

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 AUGUST 3, 2020 CITY COUNCIL AGENDA

The Portland City Council will hold a City Council Meeting remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday, August 3, 2020 at 4:30 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.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84394120128?pwd=QjNEa2RWY2JFU3dDbnpSMWg3KzRKQT09>

Passcode: 340626

Or iPhone one-tap :

**US: +13017158592,,84394120128#,,,,,0#,,340626# or
+13126266799,,84394120128#,,,,,0#,,340626#**

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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: 843 9412 0128

Passcode: 340626

PLEDGE OF ALLEGIANCE:

ROLL CALL:

EXECUTIVE SESSION:

The Executive Session will begin at 4:30 p.m. The City Council meeting will begin immediately after the end of the Executive Session.

Executive Session to discuss the City's legal rights and duties regarding pending litigation in FEDEQ DV004, LLC and FEDEQ DV005, LLC v. City of Portland et al., with legal counsel pursuant to 1 M.R.S. section 405(6)(E).

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the July 13, 2020 4:00 p.m. and July 13, 2020 5:30 p.m. draft City Council Meeting minutes.

CONSENT ITEMS:

Order 27-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Abdifatah Shariff Ali - Sponsored by Jon P. Jennings, City Manager

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

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

Order 28-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Rebecca Hassett - Sponsored by Jon P. Jennings, City Manager

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

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

Order 29-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Janet Bradbury - Sponsored by Jon P. Jennings, City Manager

This order authorizes the City Council to approve the transfer of \$3,000.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Janet Bradbury.

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

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

LICENSES:

COMMUNICATIONS:

Com 2-20/21 COVID-19 Universal Testing for all Portland Housing Authority residents - Sponsored by Jon P. Jennings, City Manager

Portland Director of Health and Human Services Kristen Dow will report on the ongoing testing for COVID-19 of the residents of the Portland Housing Authority sites. Detailed statistics are attached in the back-up material.

As a communication, this item requires no public comment or council action.

Com 3-20/21 Review of 2011 OccupyMaine Lincoln Park Protest - Sponsored by Danielle West-Chuhta, Corporation Counsel

Danielle West-Chuhta, Corporation Counsel, will review the sequence of events during the OccupyMaine protest in Lincoln Park in 2011. Her memo with exhibits is in the back-up material.

As a communication, this item requires no public comment or council action.

**Com 4-20/21 Update on the City of Portland Municipal Fiscal Year 2020-2021
Budget - Sponsored by Jon P. Jennings, City Manager**

The City Council's Finance Committee will continue its FY21 budget review process with a series of meetings starting on Wednesday, August 5, 2020 at 5:30 PM. The meetings will take place remotely via Zoom and can be live-streamed at www.portlandmaine.gov/livestream. The agenda materials can be found by visiting www.portlandmaine.gov/agendas. The Finance Committee will also meet remotely on Thursday, August 6 at 5:30 PM and Wednesday, August 12 at 5:30 PM. A scheduled public hearing will be held remotely during the Wednesday, September 2 Finance Committee meeting at 5:30 PM.

It is anticipated that the full Council will take up the FY21 budget as a first read on Wednesday, September 9 and second read on Monday, September 21. A budget workshop will be held on Monday, September 14.

The City is faced with unprecedented revenue losses of approximately \$12 million due to the COVID-19 pandemic. In order to reduce spending, the City immediately implemented a non-essential hiring freeze and non-essential spending freeze in the middle of March. Later in March, the City began issuing temporary furlough notices to staff whose roles were impacted by the pandemic. Throughout April and May, additional staff were temporarily furloughed to further reduce spending in light of revenues falling significantly shorter than normal. In June, additional temporary furloughs were instituted across all departments, including City leadership, and all cost of living adjustments and performance pay increases for non-union employees were frozen.

City Manager Jon Jennings had originally prepared a FY21 budget that only included a 1.8% tax rate increase generally aligned with inflation. In light of the pandemic and the State's Order that granted municipalities more time to review and approve the next year's fiscal budget, the City automatically carried over its FY20 budget on July 1 and began work on preparing a new FY21 budget with the goal of no property tax rate increase.

Despite receiving limited additional federal and State COVID-relief funds (\$2-\$3M) which will be used to cover some of our COVID related expenditures, the City's continued revenue shortfalls means service and staff cuts will be recommended in order to balance the budget. The City Manager expects to present a budget with a decrease in the overall tax rate.

Finance Director Brendan O'Connell will give a presentation to the Finance Committee on August 5 before the Committee begins its review of each City department budget.

As a communication, this item requires no public comment or council action.

RESOLUTIONS:

Resolve 3-20/21 Recommending the Marketing of City-Owned Surface Level Parking Lots at 157 Brackett Street and 176 Clark Street for Housing Development - Sponsored by Housing Committee, Councilor Jill C. Duson, Chair

The Housing Committee met on November 13, 2019 and voted unanimously to forward this item to the City Council with a recommendation for passage.

Pursuant to City Council adopted Rules for the Disposition of City-Owned and Tax-Acquired Property, City Council approval is sought to market two City-owned surface level parking lots located at 157 Brackett Street and 176 Clark Street for housing development through a Request for Proposal (RFP). Staff would then provide the Economic Development Committee and the Housing Committee with results of the marketing process for its recommendation to the City Council on a Purchase and Sale Agreement.

157 Brackett Street

The .1942 acre (8,460 sq. ft.) parcel located in the West End (erroneously referred to as West Bayside previously) area at 157 Brackett Street is an active 20-space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

176 Clark Street

The 1678 acre (7,313 sq. ft.) parcel located in the West End (erroneously referred to as West Bayside previously) area at 176 Clark Street is an active 16-space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 72-19/20 Amendment to the Portland City Code Chapter 17 Re: Facial Recognition Technology Prohibition - Sponsored by Councilor Pious Ali

Concerns about loss of privacy and civil rights matters have arisen with the advent of facial recognition technology around the world. This prohibition, based on others in the United States that have already been adopted, prohibits the use of facial recognition technology by city officials and employees and does not provide any exceptions, including for law enforcement officers.

This item must be read on two separate days. This item was given a first reading on October 21, 2019. Public comment was taken on November 4, 2019, when this item was postponed to November 18, 2019. It was then postponed to January 6, 2020, when it was postponed to June 15, 2020. On June 15, 2020, it was postponed to July 13. It was then postponed to this meeting. Public comment is not required at this meeting. Five affirmative votes are required for passage.

Order 193-19/20 Amendment to the Portland City Code Chapter 14 Re: Zoning for B-3 Downtown Business Zone - Sponsored by the Portland Planning Board, Brandon Mazer, Chair

The Planning Board met on May 12, 2020 and voted 7-0 to forward this zoning amendment to the City Council for approval.

Portland Opportunity Fund, LLC seeks a zoning text amendment to facilitate development at 385 Congress Street, which is zoned B-3 downtown business. The proposed text amendment would add congregate care facilities and intermediate care facilities as permitted uses to the B-3 zone, as well as to the B-3b and B-3c zones, which share the same list of permitted uses.

This item was given a first reading on June 1, 2020. At the June 15 Council meeting, after public comment was taken, it was postponed to the July 13 meeting. Public comment is not required at this meeting. Staff is requesting that this item be referred back to the Planning Board, to consider a proposal from the developer for a new use of a "continuing care facility." Five affirmative votes are required for passage.

Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair

On May 13, 2020, the Housing Committee voted (2-1) to forward this item to the City Council with a recommendation for passage.

On December 16, 2019 the Rental Housing Advisory Committee (RHAC) voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees.

The RHAC is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are also generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee.

At the October 28, 2019 meeting of the RHAC, members of the Committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant; landlords who collect application fees from multiple applicants and do not conduct background checks; and landlord who do not supply copies of reports to applicants who are not selected as tenants. During multiple meetings, the Committee discussed the concern that application fees price low and moderate income tenants out of the Portland rental market.

Members of the Committee proposed language banning fees phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

This item must be read on two separate days. It received its first reading on June 15, 2020. It received a second reading on July 13 and was postponed to this meeting. Staff is requesting that this item be passed as an emergency; Amendment 3 in the back-up material adds emergency passage to the order. Seven affirmative votes are required for passage as an emergency after public comment.

Order 11-20/21 of Discontinuance of a Portion of Emery Street - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair

The Economic Development Committee met on May 27, 2020 and voted 3-0 (with Councilor Thibodeau recusing himself due to a conflict) to forward this to the City Council for approval.

The process for discontinuing this portion of Emery Street is dictated by state statute. On July 13, 2020, the Council voted in support of discontinuance, and the Order of Discontinuance was posted in the Clerk's Office and a Notice of Order of Discontinuance was sent to abutter.

At this August 3, 2020 meeting, the Public Hearing will be held on Order of Discontinuance.

A Final Vote on Order of Discontinuance will be requested on August 31, 2020.

This discontinuance is contemplated in the land exchange agreement with J.B. Brown & Sons approved by the Council on June 15, 2020. If approved, ownership of the portion of Emery Street that will be discontinued will revert to the abutter, J.B. Brown & Sons, and be incorporated into its development and construction of the Veteran's Administration (VA) facility with parking garage. Time is of the essence with respect to the construction of that project.

Public comment only will be taken at this meeting.

Order 13-20/21 Amending the Downtown Transit Oriented Development and Omnibus Tax Increment Financing District to Make 83 Middle Street/160 Newbury Street an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair

City Council approval is needed to amend the Downtown Transit Oriented Development and Omnibus Tax Increment Financing (TIF) District by removing 83 Middle Street and 160 Newbury Street from the District for those properties to be their own free-standing Affordable Housing TIF District to support a proposed affordable housing project. In addition, housekeeping technical revisions are also included.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 14-20/21 Amending the Bayside Tax Increment Financing District to Make 337 Cumberland Avenue an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair

City Council approval is needed to amend the Bayside Tax Increment Financing (TIF) District to establish an Affordable Housing TIF District for the 337 Cumberland Avenue Affordable Housing Project. TIF financial assistance will assist with the construction of a six-story structure with 60 mixed income rental units in a mixed use building, which would include expanded space for Youth and Family Outreach to increase childcare spots from 58 to 107.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 15-20/21 Designating the 83 Middle Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Staff requests an amendment to the utilization rate in the order, attached in the back up material, because TIF values have been revised since the first read; adjustments made include the value of land donated to the developer and added to the district as well as the underwriter's recommendation to reduce the value of captured revenue returned to the developer from 75% to 50%. The numbers that follow reflect this change.

Community Housing of Maine (CHOM) is proposing to construct a five-story building with 50 units of affordable rental housing for residents age 55+ and is requesting City financial assistance in the form of an Affordable Housing Tax Increment Financing (AHTIF) District and Credit Enhancement Agreement (CEA) to assist with project operating costs.

The project will include 23 studios, 23 one-bedroom and 4 two-bedroom apartments. 40% (20 units) would be available for rent to households earning 50% of the area median income (AMI). 60% (30 units) would be available to households earning 60% AMI. The planned development will include an 11 unit preference for people experiencing homelessness. The units will have affordability restrictions through the AHTIF Program.

CHOM has received 3 forms of financial assistance for the proposed project, including \$330,000 through the Affordable Housing Development Program (HOME and Housing Trust funds); \$200,000 in CDBG funds and an Option to Lease Agreement for City-owned property at 83 Middle St. (Option expires 06/30/2021; option payment \$1.00; ground lease term 99 years and aggregate lease payment of \$99.00).

If approved, the AHTIF financing would be provided through a CEA at 50% of the increased taxable value, currently estimated at a 30-year annual average of \$51,976 with an estimated total of \$1,559,287 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$51,976, with an estimated total of \$1,559,287, will be general fund revenue. The proposed building would be taxable on this city-owned property, with an estimated annual assessment of \$3,465,000 and estimated annual tax of \$80,769.15 at the current millage rate.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 16-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Middle Street Housing Partners, L.P. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 15-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 17-20/21 Designating the 200 Valley Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 60 apartment units on a site they own located at 200 Valley Street and is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with the cost of construction of the project.

The project will include 11 studios, 25 one-bedroom, 14 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. The units will have affordability restrictions through the AHTIF Program.

The site is in the B-2 zone, and is within 100' of the Western Promenade, requiring review by Historic Preservation Staff. Staff found; the development is not located in a historic district, historic landscape district or City designated landmark; the development is adjacent to a historic landscape district, but not adjacent to a historic district or a historic City designated landmark.

AHDC has requested two forms of financial assistance: \$595,000 in Affordable Housing Development funding and AHTIF financing. If approved, the AHTIF financing would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$136,409 with an estimated total of \$4,092,269 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$45,470, with an estimated total of \$1,364,090, will be general fund revenue. The proposed project will be taxable with an estimated annual assessment of \$6.2 million and estimated annual tax of \$144,500 at the current FY20 millage rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with MaineHousing contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 18-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Avesta Valley Street LP - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 17-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 19-20/21 Designating the 337 Cumberland Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

During a meeting held on June 16, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (APHDC) is proposing to construct 60 rental units within a six-story mixed-use building on a site currently owned by Youth and Family Outreach (YFO), who will lease the site for 90 years to 337 Cumberland Avenue, LP who will be the development owner. 337 Cumberland Avenue is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with project operating costs.

The project will include 20 studios, 15 one-bedroom, 15 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. 10% or 6 of the units will be set aside for families residing in a Portland shelter. The units will have affordability restrictions.

PHDC has requested two forms of financial assistance, \$500,000 in Affordable Housing Development funding and Affordable Housing Tax Increment Financing. If approved, the AHTIF financing would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$109,900 with an estimated total of \$3,296,995 in captured revenue returned to the developer over the term of the district, to off-set project operating costs. The remaining 25% of the increased taxable value, currently estimated at a 30 year annual average of \$36,633, with an estimated total of \$1,098,998 will be general fund revenue. The proposed project will be taxable with an estimated annual assessment of \$4.9 million and estimated annual tax of \$114,219 at the current FY20 millage rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with MaineHousing contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 20-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with 337 Cumberland Avenue, LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

During a meeting held on June 16, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 19-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 21-20/21 Designating the 577 Washington Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHCD) is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at 577 Washington Avenue (Washington Gardens) to a project-based voucher funding platform. PHDC is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with the cost of construction of the project.

The development district will include 100 units of low income housing within 15 two-story residential buildings. There are currently sixty (60) studio, thirty-six (36) one-bedroom, and four (4) two-bedroom units. Sixty percent (60%) or sixty (60) of the units will be available to households earning 50% of the area median income. Forty percent (40%) or forty (40) of the units will be available to households earning 60% of the area median income. The units will have affordability restrictions through the Affordable Housing TIF Program.

PHDC has requested three forms of financial assistance including \$400,000 from the Affordable Housing Development Program, \$184,150 received through the CDBG Program and AHTIF.

If approved, the AHTIF would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$190,500 with an estimated total of \$5,714,987 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$63,500 with an estimated total of \$1,904,996, will be general fund revenue.

The proposed project will be taxable, with an estimated annual assessment of \$7.9 million and estimated annual tax of \$184,149 at the current FY20 millage rate.

This project has received 9% Low Income Housing Tax Credit and tax-exempt debt from MaineHousing.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

Order 22-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Washington Gardens LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 21-20/21 above.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

Order 23-20/21 Appropriating \$97,545 in Home Investment Partnership Program Funds and up to \$497,455 in Housing Trust Funds to Avesta Valley Street LP RE: 200 Valley Street - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

The Housing Committee met on June 10, 2020 and voted unanimously (3 - 0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 60 apartment units on a site it owns located at 200 Valley Street. Forty-eight (48) units will have income restrictions.

AHDC has requested two forms of financial assistance including \$595,000 from the Affordable Housing Development (AHD) Program (up to \$97,545 in HOME funds and up to \$497,455 in Housing Trust Funds, HTF) at 0% interest rate loan, deferred for 30 years. A separate Affordable Housing Tax Increment Financing request is being consider under Order 17 -20/21. This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing.

Total AHD request of \$595,000/unit = \$9,916.66

Total AHD request of \$595,000/affordable unit = \$12,395.83

AHDC plans to apply for \$206,921 in City of Portland and Maine Medical Center's Healthy Neighborhoods Funding. If successful, these funds could be used in lieu of an equal amount of HOME/HTF subsidy.

The project will include 11 studios, 25 one-bedroom, 14 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. The units will have affordability restrictions.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 24-20/21 Appropriating Up To \$500,000 in Housing Trust Funds to 337 Cumberland Avenue, LP RE: 337 Cumberland Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on June 10, 2020 and voted (2 - 0) (Councilor Ali abstained) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHDC) is proposing to construct 60 apartment units on a site located at 337 Cumberland Avenue. Forty-eight (48) units will have income restrictions.

PHDC has requested two forms of financial assistance including \$500,000 from the Affordable Housing Development (AHD) Program and Affordable Housing Tax Increment Financing being considered separately under Orders 19 - 20/21. Staff is recommending the AHD request be funded from the Housing Trust Fund (HTF).

Total AHD of \$500,000/unit = \$8,333.33; Total AHD of \$500,000/affordable unit = \$10,416.66

Portland Housing Development Corporation is proposing the redevelopment of 337 Cumberland Avenue by providing a newly constructed six-story structure containing 60 mixed-income units in a mixed-use building. The site is currently owned by Youth and Family Outreach (YFO), who will lease it for 90 years to 337 Cumberland Avenue, LP who will be the development owner. The site consists of an existing building containing a restaurant and a chapel that provides space for YFO to offer early childhood education and other supportive services for 58 children. The chapel will be updated and the building will be demolished. The first floor of the new building will provide expansion space for YFP that will allow for an increase in childcare spots from 58 to 107, floors two through five will be residential housing. Three Thirty-Seven Cumberland would attempt to secure Project Based Housing Choice Vouchers from PHA for some of the 50% AMI units.

The project will include 20 studios, 15 one-bedroom, 15 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing contingent upon a reduction in operating costs through a tax increment financing program and subsidized development funding through the Affordable Housing Development Program.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

Order 25-20/21 Appropriating \$400,000 in HOME Investment Partnership Program Funds to Washington Gardens, LP RE: 577 Washington Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on June 10, 2020 and voted unanimously (3 - 0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHDC) is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at 577 Washington Avenue (Washington Gardens).

PHDC has requested three forms of financial assistance including \$400,000 from the Affordable Housing Development Program, \$184,150 from the CDBG Program (approved by the City Council in May, 2020) and an Affordable Housing Tax Increment Financing request being considered separately under Orders 21 - 20/21.

Total HOME request of \$400,000/unit = \$4,000

Total HOME request of \$400,000/affordable unit = \$4,000

There are currently 60 studios, 36 one-bedroom, and 4 two-bedroom units. 60% or 60 of the units will be available to households earning 50% of the area median income (AMI). 40% or 40 of the units will be available to households earning 60% AMI.

This project has received 9% Low Income Housing Tax Credit and tax-exempt debt from Maine Housing.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

Order 26-20/21 Amendment to the Portland City Code Chapter 29 Vegetation Re: Heritage Tree Protection Ordinance and Tree Trust - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair

The proposed amendment designates certain large trees located on private property as heritage trees because of the important ecological services they provide the residents of the City of Portland. In order to preserve these benefits, the amendment requires property owners who wish to remove such a tree to receive a permit and comply with the required conditions before proceeding.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 30-20/21 Setting Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 33 Re: An Act to Increase the Minimum Wage in Portland - Sponsored by Katherine Jones, City Clerk

This order sets the public hearing on Citizen Initiative Amendment Chapter 33 of the Portland City Code, called An Act to Increase Minimum Wage in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 31-20/21 Setting Public Hearing on a Citizen Initiative Amendment to Chapter 17 of the Portland City Code Re: An Act to Ban Facial Surveillance by Public Officials in Portland - Sponsored by Katherine L. Jones, City Clerk

This order sets the public hearing on a Citizen Initiative Amendment to Chapter 17 of the Portland City Code, An Act to Ban Facial Surveillance by Public Officials in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 32-20/21 Setting Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 2 Re: An Act to Implement a Green New Deal for Portland - Sponsored by Katherine L. Jones, City Clerk

This orders set the public hearing on Citizen Initiative Amendment to Chapter 2 of the Portland City Code, An Act to Implement a Green New Deal for Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 33-20/21 Setting a Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Protect Tenants - Sponsored by Katherine L. Jones, City Clerk

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 6 of the Portland City Code, An Act to Protect Tenants, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 34-20/21 Setting a Public Hearing on Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Restrict Short Term Rentals in Portland - Sponsored by Katherine L. Jones, City Clerk

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 6 of the Portland City Code, An Act to Restrict Short Term Rentals in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 35-20/21 Setting Public Hearing on Citizen Initiative Amendment to the Portland City Code Chapter 35 Re: No Cannabis Cap Campaign - Sponsored by Katherine L. Jones, City Clerk

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 35 of the Portland City Code, called No Cannabis Cap Campaign, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

Order 36-20/21 Approving the Ninth Amendment to the 52 Hanover Street Purchase and Sale Agreement - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair

On July 21, 2020, the Council's Economic Development Committee reviewed this proposed Ninth Amendment, held a public hearing, and voted unanimously (4-0) to forward this to the City Council with a recommendation of approval.

Thomas E. Watson, now manager of 52 Hanover LLC, was selected through a public bid process to redevelop two properties located at 44/52 and 82 Hanover Street properties, the latter of which is complete and fully leased.

