portlandmaine.gov>, <jjj@portlandmaine.gov>, Adrienne Stauffer <adrienne@kaplanthompson.com>

City Councilors,

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Thank you for your support of this concept,

Jesse Thompson

PRINCIPAL, AIA, LEED AP, CPHC

Maine Licensed Architect

Kaplan Thompson Architects

[102 Exchange Street, Portland, ME 04101](#)

office: (207) 842-2888 x202

direct: (207) 536-4672

cell: (207) 210-8253

[kaplanthompson.com](#)

--

Jon P. Jennings

City Manager

[City of Portland](#)

[389 Congress Street](#)

[Portland, ME 04101](#)

(207) 874-8689 Office

(207) 874-8669 Fax

jpj@portlandmaine.gov

www.portlandmaine.gov



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Support**Dena Libner** <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 2:45 PM

To: Nancy English <nle@portlandmaine.gov>, Lori Paulette <ljn@portlandmaine.gov>

Feedback

Dena Libner
Assistant to the City Manager for Constituent Services
Executive Department
389 Congress Street
Portland, ME 04101
E: dlibner@portlandmaine.gov

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----- Forwarded message -----

From: **David Tamulevich** <DavidT@theregency.com>

Date: Thu, May 14, 2020 at 2:22 PM

Subject: Support

To: sthibodeau@portlandmaine.gov <sthibodeau@portlandmaine.gov>, Greg Mitchell <gmitchell@portlandmaine.gov> (<gmitchell@portlandmaine.gov>)

Spencer and Greg,

We at the Regency Hotel want to express our support for the City's creative efforts to support downtown businesses. With respect to the immediate vicinity of the Regency, we'd offer two comments:

1 – It would be great if the proposed order would clarify that the City can partially close streets. We would like to close half the circle in front of the Regency in order to expand the Garden Café during this pandemic, while maintaining the ability to use Milk Street closer to the main property.

2 – For the proposed Milk Street closure between Silver Street and Pearl Street, we would suggest instead pivoting to the “parklet” idea for that area. The two retailers on that stretch of Milk Street are Crooked Mile and Fitz & Bennett. The ability to move vehicles from the Regency entrance to our affiliated parking lot at Middle and Pearl is likely to be critical to our operation, particularly as we consider “self-park” options for guests as a way to maintain social distancing.

Sincerely,

David Tamulevich

5/14/2020

City of Portland Mail - Fwd: Support

General Manager

Portland Regency Hotel and Spa



Lori Paulette <ljn@portlandmaine.gov>

Fwd: Street Closures for the Old Port Re-Opening

Dena Libner <dlibner@portlandmaine.gov>

Thu, May 14, 2020 at 8:25 AM

To: Lori Paulette <ljn@portlandmaine.gov>, Nancy English <nle@portlandmaine.gov>

Feedback

Sent from my iPhone

Begin forwarded message:

From: Jon Jennings <jpj@portlandmaine.gov>**Date:** May 14, 2020 at 8:22:32 AM EDT**To:** Dena Libner <dlibner@portlandmaine.gov>, John Peverada <jbp@portlandmaine.gov>, Jessica Hanscombe <jhanscombe@portlandmaine.gov>**Subject:** Fwd: Street Closures for the Old Port Re-Opening

----- Forwarded message -----

From: Swiss Time - Info <info@myswisstime.com>**Date:** Wed, May 13, 2020 at 11:21 PM**Subject:** Street Closures for the Old Port Re-Opening**To:** <ksnyder@portlandmaine.gov>, <jpj@portlandmaine.gov>**Cc:** <bsr@portlandmaine.gov>, <sthibodeau@portlandmaine.gov>, <tchong@portlandmaine.gov>, <jcosta@portlandmaine.gov>, <kcook@portlandmaine.gov>, <pali@portlandmaine.gov>, <nmm@portlandmaine.gov>, <jduson@portlandmaine.gov>, <hbrown@portlandmaine.gov>, <chager@portlandmaine.gov>, <jbp@portlandmaine.gov>, <jill@myswisstime.com>

Greetings:

We are the owners of Swiss Time located at 86 Exchange Street. We are a family owned and operated business and have had the pleasure of being in business in the City of Portland for over 40 years. "We've been doin' time in Portland since 1977." We would like to take the time to reach out to you regarding our thoughts for your proposed street closings running through November.