44/52 Hanover Street Purchase and Sale Agreement. A condition of the 44/52 Hanover Street Purchase and Sale Agreement included the requirement to redevelop the existing 18,000 square foot former Public Works Fleet Services Metal Building into maker space. See the attached Purchase and Sale Agreement.

Mr. Watson's Proposal is to demolish the existing Fleet Services Building to construct upwards of 171 residential apartments with 8,000 square feet of commercial retail space with courtyards. This proposal does not require a rezoning nor requests any City financial investment through the City Housing Trust Fund or TIF CEA financial assistance. Attached is Mr. Watson's Proposal entitled "52 Hanover, LLC, Port Property Management, Executive Summary".

Please find the attached proposed Ninth Amendment to the 44/52 Hanover Street Purchase and Sale Agreement to support the proposed Purchase and Sale Agreement Amendments, which includes a condition to construct the required number of Inclusionary Zoning units in the proposed project, rather than pay the fee in lieu.

Five affirmative votes are required for passage after public comment.

Order 37-20/21 Setting an Election Date on Citizen Initiative Amendment to the Portland City Code Chapter 33 Re: An Act to Increase Minimum Wage in Portland - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative that increases the Portland minimum wage. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 38-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 17 Re: An Act to Ban Facial Surveillance by Public Officials in Portland - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative called An Act to Ban Facial Surveillance in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 39-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 2 Re: An Act to Implement a Green New Deal for Portland - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative called An Act to Implement a Green New Deal in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 40-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Protect Tenants - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative called An Act to Protect Tenants. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 41-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Restrict Short Term Rentals in Portland - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative called An Act to Restrict Short Term Rentals in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 42-20/21 Setting Election Date on Citizen Initiative Amendment to the Portland City Code Chapter 35 Re: No Cannabis Cap Campaign - Sponsored by Katherine L. Jones, City Clerk

This item sets an election date for a Citizen Initiative called No Cannabis Cap Campaign. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

Order 43-20/21 Accepting and Appropriating up to \$50,000 in Donations for the Andrews Square Realignment Project - Sponsored by Jon P. Jennings, City Manager

This item accepts and appropriates donations of up to \$50,000 for Andrews Square realignment project. The Department of Public Works (DPW) has received Capital Improvement Plan (CIP) funding for an intersection realignment project at Andrews Square (intersection of Clark Street, Pine Street, West Street). Various residents of the Andrews Square neighborhood and members of the West End Neighborhood Association are donating private funds to incorporate various landscaping/hardscaping features into the project. This funding would supplement city CIP funding, as well as a \$20,000 Caring Community Grant from Maine Medical Center, for these landscaping and hardscaping improvements (plantings, landscape lighting, benches, hardscape material for crosswalks). The private funding group has been working in concert with staff in the Department of Public Works.

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

AMENDMENTS:

Order 44-20/21 Amendment to Portland City Code Chapter 14 Re: Zoning Addition to the B-7 Mixed Development District Zone - Sponsored by the Portland Planning Board, Brandon Mazer, Chair

At a public hearing on June 9, 2020, the Planning Board unanimously found (7-0) that a proposed zoning text amendment to Division 17 Section 14-295 of the City's Land Use Code (adding veterinary hospitals and clinics without outdoor kennels as permitted uses within the B-7 zone) is consistent with the Comprehensive Plan for the City of Portland. The Planning Board recommended this action to the City Council.

Earle W. Noyes & Son, Inc., seeks a zoning text amendment to allow a prospective tenant to site their veterinary practice at 191 Marginal Way, which is zoned B-7 mixed development district. The proposed text amendment would add veterinary hospitals and clinics (provided there is no outdoor kennel) as permitted uses to the B-7 zone.

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

Order 45-20/21 Amendment to Chapter 5 Re: Restricting Off-Leash Dogs in Baxter Woods - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair

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

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

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

Order 46-20/21 Amendment to Portland City Code Chapter 12 Re: Repeal of Single-use Carry-out Bag Ordinance - Sponsored by the Traffic and Sustainability Committee, Councilor Spencer Thibodeau, Chair

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

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

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

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

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

CITY OF PORTLAND

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

REMOTE JULY 13, 2020 SPECIAL CITY COUNCIL AFTERNOON AGENDA

The Portland City Council will hold a City Council Meeting remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday, July 13, 2020 at 4:00 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403A, 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.

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

Please click the link below to join the webinar:

**<https://us02web.zoom.us/j/82816940000?pwd=bUtDUWFoUGY2VUpyYWZxTFIveW00QT09>
Password: 632179**

Or iPhone one-tap :

**US: +13126266799,,82816940000#,,,0#,,632179#
or +19292056099,,82816940000#,,,0#,,632179# Or
Telephone:**

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

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: 828 1694 0000

Password: 632179

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mayor Snyder called the meeting to order at 4:00 p.m. (All Councilors Present).

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the draft City Council Minutes of June 15, 2020, June 22, 2020 and June 29, 2020 City Council meetings.

Motion was made by Councilor Ray and seconded by Councilor Chong for approval of the City Council Minutes of June 15, 2020, June 22, 2020 and June 29, 2020 City Council meetings. Passage 9-0.

LICENSES:

Order 1-20/21 Granting Municipal Officers' Approval of Island Lobster Company Inc. dba Island Lobster Company. Application for a Class I FSE with Outdoor Dining on Private Property at 20 Island Avenue - Sponsored by Jon P. Jennings, City Manager

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

Order 2-20/21 Granting Municipal Officers' Approval of The Porthole Restaurant & Pub dba Porthole Restaurant. Application for a Combined Entertainment License at 20 Custom House Wharf - Sponsored by Jon P. Jennings, City Manager

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

Order 3-20/21 Granting Municipal Officers' Approval of Rising Tide Brewing Company, LLC dba Rising Tide Brewing Company. Application for a Combined Entertainment License at 103 Fox Street - Sponsored by Jon P. Jennings, City Manager

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

Order 4-20/21 Granting Municipal Officers' Approval of Pulido Enterprises, Inc. dba Portland Lobster Company. Application for a Combined Entertainment License at 184 Commercial Street - Sponsored by Jon P. Jennings, City Manager

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

Order 5-20/21 Granting Municipal Officers' Approval of Falafel Mafia dba Nura. Application for a Class III & IV FSE with Outdoor Dining on Public Property at 1 Monument Way - Sponsored by Jon P. Jennings, City Manager

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

Order 6-20/21 Granting Municipal Officers' Approval of Custom House Mariner Fleet, LLC dba Casablanca Cruises. Application for a Combined Entertainment License at 18 Custom House Wharf - Sponsored by Jon P. Jennings, City Manager

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

Order 7-20/21 Granting Municipal Officers' Approval of Bowl Portland, LLC dba Bayside Bowl. Application for a Combined Entertainment License at 58 Alder Street - Sponsored by Jon P. Jennings, City Manager

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

Order 8-20/21 Granting Municipal Officers' Approval of Marshview LLC dba Brewery Extrava. Application for a Combined Entertainment License at 66 Cove Street - Sponsored by Jon P. Jennings, City Manager

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

Order 9-20/21 Granting Municipal Officers Approval of Cape Seafood LLC dba Luke's Lobster Seafood Company. Application for a Combined Entertainment License at 60 Portland Pier - Sponsored by Jon P. Jennings, City Manager

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

COMMUNICATIONS:

Com 1-20/21 Transition of Sullivan Gym Shelter Guests - Sponsored by Jon P. Jennings, City Manager

Department of Health and Human Services Director Kristen Dow reported that the Social Services Division and Milestone Recovery was reintegrating guests currently at the gym into the City's shelters, assisted by City staff, Preble Street, MaineHousing, and the DHHS Commissioner's Office. The transfer would be complete by July 14, 2020. Ms. Dow responded to Councilor Chong's question regarding funding from Maine Housing, saying she was working with MaineHousing on that..

- City of Portland Oxford Street Shelter Operations will absorb 42 individuals in total:
 - 26 will be males going to the Expo; and
 - 16 will be females going to Oxford Street Shelter.
- 7 individuals will be going to Milestone Recovery.
- 1 Individual will go to Florence House.

UNFINISHED BUSINESS:

Order 203-19/20 Designating the 104 Grant Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

Motion was made by Councilor Ray and seconded by Councilor Ali for passage. Passage 5-3 (Chong absent, Cook, Ali, Ray opposed).

Motion to reconsider was made by Councilor Duson and seconded by Councilor Mavodones for passage. Passage 9-0.

Motion previously made by Councilor Ray and seconded by Councilor Ali for passage. Passage on reconsideration 6-3 (Cook, Ali, Ray).

Order 204 -19/20 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Watson Renewal Grant LLC - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 6-3 (Cook, Ali, Ray opposed).

Order 205-19/20 Approving an Agreement between the Maine Department of Transportation and Portland Re: Improvements to Stevens Avenue - Sponsored by Jon P. Jennings, City Manager

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

Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair

Motion to postpone to October 5, 2020 was made by Councilor Duson and seconded by Councilor Thibodeau for passage. Motion to amend to postpone to August 3, 2020 from Councilor Ray, seconded by Councilor Duson, then motion to amend withdrawn.

Motion changed to postpone to August 3, 2020 was made by Mayor Snyder and seconded by Councilor Duson for passage. Passage 9-0.

ORDERS:

Order 10-20/21 Extending the Emergency Proclamation - Sponsored by Mayor Kate Snyder

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

Order 11-20/21 of Discontinuance of a Portion of Emery Street - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair

Councilor Thibodeau said his employer had done work for the developer of this project and he would recuse himself from the item's vote. Motion was made by Councilor Costa and seconded by Councilor Ray for passage. Passage 8-0 (Thibodeau recused).

Order 12-20/21 Accepting and Appropriating the Keep Maine Healthy 2020 Municipal COVID-19 Awareness Campaign Grant of \$1,884,960 - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

Motion was made by Councilor Ali and seconded by Councilor Ray to adjourn. Passage 8-0 (Thibodeau absent) at 6:37 P.M.

A TRUE RECORD.

Nancy English, Paralegal

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

CITY OF PORTLAND

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

REMOTE JULY 13, 2020 SPECIAL CITY COUNCIL EVENING MEETING MINUTES

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday July 13, 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.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82978458395?pwd=eEpSa1lqYmx5NC95YWJ0TXhTZi9EZz09>

Password: 140430

Or iPhone one-tap :

**US: +13126266799,,82978458395#,,,0#,,140430#
or +19292056099,,82978458395#,,,0#,,140430# Or**

Telephone:

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

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: 829 7845 8395

Password: 140430

ROLL CALL:

Mayor Snyder called the meeting to order at 6:42 P.M. (All Councilors Present).

ANNOUNCEMENTS:

RESOLUTIONS

⋮

Resolution 1-20/21 Establishing a Steering Committee to Develop a Community Vision Statement and Accompanying Initial Recommendation in Response to Systemic Racism - Sponsored by Mayor Kate Snyder.

Motion from Councilor Thibodeau, seconded by Councilor Ray, to amend by adding language from Councilor Thibodeau in Amendment 1 in the back up material. Councilor Thibodeau added “and June 2, 2020” after June 1, 2020 in the amendment to his original motion.

Passage: 9-0

Motion from Councilor Ray, seconded by Councilor Chong, to amend by adding language from Councilor Ray in Amendment 2 in the back up material.

- Motion to amend Amendment 2 from Councilor Ali, seconded by Councilor Ray, with additional language from Councilor Ali concerning additional committee qualifications.
- Motion to withdrawn amendment to amendment from Councilor Ali.
- Withdrawn amendment to the amendment re-submitted including new language from Councilor Ali adding “who are doing racial equity work” and “members of the faith community and youth” to the Be It Further Ordered paragraph beginning, “that the Racial Equity Steering Committee...”.
- Motion to Call the Question from Councilor Cook, seconded by Councilor Mavodones. Passage: 9-0.

Amendment 2 with additional language from Councilor Ali added to original motion. Passage 7-2 (Mavodones, Snyder).

Motion from Councilor Ali, seconded by Councilor Cook, to amend by adding language from Councilor Ali in Amendment 3 in the back up material.

- Motion from Councilor Thibodeau, seconded by Councilor Mavodones, to amend the amendment with revisions to the language.
- Motion withdrawn.
- Motion resubmitted with the addition of the word “independent” before “third-party” in the amendment.
- Motion withdrawn.
- Motion from Councilor Cook seconded by Councilor Duson to add the following paragraphs with revisions in red, as well as the original Whereas paragraphs in Amendment 3:
 - BE IT FURTHER RESOLVED , that the Mayor and City Council , do hereby request that the City Manager appoint **an independent** third - party **to conduct a thorough** review of the **June 1st into June 2nd protests including the** City's response plan for protests and large demonstrations,

addressing policing actions **of all** responding law enforcement agencies and make a full report of the same to the City Council.

BE IT Further RESOLVED , that the Mayor and the Council are in no way indicting the Portland Police Department, but the purpose of this resolve is to establish a full picture of events and response to the unprecedented protests, to learn from these events, build trust, and be transparent with the communities affected and our community at large.

Amendment 3 with additional language above added by Councilor Ali to original motion. Passage of Amendment 3 as amended 9-0.

Motion from Councilor Mavodones, seconded by Mayor Snyder, to postpone as amended to August 3, 2020. Motion withdrawn.

Motion from Councilor Mavodones, seconded by Mayor Snyder, to postpone as amended to August 3, 2020. Failed 3-6 (Cook, Ali, Costa, Ray, Thibodeau and Chong).

Passage as amended: 8-1 (Mavodones).

UNFINISHED BUSINESS:

Motion from Councilor Costa, seconded by Councilor Mavodones, to continue deliberations after 10:00 p.m.. Passage 6-3 (Mavodones, Thibodeau and Snyder).

Order 72-19/20 Amendment to the Portland City Code Chapter 17 Re: Facial Recognition Technology Prohibition - Sponsored by Councilor Pious Ali

Motion from Councilor Ali, seconded by Councilor Mavodones, to postpone to December 2, 2020. Motion withdrawn.

Motion from Councilor Duseon, seconded by Councilor Mavodones, to postpone to August 3, 2020. Passage 6-3 (Cook, Ali, Ray).

Order 12-20/21 Accepting and Appropriating the Keep Maine Healthy 2020 Municipal COVID-19 Awareness Campaign Grant of \$1,884,960 - Sponsored by Jon P. Jennings, City Manager

Motion to approve from Councilor Costa, seconded by Councilor Ali. Passage 9-0.

Order 193-19/20 Amendment to the Portland City Code Chapter 14 Re: Zoning for B-3 Downtown Business Zone - Sponsored by the Portland Planning Board, Brandon Mazer, Chair

Motion from Councilor Mavodones, seconded by Mayor Snyder, to postpone to August 3, 2020. Passage 9-0.

ORDERS:

Order 13-20/21 Amending the Downtown Transit Oriented Development and Omnibus Tax Increment Financing District to Make 83 Middle Street an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair

This is a first reading.

Order 14-20/21 Amending the Bayside Tax Increment Financing District to Make 377 Cumberland Avenue an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair

This is its first reading.

Order 15-20/21 Designating the 83 Middle Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

This is a first reading.

Order 4-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Middle Street Housing Partners, L.P. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

This is a first reading.

Order 17-20/21 Designating the 200 Valley Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair

This is a first reading.

Order 18-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Avesta Valley Street LP - Sponsored by the

Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

This is a first reading.

Order 19-20/21 Designating the 337 Cumberland Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

This is a first reading.

Order 5-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with 337 Cumberland Avenue, LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

This is a first reading.

Order 21-20/21 Designating the 577 Washington Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.

This is a first reading.

Order 5-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Washington Gardens LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

This is a first reading.

Order 23-20/21 Appropriating \$97,545 in Home Investment Partnership Program Funds and up to \$497,455 in Housing Trust Funds to Avesta Valley Street LP RE: 200 Valley Street - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

This is a first reading.

Order 24-20/21 Appropriating Up To \$500,000 in Housing Trust Funds to 337 Cumberland Avenue, LP RE: 337 Cumberland Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

This is a first reading.

Order 25-20/21 Appropriating \$400,000 in HOME Investment Partnership Program Funds to Washington Gardens, LP RE: 577 Washington Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair

This is a first reading.

AMENDMENTS:

Order 26-20/21 Amendment to the Portland City Code Chapter 29 Vegetation Re: Heritage Tree Protection Ordinance and Tree Trust - Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair

This is a first reading.

Motion was made by Councilor Costa, seconded by Councilor Chong, to adjourn.
Passage 9-0 at 11:50 P.M.

A TRUE RECORD.

Nancy English, Paralegal

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 21, 2020

SUBJECT: Order 27-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Abdifatah Shariff Ali - Sponsored by Jon P. Jennings, City Manager

SPONSOR: Jon P. Jennings, City Manager

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

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

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Ali, Abdifatah Shariff forfeiture 3.16.2020
2. AF_Ali

Prepared by:

Date: 7/21/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

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

ORDERED, that the City Council hereby accepts \$2,540.00 in forfeited assets in the case of State of Maine vs. Abdifatah Shariff Ali from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached “Approval of Transfer.”

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-19-4867

[illegible]

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

[illegible]

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WHEREFORE, the Portland City Council does hereby approve of the transfer of the portion of the Defendant *In Rem* #1, namely \$2,540.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on August 3, 2020.

Mayor
(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
January 13, 2020

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

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

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

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

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

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

Dear Chief Clark:

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

Please inform the municipal officers that:

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Johanna Gauvreau for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-19-4867

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

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and §5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem* #1 namely \$2,540.00 U.S. Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant(s) *In Rem* #1 to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 21, 2020

SUBJECT: Order 28-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Rebecca Hassett - Sponsored by Jon P. Jennings, City Manager

SPONSOR: Jon P. Jennings, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

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

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Hassett, Rebecca forfeiture 3.16.2020
2. AF_Hassett

Prepared by:

Date: 7/21/2020

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts \$620.00 in forfeited assets in the case of State of Maine vs. Rebecca Hassett from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached “Approval of Transfer.”

**STATE OF MAINE
Cumberland, SS**

**UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-19-5662**

State of Maine

v.

**Rebecca Hassett,
Defendant**

And

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

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

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem #1*, namely \$620.00 U.S. Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the portion of the Defendant *In Rem #1*, namely \$620.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on August 3, 2020.

Dated: _____

Mayor
(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



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

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

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

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

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

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

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

Dear Chief Clark:

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

Please inform the municipal officers that:

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

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

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

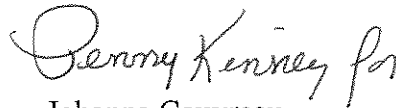
forfeiture is not guaranteed and both the municipal legislative body and the law enforcement agency involved are **cautioned** that they **should not encumber** funds or property until a Final Order granting them lawful title to the property is delivered to them;

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Penny Kenney for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-19-5662

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

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and §5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem* namely \$620.00 U.S. Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 21, 2020

SUBJECT: Order 29-20/21 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Janet Bradbury - Sponsored by Jon P. Jennings, City Manager

SPONSOR: Jon P. Jennings, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order authorizes the City Council to approve the transfer of \$3,000.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Janet Bradbury.

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

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Bradbury, Janet forfeiture 8.3.2020
2. J_Bradbury

Prepared by:

Date: 7/21/2020

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that the City Council hereby accepts \$3,000.00 in forfeited assets in the case of State of Maine vs. Janet Bradbury from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached “Approval of Transfer.”

**STATE OF MAINE
Cumberland, SS**

**UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-20-1995**

State of Maine

v.

**Janet Bradbury,
Defendant**

And

**\$3,000 U.S. CURRENCY
Defendant In Rem**

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

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem*, namely \$3,000.00.00 U.S. Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the portion of the Defendant *In Rem*, namely \$3,000.00, to the City of Portland, Maine pursuant to 15 M.R.S. §5824(3) and §5826(6) on August 3, 2020.

Dated: _____

Mayor
(Impress Legislative Body Seal Here)

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
July 15, 2020

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

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

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

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

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

RE: State of Maine vs. Janet Bradbury
Cumberland County Unified Criminal Court Doc. No. CR-20-1995
Criminal Forfeiture
Required Vote of Municipal Officers/Approval of Transfer of Forfeiture Assets

Dear Chief Clark:

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

Please inform the municipal officers that:

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Johanna Gauvreau for".

Johanna Gauvreau
Assistant Attorney General
CRIMINAL DIVISION

Enclosure

STATE OF MAINE
Cumberland, ss

UNIFIED CRIMINAL COURT
Docket No. CR-20-1995

State of Maine	}	
	}	City of Portland
v.	}	Approval of Transfer
	}	15 M.R.S. §5824(3) and §5826
Janet Bradbury,	}	
Defendant;	}	
	}	
And	}	
	}	
\$3,000.00 U.S. Currency	}	
Defendant(s) In Rem	}	

NOW COMES the City of Portland, Maine, by and through its legislative body, the City Council, and does hereby grant approval pursuant to Section 5824(3) and §5826(6) of Title 15 of the Maine Revised Statutes, to the transfer of any portion of the above captioned Defendant *In Rem* namely \$3,000.00 U.S. Currency, on grounds that the City of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the Portland City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City of Portland, Maine pursuant to 15 M.R.S. § 5824(3) and §5826(6) as approved on _____ 2020.

Mayor

(Impress municipal legislative body seal here)



Health & Human Services Department
Kristen Dow, Director

MEMORANDUM

TO: Jon P. Jennings, City Manager

FROM: Kristen Dow, Health and Human Services Director

DATE: July 29th, 2020

SUBJECT: COVID-19 Universal Testing - Portland Housing Authority

Portland Housing Authority with the City of Portland's Public Health Division, Northern Light - Mercy Hospital, Greater Portland Health, Catholic Charities, Maine Immigrant Rights Coalition, Maine Department of Health and Human Services and the Maine Center for Disease Control and Prevention have been providing COVID-19 nasal swab testing to Portland Housing Authority residents. The plan is to have all PHA sites scheduled for testing. Sites that have been tested to date are as follows:

Sagamore Village:

194 households, 479 people (youth: 99 age 0-10, 89 age 11-20)
Languages spoken other than English: Khmer 22, Vietnamese 9, Cantonese 4, Mandarin 1, Arabic 28, Dari 1, Sudanese Arabic 2, Somali 4, Kinyarwanda 3, French 2, Spanish 4
Date/time of testing: 7/15/2020, 4:00pm-7:00pm
Tests administered: 100

Harbor Terrace:

112 households, 129 people (all elderly and disabled)
Languages spoken other than English: Vietnamese 6, Khmer 1, Arabic 3, French 2, Acholi 1, Somali 1, Polish 1, Sudanese Arabic 2
Date/time of testing: 7/21/2020, 1:30-3:30
Tests administered: 50

Riverton Park:

112 Households, 531 people (youth: 125 age 0-10, 190 age 11-20)
Languages spoken other than English: Somali 30, Arabic 21, Acholi 2, Khmer 3, Vietnamese 2, French 5, Dari 2, Nuer 2, Kinyarwanda 2, Russian 1
Date/time of testing: 7/27/2020, 4:00pm-6:00pm

Mercy Hospital completes all the swabbing and testing on-site at each event. The testing sites are outdoors and strategically located on-site at each location in collaboration with Portland Housing Authority staff. Each testing site has one location with 4 tables, each with one chair.



Health & Human Services Department

Kristen Dow, Director

Interpreter services are being provided by the City of Portland, Maine Medical Center, Catholic Charities and Portland Public Schools. Interpreters have been secured in the following languages: Khmer, Vietnamese, Cantonese, Mandarin, Arabic, Sudanese Arabic, Somali, Kinyarwanda, and French, Spanish and Dari as needed for individual events.

Outreach: In advance of the event, all families receive a notice of the testing event with details on how to access testing as well as a COVID-19 testing - *What to Expect* - pamphlet in their native languages. All individuals who attend the testing event will be provided with a face covering and with information on how to access services should they have questions after the testing or are in need of resources due to a need to quarantine or isolate for any reason. All materials include information on how to access resources utilizing Community Health Outreach Workers who will field needs in the resident's native language.

The planning group quickly identified a need in the “gap time” experienced by community members upon testing positive for COVID-19. This gap time points to the window between notification of a positive test and full case management by Catholic Charities and/or The Opportunity Alliance.

Explanation of testing process:

- Patient receives COVID-19 swab
- Mercy Hospital sends swab to HETL
- HETL processes testing and notifies Mercy of the result (24-48 hours)
- Mercy notifies patient of result
- ----Beginning of “gap time”
- Mercy notifies HETL that they have notified the patient
- The patient is assigned a Contact Tracer
- Contract Tracer makes contact (once times allows, as they have large caseloads)
- Contact Tracer asks patient if they have any need for resources
- If yes, contact tracer refers the family to the CAP agency or Catholic Charities
- ----Ending of “gap time”
- CAP Agency/Catholic Charities processes the referral and makes contact

For provision of resources in the “gap time” (time between the testing and the connection to Catholic Charities/The Opportunity Alliance), MIRC will assist with connecting families to needed resources. The City will be able to reimburse for costs of food and PPE as necessary, which are paid for through grants that have been awarded to the City. Individual agencies that serve specific populations will facilitate the shopping and delivery of food. Many families have very specific cultural diets. Eight agencies are partnering with the City to help fill in during this gap in services, including: Cambodian Association of Maine, Southern Sudanese Community Association of Maine, Présenté Maine, Congolese Association of Maine, New England Arab American Organization, Maine Access Immigrant Network, Afghan Community and Rwandese Community Association of Maine.

MEMORANDUM

TO: City of Portland City Council
FROM: Danielle West-Chuhta, Corporation Counsel
DATE: July 29, 2020
RE: The OccupyMaine protest in Lincoln Park in 2011

At the Monday City Council workshop it was requested that I provide the City Council with additional details regarding the 2011 OccupyMaine protest that originally started in Ganley Plaza and moved to Lincoln Park. Attached hereto please find a timeline of the events of that protest, as well as the petition/application filed with the City Council and the Council Order denying such continued use by the OccupyMaine protestors beyond three (3) days in accordance with the provisions of Chapter 18 of the Portland City Code.

OCCUPYMAINE TIMELINE

Oct. 1, 2011

OM moves into Monument Square: Tables, Chairs, Suitcases, Sleeping Bags, Sleep Overnight

Oct. 2, 2011

OM (Demi) issued a citation from the Police Dept. for CANOPY

50 – 100 demonstrators in attendance at Mon Square

Oct. 3, 2011

Internal Mtg with City Staff, followed up with

City Staff (Mike, Nicole, Ted) meeting with OM Reps (Demi, John Branson) to offer group use of Lincoln Park for overnight stays

Email from Ted to City Staff, informing/outlining some of conditions for their protests at Mon Square and their stay at Lincoln Park

Oct. 4, 2011

OM sets up canopies and tents at Lincoln Park (side near Congress + Pearl)

Recreation receives "Application for Canopy" at Monument Square from John Branson

Oct. 5, 2011

Drumming complaints from Mon Square businesses

Email from Ted to John Branson; NO permits issued for structures (canopies)

Oct. 6, 2011

More drumming complaints Police visit square

Press Release (and letter to Gary) from John Branson; First Amendment Right to protest on city property

Internal Mtg with City Staff

Oct. 7, 2011

Gary Wood replies back to John Branson

Oct. 11, 2011

Application from OM to hold RockupyMaine at Mon Square, Oct. 15

Internal Mtg with City Staff; conflicts + future uses of Mon Square

Email sent to OM offering up options; Congress Square use instead of Mon Square

Ted followed up with phone conversation to John Branson to discuss

Emails to City Staff about a Porta-Restroom

Oct. 12, 2011

Email from Gary to John Branson OK'ing rental of Porta-Restroom

Email from concerned citizen about lack of restrooms at Lincoln Park

Revised Application from OM to hold RockupyMaine at Congress Square, Oct. 15

Oct. 13, 2011

Food Service issues raised (Rockupy event – Oct. 15); Licenses Required

Permit issued to OM to hold RockupyMaine at Congress Square, Oct. 15

Oct. 15, 2011

RockupyMaine held at Congress Square. Approximately 200 in attendance. A march is also held on the sidewalks (this was not included in the application or the permit, but seemed to go fine).

Oct. 18, 2011

Email from concerned citizen about lack of restrooms at Lincoln Park

Oct. 19, 2011

Police move 2 homeless tents out of the east-side of Lincoln Park

Email from concerned citizen (follow up from Oct. 12 email); lack of restrooms at Lincoln Park

Application from OM to hold Criminalization of a Generation Rally at Mon Square, Oct. 22

Oct. 20, 2011

Email received RE: camping + homeless staying at Lincoln Park

Application received from OM to hold Open Jam/Open Space (Speak Out) at Mon Square, Oct. 22
(instead of Criminalization of a Generation Rally)

Permit issued to OM to hold Open Jam/Open Space at Mon Square, Oct. 22

Oct. 21, 2011

Internal Mtg with City Staff; sanitary + health + fire issues

Email from Ted to John Branson + OM Reps: porta-restroom, fires at Lincoln Park

Oct. 24, 2011

Email from concerned citizen about lack of restrooms at Lincoln Park

Phone call from concerned citizen about tents blocking sidewalks at the park

Email received from John Branson stating a porta-restroom is rented (for one month) and to be delivered to the park on Tues. Oct. 25

Ted visits Lincoln Park to follow up on a phone call about tents blocking sidewalks (found none). While at the park, I spoke to John Branson about the location for the porta-restroom. John also filled Ted in on the "chemical bomb" that went off in the encampment on Sunday night (early Monday morning). And Brian (police detective) also spoke to us briefly.

Due to the bomb incident, the Encampment moved closer to the Court side of the park (away from Congress Street). Ropes strung between trees and large blue tarps hung between.

Oct. 25, 2011

United Site Services (Blow Bros.) delivers porta-restroom to Lincoln Park

Arrest made at OM Lincoln Park. Male was drinking and disturbing the peace - around midnight. The arrested individual was a member of the OM group; complainant was a member of the OM security team.
Application received from OM to hold Corporate Zombie March + Teach-In + Concert at Mon Square, Oct. 29

Oct. 26, 2011

Permit issued to OM to hold Zombie March + Teach-In + Concert at Mon Square, Oct. 29

Email received from a member of OM who stated that they were thinking of getting a 55 gallon drum to have fires in (so they could stay warm). Ted replied with an email stating fire policy in parks.

Oct. 27, 2011

OM Encampment at Lincoln Park now totals around 30 tents + canopies, filling up at least ½ of the park.

Tim Sullivan, Rep for OM, came into the Rec. Office and spoke briefly to Sally + Ted.

Issues discussed:

1. Ted reiterated to Tim the fire policy and asked that it be talked about at the GA meetings.
2. An OM member had reseeded the grass areas where tents used to be staked (Congress Street side of Park). Sally thanked Tim and the group for being good caretakers of the park, but asked them to refrain from doing any seeding or repair to the grounds, as the city parks staff would address those areas. Sal did ask Tim to talk to the group about setting aside money/donations to cover that work, and that she could get him some cost figures.
3. Tim informed us that the group was now concentrating their protest + demonstration efforts mainly at Lincoln Park (and not Mon Square). Mon Square would continue to be used for special events (speak outs, rallies and concerts).
4. Sally informed Tim that the Park Manager and city Arborist may want to tour the park to address their particular concerns and that Tim and the OM Reps could meet with them to discuss.

Oct. 29, 2011

Zombie March + Concert held at Monument Square. Low attendance with no issues to report.

Oct. 30, 2011

5 inches of snow. 30 tents at Lincoln Park. No distress call that REC knows of.

Ted was told that some branches came down from the weight of the snow.

Oct. 31, 2011

City staff met internally to discuss safety + health aspects to wintertime camping.

Ted emails John Branson + Tim Sullivan to ask for a meeting + tour with them and Park Manager.

Nov. 1, 2011

Ted emails OM to ask what their plans are for staying warm, etc.

A second porta-restroom is rented + delivered to Lincoln Park.

A notice goes out to OM members, announcing a meeting to discuss winter plans.

Nov. 2, 2011

Joe Dumais (park manager) and Ted walk through Park + send email to staff: generator, kerosene heaters, geodesic dome, etc.

Nov. 3, 2011

Acting Chief of Police reports that officers responded to calls at OM, Lincoln Park –

1. a despondent woman from OM, jumps into Casco Bay, pulled out and transported to MMC.

2. plainclothes officers witness OM member being unruly, belligerent and confrontational. Peace was restored.

3. woman from OM dumping trash into a Police Dumpster beside the Police Parking Garage. She said the city advised them to put their trash there – which was not true.

OM meeting held at Park to discuss winter plans.

Nov. 4, 2011

Troy Moon (park manager) was going to follow up with OM about trash issues, but did not. City staff will meet in the future to discuss park issues.

Nov. 6, 2011

Rumour spread through OM encampment (and on their Facebook Page) that the city was going to evict them. Article in PPH dispels that rumour.

Nov. 7, 2011

More tents (5 or so) now set up on the East Side of the Park. Number of Tents now up to 35.

Ted emailed (again) the request to OM to see their winter plans: fire + safety, staying warm, park stewardship.

Phone call from citizen asking if OM needed a Building Permit for the wooden structures.

PPH Opinion Editorial: RE: peaceful protest of OM

Nov. 8, 2011

OM responds to city requests for winter plans. Simple first response. More detailed plans to follow (no later than Mon Nov. 15.)

1. 2 Nurses are serving as medics on site. Some members have first-aid training. SOLO Wilderness Medical School was in the park to give training on basics of surviving extreme cold. An OM group called "OccupyWinter" has formed to educate occupiers. Continuing the policy of NO open fires. The group may petition the city to have a wood stove on site.

2. Plans for staying warm, see above. Donations of sleeping bags, propane heaters, hand warmers, have come in. Some sturdier tents at the park can be utilized as "warming huts."

3. Members putting straw down on muddy areas. Dishwashing done at First Parish Church. They have agreed to set up a separate financial account for current and future stewardship of the park. Occupiers welcome an announced tour for city staff.

Nov. 8 (continued)

PPH article about Police responding to 2 reports that a man was dragging a screaming child into a tent (Tuesday at 3pm). 4 Officers responded, but were unable to find the child (it was unfounded)

Daily Sun article about city wanting to make sure occupiers are safe and that they have survival plans for the winter months.

About 10 tents + structures now on the East side of the Park. Total tents: close to 40.

Nov. 9, 2011

PPH article states OM will ask the city's permission to use wood stove. Also says members are holding a Lincolnshire Town Festival and Renaissance Fair at the Park on Saturday, 11am – Evening, where tours of the different areas of OM will be highlighted.

Letters to the Editor state Occupation Group does have clear goals.

City staff meet to discuss issues at Lincoln Park.

Nov. 10, 2011

Ted emailed OM to inform them that WATER (from a hose) will only be available from Central Fire Station from 8am – 5pm, 7 days a week, until it starts to freeze out.

Nov. 11, 2011 – Veteran's Day

OM members (approx 20) attended the Veteran's Day Parade, holding signs at Monument Square. They were in the company of Peace Action Maine members and Veterans for Peace members (so there were about 60 protestors lining Congress Street at Monument Square). No issues to report (that I know of).

Nov. 12, 2011

OM holds a Renaissance Fair and Open House for the public. Low attendance.

Police Dept. Reports: Approx. 2pm, officers were conducting foot patrol at the park when they were approached by a OM member, stating another OM member was irate and making vague threats to hurt other members. Officers made contact with the irate individual (and things settled down). While officers were there, they had contact with another male OM member who was out on bail. That member was found to be in possession of marijuana. He was summoned and removed from the park with a criminal trespass notice not to return.

Nov. 13, 2011

Nationwide (San Francisco, Portland, Oregon, New York City, Oakland), city parks are being cleared out of Occupiers (many arrests made), and Tents/belongings removed from the areas by city staff.

Nov. 14, 2011

Ted emails OM members to remind them of the Details Winter Plans that are needed and to let OM know that the city will schedule a walk-through of the park with them. Also, RE: a wood stove request, Ted reminds them that our policy is gas grills only.

Police Dept. Reports: Approx. 11am, officers responded to a domestic disturbance at the park. A boyfriend said that his girlfriend was intoxicated and in danger. The girlfriend said she was in the park on her own free will. Officers determined that she was on probation and that alcohol consumption was a violation of her probation. Her probation officer was notified who in turn authorized a probation hold and she was arrested; her alcohol content being 3 times the legal limit.

Police Dept. Reports: Approx. 7:30pm, officers on foot patrol of the park saw 2 males preparing to fight one another. No probable cause for arrest was found. Officers separated the 2 men and cleared the area.

Nov. 15, 2011

Frederick Deese Hamilton stops in at Corp. Counsel Office in morning hours, to ask to file a petition asking the city to evict a "John" (the only African American at OM) from the park, because of John's threatening nature. Corp. Counsel instructed Mr. Hamilton that this was not possible.

Nov. 15 (continued)

John Branson emails city staff the detailed OM Winter Safety Plans + MAP of OM... and looks forward to the walk-through with city staff.

Ted replies to John that he will soon set up that walk-through time.

Police Dept. Reports: Approx. 6pm, officer driving by Lincoln Park saw a female and male screaming at each other on the east side of the park. The female hit him on the back and shoulders multiple times with her fists. The officer made contact with the subjects and found them both highly intoxicated. They denied being in a domestic relationship and stated that they were arguing over tenting space. The male refused to press charges for assault but the female was ultimately arrested for Disorderly Conduct and served with a criminal trespass notice for the park.

Approximately 25 Police Calls to the park, from Oct. 3 – Nov. 15.

Ted emails OM for a 9am Walk-through meeting, Thurs., Nov. 17.

Nov. 17, 2011

City Staff meet at Central Fire in preparation of Walk-through with OM.

At 9am, City Staff (Andy Hutchins, Nicole Clegg, Joe Dumais, Chris Pirone, Tammy Munson, Brian LaFlamme, Mike Bobinsky, Ted Musgrave) and OM Reps (Allen, Tim, Heather, Peggy, John Branson) walk through Lincoln Park. Members of the press were also in attendance (Phoenix, Forecaster). Zack Hieden (MCLU) also on site. The tour lasted for a good hour.

Police Dept. Reports: Approx. 10:20pm, officers responded to Lincoln Park for a reported fight between two males. The officers located the males at Congress Street and Franklin Arterial pushing and shoving each other. Officers found that one of the males had stopped in the park to tell the OccupyMaine group that he didn't feel that they should be allowed to camp in the park. When a male member of the group started to yell at him he turned to leave. The confrontational male then chased after him and punched and pushed him until the officers arrived. The Assault victim in this case refused to press charges but the highly intoxicated suspect was so confrontational and uncooperative that he was ultimately arrested for Disorderly Conduct.

Nov. 18, 2011

City Staff meet at Manager's Office to discuss overnight and morning assaults at OM (and the code violations). It was determined that a followup letter to John Branson would be sent out, alerting OM of the many violations and safety concerns, and City's concern regarding the increased incidents of violence.

That letter would come from Gary Wood, Corporation Counsel. The letter would also ask that OM members attend a meeting with City Staff on Monday, Nov. 21, 3pm, City Manager's Office.

Police Dept. Reports: Approx. 7am, officers responded to Lincoln Park for an Aggravated Assault report. Officers determined that a male member of Occupy Maine had attempted to wake up the rest of the encampment by playing a set of drums near the fountain area. A number of Occupy Maine members were upset by the noise and confronted the subject. When the drummer refused to stop he was kicked by a fellow protester. The fellow protester also kicked the drum. When the drummer continued to drum a second protester ran up and grabbed him around the throat in an attempt to choke him. The victim broke away and a third protester used a hammer to strike the drum and break it. The third protester with the hammer turned to walk away and was struck in the back with a piece of the broken drum. The third protester then walked back to the drummer and struck him in the head with the hammer. The drummer fell to the ground at this point and the suspect fled the scene. The victim was transported to Maine Medical Center for a medical evaluation. The first protester who kicked the victim has not been charged at this

time. The second suspect who choked the victim was identified a short time later and summonsed for Assault. The third suspect who assaulted the victim with the hammer was arrested at approximately 10:21 AM and charged with Aggravated Assault and Probation Violation.

At approximately 9:12pm, officers were conducting a walkthrough of Lincoln Park when they heard two males yelling at each other under a tarp. The officers heard one male yell "I'm going to kick you in two seconds". The officers interrupted the argument and found a male drinking from a 40 oz. bottle of beer. The subject was ultimately arrested for Drinking in Public and Violation of Bail.

Nov. 19, 2011

Police Dept. Reports: Approx. 2:20am, officers responded to Lincoln Park for a male and a female arguing. When they arrived the female had left but the caller pointed out the male who was still in the area. The officers made contact with the male and he would only identify himself as "call me Occupy Maine". During their conversation officers found that the male had two knives concealed along his waistline. The male said he had them for camping but he also stated that he didn't have a tent. He was ultimately arrested for Carrying a Concealed Weapon. The male would only identify himself as "call me Occupy Maine" while at the county jail as well and he was also charged with Failure to Give Correct Name, Address, and Date of Birth. The male was ultimately identified and found to be wanted in New York for a Parole Violation on the original charge of Robbery. An additional charge of Fugitive from Justice was also added.

At approximately 4:23pm, officers made contact with the parents of two missing fourteen year old girls from Buxton. The parents had circulated information through their Facebook page network that the girls may be staying in the Lincoln Park encampment. Officers had utilized that information to conduct numerous park walkthroughs in an attempt to locate them. Officers interviewed Occupy Maine members that stated that the girls had been "walking around, sleeping in a tent on the property and eating with the rest of us" but we had been unable to catch up with them. On this occasion the parents were in Lincoln Park actively seeking information on the whereabouts of their children. Officers ultimately made contact with a 22 year old male who stated that he knew where the girls were hiding. He led us to a sewage drain on the wooded slope along the Eastern Promenade where the girls had stayed the night on 11/18/11. Detectives would later determine that the girls had spent the night in Lincoln Park with two self identified male members of the Occupy Maine safety team on 11/16 and 11/17 but they fled the area after the Aggravated Assault with a hammer on the morning of 11/18 because they were afraid they might be found during that investigation. The girls were cold, tired, and hungry but unhurt. The girls were reunited with their families and released.

Nov. 20, 2011

Police Dept. Reports: Approx. 12:02pm, officers were conducting a walkthrough of Lincoln Park when they were approached by a member of Occupy Maine. The protester told the officers that another protester had seen a male all dressed in black acting suspicious. The male was reportedly cupping a knife in his hand with the blade exposed. The protester went on to say "he was looking for someone to stab I think". Officers made contact with the suspect as he walked out of the park and discovered a folding knife in his pocket. The suspect stated that he carried the knife for protection and he was ultimately arrested for Carrying a Concealed Weapon. Other protesters stated that they believe the suspect was there to stab the males involved with the 14-year-old runaways from Buxton.