General Concerns:

We are curious to learn whom the city included from the large population of independent retailers and business owners in the Old Port who assisted with this proposal. In our opinion as a small retail business struggling through this COVID-19 pandemic this proposed street closure is to only assist the restaurant industry. You are allowing reduced permitting fees to no permitting fees for restaurants; however, have made no adjustment for retailers. We are in extremely challenging times and it seems that your opinion is that we as retailers can simply bring our merchandise onto the street and pay a fee and can continue to operate as we had.

From our standpoint that is a completely unrealistic expectation. It takes far more manpower to oversee valuable merchandise on the street than in locked showcases in our store. It seems to be setting up retailers for the potential disaster of theft. We have moved our entire inventory online and feel that is the safest way to merchandise our products during the current situation.

When we do finally open our door we will be doing so as safely as possible for our customers and our staff, but if we have to be outside we fear our customers will not choose to be safe for us. There will be no way

for us to ensure that our customers wear masks; which is a huge fear for us. As of May 12th we have begun to open for curbside pick up and drop off services only. We have limited our hours (Tuesday, Thursday, and Saturday 10am to 3pm) and are able to operate with a reduced staff as no one is allowed in our store; however, if you choose to close our street we will not be able to operate as such and it will almost force us to open faster than we feel safe and will put our staff and our families at risk with so many people milling around waiting for tables. This does not seem safe to us.

From what we have read you are proposing to allow deliveries only before 10am however, we do not even open until 10am as do many other retailers on this street, this will create an additional hardship on us to coordinate with deliveries; which are absolutely necessary when it comes to operating a business.

Additionally, we pay to park in a private parking lot behind our building at [86 Exchange Street](#). The only access to this parking is off Exchange Street how will we, and the other people who pay to park there, access this lot if you close our street?

How do you expect any of our customers to find appropriate parking; the lot owned by the City next to us is always full. Our customers will have to pay for 1 hour of parking to run a 10-minute errand. That will drive our customers away they will choose to wait to come in until after November and we cannot afford for that to happen.

Specific Concerns:

1. How will the street be shared for outside tables and retailers what will the boundaries look like for those who choose to participate in this?
2. Are you allowing tables in the street or sidewalks only?
3. How do you plan to keep the appropriate 6 foot distancing for the actual staff who have to either wait on these tables for diners or work the tables set up for merchants?
4. How will you ensure that a retailer who chooses not to participate will not have their storefront blocked by another merchant or by people waiting for access to seating?
5. Will food waste remain out on tables for long periods of time after a customer has finished eating and left? This could be dangerous not only from the germs left on the food scrapes but for the cleanliness of the street from the plethora of sea gulls; which will ravage the tables and diners alike.
6. Will music be allowed to be played on the street? If so how will you limit volume and noise?
7. What is the outdoor alcohol policy?
8. Where are you expecting all these people to park if you take away the already limited parking available in the Old Port?
9. Why is this running 24 hours a day through November and not being looked at with specific hours or even on a weekly or monthly basis? This is a huge commitment you are making for us and allowing us no choice or say in this matter.

We are already struggling and at the brink of permanent closure from the COVID-19 pandemic. We have been closed since March 18th shortly thereafter you removed our ability to ship to our customers for at least a month. That City mandate completely dismissed any chance of a potential income during that period. We want to stay in Portland for 40 years to come but please keep us in your hearts. Please look over what you are doing. Please speak to any retailer who has been in business for more than 10 years in the Old Port. Please not just vote on this without doing your research. We beg you to re-think the way you are approaching this.

We agree something new and different should be done to assist all the businesses, as we are all struggling, but there has to be other options other than closing our streets. Portland is not just made of up restaurants, you have retailers too, please don't forget about us. We understand you have a lot to consider on this proposal please take your time to appropriately weigh what this street closure will do to everyone involved.

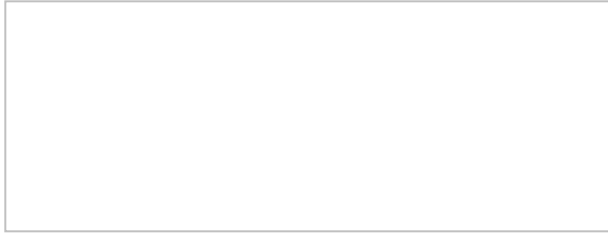
We look forward to your reply on the above-mentioned concerns and questions.