Nov. 21, 2011

City Staff (Mark Rees, Michael Sauschuck, Gary Wood, Ted Musgrave) and OM members (Heather, Brian, John Branson, Evan, Alan, Harry) meet at Manager's Office to discuss many issues surrounding OM's encampment. It was decided that OM would ask its General Assembly to submit an application request to the City for a permit to stay at Lincoln Park. The encampment would be downsized and code violations addressed. A press conference was held outside the Manager's Office following the meeting.

Nov. 22, 2011

City Staff (Mark Rees, Tammy Munson, Chris Pirone, Gary Wood, Ted Musgrave) meet at Manager's Office to discuss code violations at OM's encampment and to address John Branson's specific questions regarding this list (Attachment included in Corp. Counsel's letter to OM - dated Nov. 18).

Nov. 23, 2011

Gary Wood drafts and sends a 10-page letter to John Branson, reiterating the City's concern for public safety and OM's need to adhere to City Code, and answers questions posed by John Branson and OM. City Manager Mark Rees outlines steps for OM request:

1. OM files petition/request with City Council, 2. Corp. Counsel Office reviews, 3. Public Safety Committee (Dec. 1) reviews, hears public and staff input, 4. City Council meets (Dec. 7) to hear the recommendation of the Public Safety Committee.

Nov. 24, 2011

Police Dept. Reports: Approx 5am, officers responded to Lincoln Park for a disturbance. They located a 20-year-old Peaks Island resident who reported being assaulted. The man said he was waiting for a ferry and sitting on a park bench when a suspect identified as 49-year-old Peter Wing approached him. The victim said Wing asked him what he was doing and said the park was Occupy Maine's and he needed to leave. The victim refused and Wing reportedly threw him to the ground and punched him in the face. Wing was located in the park and arrested for Assault and Violation of Bail. Wing's bail originated from a Drinking in Public arrest in Lincoln Park on 11/18/11.

At 6:10am, a 40-year-old man walked to the police station and reported being assaulted by a group of three males and one female in Lincoln Park. The victim said he had been drinking in a tent with the group when they began to argue about cigarettes. The victim said he was knocked to the ground and kicked and punched. He believes he lost consciousness for a period of time before being able to make his way to the police station. He had visible facial injuries and other signs of assault. He was transported by Medcu to Maine Medical Center and was thought to have bleeding in the brain. He was ultimately admitted for observation. The park was canvassed for witnesses and an Aggravated Assault investigation is ongoing.

At 11pm, officers responded to a 911 call reporting a domestic violence assault in Lincoln Park. Members of Occupy Maine told officers they witnessed a couple arguing in the kitchen area, followed by punching and slapping between the couple. The couple were located in the park and identified as 33-year-old Gabriel Williams and 30-year-old Alyssa Brame. Both denied any assault but Brame had physical injuries consistent with witness descriptions of the assault. Both were arrested for Domestic Violence Assault. Williams was also charged with Possession of Cocaine when a small amount of the drug was discovered following his arrest.

Nov. 25, 2011

Police Dept. Reports: At 2am, officers responded to a 911 call reporting a domestic violence assault in Lincoln Park. Members of Occupy Maine reported a woman in a tent screaming for help. Officers arrived and spoke with 18-year-old Melissa Ciaramitaro in the tent. She reported being choked by her boyfriend during an argument about going to sleep. She was able to scream for help only after he released his grip on her throat. The suspect was identified as 25-year-old Jason Carr. He was located hiding under sleeping bags in the tent and arrested. He was charged with Domestic Violence Assault and Violation of Bail. Ciaramitaro refused to cooperate after the arrest but witnesses in the park did give statements. Ciaramitaro began screaming as officers were leaving the park and she was ultimately arrested for Disorderly Conduct. Other Occupy Maine protestors complained that she was screaming very loudly and would not stop. They provided a statement to support this arrest. It should be noted that Carr's bail originated from a Disorderly Conduct arrest in Lincoln Park on 11/17/11.

Nov. 29, 2011

OM delivers a 10-page petition/request/proposal to Corp. Counsel Office to ask for permission from City Council for its continued stay at Lincoln Park. The request seeks to "create a permanent 24/7 speech,

assembly and community building zone within a designated area of Lincoln Park" and to "continue its established community encampment within that designated zone for a period of not more than 179 days, subject to the right to seek renewal and/or extension."

Temperatures over the past 2 weeks have been fairly mild (daytime averaging in the 50's).

Nov. 30, 2011

Ted Musgrave emails City Staff to remind them of Annual Events (Festivals: Radiance – July 7 and PICNIC – Aug. 25) scheduled for 2012 at Lincoln Park. And reminds staff about the time needed to reseed and rejuvenate the park (a 2 – 3 month span).

The Portland Daily Sun reports that OM will hold a potluck lunch and rally at Lincoln Park on Thursday, Dec.1, followed by a protest march to Monument Square and financial institutions, and ending in front of City Hall with another rally. OM members will then go inside to attend the Public Safety Committee meeting (5pm, Dec. 1).

Police Dept. Reports: 10pm, A 51 year old man is arrested at Lincoln Park – criminal threatening and violating conditions of release (he was out on bail from a 2010 aggravated assault charge).

Dec. 1, 2011

City Staff met at the Manager's Office to discuss the Agenda Items for the Public Safety Committee meeting.

5pm, Public Safety Committee, City Council Chambers. A 5 hour meeting with lots of testimony from the public. Acting Police Chief updated the arrest report to include arrests from Nov. 28 – Dec. 1: 16 arrests, 112 calls for service (a majority of those calls being just walk-throughs/special attention). The vote was 3 – 0, recommending that the full City Council not approve the OM proposal when it comes up for debate on Dec. 7.

John Branson and OM said they would submit a revised proposal for Council to consider.

Police Dept. Reports: at approximately 2:07 PM officers were conducting a walkthrough of Lincoln Park when they heard several subjects yell "open that bottle of wine". The officers investigated further and found six highly intoxicated subjects sitting around a tent. The subjects were in close proximity to open containers of alcohol but none of them had been found drinking or in possession so the officers issued drinking in public and criminal trespass warnings. One of the subjects was found to have an active criminal trespass notice on file and he was arrested for Criminal Trespass. A second subject left the park and then returned to argue his arrested friend's case and he was also arrested for Criminal Trespass.

Dec. 2, 2011

OM, through their lawyer, John Branson, emails staff to say that they would like to rent a dumpster and place that at the park for the start of their clean up and trash removal. Dumpster would be on site from approx. Tues, Dec. 6 – Friday, Dec. 9. Parks Staff will coordinate the siting of the dumpster.

Police Dept. Reports: at approximately 9:21 PM officers were conducting a walkthrough of Lincoln Park when they were approached by a self identified Occupy Maine member. The member wished to remain anonymous but she pointed out a tent that had been the source of several hours of disorderly and drunken behavior. The officers made contact with the occupants of the tent and described the general area of the tent as being "littered with half empty beer bottles, a large amount of trash, and two white buckets. One bucket filled with what appeared to be human feces, the other filled with urine". Two males were ultimately found to be in possession of open containers of alcohol and they were arrested for Drinking in Public.

Dec. 3, 2011

Police Dept. Reports: at approximately 1:30 PM an officer responded to Lincoln Park for a criminal threatening report. The victim stated that he witnessed a highly intoxicated male yelling and being belligerent toward pedestrians walking along Congress Street. The victim was concerned that type of behavior may "get people from his movement kicked out of the park" so he asked the male to stop yelling.

The male became aggressive, walked within inches of the victim's face and stated "shut up or I'll punch you in your face". The victim walked away from the suspect to diffuse the situation and the suspect left the area. The officer was in the process of taking the report in this case when the suspect returned and was arrested for Criminal Threatening.

Dec. 4, 2011

The Police Dept. reported that OM folks filled their dumpster (by the garage) with debris on Sunday night. PS emptied Monday morning (Dec. 5).

Dec. 5, 2011

OM files an amended petition with Corp. Counsel Office. Some of the Changes to the original proposal (from Nov. 29) include a limit on number of OM individuals sleeping at encampment (50), the procurement of liability insurance, and pledging to raise \$2,500 for restoration of the park.

Dec. 6, 2011

John Branson informs the city that OM has \$1,450 in funds set aside.

Dec. 7, 2011

The ACLU of Maine sides with OM and urges the city to allow the OM group to remain in the park. OM orders up a 22 foot long dumpster from Pine Tree Waste (to be delivered on Thurs, Dec. 8). John Branson forwards Corp Counsel Office an Initial Redress of Grievances and asks that Council act on those: 1. withdraw city funds from TD Bank and transfer to a locally owned bank or CU, 2. make the State of Maine Room available for a weekly General Assembly meeting, 3. increase support for homeless people starting with those living in Lincoln Park, 4. create a 24-hour free speech and assembly space in Monument Square.

City Council meets at 7pm to take up OM's petition. Almost a 5-hour meeting, concluding with only 1 councilor voting in favor of OM being allowed to stay overnight at Lincoln Park. 3 Members of the public spoke in opposition to OM's encampment; 50+ spoke in favor. The mayor recommended that OM meet again with city staff to try to work on the issues, in hopes that neutral ground can be found and the protest can be held in a safe manner (the next Public Safety Meeting: Dec. 13, 5:30pm). No immediate police action was going to be taken to remove the encampment from the park.

Dec. 8, 2011

22 Foot long Dumpster arrives at Lincoln Park. Clean up of grounds begins.

Jeff Inglis, Managing Editor at Portland Phoenix, requests (via Freedom of Information) that the City turn over all correspondence and notes to, from, or among all city councilors and Mayor Brennan regarding the OccupyMaine camp in Lincoln Park (October 1 – December 8).

Dec. 9, 2011

City Manager sends John Branson and OM letter asking what their plans are – now that City Council has not approved their request for overnight camping and it is against city ordinances. A Thursday, Dec. 15, 12:30pm, deadline was given. City Manager assured OM that they would be given a 48-hour notice of eviction, should that need to happen.

Dec. 10, 2011

OM emails out a solidarity notice to followers and others, asking that they support the OM movement and come to Lincoln Park to protest the city's decision to evict the OM community.

Dec. 11, 2011

OM holds a GA at the park. Decides to sue the city to keep their encampment at the park, citing first amendment grounds. Lawyer John Branson will file a temporary injunction request so that they may stay until the case is heard.

Dec. 12, 2011

Police Dept. receives a Bomb Threat to OM encampment. Sends officers and bomb sniffing dogs to Lincoln Park. No bomb is found.... But police do have a suspect. OM formally informs Corp. Counsel of that intent to file suit.

Dec. 13, 2011

Police Dept Reports: On 12/13/11 at approximately 11:25 PM, officers responded to Lincoln Park for a domestic violence assault in progress. The officers made contact with a male victim who stated that he had been invited to the park by his girlfriend to "drink beer, smoke marijuana, and talk". When the male located his girlfriend she was highly intoxicated and in another male's tent. The owner of the tent was identified as John "Big John" Mutero. The officers found that the couple had been involved in a physical altercation after the male broke up with his girlfriend. The altercation involved the female biting the male and leaving a visible injury. She was ultimately arrested for Domestic Violence Assault. During the investigation the officers also determined that Mutero had threatened to kill the male victim if the police were called. He was ultimately summonsed for Criminal Threatening and served with a criminal trespass notice. Mutero was also accused of sexually assaulting the female in this incident but the victim refused to cooperate.

Dec. 15, 2011

Dumpster rented by OM is removed from the edge of Lincoln Park. Park looks a lot better, now with most of the litter, debris and worn items picked up off the grounds and disposed of. Letter from Corp. Counsel and Notice to Vacate from the City Manager is sent to OccupyMaine. OM has stated that they will file lawsuit on Monday, Dec. 19. It is agreed by both parties that a temporary restraining order need not be filed by OM because the city will allow the status quo to continue until at such time a court rules on the matter. However, the City Manager signs a Notice to Vacate, which would go into effect December 19 at Noontime, should no lawsuit be filed by that time. If a lawsuit is not filed by Dec. 19 Noon, then OM is expected to go through the Recreation Permit Application process in order to use Lincoln Park (or any other city property) if attendance is expected to exceed 25 or more individuals.

Dec. 16, 2011

Social Services Div. counselors meet with OM homeless members (18). 4 of those individuals agree to stay at one of the city's homeless shelters while city staff find permanent housing for them. New mayor Michael Brennan has stated that he is interested in forming a task force to address issues raised by OM.

Dec. 19, 2011

OM files lawsuit against City. OM and John Branson hold a Press Conference on the steps of the Court House, detailing their reasons for filing suit against the city. The thrust of the brief: city code is unconstitutional, infringement of 1st amendment, ordinances which prohibited free speech and assembly (during the 10:00pm - 6:30pm time frame), no "city" location where free speech could be practiced 24/7, and the requirement to get a permit for events over 25 people even if event fell under 1st amendment use. He did, however, have some kind words for the city... re: status quo + no temp restraining order needed... and the city's willingness to negotiate in the early stages. The City has 21 days to respond to the suit.

Dec. 21, 2011

OM members join in the Preble Street Resource Center's "Homeless People's March & Vigil" at Monument Square. 100 people participate in the candlelight vigil, held in the drizzle at the Holiday Tree.

Dec. 23, 2011

Police Dept Reports: On 12/23/11 at approximately 11:23 PM officers were conducting a walk through of Lincoln Park when they observed a subject known to them sitting near a tent. The subject was positively identified and found to have two outstanding warrants for Possession of Oxycodone (class C), Refusing to Submit to Arrest, and Failure to Pay Fine on a Theft charge. The male was arrested without incident.

Dec. 25, 2011

Police Dept Reports: On 12/25/11 at approximately 2:38 PM officers responded to Lincoln Park for the report of a campfire. When the officers arrived they determined that the campfire issue had been voted on and approved during a general assembly. The fire was extinguished and a warning was issued.

Jan. 3, 2012

Constituent complaints received about the large amount of blankets draped over the Park's wrought iron fence (Franklin Street side).

Jan. 5, 2012

Ted emails OM and John Branson to ask that the blankets be removed and the park picked up debris to make it more presentable, by Noon, Jan. 6. John Branson emails back, states that there is a cleanup planned at the Park for Sat. + Sun. Jan. 7 + 8. Asked if the City could offer up a Dumpster to be positioned at the park, as the last one from Pine Tree Waste totaled \$600. Ted also asks OM to remove any tents/structures that are not occupied, as recent news reports stated that only 1 or 2 occupiers were now in the Park (due to the very cold temperatures). OM folks reply back that there are still many occupiers sleeping in the Park.

Jan. 6, 2012

City wakes up to 1.5 inches of snow on the ground. The blankets are removed from the fence. City Manager Reese says the City will not participate in the cleanup of the park at this time.

The City files the response in Court to OM's lawsuit regarding First Amendment rights.
Sand Barrel delivered to the Park (SE corner); OM folks shovel off the park sidewalks.

Jan. 7 + 8, 2012

OM holds a cleanup at the park. Public Services Staff pick up large leaf piles that OM'ers raked.

Jan. 12, 2012

City receives 6 inches of new snow. Public Services staff plow out the sidewalks at Lincoln Park with one of their "holder units."

Jan. 17, 2012

Signs and banners (probably 40 - 50) decorating the wrought iron fence around Lincoln Park are removed. Articles in the papers about this; OM says they were stolen. Turns out, an OM member in his effort to clean up the park, removed all of them.

The court hearing is scheduled for Tues, Jan. 24, at the Federal Courthouse. Attorney Mark Dunlap is heading up the city's legal team (Gary Wood, Trish McAllister).

There is now just 1 Porta-Restroom (down from 2) located at the park.

Jan. 20, 2012

City receives 5 inches of snow overnight (Jan. 19). Snow covers much of the blue tarps, which cover many of the 30 some tents + structures in the park. Public Services staff plow out the sidewalks at Lincoln Park with one of their "holder units."

From Noon – 3pm, the OccupyMaine group (20 protestors) walk around the federal court house as part of the national "Occupy the Courts" movement. Police Dept. reports: No arrests and No issues.

Jan. 24, 2012

Case is heard in court. Signs and banners go up on the Lincoln Park fence (courthouse side).

Jan. 31, 2012

Justice Warren rules against OccupyMaine (preliminary injunction denied) on the grounds that the group had not addressed the safety and health concerns raised by city staff, that the park use ordinance was applicable for time, place, and manner restrictions regarding 1st amendment use, and that using the park on a 24/7 basis precluded other groups from using it for 1st Amendment uses or for other purposes.

Feb. 2, 2012

City issues notice to OM to vacate the park by Monday, Feb. 6, 8am (and to remove all items from the park).

Feb. 3, 2012

OM planning a Rededication Ceremony of Lincoln Park, Sunday, Feb. 12, Noon (Lincoln's birthday). OM not planning on submitting an App for use, as they feel the event falls under 1st Amendment use.

Feb. 4 + 5, 2012

OM removes some tents + structures: Library, Kitchen, Dome. Still some tents (15 or so) left up. The city dumpster is filled and emptied 3 times over Fri., Sat. + Sun. OM big graffiti logo to be used as backdrop for OccupyME TV spots. Library books stored at a member's house. The DOME donated to _____. The porta-restroom is still on site.

Feb. 6, 2012

John Branson + OM ask for an extension to the eviction notice. City agrees to a Friday, 8am (Feb. 10, 2012) date. City dumpster still on site. Harold Brown, occupier, 8am, sets American Flag hanging from the OM flagpole, on fire. Gets plenty of press coverage.

Feb. 8, 2012

12 tents/structures still up in the park.

Feb. 10, 2012

In the afternoon, city staff (Public Services) are onsite raking up straw and hay and loading with bobcat into the dumpster. Wooden pallets and other debris moved to the dumpster. Some of the tents removed by OM, what was left (late afternoon) was then loaded into the dumpster and removed from the park. Most of the park benches are "caution taped" off. Some Police Officers on site. No incidents of trouble.

Feb. 11, 2012

A small rally of occupiers – sign holders (15 or so) held at Monument Square.

Feb. 12, 2012

OM holds a Rededication Ceremony, Noontime, at Lincoln Park. About 25 in attendance.

Feb. 21, 2012

OM drops lawsuit against city, stating "we believe the energy and resources required to continue litigation would be of better use in service to the community." Since leaving the park (on Feb. 10) OM has been using its own television show, Occupy ME TV, to get its message out (www.occupymetv.org).

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*Admitted to practice in Maine, Massachusetts &
the District of Columbia.

December 5, 2011

BY ELECTRONIC MAIL & FIRST CLASS MAIL

Gary C. Wood, Esq.
Corporation Counsel
City of Portland
389 Congress Street
Portland, Maine 04101

RE: *OccupyMaine's Amended Petition to Portland City Council*

Dear Gary:

Enclosed please find OccupyMaine's Amended Petition to the Portland City Council, seeking to address a number of concerns raised at the Public Safety Committee meeting last Thursday, December 1st.

Here is the summary of the substantive amendments to the Petition:

1. Change in terminology from "zone" to "space" so as to avoid the impression that OccupyMaine is seeking a zoning change of any kind with respect to Lincoln Park.
2. Number of Occupants. In addition to limiting the number of occupants based on the reduced geographic occupation space and the minimum space requirement of 10 feet between tents, OccupyMaine further proposes a limit of fifty (50) overnight occupants at any given time absent approval from the City for a variance under special circumstances.
3. Kitchen and Food Distribution. If the City denies OccupyMaine a temporary food service license with reasonable and legitimate grounds therefor, OccupyMaine will promptly discontinue the use and operation of a kitchen for food storage, preparation and distribution.

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Gary C. Wood, Esq.
December 5, 2011
Page 2

4. Liability Insurance. OccupyMaine will undertake diligent efforts to procure at reasonable cost liability insurance with a coverage amount of not less than \$400,000, and requests that it be allowed thirty (30) days to procure such insurance coverage. Only if unsuccessful will OccupyMaine seek a waiver.

5. Sanitation Plan.

a. Commencing today, December 5th, OccupyMaine has arranged and paid for servicing of the two port-a-potties in Lincoln Park three times per week (Mondays, Wednesdays and Fridays) rather than twice weekly.

b. Within the next week, OccupyMaine will be renting a dumpster for several days at its own expense for the purpose of disposing of trash and debris in Lincoln Park that cannot easily be placed into trash bags. OccupyMaine will place the dumpster in a location approved by the City, and will have it removed within a reasonable time not to exceed seven (7) days after it is placed on site.

6. Plans for Stewardship of the Park

a. As an alternative to posting a bond for future repair or stewardship of the Park, OccupyMaine will establish a fund at Five County Credit Union to cover such costs and pledges to raise Two Thousand Five Hundred Dollars (\$2,500.00) by the end of the 179-day term of the permit sought herein. In addition, OccupyMaine will exercise its diligent efforts through public appeals and other means to procure the voluntary services of landscapers and landscaping companies free of charge (or at a discount) to assist with any needed repairs and future stewardship of Lincoln Park.

b. OccupyMaine is willing to dedicate its resources and efforts to help establish the Friends of Lincoln Park, a non-profit organization in the same vein and spirit as other private organizations formed to support and maintain public parks in the City of Portland.

The above represents a total of eight (8) substantive changes to OccupyMaine's original Petition dated November 29, 2011. Please note that OccupyMaine is willing to consider additional substantive changes as necessary to address any other concerns that may be voiced by the City Council or City Officials at the upcoming meeting this Wednesday at 7:00 p.m.

BRANSON LAW OFFICE, P.A.

Gary C. Wood, Esq.

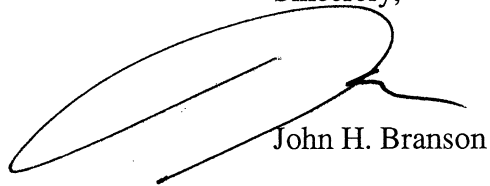
December 5, 2011

Page 3

OccupyMaine and its individual members expressly reserve all their rights under the Constitution of the United States and the Constitution of the State of Maine to engage in non-commercial expression, assembly, association and petitioning for redress of grievances, and do not waive any of those rights through its submission of this Amended Petition.

OccupyMaine thanks the City of Portland for its fullest consideration of the enclosed Amended Petition. In the event the City requires any additional information or details in order to properly review and assess the Petition, or has any questions regarding the same, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Branson". The signature is fluid and cursive, with a large loop at the beginning and a trailing line extending to the right.

Enclosure

cc: OccupyMaine (w/enclosure)
Heather Curtis (w/enclosure)

OCCUPYMAINE
LINCOLN PARK
PORTLAND, MAINE 04101

OCCUPYMAINE'S AMENDED PETITION TO PORTLAND CITY COUNCIL

DECEMBER 5, 2011

I. OccupyMaine

OccupyMaine is an unincorporated association of individuals seeking redress of grievances arising from: the vast inequality of wealth and income in the United States and throughout the world; a thoroughly corrupt and unjust financial, economic and political system; and the corporate takeover of our public spaces and our once democratic government at the national, state and local levels. OccupyMaine functions and operates through its General Assembly, working groups reporting to the General Assembly, and the contributions of its autonomous individual members. OccupyMaine is based in Lincoln Park in Portland, Maine and has maintained there a continuous assembly of individuals engaged in peaceful non-commercial expression and protest since October 3, 2011. OccupyMaine was officially organized on October 1, 2011 in solidarity with #OccupyWallStreet and hundreds of other occupations around the nation and the world.

Contact Persons for this Petition:

Heather Curtis, OccupyMaine member
Facilitator of Petition for 24-Hour Speech & Assembly Space
24 Kellogg Street
Portland, Maine 04101

Tel. 207-420-7058
E-mail: heather@can-so.org

John H. Branson
Legal Counsel to OccupyMaine
Branson Law Office, P.A.
482 Congress Street, Suite 304
Portland, Maine 04101

Tel. 207-780-8611
Fax: 207-221-2203
E-mail: jbranson@bransonlawoffice.com

II. Nature and Purpose of Petition

By way of this Petition, OccupyMaine asks the City of Portland, through its elected representatives, to permanently designate a specific area of Lincoln Park for use as a perpetual free speech, assembly and community building space on a 24/7 basis by members of the public seeking to engage in such activities, subject to certain terms and conditions established by the City. OccupyMaine proposes that said space be comprised of a certain geographic area within Lincoln Park, to wit, that portion of the Park to the South and West of a concrete walkway within the Park running southeasterly from Congress Street through the fountain area in the Park to Federal Street, as depicted in map attached hereto as Exhibit 1.

By way of this Petition, OccupyMaine also seeks to maintain its 24-hour, 7-day-per-week community encampment at Lincoln Park first established on October 3, 2011, limited to the designated space described above, for the purposes of: (1) continuing to assemble and speak out for redress of grievances; (2) continuing to create and maintain a safe public space for dialogue, debate and action to accomplish social and economic change; and (3) continuing to illustrate, teach and learn – for the benefit of each other and the public at large – basic lessons in community building, free association and expression, and direct democracy; and for other purposes consistent with non-commercial first amendment activity.

III. Proposed Parameters, Terms and Conditions Governing OccupyMaine's Community Encampment at Lincoln Park.

1. Duration. By way of this Petition, OccupyMaine seeks the establishment of a permanent space in Lincoln Park for non-commercial speech, assembly and community building available on a 24/7 basis. By way of this petition, OccupyMaine seeks leave from the City to continue to maintain its occupation within that designated space under certain terms, plans and conditions for a period of not more than 179 days, subject to the right to seek renewal and/or extension of that time period through the appropriate process.

2. Geographic Limitation. OccupyMaine proposes to limit its 24/7 occupation of Lincoln Park to a certain geographic area within Lincoln Park, to wit, that portion of the Park to the South and West of a concrete walkway within the Park running southeasterly from Congress Street through the fountain area in the Park to Federal Street, as depicted in map attached hereto as Exhibit 1. By way of this Petition, OccupyMaine asks the City to permanently designate that particular geographic area within Lincoln as a

space for non-commercial speech, assembly and community building available on a 24/7 basis.

3. Number of Tents. OccupyMaine seeks to maintain as many tents as can be erected within the designated geographic area without running afoul of the fire code provision requiring a minimum of 10 feet of separation between each tent.

4. Number of Occupants. OccupyMaine would limit the number of overnight occupants to a number consistent with the safety and welfare of those occupants, in view of the limited geographic area we are occupying and the number of tents within the occupation space consistent with any applicable safety regulations, and further agrees that the number of occupants would not in any event exceed fifty (50) at any given time absent approval from the City for a variance under special circumstances.

5. Kitchen and Food Distribution. OccupyMaine seeks to maintain and operate a kitchen, and store, prepare and serve food out of the kitchen consistent with prudent and sanitary food safety practices. OccupyMaine will seek a temporary food service license for this purpose. OccupyMaine shall if required submit a building permit application and any other information reasonably necessary to assure the City regarding structural integrity and soundness. If the City denies OccupyMaine a temporary food service license with reasonable and legitimate grounds therefor, OccupyMaine will promptly discontinue the use and operation of a kitchen for food storage, preparation and distribution.

6. Other Tents and/or Structures

a. Library & Buckminster Fuller Spiritual Dome. OccupyMaine would continue to maintain, within the designated occupation space, the Troy Davis Memorial Library and the Buckminster Fuller Spiritual Dome, and shall if required submit a building permit application and any other information reasonably necessary to assure the City regarding structural integrity and soundness.

b. Free Store for Non-Food Donations. OccupyMaine would continue to maintain, within the designated occupation space, a Free Store for Non-Food Donations, and shall if required submit a building permit application and any other information reasonably necessary to assure the City regarding the structural integrity and soundness.

c. Medical Tent. OccupyMaine would continue to maintain, within the designated occupation space, a Medical Tent, and shall if required submit a building permit applications and any other information reasonably

necessary to assure the City regarding structural integrity and soundness of said tent.

d. Communal Warming Tent/Teepee. OccupyMaine would install and maintain, within the designated occupation space, a communal warming tent/teepee within which it could operate a wood or pellet burning stove with proper exhaust of all smoke to the outside. It would not be a place for sleeping but rather for getting warm.

7. Tarps, Coverings & Tents—Flame Retardant/Fire Safe. OccupyMaine would replace any tarps or tents that are not certified as flame retardant and fire safe with tarps, coverings and tents that meet the applicable fire safety codes, and requests that it be afforded thirty (30) days from the date of permit approval to accomplish same.

8. Wooden Pallets. OccupyMaine would replace any wooden pallets that are not certified as flame retardant and fire safe with flame retardant wooden pallets or other foundations that meet the applicable fire safety codes, and requests that it be afforded thirty (30) days from the date of permit approval to accomplish same.

9. Hay & Hay Bales. OccupyMaine would replace any hay or hay bales that are not certified as flame retardant and fire safe with hay and/or hay bales that have been treated to be flame retardant and/or other insulating materials that meet the applicable fire safety codes, and requests that it be afforded thirty (30) days from the date of permit approval to accomplish same.

10. Liability Insurance. OccupyMaine will undertake diligent efforts to procure at reasonable cost liability insurance with a coverage amount of not less than \$400,000, and requests that it be allowed thirty (30) days to procure such insurance coverage. If such diligent efforts prove unsuccessful, OccupyMaine shall seek a waiver of any requirement that it obtain liability insurance, on the ground that such a requirement is an unduly burdensome restriction on non-commercial speech and assembly. *See, e.g., Sullivan v. City of Augusta*, 511 F.3d 16 (1st Cir. 2005).

11. Sanitation Plan.

OccupyMaine proposes to continue to properly bag all trash on a daily basis, in City approved blue trash bags, and place those bags for removal in or next to the City trash barrels located at the corner of Pearl and Federal and the corner of Pearl and Congress. OccupyMaine requests that the City place two more barrels for that purpose, one at each referenced corner, to help avoid the need to place bags next to the barrels.

OccupyMaine has paid for and maintains two port-a-potties in Lincoln Park, serviced three times per week on Mondays, Wednesdays and Fridays (effective December 5, 2011), and plans to continue maintaining and paying for such facilities and services.

Within the next week, OccupyMaine will be renting a dumpster for several days at its own expense for the purpose of disposing of trash and debris in Lincoln Park that cannot easily be placed into trash bags. OccupyMaine will place the dumpster in a location approved by the City, and will have it removed within a reasonable time not to exceed seven (7) days after it is placed on site.

12. Fire Safety, Public Safety and Medical Response.

OccupyMaine has a nurse practitioner who serves as a medic on-site, with a posted phone number, who is on call when not on site. A number of members of OccupyMaine have first aid and advanced first aid training. OccupyMaine has published emergency numbers, such as 911, the HOME Team, the 774-HELP line and Crisis Unit numbers. Additionally, OccupyMaine's Safety, Logistics, and Information team members maintain those phone numbers and contact information, and are familiar with the Ingraham Office and 24 hour Crisis Center in Monument Square.

It is also the policy of OccupyMaine, understood by all team members and other occupiers, that calling 911 or securing transport to a hospital emergency room is the best way to handle any medical emergency. One role of the medics and other team members is to ensure prompt medical attention and escalation of care for any individual as needed, and to secure treatment from free and/or sliding scale medical clinics as needed.

OccupyMaine has received and continues to receive ongoing trainings from SOLO Wilderness Medical School on winter survival in the outdoors. A group called "OccupyWinter" has also formed on a national and international basis to share information among the various occupations regarding winter preparations and cold weather survival, and OccupyMaine is connected with that group.

OccupyMaine has continued to abide by the City's request that it have no open pit fires of any kind in Lincoln Park and that it not burn wood or wood pellets for any purpose. As set forth herein, however, OccupyMaine seeks leave through this permit request to operate a wood or pellet burning stove within

the designated area of Lincoln Park, either outside or within a tent or teepee that has proper exhaust for smoke, as an essential method for staying warm in the absence of permitted warmers within tents where people sleep. The warming tent would not be for sleeping but for staying warm.

OccupyMaine will post designated exit signs around the encampment and detailed maps of the encampment in common areas. In the event evacuation of the encampment is required due to fire or for any other safety reason, "The People's Mic" and a whistle will warn occupiers to evacuate immediately. Members of the Safety team will be responsible for checking tents to ensure evacuation in the event of an emergency. Numbers have been placed on each tent for the purposes of identification. The watering trough behind the Fire Station has been designated as a place to gather in the event of an evacuation, which will be announced in advance and during any evacuation. We have fire extinguishers in key locations around the Occupy encampment, and are acquiring carbon monoxide detectors for installation at appropriate locations.

Cigarette butt cans have been distributed throughout the camp, and "No Smoking" signs are posted in common spaces like the kitchen and library tents and also near any flammable items. OccupyMaine members understand that smoking in tents has been forbidden by the City and the group and as best as the group can determine that regulation is being observed.

OccupyMaine members within the encampment would refrain from using any propane or other flame-based heating devices within a tent where people are sleeping, absent appropriate exhaust and pre-approval from the City.

OccupyMaine's Statement of Policy and Principles on Violence and Drugs, adopted by the General Assembly on November 10, 2011 and attached hereto as Exhibit 2, would have to be observed by individuals who wish to remain in the community encampment on a daytime and/or overnight basis.

OccupyMaine is in the process of finalizing a social compact articulating expected standards of behavior – with respect to one another and the Park – for those who wish to be part of the OccupyMaine community encampment in Lincoln Park.

OccupyMaine proposes that the City place holiday lights on all the trees in Lincoln Park for the duration of the winter months, as it does in many other

parks and areas of the City, for the purpose of beautifying and brightening Lincoln Park and enhancing public safety during the evening and nighttime hours.

OccupyMaine welcomes any additional input, ideas of suggestions from City officials as to different or better ways to address Fire Safety, Public Safety and Medical Response.

13. Plans for Staying Warm.

As set forth above, OccupyMaine has received and continues to receive education and training regarding staying warm, and a SOLO Wilderness Medical School instructor has been actively involved with OccupyMaine. A number of OccupyMaine's members are also experienced winter campers. OccupyMaine have been receiving donations of sleeping bags, tents, clothing, footwear, propane heaters for use outside of sleeping tents, hand warmers, etc. That said, occupiers fully understand that in the event of extreme cold, they must stay physically active and/or take shelter indoors as necessary to stay warm. OccupyMaine maintains a couple of sturdier tents that can be utilized as warming huts, day and night, for numerous persons.

OccupyMaine also has a network of local residents who have agreed to provide shelter and hot showers if needed.

OccupyMaine is in the process of finalizing a social compact articulating expected standards of behavior – with respect to one another and the Park – for those who wish to be part of the OccupyMaine community encampment in Lincoln Park.

OccupyMaine welcomes any additional input, ideas of suggestions from City officials as to different or better ways to help occupiers stay warm in Lincoln Park.

14. Plans for Stewardship of the Park.

OccupyMaine is keeping the Park clean through various efforts of the occupiers. Group members have been raking regularly and keeping straw down on muddy areas. All trash is bagged and tied on a regular basis, and deposited on a daily basis in or next to the barrels just outside the Park at the corner of Pearl and Federal and the corner of Pearl and Congress. Through

this Petition, OccupyMaine is requesting that the City place two more trash barrels, one at each of the referenced corners.

OccupyMaine proposes that the City places holiday lights on all the trees in Lincoln Park for the duration of the winter months, for the purpose of beautifying and brightening the Park and enhancing public safety during the evening and nighttime hours.

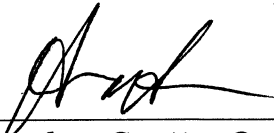
OccupyMaine is in the process of finalizing a social compact articulating expected standards of behavior – with respect to one another and the Park – for those who wish to be part of the OccupyMaine community encampment in Lincoln Park.

OccupyMaine will use its funds as necessary on an ongoing basis to maintain Lincoln Park and the community encampment in a clean and presentable manner. As an alternative to posting a bond for future repair or stewardship of the Park, OccupyMaine will establish a fund at Five County Credit Union to cover such costs and pledges to raise Two Thousand Five Hundred Dollars (\$2,500.00) by the end of the 179-day term of the permit sought herein. In addition, OccupyMaine will exercise its diligent efforts through public appeals and other means to procure the voluntary services of landscapers and landscaping companies free of charge (or at a discount) to assist with any needed repairs and future stewardship of Lincoln Park.

Finally, OccupyMaine is willing to dedicate its resources and efforts to help establish the Friends of Lincoln Park, a non-profit organization in the same vein and spirit as other private organizations formed to support and maintain public parks in the City of Portland.

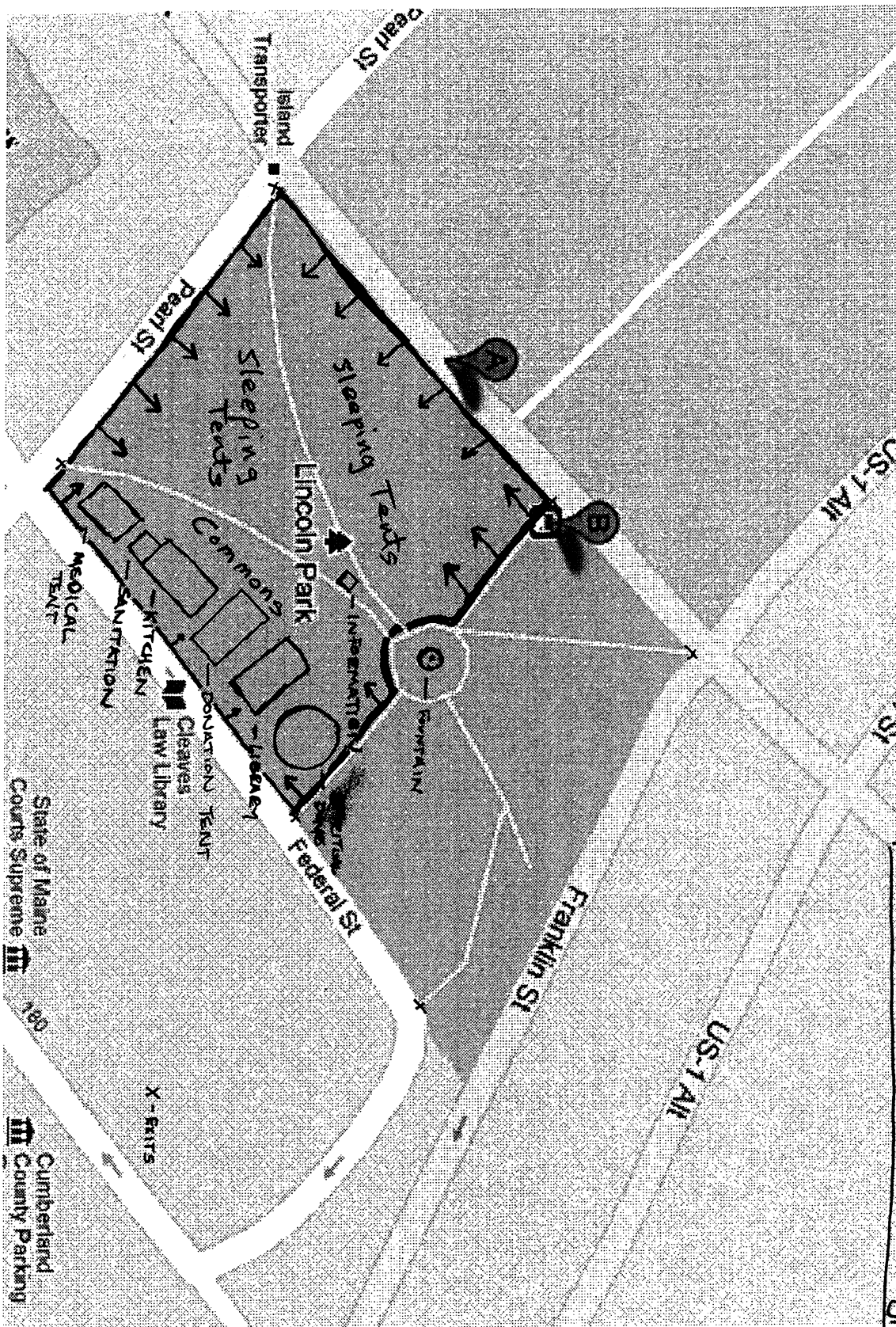
OccupyMaine welcomes any additional input, ideas or suggestions from City officials with regard to present or future stewardship of Lincoln Park.

Dated: December 5, 2011



Heather Curtis, *OccupyMaine Member*
and *Facilitator of this Petition*

Outline of Proposed 24/7 1st Amendment Space
and Occupy Maine Community Encampment for
Economic & Social Change



A statement of policy and principles on Violence and drugs

Goal: To provide a framework to de-escalate conflict and respect fundamental human dignity.

Occupy Maine condemns all forms of oppression.

Occupy Maine acknowledges the right of all people to access the legal system, and will not impinge on this right. You remain an autonomous individual, and can always call the police.

A process to address and mediate violations of these norms must differentiate between people and behavior.

To ensure a healthy, safe space, Occupy Maine will not tolerate violent behavior, threats of violence against individuals, intoxication, theft or unauthorized physical contact.

When a person chooses to act in a way that violates these principles, the community will demand that these behaviors cease immediately.

A team, consisting of three to five mediators, drawn from a pool of those willing, with other community members will directly address the facts of violation, in the form, "We have seen you hurt our community, YOU are welcome here, but your behavior is not kind, and is not welcome here". The team must be resolute, calm, and collected. If a mediator can no longer remain in this role, they must step away until they can resume. This process is not a shouting match, nor an argument. All statements are made in "I" form, are strictly factual, and are not based on rumor or supposition. The process must and will continue, repeating itself until the negative behavior is addressed. The oppressive behavior will leave the Occupation, with or without the individual. If confrontation escalates, call the police.

The occupation will continue to update these policies.

Approved by the General Assembly of
Occupy Maine
11-10-11

Order 83-11/12

Motion Failed 1-8 (Brennan, Duson, Mavodones, Coyne, Anton, Donoghue, Leeman, Suslovic)

MICHAEL F. BRENNAN (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

EDWARD J. SUSLOVIC (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER ACTING ON OCCUPYMAINE'S PETITION TO PORTLAND CITY COUNCIL FOR DESIGNATED TWENTY-FOUR HOUR FREE SPEECH, ASSEMBLY, AND COMMUNITY BUILDING ZONE IN LINCOLN PARK AND FOR A PERMIT TO CONTINUE OCCUPYMAINE'S TWENTY-FOUR HOUR, SEVEN- DAY PER WEEK COMMUNITY ENCAMPMENT IN LINCOLN PARK

ORDERED, that OccupyMaine's amended petition to the Portland City Council for a designated twenty-four hour free speech, assembly and community building zone in Lincoln Park is hereby approved; and

BE IT FURTHER ORDERED, that OccupyMaine's amended petition to the Portland City Council for a permit to continue OccupyMaine's 24 hour, 7 day per week community encampment in Lincoln Park is hereby approved.