5/14/2020

City of Portland Mail - Fwd: Street Closures for the Old Port Re-Opening

Thank you for your time and consideration. Stay safe and healthy.

Jill, Stephany, and Kristopher Guyot



--

Jon P. Jennings
City Manager
[City of Portland](#)
[389 Congress Street](#)
[Portland, ME 04101](#)
(207) 874-8689 Office
(207) 874-8669 Fax
jpj@portlandmaine.gov
www.portlandmaine.gov

MEMORANDUM
City Council Agenda Item

FROM: Paul Bradbury, Jetport Director

DATE: May 11, 2020

SUBJECT: **Order 178-19/20 Accepting and Appropriating Federal Aviation Administration CARES Act Grant for the Portland International Jetport - 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 5/18/2020

Final Action 6/1/2020

Can action be taken at a later date: Yes Action can be taken at a later date, but the grant must be executed no later than July 1, 2020 for the grant to be valid.

PRESENTATION: Paul Bradbury will introduce as needed, and answer any Council questions on this item.

I. SUMMARY

The Portland International Jetport requests approval to accept a Federal Aviation Administration CARES Act grant in the amount of \$12,162,498 and naming the Airport Director as the City's official representative for the grant.

II. AGENDA DESCRIPTION

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748, Public Law 116-136) signed into law by the President on March 27, 2020, included \$10 billion in funds to be awarded as economic relief to eligible U.S. airports affected by the prevention of, preparation for, and response to the COVID-19 pandemic. The Federal Aviation Administration (FAA) is now issuing grants to all commercial service airports in amounts based on the number of passengers that board aircraft, the amount of debt the airport has, and the amount of money the airport has in reserve. The Portland International Jetport, based upon these metrics, has been allocated a CARES Act Grant from the FAA in the amount of \$12,162,498. This grant funding will be used to cover the Jetport's debt service and operating expenses. Unlike other FAA grants there is no local match required for this grant.

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

III. BACKGROUND

The Portland International Jetport has seen a dramatic reduction in passenger volumes since the World Health Organization declared a pandemic on March 11, 2020. Passenger volumes at the Jetport dropped 24.5% on March 11th with this declaration, and continued down in April hitting a peak passenger decline of 97.3% down on April 14, 2020 compared to the same day in 2019. Today passenger volumes remain down more than 90% from the prior year. This drop is unprecedented, especially considering that January and February of 2020 were all time records with the Jetport handling 130,165 and 133,338 total passengers in these months, respectively.

As most know, the Jetport is dependent on passengers to generate its operating revenues. Either directly

through parking, rental cars, and concessions or indirectly via airline partners through rent and landing fees. The Jetport does not receive any funding from City of Portland taxpayers.

The precipitous drop in passengers has resulted in a significant drop in these operating revenues and our non-operating passenger facility charge revenues of \$4.39 per enplaned passenger used to pay debt service on the outstanding terminal bonds.

The \$12.162 million in CARES Act grant relief funding will provide needed short term liquidity to the Jetport and allow it to maintain operations without drawing down its unrestricted cash reserves.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Acceptance of the CARES Act grant from the FAA will provide short term fiscal relief for the Jetport to overcome pandemic related revenue losses. The grant will allow the Jetport to maintain operational readiness and be prepared to support aviation travel needs as economic activities resume throughout the country.

V. FINANCIAL IMPACT

The Portland International Jetport remains down more than 90% on passenger volumes, which has resulted in a monthly revenue loss of approximately \$1.6 million. The Jetport has reduced operating expenses and frozen non-essential capital spending in response to these revenue losses. This effort has reduced average monthly expenses and limited the Jetport's total current monthly deficit to \$1.28 million.

Acceptance of the CARES Act relief grant will allow the airport to maintain its essential operations and cover operating and debt service expenses at current levels for the next nine months. Although we will not be at pre-pandemic volumes in nine months, I anticipate each month passenger volumes and revenues will improve which will allow this funding to extend well into FY 2021.