**COUNCIL COMMUNICATION FROM CITY MANAGER JON JENNINGS
REGARDING THE FY21 MUNICIPAL BUDGET
AUGUST 3, 2020**

The City Council's Finance Committee will continue its FY21 budget review process with a series of meetings starting on Wednesday, August 5, 2020 at 5:30 PM. The meetings will take place remotely via Zoom and can be live-streamed at www.portlandmaine.gov/livestream. The agenda materials can be found by visiting www.portlandmaine.gov/agendas. The Finance Committee will also meet remotely on Thursday, August 6 at 5:30 PM and Wednesday, August 12 at 5:30 PM. A scheduled public hearing will be held remotely during the Wednesday, September 2 Finance Committee meeting at 5:30 PM.

It is anticipated that the full Council will take up the FY21 budget as a first read on Wednesday, September 9 and second read on Monday, September 21. A budget workshop will be held on Monday, September 14.

The City is faced with unprecedented revenue losses of approximately \$12 million due to the COVID-19 pandemic. In order to reduce spending, the City immediately implemented a non-essential hiring freeze and non-essential spending freeze in the middle of March. Later in March, the City began issuing temporary furlough notices to staff whose roles were impacted by the pandemic. Throughout April and May, additional staff were temporarily furloughed to further reduce spending in light of revenues falling significantly shorter than normal. In June, additional temporary furloughs were instituted across all departments, including City leadership, and all cost of living adjustments and performance pay increases for non-union employees were frozen.

City Manager Jon Jennings had originally prepared a FY21 budget that only included a 1.8% tax rate increase generally aligned with inflation. In light of the pandemic and the State's Order that granted municipalities more time to review and approve the next year's fiscal budget, the City automatically carried over its FY20 budget on July 1 and began work on preparing a new FY21 budget with the goal of no property tax rate increase.

Despite receiving limited additional federal and State COVID-relief funds (\$2-\$3M) which will be used to cover some of our COVID related expenditures, the City's continued revenue shortfalls means service and staff cuts will be recommended in order to balance the budget. The City Manager expects to present a budget with a decrease in the overall tax rate.

Finance Director Brendan O'Connell will give a presentation to the Finance Committee on August 5 before the Committee begins its review of each City department budget.

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 2, 2020

**SUBJECT: Resolve 3-20/21 Recommending the Marketing of City-Owned Surface Level
Parking Lots at 157 Brackett Street and 176 Clark Street for Housing
Development - Sponsored by Housing Committee, Councilor Jill C. Duson,
Chair**

SPONSOR: Housing Committee, Jill C. Duson, 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 8/3/2020

Final Action 8/31/2020

Can action be taken at a later date: No

PRESENTATION: Mary Davis/ 10 minutes

I. SUMMARY

Resolution authorizing City staff to move forward with the disposition of two City-owned properties; the properties are 157 Brackett Street and 176 Clark Street.

II. AGENDA DESCRIPTION

The Housing Committee met on November 13, 2019 and voted unanimously to forward this item to the City Council with a recommendation for passage.

Pursuant to City Council adopted Rules for the Disposition of City-Owned and Tax-Acquired Property, City Council approval is sought to market two City-owned surface level parking lots located at 157 Brackett Street and 176 Clark Street for housing development through a Request for Proposal (RFP). Staff would then provide the Economic Development Committee and the Housing Committee with results of the marketing process for its recommendation to the City Council on a Purchase and Sale Agreement.

157 Brackett Street

The .1942 acre (8,460 sq. ft.) parcel located in the West End (erroneously referred to as West Bayside previously) area at 157 Brackett Street is an active 20-space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

176 Clark Street

The 1678 acre (7,313 sq. ft.) parcel located in the West End (erroneously referred to as West Bayside previously) area at 176 Clark Street is an active 16-space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

In response to the request from members of the Housing Committee, staff presented two city-owned parking lots for disposition consideration as the location of future housing development.

157 Brackett Street

The .1942 acre (8,460 sq. ft.) parcel located in the West End (erroneously referred to as West Bayside previously) area at 157 Brackett Street is an active 20- space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

As a result of an inquiry from a developer and responding to a request from the Housing and Community Development Office, the City-Owned and Tax Acquired Committee reviewed the possible disposition of city property at 157 Brackett Street in July, 2014. A draft RFP was presented to the Housing and Community Development Committee on September 29, 2014. After much public comment regarding Reiche School safety issues and area parking concerns, the HCDC postponed action until city staff could coordinate a neighborhood meeting to discuss these issues. As a result of a meeting coordinated through the West End Neighborhood Association, several safety improvements were made. An RFP for sale of the property was issued on July 9, 2015. The only respondent who replied to the RFP did not consummate the sale.

The property is located in the B-1 zone, which supports mixed-use buildings. The minimum lot area per dwelling unit is one unit for every 435 sq. ft., which would allow up to 19 units of housing on the parcel. The assess value is currently \$126,300.

176 Clark Street

The .1678 acre (7,313 sq. ft.) parcel located in the West End (erroneously referred to as West Baysid previously) area at 176 Clark Street is an active 16-space surface level parking lot used as employee and visitor parking for Reiche School, parking for customers of area businesses, and off-street parking after hours.

The property is located in the R-6 zone, which supports high-density residential development characterized by multi-family dwellings. The minimum lot area per dwelling unit is one unit for every 725 sq. ft., which would allow up to 10 units of housing on the parcel. The assess value is currently \$79,500.

Per the Portland School Department Facilities Director, Reiche School needs the 36 (combined) spaces at a minimum. The Community Center and pool patrons also use the spaces along with neighbors needing to get their cars off the road during snow bans. Parking is crucial in the West End if not all of Portland, but very few parking lots meet so many different demands to include local businesses during non-school hours.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Portland's Comprehensive Plan 2030 identified the disposition of City-owned property as a part of a larger strategy of leveraging underused properties along with recommending and incentivizing affordability restrictions as part of City-owned property transactions.

Council and Housing Committee Goal/Priority: Increase access to housing that is safe, affordable and accessible for working and low-income families. Identify a public/private partnership to add rental and ownership units to the City's housing inventory by leveraging policy, planning expertise, funding, zoning, public land and/or other strategies.

V. FINANCIAL IMPACT

The City benefits when City-owned land is improved and returned to the City's tax rolls.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Housing Committee approved a recommendation that the City Council approve the disposition of two City-owned surface parking lots at 157 Brackett Street and 176 Clark Street.

VIII. LIST ATTACHMENTS

1. Resolution recommending the marketing of city property for housing 8.3.2020
2. 157 Brackett Street GPS map
3. 176 Clark Street GPS map

Prepared by:

Mary Davis, Division Director

Date: 7/2/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

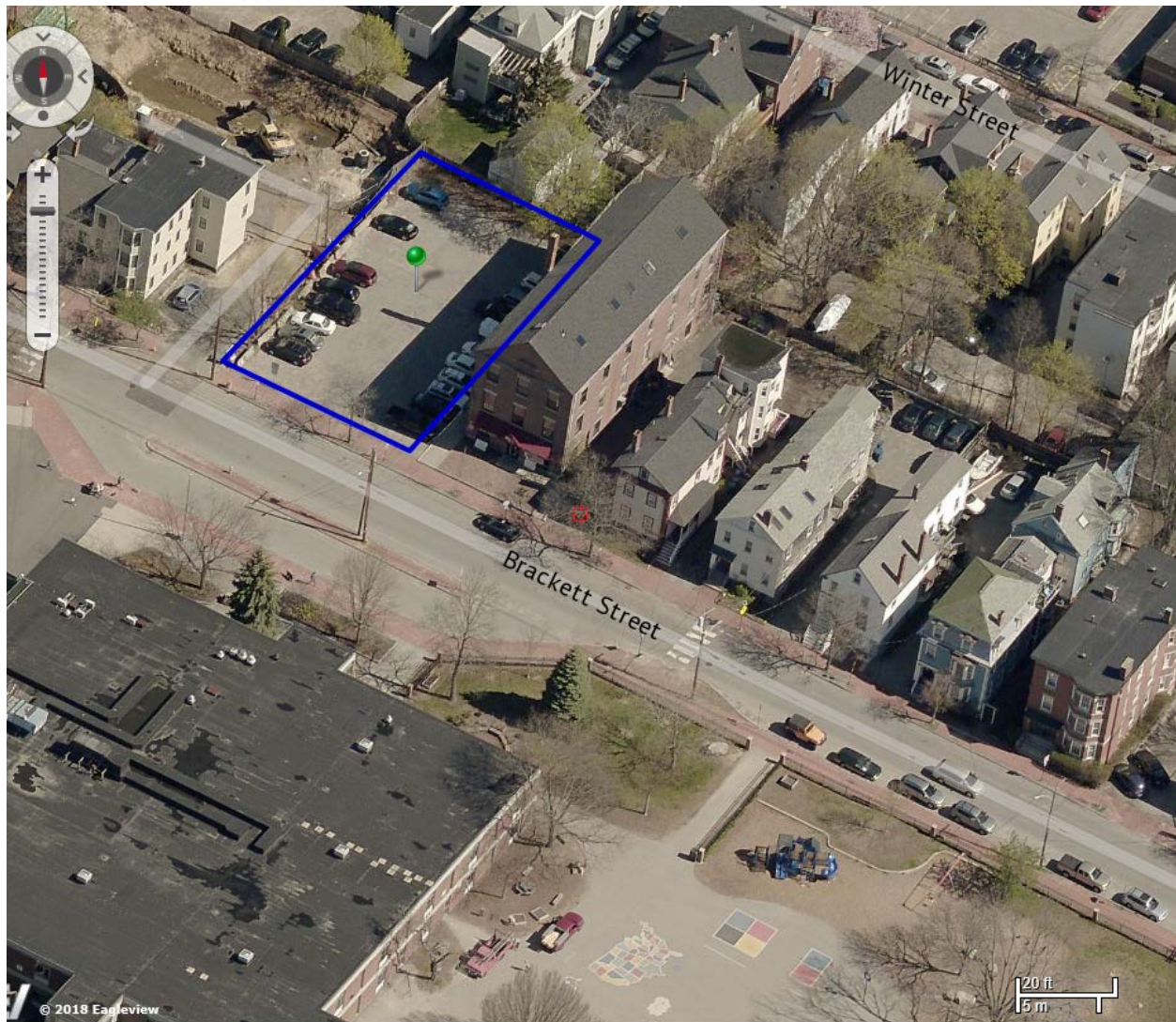
**RESOLUTION RECOMMENDING THE MARKETING OF
OF CITY-OWNED SURFACE LEVEL PARKING LOTS
AT 157 BRACKETT STREET AND 176 CLARK STREET FOR
FOR HOUSING DEVELOPMENT**

WHEREAS, the City Council adopted a new comprehensive plan called Portland's Plan 2030, which has a goal of leveraging city-owned land that may be appropriate for housing development; and

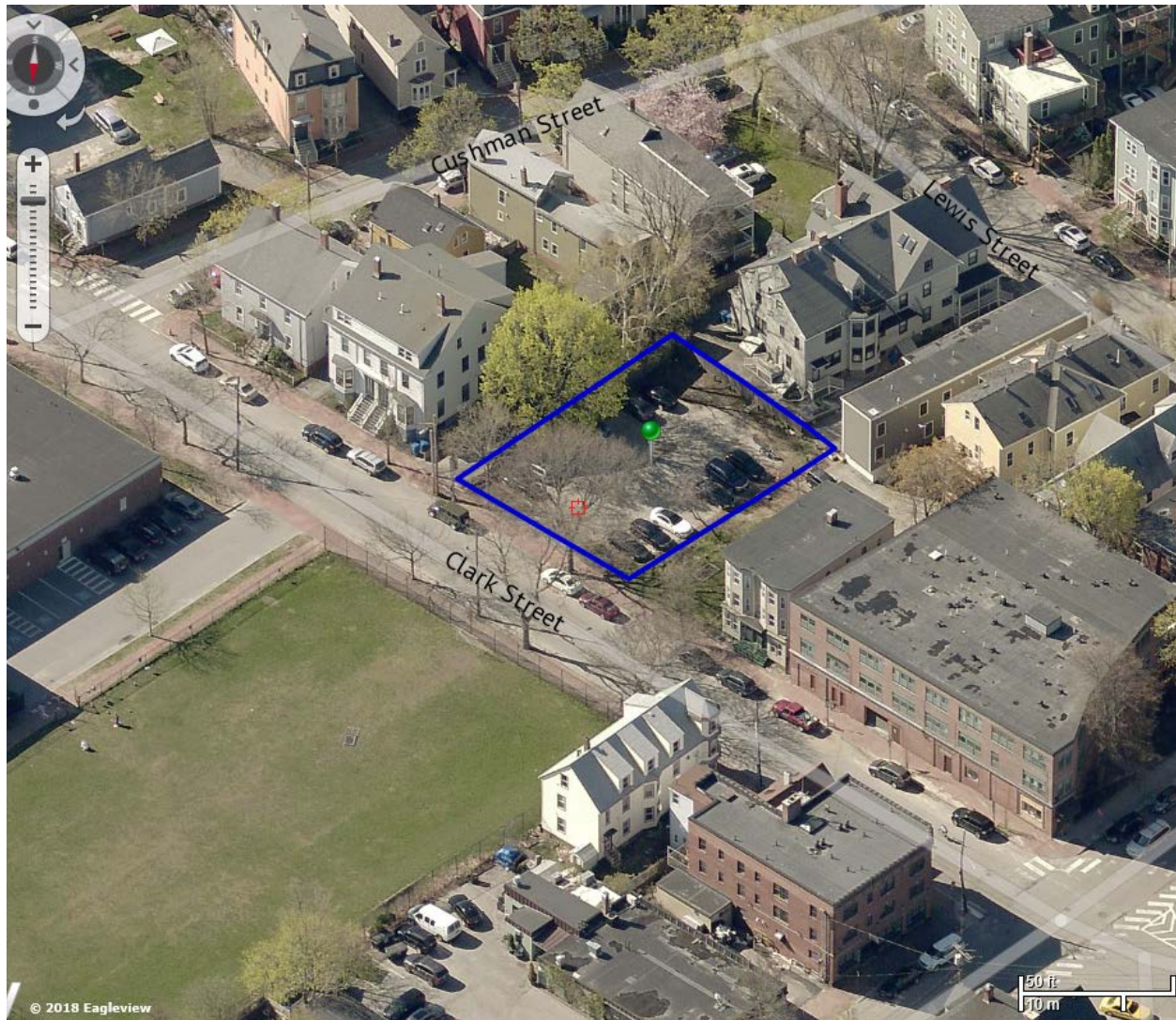
WHEREAS, the City owns surface-level parking lots at 157 Brackett Street and 176 Clark Street (the "Properties") that could support different types of housing projects;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby authorizes staff, working under the direction of the Housing and Economic Development Committees to proceed with the disposition of the Properties to support housing developments according to the Rules for the Disposition of City-Owned and Tax-Acquired Property, adopted by the City Council and most recently amended by Order 190-15/16.

157 Brackett Street



176 Clark Street



Order 72-19/20

Motion to postpone to January 6, 2020: 7-1 (Batson opposed, Cook absent) on 11/18/2019

Motion to postpone to June 15, 2020: 9-1 on 1/6/2020

Motion to postpone to July 13, 2020: 9-0 on 6/15/2020

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 17
RE: FACIAL RECOGNITION TECHNOLOGY PROHIBITION**

WHEREAS, the residents of the City of Portland value privacy as an essential element of their individual freedom; and

WHEREAS, facial recognition technology and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors; and

WHEREAS, the use of facial recognition technology and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of rights guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution; and

WHEREAS, this technology allows people to be tracked without consent, generating databases about law-abiding Portlanders that may chill the exercise of free speech in public places; and

WHEREAS, facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful "false positive" identifications; and

WHEREAS, facial recognition and other biometric surveillance would corrupt the core purpose of officer-worn body-worn cameras by transforming those devices from transparency and accountability tools into roving surveillance systems; and

WHEREAS, the use of facial recognition and other biometric surveillance would disproportionately impact the civil rights and liberties of persons who live in highly policed neighborhoods, and its use would diminish effective policing and public safety by discouraging people in these communities, including victims of crime, undocumented persons, people with unpaid fines and fees, and those with prior criminal history from seeking police assistance or from assisting the police;

NOW, THEREFORE, BE IT ORDERED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, that the Portland City Code is hereby amended by adding an Article, to be numbered XI, which said Article reads as follows:

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article to protect the privacy and civil liberties of the residents of the City of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

Employee means a regular employee of the City of Portland acting in their official capacity.

Facial recognition technology means an automated or semi-automated process that assists in identifying or verifying the identity of an individual based on an individual's face.

Official means an elected or appointed official of the City of Portland acting in their official capacity.

Sec. 17-130. Facial Recognition Technology Prohibition.

No city official or employee shall obtain, retain, access, or use any facial recognition technology or information provided by any facial recognition technology.

**AMENDMENT TO ORDER 72-19/20
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR ALI
RE: FACIAL RECOGNITION TECHNOLOGY**

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article to protect the privacy and civil liberties of the residents of the City of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

~~Employee means a regular employee of the City of Portland acting in their official capacity.~~

~~Facial recognition technology means an automated or semi-automated process that assists in identifying or verifying the identity of an individual based on an individual's face.~~

~~Official means an elected or appointed official of the City of Portland acting in their official capacity.~~

~~Face surveillance means an automated or semi-automated process that assists in identifying or verifying an individual, or captures information about them, based on the physical characteristics of their face.~~

~~Face surveillance system means any computer software or application that performs face surveillance.~~

~~City of Portland means any department, agency, bureau, and/or subordinate division of the City of Portland.~~

~~City of Portland official means any person or entity acting on behalf of the City of Portland, including any officer, employee, agent, contractor, subcontractor, or vendor.~~

Sec. 17-131. Facial Recognition Technology Prohibition.

~~No city official or employee shall obtain, retain, access, or use any facial recognition technology or information provided by any facial recognition technology.~~

~~It shall be unlawful for the City of Portland or any City of Portland official to:~~

~~(a) Obtain, retain, store, possess, access, use, or collect:~~

~~1. any face surveillance system; or~~

~~2. any data or information derived from a face surveillance system or other use of face surveillance;~~

~~(b) Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Portland or any City of Portland official:~~

~~1. any face surveillance system; or~~

~~2. any data or information derived from a face surveillance system or other use of face surveillance; or~~

~~(c) Issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:~~

~~1. any face surveillance system; or~~

~~2. any data or information derived from a face surveillance system or other use of face surveillance.~~

Sec. 17-132. Enforcement.

~~(a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence~~

derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.

(b) Private cause of action.

1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the city of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.

2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the greater of:

a. \$100 for each violation of this article; or

b. \$1,000.

3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.

(c) Violation of this ordinance by any official or employee of the city of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining.

Sec. 17-132. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

(a) limit any individual's rights under state or federal law;

(b) prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording;

(c) prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or

(d) prohibit the use of facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:

1. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed, used, or collected with the knowledge and consent of any person authorized for such entry or access; and

2. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.

**AMENDMENT TO AMENDMENT 1 TO ORDER 72-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: ENFORCEMENT**

WHEREAS, the residents of the City of Portland value privacy as an essential element of their individual freedom; and

...

NOW, THEREFORE, BE IT ORDERED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, that the Portland City Code is hereby amended by adding an Article, to be numbered XI, which said Article reads as follows:

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-131. Facial Recognition Technology Prohibition.

~~No city official or employee shall obtain, retain, access, or use any facial recognition technology or information provided by any facial recognition technology.~~

~~It shall be unlawful for the City of Portland or any City of Portland official to:~~

~~(a) Obtain, retain, store, possess, access, use, or collect:~~

~~1. any face surveillance system; or~~

~~2. any data or information derived from a face surveillance system or other use of face surveillance;~~

~~(b) Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Portland or any City of Portland official:~~

~~1. any face surveillance system; or~~

~~2. any data or information derived from a face surveillance system or other use of face surveillance; or~~

_____ (c) Issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:

_____ 1. any face surveillance system; or

_____ 2. any data or information derived from a face surveillance system or other use of face surveillance.

Sec. 17-132. Enforcement.

Any City employee who violates a provision of this Article may be subject to discipline in accordance with the City's disciplinary policies and procedures and applicable collective bargaining agreements.

~~_____ (a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.~~

~~_____ (b) Private cause of action.~~

~~_____ 1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the city of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.~~

~~_____ 2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to~~

~~face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the greater of:~~

~~_____ a. \$100 for each violation of this article; or~~

~~_____ b. \$1,000.~~

~~_____ 3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.~~

~~_____ (c) Violation of this ordinance by any official or employee of the city of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining.~~

Sec. 17-132. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

_____ (a) limit any individual's rights under state or federal law;

_____ (b) prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording;

_____ (c) prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or

_____ (d) prohibit the use of facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:

_____ 1. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed,

used, or collected with the knowledge and consent of any person authorized for such entry or access; and

2. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.