VI. STAFF ANALYSIS AND BACKGROUND

Approval of this grant will provide needed short term fiscal relief to the Portland International Jetport as it maintains essential operations and recovers from the dramatic drop in passenger volumes due to the COVID-19 health crisis.

VII. RECOMMENDATION

Portland International Jetport staff recommends the City Council accept and appropriate this critical CARES Act grant relief funding.

VIII. LIST ATTACHMENTS

1. FAA Coronavirus Aid, Relief, and Economic Security Grant Accept and Appropriate 5.182020
2. PWM CARES Act Grant Agreement 3-23-0038-091-2020

Prepared by:

Paul Bradbury, Jetport Director

Date: 5/11/2020

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 ACCEPTING AND APPROPRIATING A
FEDERAL AVIATION ADMINISTRATION
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY GRANT**

ORDERED, that Coronavirus Aid, Relief, and Economic Security grant funding of approximately \$12,162,498 dollars from the Federal Aviation Administration (FAA) is hereby accepted by the Portland International Jetport (Jetport) for the purpose of paying the Jetport's debt obligations and operating expenses; and

BE IT FURTHER ORDERED, that the grant funding for said purpose is hereby appropriated; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Director of the Jetport to be the official representative for this FAA grant, as required by the FAA, and to execute grant documents and any other related documents necessary or convenient to carry out the intent of said documents.



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
New England Region
Connecticut, Massachusetts, Maine, New
Hampshire, Rhode Island, & Vermont

3-23-0038-091-2020

FAA ANE-600
1200 District Ave
Burlington, MA 01803

CARES Act Grant Transmittal Letter

May 11, 2020

Mr. Paul Bradbury
Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, ME 04102

Dear Mr. Bradbury:

Please find the following electronic CARES Act Grant Offer, Grant No. 3-23-0038-091-2020 for Portland International Jetport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, **no later than July 1, 2020** in order for the grant to be valid.
- c. You may not make any modification to the text, terms or conditions of the grant offer.
- d. The grant offer must be electronically signed by the sponsor's legal signatory authority and then the grant offer will be routed via email to the sponsor's attorney. Once the attorney has electronically attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR § 200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System. The terms and conditions of this agreement require you drawdown and expend these funds within four years.

An airport sponsor may use these funds for any purpose for which airport revenues may be lawfully used. CARES grant recipients should follow the FAA's Policy and Procedures Concerning the Use of Airport Revenues ("Revenue Use Policy"), 64 Federal Register 7696 (64 FR 7696), as amended by 78 Federal Register 55330 (78 FR 55330). The Revenue Use Policy defines permitted uses of airport revenue. In addition to the detailed guidance in the Revenue Use Policy, the CARES Act states the funds may not be used for any purpose not related to the airport.

With each payment request you are required to upload directly to Delphi:

- An invoice summary, even if you only paid a single invoice, and
- The documentation in support of each invoice covered in the payment request.

For the final payment request, in addition to the requirement listed above for all payment requests, you are required to upload directly to Delphi:

- A final financial report summarizing all of the costs incurred and reimbursed, and

- An SF-425, and
- A narrative report.

The narrative report will summarize the expenses covered by the CARES Act funds and state that all expenses were in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenues and incurred after January 20, 2020.

By accepting this grant, you agree to continue to employ, through December 31, 2020, at least 90 percent of the number of individuals employed by the airport as of March 27, 2020. In accordance with the employee retention grant assurance, you will provide the following reports to this office within 10 business days of the end of each reporting period:

- The number of employees employed as of March 27, 2020.
- The number of employees as of June 30, 2020.
- The number of employees as of September 30, 2020.
- The number of employees as of December 31, 2020.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once you have drawn down all funds and uploaded the required documents to Delphi, notify Julie Seltsam-Wilps by email that the grant is administratively and financially closed. Julie Seltsam-Wilps is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts.

Sincerely,



Gail Lattrell (May 11, 2020)

Gail Lattrell

Director, Airports Division

[ADO has discretion to delegate signature authority to Program Manager]



U.S. Department
of Transportation
Federal Aviation
Administration

CARES ACT AIRPORT GRANTS AGREEMENT

Part I - Offer

Federal Award Offer Date May 11, 2020

Airport/Planning Area Portland International Jetport

CARES Grant Number 3-23-0038-091-2020

Unique Entity Identifier 156061707

TO: City of Portland, ME
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Coronavirus Aid, Relief, and Economic Security Act (CARES Act or "the Act") Airports Grants Application (herein called the "Grant") dated April 27, 2020, for a grant of Federal funds at or associated with the Portland International Jetport Airport, which is included as part of this Grant Agreement; and

WHEREAS, the Sponsor has accepted the terms of FAA's Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Grant Application for the Portland International Jetport Airport, (herein called the "Grant") consisting of the following:

This Grant is provided in accordance with the CARES Act, as described below, to provide eligible Sponsors with funding to help offset a decline in revenues arising from diminished airport operations and activities as a result of the COVID-19 Public Health Emergency. CARES Act Airport Grants amounts to specific airports are derived by legislative formula.

The purpose of this Grant is to maintain safe and efficient airport operations. Funds provided under this Grant Agreement must only be used for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational and maintenance expenses or debt service payments. CARES Act Airport Grants may be used to reimburse airport operational and maintenance expenses directly related to Portland International Jetport Airport incurred no earlier than January 20, 2020. CARES Act Airport Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after April 14, 2020. Funds provided under the Grant will be governed by the same principles that govern "airport revenue." New airport development projects may not be

funded with this Grant unless and until the Grant Agreement is amended or superseded by a subsequent agreement that addresses and authorizes the use of funds for the airport development project.

NOW THEREFORE, in accordance with the applicable provisions of the CARES Act, Public Law 116-136, the representations contained in the Grant Application, and in consideration of, (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$12,162,498.
2. **Period of Performance.** The period of performance shall commence on the date the Sponsor formally accepts this agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).

The period of performance end date shall not affect, relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.

3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the CARES Act.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.
5. **Final Federal Share of Costs.** The United States' share of allowable Grant costs will be 100%.
6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Grant Agreement, the CARES Act, and the regulations, policies, standards and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor **on or before July 1, 2020**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Grant Agreement, the CARES Act or other provision of applicable law. For the purposes of this Grant Agreement, the term “Federal funds” means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Grant Agreement.
11. **System for Award Management (SAM) Registration And Universal Identifier.** Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
14. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any expense for which funds are provided under this Grant. The Sponsor will include a provision implementing applicable Buy American statutory and regulatory requirements in all contracts related to this Grant Agreement.
15. **Audits for Private Sponsors.** When the period of performance has ended, the Sponsor must provide a copy of an audit of this Grant prepared in accordance with accepted standard audit practices, such audit to be submitted to the applicable Airports District Office.
16. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse’s Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. Suspension or Debarment. When entering into a “covered transaction” as defined by 2 CFR § 180.200, the Sponsor must:

- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting the entity is not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. sub-contracts).
- C. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debar a contractor, person, or entity.

18. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

19. Trafficking in Persons.

- A. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - 2. Procure a commercial sex act during the period of time that the award is in effect; or
 - 3. Use forced labor in the performance of the award or subawards under the award.
- B. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph A of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph A.1 of this award term through conduct that is either –
 - a. Associated with performance under this award; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by the FAA at 2 CFR Part 1200.
3. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph A during this award term.
4. Our right to terminate unilaterally that is described in paragraph A of this section:
 - a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - b. Is in addition to all other remedies for noncompliance that are available to the FAA under this award.

20. Employee Protection from Reprisal.

A. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
 - a. Gross mismanagement of a Federal grant;
 - b. Gross waste of Federal funds;
 - c. An abuse of authority relating to implementation or use of Federal funds;
 - d. A substantial and specific danger to public health or safety; or
 - e. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Federal office or employee responsible for oversight of a grant program;
 - e. A court or grand jury;
 - f. A management office of the grantee or subgrantee; or
 - g. A Federal or State regulatory enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General’s office are established under 41 U.S.C. § 4712(b).

6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
21. **Employee Retention.** City of Portland, ME, owner and operator of Portland International Jetport, as a Small hub airport, agrees to continue to employ, through December 31, 2020, at least 90 percent of the number of individuals employed (after making adjustments for retirements or voluntary employee separations) by the airport as of March 27, 2020, unless this provision is specifically waived by the Secretary at the airport Sponsor's written request. The Sponsor shall provide to the FAA the number of employees employed as of March 27, 2020, within 10 business days of this Grant being awarded. Provided further, the Sponsor will report to the FAA the number of employees as of June 30, September 30, and December 31 of 2020, within 10 business days of the end of each reporting period.
22. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Grant Agreement.