**AMENDMENT TO AMENDMENT 3 TO ORDER 72-19/20
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR COSTA
RE: STANDARD PROCEDURES ALLOWED UNDER STATE AND FEDERAL LAW**

NOW, THEREFORE, BE IT ORDERED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, that the Portland City Code is hereby amended by adding an Article, to be numbered XI, which said Article reads as follows:

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article to protect the privacy and civil liberties of the residents of the City of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

...

Sec. 17-131. Facial Recognition Technology Prohibition.

...

Sec. 17-132. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

...

(e) prohibit any contracts, agreements, permits or other actions at the Portland Jetport or at the port, when done as part of a broader system of screenings managed by a state or federal agency.

CITY OF PORTLAND, MAINE

MEMORANDUM

To: *Jon Jennings, City Manager*

From: *Paul Bradbury, Airport Director*

Date: *July 6, 2020*

RE: *Proposed Ordinance on the Prohibition of Facial Recognition Technology*

I have reviewed the proposed amendment adding Chapter 17 Article XI. Facial Recognition Technology Sec. 129 - 132 to the Portland City Code. The amendment prohibits the use of any facial recognition technology by City officials or employees, but does allow exceptions including one for managing the secure entry to restricted buildings and spaces.

Although no facial recognition technology is currently in use at the Portland International Jetport, I do believe its use will be implemented within the next six months for the allowable excepted use under this amendment for managing access to secured areas. The COVID-19 pandemic is accelerating the schedule for eliminating the use of touch keypads and adding biometrics such as facial recognition to airport access control systems like that being used at the Jetport. This change to biometrics will allow our security system to be touchless and safer as we combat this pandemic.

There has been rapid deployment in the use of facial recognition at airports by airlines to speed up passenger check in and provide a better overall customer experience. Again, much like our aforementioned security system, I believe this will only accelerate as airlines respond to COVID-19 and work to increase social distances, reduce the need to queue, and seek touchless options for check-in. Under my review of the proposed amendment I believe the use by airlines would also be exempt since these systems are providing boarding access, require consent, and do not retain information by persons who opt out.

One area of this proposed amendment that remains a concern is regarding the Jetport's planned future development of a Federal Inspection Services (FIS) facility for the processing of international travelers. This facility would have facial recognition software that is used by airlines and U.S. Customs and Border Protection staff, but it would be in part obtained through construction contracts issued by the Jetport. The proposed amendment to the City Code does not allow the City of Portland or any City of Portland official to "Issue any permit or enter into a

contract or other agreement that authorizes any third party to obtain, retain, store, process, access, use or collect: 1. any face surveillance system; or 2. any data or information derived from a face surveillance system or other use of face surveillance”. I believe this broad restriction would limit the Portland International Jetport from entering into a construction contract in the future for an FIS Facility. The FIS facility is needed for most non-stop international flights to service the Jetport, since there are only 16 U.S. preclearance airports worldwide that do not require local clearance. The development of an FIS facility is necessary to meet the future air service needs of Portland and Maine; without it we are arbitrarily limiting economic opportunities for the region.

In summary, facial technology software is being rapidly deployed at airports nationwide to support the more efficient, convenient, and safe processing of travelers. It is not being used for surveillance, but rather to automate a manual process of checking identification. The amendment’s exceptions cover several anticipated uses for the technology at the Jetport such as security access control and airline check-in, but limits the ability of the Jetport to provide a future FIS facility for processing international flights. The development of an FIS is included in the Jetport’s City Council-approved Master Plan. The Jetport strives to provide the highest level of air service and connectivity and this will not be possible without the future development of an FIS facility to process international flights.

**Portland Police Department
Memorandum**

July 8, 2020

To: Jon Jennings, City Manager
Fm: Frank Clark, Chief of Police
Re: Draft Ordinance - Facial Recognition (Ch. 17, Article XI)

My command staff and I have reviewed the newest draft ordinance language that would effectively prohibit the acquisition and use of facial recognition technology or any information derived from such a system by City of Portland officials.

We acknowledge our continued awareness of the related privacy and accuracy concerns. I will refer you to my first memo on this topic, dated December 26, 2019, which more thoroughly outlines the technology and law enforcement's use of it (see attached). Although the department does not have any current plans to acquire facial recognition technology, I remain an advocate of lawfully and appropriately using innovative 21st century technologies in order to increase investigative efficiencies and effectiveness and drive better public safety outcomes. As such, I would respectfully continue to urge the Council to not preemptively implement an outright ban on the use of such a potentially beneficial tool to assist victims of crime and people in crisis.

Specific to this current proposal, the draft defines "face surveillance" as "an automated or semi-automated process that assists in identifying or verifying an individual, or captures information about them, based on the physical characteristics of their face," and then defines "face surveillance system" as "any computer software or application that performs face recognition." The draft then prohibits any city employee from obtaining, possessing, accessing or using any "face surveillance," or from using any data or information derived from such a system. This is extremely broad and, although certainly not the intent, could even implicate investigative processes that we currently use, in which we simply access and use video or still photographs captured of suspects and disseminate them to law enforcement or the public to assist in identification. It would also prevent another law enforcement agency from cooperating with Portland PD or providing a lawfully acquired investigative lead.

The word "surveillance" in this context also has a negative connotation, often implying ongoing or broad observation of a place, person or group to gather information. That is not reflective of any intended use of facial recognition technology. For our purposes, by contrast, facial recognition would involve the simple comparison of an unknown person's photograph with known photographs contained in a public database (e.g., criminal mugshots). One example from another jurisdiction here in Maine involved the comparison of an unidentified homicide victim's face with a database of known photographs in another state, resulting in a prompt identification of the victim and the ability to quickly continue the investigation.

Portland PD has not utilized this resource and, again, has no plans to acquire such technology at this time. We would, however, like to retain the lawful capacity to work with our law enforcement partners and use such technology in appropriate cases moving forward. Any such operational use would be in compliance with established policy (see attached draft), which would require criteria for use, as well as my express authorization and a process for human confirmation. I can assure you that the department will continue to monitor the advancement and use of the technology itself and will not be seeking to acquire such technology without approval from the Council via the City Manager.

Please let me know if there are any questions. Thank you, in advance, for your anticipated consideration.

**Portland Police Department
Memorandum**

To: Jon Jennings, City Manager
From: Frank Clark, Chief of Police
Date: December 26, 2019
Re: Draft Ordinance - Facial Recognition Prohibition

I have reviewed the draft ordinance language that would effectively prohibit the *use, access or retention* of facial recognition technology or information by City of Portland officials, as contained within the proposed Amendment to Portland City Code Chapter 17, Article XI (17-130).

Although the Portland Police Department does not currently utilize this technology, nor do we have any immediate plans to acquire it, I would be concerned were it to be preemptively prohibited.

Having recently researched this technology more thoroughly, to include review of policy, practice and other materials available through such resources as the International Association of Chiefs of Police (IACP), and the Integrated Justice Information Systems Institute (IJIS), as well as discussions with members of the *National Capital Region Law Enforcement Facial Recognition Phase 2 Pilot Project*, we acknowledge that there are many ways in which facial recognition technology can be used, and that some of those uses may cause public concern related to privacy, civil rights and civil liberties.

We also believe that carefully considered policies and practices can effectively mitigate these related concerns. While we do not have any immediate plans to acquire facial recognition, I am an advocate of taking advantage of contemporary 21st century technologies to drive better public safety outcomes. A ban on facial recognition technology would only take away a potential tool that is helping to increase efficiencies and provide assistance for crime victims and people in crisis in other jurisdictions.

The Technology:

Facial recognition is essentially a software application that uses computer algorithms capable of comparing a photograph of an *unknown* person (e.g., a criminal suspect, an unconscious victim, or an unidentified decedent) to other *known* photographs (e.g., a criminal mugshot database), in order to refute or provide *possible* matches based upon a person's facial feature locations and contours.

In the context of law enforcement investigations, facial recognition systems do not provide a positive identification of an individual; they are merely a tool used to develop a "tip" that may aid in developing investigative leads. The accuracy of facial recognition may vary, but that concern can be mitigated when used in conjunction with sound policies and a trained facial examiner.

No enforcement action can be taken based solely upon the computer's "identification" of a possible suspect or victim. The computer can provide a list of possible candidates (i.e., "leads"), but it does not rise to the constitutionally requisite level of either *reasonable articulable suspicion*, or *probable cause* that would justify a law enforcement action, such as a search, detention or arrest.

Whenever a possible match is found by the computer, human intervention is then required to determine whether or not a person from the "known list" is actually the person whose identity is in question. This would include review by a *trained* facial examiner, who understands how to use

morphological features of the face. It would only be after additional human confirmation and investigation that any action might be possible.

Guiding Principles – Law Enforcement Use of Technologies:

In accordance with the best practices outlined by the IACP Technology Policy Framework, law enforcement agencies should always develop appropriate usage policies to ensure responsible and effective use of technologies. In order to ensure effective implementation, use and community trust, such policies must include guidance intended to ensure the constitutionally protected civil rights and civil liberties of individuals, as well as the privacy protections and criteria related to the collection, storage, use and retention of any data.

Law enforcement has the capacity to thoughtfully and responsibly approach the adoption of facial recognition technology. The IACP released a technology policy framework in 2014.¹ The Criminal Intelligence Coordinating Council released a comprehensive policy development guide for law enforcement use of facial recognition technology in 2017.² The IJIS Institute published a Facial Recognition Use Case Catalogue earlier this year, outlining particular public safety applications and successful uses of the technology.³

Agencies have developed and adopted facial recognition technology policies to address challenges involved with this tool, including the potential for inaccurate results based on skin color. All of these efforts must be taken into account in any policy discussion on facial recognition.

The results returned from a facial recognition candidate are ranked upon computational analysis. The list may contain persons of a different race, gender and / or age of the individual in the questioned photo. Therefore, the images and information in the candidate list are for investigative lead generation purposes only.

Before use of any facial recognition system, law enforcement agencies should provide training to users in regards to the system's use, functions, limitations, accuracy and policy. Such policies should address such areas as the *capture, usage, retention*, and *accuracy* of images, as well as the standards and training required for the human oversight component.

Uses / Database:

Facial recognition technologies and processes have and can be used to:

- Solve crimes, to include unsolved cold cases, or identify wanted persons by comparing a picture taken at a crime scene to images of known people in a mugshot database in order to generate a lead in a criminal investigation;
- Identify persons who have directed substantive threats to a person, or group of persons such as those at large events or mass gatherings;
- Identify missing, endangered, or unconscious persons, or unidentified decedents, to include comparing a cell phone camera image of an unconscious crime victim to a publicly available database of facial images to notify relatives or generate investigative leads;

¹<https://www.theiacp.org/sites/default/files/all-i-j/IACP%20Technology%20Policy%20Framework%20January%202014%20Final.pdf>

² <https://www.bja.gov/Publications/Face-Recognition-Policy-Development-Template-508-compliant.pdf>

³https://cdn.ymaws.com/www.ijis.org/resource/collection/93F7DF36-8973-4B78-A190-0E786D87F74F/Law_Enforcement_Facial_Recognition_Use_Case_Catalog.pdf

- Compare a cell phone camera image of a wandering elderly person with possible dementia to driver's license photos to help determine if they have been reported missing;
- Compare an image of persons involved in potential child sexual exploitation cases to known images in order to help identify potential child victims and perpetrators;
- Intervene in crisis incidents, to include persons expressing suicidal intent or ideations;
- Protect or aid in the exoneration of persons who have been misidentified by an eyewitness;
- Compare an image posted publicly on social media by an individual claiming they want to end their life to a database of driver's license photos to help identify that person so that help can be quickly dispatched.

Comparative Technologies / Best Practice Policies:

If the processes and concerns noted above sound familiar, they involve the same concerns and mitigating processes that have been used for several years now in regards to the implementation of automated fingerprint identification systems (AFIS).

If a person's (latent / unknown) fingerprint is found at the scene of a crime, it can be entered into an automated computerized system, the algorithms of which can provide a list of potential fingerprint matches from a database of (known) criminal defendants. Just like facial recognition, however, a "match" is not allowed based solely upon the results of a computerized comparison. It still requires a trained human examiner to actually compare the questioned (latent / unknown) fingerprint to the known ("inked") fingerprint.

Similar to the potential with facial recognition, AFIS technology is extremely beneficial for such at efficiently and effectively identifying criminal suspects, unidentified decedents, or uncommunicative missing persons, and, like facial recognition, must also be complemented by a trained human using their own senses to confirm or refute the suspicion prior to taking any sort of enforcement action.

Recommendation:

As an advocate of public safety and innovation, as well as staff and investigative effectiveness, efficiency and productivity, and in light of the array of successes and experiences in other jurisdictions, I can certainly see the potential future benefits of this technology. As such, I would recommend against the outright pre-emptive banning of this technology.

I will continue to monitor the progress of this technology, and the associated legal decisions and landscape related to its use. If / when the Portland Police Department seeks to acquire such technology, I would pledge to bring such a request forward to the City Administration and City Council for further public discussion.

I would likewise ensure that we would come to you with a plan that would outline the policies, training and protocols that would need to be put in place to guarantee the appropriate and lawful use of this technology in a balanced and responsible manner.

Thank you, in advance, for your anticipated consideration.

PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

	Subject:	Facial Recognition Technology	Policy #:	PENDING
	Distribution:	All Personnel	Effective Date:	##/##/2020
	Standards:		Revision Date:	##/##/2020
	By Order Of:	Chief of Police	Review:	Biennially

I. PURPOSE:

To establish procedures for approval and acceptable use of the images, information and tools associated with facial recognition technology.

II. POLICY:

When used in combination with human analysis and additional investigative steps, facial recognition technology can be a useful tool to increase investigative efficiencies and drive better public safety outcomes. As with all investigative tools, this technology must be used in accordance with local, state and federal law and with the utmost respect for the constitutional rights of all persons.

III. DEFINITIONS:

Facial Recognition Technology: An electronic system which automates the process of comparing a photo of an unknown person with a public database of photographs.

Examiner: An individual who has received advanced training in the operation, use and applicability of facial recognition technology to include an understanding of the efficacy and limitations of the system.

IV. PROCEDURES:

- A. Facial Recognition technology must only be used for a legitimate public safety purpose, including but not limited to the list of authorized uses outlined below.
- B. When used for a law enforcement purposes, Facial Recognition may never be used as the sole basis to establish reasonable articulable suspicion or probable cause. Any possible match must be verified by a competent Examiner trained in the use of the technology and / or followed up with an investigatory process sufficient to independently meet the constitutionally requisite standards necessary to justify further action.
- C. Authorized uses of facial recognition technology are as follows:
 - 1. To identify a suspect in a specific criminal incident;
 - 2. To identify an individual when there is a basis to believe the individual is a missing or endangered person, a crime victim or a witness to criminal activity;
 - 3. To identify a deceased person;
 - 4. To identify a person who is incapacitated or otherwise unable to identify themselves;

5. To mitigate an imminent, definable threat to health or public safety (e.g., a social media posting of an armed individual expressing a specific threat to carry out an active shooting incident).
- D. Facial recognition technology shall never be used to conduct general or broad observation of a place, person, group or event to gather information.
 - E. The Chief of Police must approve all requests to use or use information or data from facial recognition technology.
 - F. All uses of facial recognition technology must be documented in a supplemental report and associated with an incident number in the PPD records management system. The supplement must include:
 1. the reason and justification for the use;
 2. the experience and qualifications of the examiner;
 3. the date/time of the Chief's authorization;
 4. the results of the search; and
 5. if a possible match is identified, the investigative steps employed to confirm or refute the finding.
 - G. Records derived from the use of Facial Recognition technology will be maintained in accordance with Maine Rules for Disposition of Municipal Records as established by the Maine Municipal Records Board and in accordance with the requirements of Maine law.
 - H. The Police Attorney will conduct an annual review of all uses of facial recognition technology and provide a written report to the Chief outlining the usage and efficacy of the technology, along with any recommendations, to include compliance with city, state and federal law and the procedures established in this policy.

CITY OF PORTLAND, MAINE

MEMORANDUM

To: *Jon Jennings, City Manager*

From: *Kathy Alves, Public Buildings Director*

Date: *July 7, 2020*

RE: *Proposed Ordinance on the Prohibition of Facial Recognition Technology*

In reviewing the proposed addition of Chapter 17 Article XI. Facial Recognition Technology Sec. 129 - 132 to the Portland City Code, my understanding is that facial recognition will be allowed to manage restricted facility access, such as clearing cruise ship passengers at Oceangate Way. Currently, all searches and positive ID checks are handled manually by CBP. I appreciate and support the implementation of this technology in this way.

However, I do see a challenge with the proposed prohibition of the City or a third party to obtain, retain, store, process, access or collect any face surveillance system or any data or information derived from a face surveillance system or other use of face surveillance.

The intent behind implementing facial recognition technology is for cruise lines to purchase this technology for both their own and CBP use. CBP would control the technology through servers dedicated to vessel travel.

As the cruise industry works diligently to recover from the COVID-19 pandemic, it's evident that reducing exposure to crew, passengers, agents, operation staff and CBP is paramount. The industry is working side-by-side with government officials to cover all aspects of reducing exposure both on and off shore. Facial recognition, biometrics, temperature scanners, hands-free restrooms and vocal elevator calls are part of the industry's plan to reduce exposure while still providing a positive experience for all passengers.

The need for facial recognition/ biometric screening is being reviewed and implemented in many ports due to COVID-19. CBP and the cruise industry are in favor of this technology to protect both travelers and staff. COVID-19 has certainly expedited the need to move to more innovative technology as a means of following social distancing requirements and to minimize transmission.

While the cruise industry as a whole is facing many uncertainties, one sector remains very strong. Smaller, more intimate expedition-type cruising is soaring. Many of these itineraries originate out of Europe. This type of market is favorable to Portland. Allowing technology from a travel perspective will keep Portland competitive with the Boston market and thriving for years to come.

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council
CC: Jon Jennings, City Manager
FROM: Danielle P. West-Chuhta, Corporation Counsel
DATE: July 10, 2020
RE: **Proposed Facial Recognition Ordinance**

A newly proposed Facial Recognition ordinance has been proposed by Councilor Ali at the City Council's last meeting in June 2020. After reviewing the proposed ordinance, I have identified the enforcement section as an area of significant concern. The following memorandum provides a summary of those concerns.

The enforcement section of the proposed ordinance specifically provides as follows:

(a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.

(b) Private cause of action.

1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the City of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.

2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the

greater of:

a. \$100 for each violation of this article; or

b. \$1,000.

3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.

(c) Violation of this ordinance by any official or employee of the City of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining.

I. Suppression of Evidence

First, with regard to subsection (a), the proposed language seeks to suppress any data or evidence that is collected in violation of this ordinance. Such decisions, however, regarding the admissibility of data/evidence would be a determination for a court to make through the application of the Maine Rules of Evidence. This is not a process the City Council has jurisdiction or authority to address, and so it is recommended that this language not be included in a proposed ordinance.

II. Private Right of Action

Next, the proposed ordinance allows for a private right of action to be instituted against either the City or a third party.

With respect to a claim against the City, there are certain statutory protections for municipalities and their employees, specifically the Maine Tort Claims Act. There are also a very specific set of circumstances under which the City could be held liable for an employee's unauthorized actions. Although the City may be able to waive its own protections, I would strongly recommend against such a waiver. Providing liability for the civil penalties stated could open the door to additional liability, and waive certain City defenses to related litigation, including those relating to an unauthorized act by an employee.

With respect to a private right of action against either the City or a third party, Maine law is not favorable that a municipality can create such a private right of action in this circumstance. A private right of action specifically allows an individual to sue to enforce their rights under a statute or ordinance. Not all laws are enforceable privately, and the courts generally hold that a private right is only available if it is explicitly spelled out in the enabling statute seeking to be

enforced, or if it is implied by the entire statutory scheme. A few examples of laws that are not enforceable by individuals include laws setting out criminal and civil violations, OSHA, HIPAA, veterans preference statutes, and others.

It is also important to note that Maine case law makes it clear that there is no private right of action available under local land use ordinances. In fact, only municipalities are authorized to enforce this type of ordinance, and they cannot delegate that authority. *E.g. Herrle v. Town of Waterboro*, 2001 ME 1; *Charlton v. Town of Oxford*, 2001 ME 104. Whether that prohibition extends to other types of municipal ordinances (outside of the land use context), is not clear in Maine case law. However, 30-A M.R.S. § 3001, which establishes the City's right to enact ordinances, strongly suggests that the municipality is solely responsible for enforcing its own ordinances. For example, penalties available under an ordinance must only accrue to the municipality. *Id.*

The case for a private right of action in this context might be strengthened if the City was simply expanding an existing right provided for in state law, such as in the case of the minimum wage ordinance that was passed previously by the City Council. Here, however, the City is creating an entirely new right – the right to pursue a claim for violations of the proposed facial recognition ordinance – which does not currently exist in the state or federal law. As such, I recommend that the language establishing this right not be included in the proposed ordinance.

III. Disciplinary Action

With respect to the section providing that a violation of the ordinance is grounds for suspension or termination, that is the type of provision that cannot be implemented unilaterally. Generally, policies that would impose new grounds for discipline need to be posted, and the City's unions given the opportunity to object, request to bargain if the policy impacts working conditions, or provide feedback on the proposal. Implementing this requirement in an ordinance does not allow the City to follow that necessary and required procedure. Additionally, to the extent that this proposed ordinance purports to remove supervisor discretion to impose lesser discipline, or no discipline at all, for a violation, that is also problematic from both a bargaining standpoint and an employee due process standpoint.