SPECIAL CONDITIONS

1. **ARFF and SRE Equipment and Vehicles.** The Sponsor agrees that it will:
 - A. House and maintain the equipment in a state of operational readiness on and for the airport;
 - B. Provide the necessary staffing and training to maintain and operate the vehicle and equipment;
 - C. Restrict the vehicle to on-airport use only;
 - D. Restrict the vehicle to the use for which it was intended; and
 - E. Amend the Airport Emergency Plan and/or Snow and Ice Control Plan to reflect the acquisition of a vehicle and equipment.
2. **Equipment or Vehicle Replacement.** The Sponsor agrees that it will treat the proceeds from the trade-in or sale of equipment being replaced with these funds as airport revenue.
3. **Off-Airport Storage of ARFF Vehicle.** The Sponsor agrees that it will:
 - A. House and maintain the vehicle in a state of operational readiness for the airport;
 - B. Provide the necessary staffing and training to maintain and operate the vehicle;
 - C. Restrict the vehicle to airport use only;
 - D. Amend the Airport Emergency Plan to reflect the acquisition of the vehicle;
 - E. Within 60 days, execute an agreement with local government including the above provisions and a provision that violation of said agreement could require repayment of Grant funding; and
 - F. Submit a copy of the executed agreement to the FAA.
4. **Equipment Acquisition.** The Sponsor agrees that it will maintain Sponsor-owned and -operated equipment and use for purposes directly related to the airport.
5. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
6. **Utility Relocation in Grant.** The Sponsor understands and agrees that:

- A. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;
- B. FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and
- C. The utilities must serve a purpose directly related to the Airport.

The Sponsor's acceptance of this Offer and ratification and adoption of the Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the CARES Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Grant and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Gail Lattrell (May 11, 2020)
(Signature)

Gail Lattrell

(Typed Name)

Director

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Grant Application and incorporated materials referred to in the foregoing Offer under Part II of this Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Grant Application.

I declare under penalty of perjury that the foregoing is true and correct.

Dated

City of Portland, ME

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By:

(Typed Name of Sponsor's Authorized Official)

Title:

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Maine. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the CARES Act. The Sponsor understands funding made available under this Grant Agreement may only be used to reimburse for airport operational and maintenance expenses, and debt service payments. The Sponsor further understands it may submit a separate request to use funds for new airport/project development purposes, subject to additional terms, conditions, and assurances. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____

By:

(Signature of Sponsor's Attorney)

CARES ACT ASSURANCES**AIRPORT SPONSORS**

A. General.

1. These assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act or "the Act"), Public Law 116-136. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Grant offer by the sponsor, these assurances are incorporated into and become part of this Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. Federal Fair Labor Standards Act — 29 U.S.C. 201, et seq.
- b. Hatch Act — 5 U.S.C. 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.
- d. National Historic Preservation Act of 1966 — Section 106 - 16 U.S.C. 470(f).
- e. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- f. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et seq.
- g. Clean Air Act, P.L. 90-148, as amended.
- h. Coastal Zone Management Act, P.L. 93-205, as amended.
- i. Flood Disaster Protection Act of 1973 — Section 102(a) - 42 U.S.C. 4012a.
- j. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- k. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- l. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- m. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- n. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et seq.
- o. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- p. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et seq.
- q. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.

- r. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et seq.
- s. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- t. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et seq.
- u. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- v. Single Audit Act of 1984 — 31 U.S.C. 7501, et seq.
- w. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- x. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13788 – Buy American and Hire American
- h. Executive Order 13858 – Strengthening Buy-American Preferences for Infrastructure Projects

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.
- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).
- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).
- j. 49 CFR Part 20 – New restrictions on lobbying.

- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program .49 CFR Part 27 — Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
- m. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- n. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- o. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- p. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- q. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant

Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

7. Airport Revenues.

This Grant shall be available for any purpose for which airport revenues may lawfully be used. CARES Act Grant funds provided under this Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums.

8. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **City of Portland, ME**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

d. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
 - B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.
- e. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

11. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than \$5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.