I would recommend that this provision be removed from the proposed ordinance. To give the City Council comfort around this issue and not including this language in the proposed ordinance, any employee who violates a law, rule, or order, would already be subject to discipline following the City's existing discipline and workplace conduct policies.

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: ZONING ADDITIONS TO THE B-3 DOWNTOWN BUSINESS ZONE**

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

*That Chapter 14, Section 14-217 is hereby amended to read
as follows:*

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and
B-3c zones:

1. *Residential:*

- a. Attached single-family, two-family and
multifamily dwellings;
- b. Handicapped family units;
- c. Lodging houses;
- d. Combined living/working spaces including, but not
limited to, artist residences with studio
space;~~;-and~~

e. Congregate care facilities.

2. *Business:*

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;

- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;
- j. Communication studios or broadcast and receiving facilities;
- k. Health clubs and gymnasiums;
- l. Theaters and performance and exhibition halls;
- m. Convention and meeting facilities;
- n. Hotels;
- o. Business services;
- p. Parking garages;
- q. Galleries;
- r. Registered dispensary;
- s. Marijuana retail store;
- t. Small-scale marijuana caregiver.

3. *Institutions:*

- a. Museums;
- b. Public or private schools of any type;

- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;
- f. Nursery schools, kindergartens, and day care facilities or home babysitting services~~;~~[i](#)
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions;~~;~~ [and](#)

[h.](#) Intermediate care facility for thirteen (13) or more persons.

4. *Other:*

- a. County and municipal uses;

...



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Zoning Text Amendment to B-3 Downtown Business Zone
385 Congress Street
Portland Opportunity Fund LLC, Applicant

Submitted to: Mayor Snyder & the City Council
From: Chair Mazer & the Portland Planning Board
Council Meeting Date: June 1, 2020

Prepared by: Christian Roadman, Planner
Date: May 13, 2020



Context of the B-3 and B-3c zones. 385 Congress Street is highlighted in teal

I. Introduction and Project Summary

At a public hearing on May 12 2020, the Planning Board unanimously found (7-0) that a proposed zoning text amendment to Division 12 Section 14-217 of the City's Land Use Code (adding congregate care facilities and intermediate care facilities as permitted uses) is consistent with the Comprehensive Plan for the City of Portland. The Planning Board recommended this action to the City Council.

Portland Opportunity Fund LLC seeks a zoning text amendment to facilitate development at 385 Congress Street,

which is zoned B-3 downtown business. The proposed text amendment (**Attachment 2**) would add congregate care facilities and intermediate care facilities as permitted uses to the B-3 zone (as well as the B-3b and B-3c zones, which share the same list of permitted uses).

The review of this proposed text change did not include site plan considerations. However, the applicant's intended development provides helpful context. They propose (**Attachment 3**) to "develop an elderly housing complex that would consist of a congregate care facility (independent living apartments) and an intermediate care facility that will be comprised of assisted living units and a memory care facility." If approval is granted by the Planning Board and City Council for a zoning text change, the applicant may follow with a master development plan and / or level III site plan for their broader development intentions.

II. ZONING ANALYSIS

Both proposed additional permitted uses are defined in the zoning code:

Congregate care facility:

"A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- (a) Transportation for essential support activities. This service shall be included in the base rent;*
- (b) Provision of at least one (1) meal per day;*
- (c) Programmed social activities which are facilitated by staff. This service shall be included in the base rent;*
- (d) Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and*
- (e) Installation of emergency call buttons or systems in each congregate care living unit.*

The population of a congregate care facility shall consist of persons fifty-five (55) years of age or older and their spouses and/or disabled persons and their spouses."

Intermediate care facility:

"A facility which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services."

Two points in the zoning code's purpose statement for the B-3 zones are particularly relevant to the proposed change: "encourage increased housing opportunity downtown for a diverse residential population," and "reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio economic groups."

As noted by the applicant (**Attachment 3**), multi-family housing is already permitted in B-3 zones.



Context of 385 Congress Street, which is outlined in teal.

III. CONSISTENCY WITH CITY COMPREHENSIVE PLAN

[Portland's Plan 2030](#) identifies vision statements, policy goals for the City, and principles of future land use. Several of these are relevant to the proposed text amendment.

Vision statements:

Equitable:

"We will remain an open and inclusive city, celebrating diversity and providing a welcoming and safe place for residents and visitors alike."

"We will incorporate the needs of all our residents in planning for our future."

Dynamic:

"Portland will plan for a built environment that encourages an active citizenry."

Secure:

"We will be committed to accessible housing and healthy food for all our residents."

Connected:

“We will foster accessible linkages between where we live, work, shop, and play.”

Policy goals:

Environment: *“Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.”*

Housing:

“Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences, and financial capabilities of all Portland residents.”

“Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.”

Transportation: *“Promote multi-modal accessibility, enabling residents and visitors of all ages and abilities to participate fully in the social and economic life of the community.”*

Proposed Text Amendment to B-3 Downtown Business Zone

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and B-3c zones:

1. Residential:

- a. Attached single-family, two-family and multifamily dwellings;
- b. Handicapped family units;
- c. Lodging houses;
- d. Combined living/working spaces including, but not limited to, artist residences with studio space;
- e. Congregate care facilities.

2. Business:

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;
- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;
- j. Communication studios or broadcast and receiving facilities;
- k. Health clubs and gymnasiums;
- l. Theaters and performance and exhibition halls;
- m. Convention and meeting facilities;
- n. Hotels;
- o. Business services;
- p. Parking garages;
- q. Galleries;
- r. Registered dispensary;
- s. Marijuana retail store;
- t. Small-scale marijuana caregiver.

3. Institutions:

- a. Museums;
- b. Public or private schools of any type;
- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;

- f. Nursery schools, kindergartens, and day care facilities or home babysitting services.
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions;

h. Intermediate care facility for thirteen (13) or more persons.

4. Other:

- a. County and municipal uses;
- b. Studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- c. Printing, publishing and related manufacture of cardboard or paper boxes, provided that these activities are conducted wholly within a building.
- d. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:

- i. The meeting facility shall be limited to the following types of uses:

- (a) Private parties.
 - (b) Business meetings.
 - (c) Weddings.
 - (d) Receptions.
 - (e) Seminars.
 - (f) Business and educational conferences.

- ii. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

- e. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

- i. All applicable provisions of Article V of this chapter shall be met.
 - ii. Parking shall be provided in compliance with Division 20 of this Article.
 - iii. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - iv. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - v. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

- f. Wind energy systems, as defined and allowed in Article X, Alternative Energy.



**Bernstein, Shur,
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Portland, ME 04104-5029

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Mary E. Costigan
(207) 228-7147 direct
mcostigan@bernsteinshur.com

February 19, 2020

James Rather
Development Review Services Manager
City of Portland
389 Congress Street
Portland, ME 04101

RE: Application for B-3 Text Amendment

Dear James:

I am writing on behalf of my client, Portland Opportunity Fund LLC, to apply for a text amendment to the B-3 Downtown Business Zone. As explained in more detail below, we are seeking to amend the B-3 zone by adding Congregate Care Facilities and Intermediate Care Facilities as permitted uses in the B-3.

Portland Opportunity Fund is under contract to purchase a portion of a parcel located at 385 Congress Street. They are proposing to develop an elderly housing complex that would consist of a Congregate care facility (independent living apartments), and an Intermediate care facility that will be comprised of assisted living units and a memory care facility. As currently zoned, the B-3 permits multi-family housing but does not allow congregate care or intermediate care facilities.

Portland Opportunity Fund is a joint venture between Senior Care Development LLC and Benchmark Senior Living. Benchmark is the largest operator of senior housing in New England and has identified the Portland downtown as an ideal location for senior housing. As set forth in more detail in the attached Comprehensive Plan Analysis, the location of senior housing in the B-3 aligns directly with many of the Plan's goals; notably, the economic, housing and transportation goals. Locating senior housing convenient to educational and cultural institutions, medical service centers, social opportunities and public transportation is a benefit to the City, the residents and the local businesses and service-providers.

February 19, 2020
Page 2

Enclosed with this letter are the above-referenced Comprehensive Plan Analysis, evidence of Right, Title and Interest and the Proposed Text Amendment. Thank you for your consideration. Please contact me directly if you have any questions.

Sincerely,



Mary E. Costigan

cc: Eric Gardner

Congregate care facility: A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- (a) Transportation for essential support activities. This service shall be included in the base rent;
- (b) Provision of at least one (1) meal per day;
- (c) Programmed social activities which are facilitated by staff. This service shall be included in the base rent;
- (d) Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and
- (e) Installation of emergency call buttons or systems in each congregate care living unit.

The population of a congregate care facility shall consist of persons fifty-five (55) years of age or older and their spouses ~~and/or disabled persons and their spouses.~~

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and B-3c zones:

1. *Residential:*

- a. Attached single-family, two-family and multifamily dwellings;
- b. Handicapped family units;
- c. Lodging houses;
- d. Combined living/working spaces including, but not limited to, artist residences with studio space~~;~~
- e. Congregate care facilities.

2. *Business:*

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;
- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;

- j. Communication studios or broadcast and receiving facilities;
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- r. Registered dispensary;
- s. Marijuana retail store;
- t. Small-scale marijuana caregiver.

3. *Institutions:*

- a. Museums;
- b. Public or private schools of any type;
- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;
- f. Nursery schools, kindergartens, and day care facilities or home babysitting services.
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions~~;~~

h. Intermediate care facility for thirteen (13) or more persons.

4. *Other:*

- a. County and municipal uses;
- b. Studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- c. Printing, publishing and related manufacture of cardboard or paper boxes, provided that these activities are conducted wholly within a building.
- d. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522a and 14-523 not withstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:
 - i. The meeting facility shall be limited to the following types of uses:
 - (a) Private parties.
 - (b) Business meetings.
 - (c) Weddings.
 - (d) Receptions.
 - (e) Seminars.
 - (f) Business and educational conferences.
 - ii. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.
- e. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

- i. All applicable provisions of Article V of this chapter shall be met.
 - ii. Parking shall be provided in compliance with Division 20 of this Article.
 - iii. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - iv. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - v. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.
- f. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(b) The following additional restrictions shall apply in the [PAD overlay zone](#), which shall be located on the streets listed below and as further delineated on the [PAD overlay zone](#) map, a copy of which is on file in the office of planning and urban development:

Center Street, from Fore Street to Commercial Street.

Commercial Street, north side, from Foundry Lane to Pearl Street.

Commercial Street, south side, from Carroll Block to Thomas Block, inclusive.

Congress Street, from Longfellow Square to Monument Square.

Dana Street.

Exchange Street, from Federal Street to Fore Street.

Fore Street, north side, from one hundred ten (110) feet west of Center Street to two hundred seventy-five (275) feet west of Pearl Street.

Fore Street, south side, from Center Street to Pearl Street.

Free Street, north side, from Congress Square to Temple Street.

Free Street, south side, from Congress Square to four hundred twenty-three (423) feet east of Oak Street and from Center Street to Temple Street.

Middle Street, north side, from Monument Square to sixty (60) feet east of Garden Lane.

Middle Street, south side, from Monument Square to two hundred fifty (250) feet east of Pearl Street.

Milk Street, from Exchange Street to Pearl Street.

Moulton Street.

Pearl Street, from Middle Street to Fore Street.

Wharf Street.

York Street, south side, from Center Street to Dunphy's Lane.

Frontages of the following areas: Longfellow, Congress, and Monument Squares; Tommy's and Post Office Parks.

1. *Ground floor uses:*

a. Subject to the following limited uses, at least seventy-five (75) percent of the street level frontage of a building on a street located within the PAD overlay zone must be utilized, and, at minimum, the floor area to be occupied shall be seventy-five percent (75%) of the street level frontage multiplied by a twenty (20) foot depth:

i. Retail establishments as permitted in 14-217(a)(2)e;

ii. Personal services;

iii. Hotels;

- iv. Copying centers;
- v. Restaurants as permitted in 14-217(a)(2)f;
- vi. Drinking establishments;
- vii. Theaters, provided that only ticket and refreshment sales, lobbies, lounges and entrances shall be located within this area;
- viii. Travel agencies;
- ix. Real estate sales;
- x. Visitor information services;
- xi. Museums;
- xii. Libraries;
- xiii. Banks, financial and other business services, provided that only tellers and spaces primarily used for customer services shall be located in this area;
- xiv. Municipal or county uses;
- xv. Galleries and studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- xvi. Performing arts studios which attract and allow for public, pedestrian observation from the adjacent sidewalks (including dance studios, music conservatories, and the like);
- xvii. Other uses where the applicant can demonstrate to the zoning administrator that the proposed use will not differ substantially from a required ground floor retail use in its effect on the continuity of pedestrian-oriented use and that the

proposal establishes a ground floor use that generates pedestrian interest and activity.

For those buildings which have frontage on more than one (1) street located within the PAD overlay zone, the street level area of each such frontage shall meet the above requirements.

- b. For those buildings which have forty (40) feet or less of frontage on a street within the PAD overlay zone, the above restrictions shall be reduced to fifty (50) percent of the frontage where required to accommodate a service entrance. For buildings which have frontage on more than one (1) street located within a PAD overlay zone, only one (1) such frontage shall be permitted to reduce the required retail area to fifty (50) percent of the frontage.
- c. In no event shall any required retail frontage area be used for any of the following:

- i. Storage;

- ii. Service entrances, including loading docks, dumpsters and compactors, except as provided in subsection b; or

- iii. Food preparation areas, unless such preparation areas are visually oriented toward pedestrians on streets located within a PAD overlay zone.

(Ord. No. 241-91, 3-11-91; Ord. No. 200-95, § 1, 3-20-95; Ord. No. 126-97, § 7, 3-3-97; Ord. No. 46-97, § 3, 8-4-97; Ord. No. 226-98, §§ 1, 2, 3-2-98; Ord. No. 51-00, §2, 8-7-00; Ord. No. 205-06/07, 6-4-07; Ord. No. 226-07/08, 5-19-08; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 283-09/10 emergency passage; Ord. No. 10-10/11, 8-2-10; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12; 140-18/19, 2-20-2019)

***Editor's Note:** Pursuant to Order 164-06/07 passed on April 4, 2007 Section 14-217.5 (*Old Port Overlay Zone*) was repealed in its entirety and Division 19.8 (*Downtown Entertainment Overlay Zone*) was enacted.

***Editor's Note:** Pursuant to Order No. 48-06/07 passed on September 18, 2006 Section 14-217.6 (*Moratorium on Formula Restaurants in Old Port Historic District and Arts District*) expired on November 19, 2006.



CITY OF PORTLAND
Planning & Urban Development
Christine Grimando, AICP, Director

To: Mayor Snyder and Members of the City Council

From: Christine Grimando, Director

Date: July 10, 2020

Re: B-3 text amendment update

At the July 15th City Council meeting, the Council held a public hearing on a text amendment to the B-3 zone (including B-3b and B-3c) to include Congregate Care Facilities and Intermediate Care Facilities as permitted uses. The Council's deliberation included concerns that the amendment, particularly the part concerned with Congregate Care, would unintentionally allow for group or sober homes. While recognizing the value of group homes, as well, there was a wish to better understand the extent to which the proposed text amendment could have different impacts than intended.

Though Congregate Care, Intermediate Care, and Sheltered Care Group Homes have some overlap in that they each offer on-site services to the occupants, there are ways they are distinguished from each other in the Land Use Code. They are categorized differently in terms of their use categories, for instance. Intermediate Care is considered an institutional use, similar to how a hospital or clinic would be (Intermediate Care also requires state licensing as a residential care facility). Congregate Care, on the other hand, is a residential use category, specifically one that consists of multiple dwelling units, making it a variation on multi-family housing, like an apartment building would be, except with a list of specific, required services. Sheltered Care Group Home is considered a single shared dwelling, with services.

The uses are further treated differently within the Code in their parking requirements: Division 20 includes separate parking requirements for each use. Intermediate care is grouped with other care facilities (long-term and extended care), while sheltered care group homes are grouped with the same category of requirements as emergency shelters. Congregate care facilities have separate parking requirements from both.

Last, there are different implications within the definitions for the intended populations. While "sheltered care group home" focuses on mental wellness, congregate care facilities and intermediate care facilities are focused more on ensuring physical well-being and housing and

services for an aging population. Congregate care facilities explicitly require "installation of emergency call buttons" in each living unit, for instance, as well as meals, laundry, social activities, health monitoring, and transportation. Intermediate care facilities explicitly link the physical or mental condition of residents to a need for "care and services above the level of room and board." A sheltered care group home wishing to establish itself under the banner of a congregate care facility would need to provide these specific, and potentially cost prohibitive, services to meet that exceed the basic needs and requirements of group homes.

Though neither of the two uses proposed for the B-3 zone include a statement or terms that make them decisively not sheltered care group homes, there are distinctions within the definitions and how they are applied in the Code. Intermediate Care's licensing requirements also limit the extent to which it could be applied to unintended uses. Planning proposes one change to further distinguish between Congregate Care Facilities and Sheltered Care Group Homes: to remove the reference to the population served including disabled persons and their spouses.

This change would not prohibit Congregate Care Facilities from serving disabled persons that were 55+, but it would require that these be facilities exclusively for people 55+ (though a 55+ person with a spouse that was younger than 55 could also be residents). For people with disabilities in need of housing and services, there are still categories of housing and care that meet those needs elsewhere in the City. As the Council noted in June, the intent is not to prohibit housing and services for the disabled, but to be deliberate in where and how those options were offered.

The full text of the revised amendment is included as Attachment 1.

Attachment 1. Revised Proposed Text Amendments

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 15, 2020

SUBJECT: **Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

PRESENTATION: A member(s) of the Rental Housing Advisory Committee will be available for questions.

I. SUMMARY

The Rental Housing Advisory Committee recommends the City enact an ordinance to ban application fees for rental housing units.

II. AGENDA DESCRIPTION

On May 13, 2020, the Housing Committee voted (2-1) to forward this item to the City Council with a recommendation for passage.

On December 16, 2019 the Rental Housing Advisory Committee (RHAC) voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees.

The RHAC is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are also generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee.

At the October 28, 2019 meeting of the RHAC, members of the Committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant; landlords who

collect application fees from multiple applicants and do not conduct background checks; and landlord who do not supply copies of reports to applicants who are not selected as tenants. During multiple meetings, the Committee discussed the concern that application fees price low and moderate income tenants out of the Portland rental market.

Members of the Committee proposed language banning fees phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

This item must be read on two separate days. It received its first reading on June 15, 2020. It received a second reading on July 13 and was postponed to this meeting. Staff is requesting that this item be passed as an emergency; Amendment 3 in the back-up material adds emergency passage to the order. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Enact an ordinance to ban application fees for rental housing units.

Increase access to rental and home ownership that is safe, affordable, and accessible

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Rental Housing Advisory Committee is requesting the City Council to enact an ordinance to ban application fees for rental housing units.

VIII. LIST ATTACHMENTS

1. Ch. 6 Sec. 6-223.1 Rental Application Fees 6.15.2020
2. Staff Amendment 1 re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
3. Staff Amendment 2 Enforcement re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
4. Staff Amendment 3 Passage as an emergency re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
5. Amendment 4 Order 206-FY20 Councilor Duson Rental Application Fee 8.3.2020
6. 2020-07-15 Rental Application Fee Memo for 8.3.2020
7. RHAC Committee Memo re Application Fees
8. Email from Wendy Harmon

Prepared by:

Mary Davis, Division Director

Date: 7/15/2020

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
Chapter 6 BUILDINGS AND BUILDING REGULATIONS
RE: RENTAL APPLICATION FEES**

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

1. *That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may
require a tenant or prospective tenant to pay any amount in
excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

**AMENDMENT TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: DEFINITION AND TERMS**

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

1. *That Section 6-223.1 of the Portland City Code is hereby added to read as follows:*

6-223.1. Rental application fees restricted.

~~At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:~~

~~_____ (a) Rent for the first full month of occupancy; and~~

~~_____ (b) A security deposit as defined in 14 M.R.S. §6032.~~

_____ (a) For purposes of this section, a rental application fee shall mean any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant for a rental housing unit is required to pay in order to have their rental application considered by a landlord.

_____ (b) No landlord may charge an applicant for a rental housing unit any rental application fee.

_____ (c) No landlord may charge an existing tenant who wishes to move to a different apartment under the control of the landlord any rental application fee.

**AMENDMENT TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: ENFORCEMENT**

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

1. *That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

...

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-223.1, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. §§4551, et seq.

AMENDMENT 3 TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: EMERGENCY PASSAGE

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

1. *That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

...

**BE IT FURTHER ORDAINED, that this amendment is enacted as an
Emergency, pursuant to Article II, Section 11 of the
Portland City Charter, in order to immediately allow
persons affected by the pandemic to more easily seek
new rental housing.**

**AMENDMENT 4 TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR DUSON
RE: RENTAL APPLICATION FEE LIMITATION**

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

1. That Sections s 6-221 and 6-223.1 of the Portland City Code ~~is~~are hereby added to read as follows:

~~6-223.1. Rental application fees restricted.~~

~~At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:~~

- ~~—— (a) Rent for the first full month of occupancy; and~~
- ~~—— (b) A security deposit as defined in 14 M.R.S. §6032.~~

6-221. Definitions.

Applicant means a prospective tenant for a rental housing unit, who signs or intends to sign a lease or other contractual agreement in relation to the unit.

...

Rental Application means the written document used by a landlord to determine if an applicant is qualified to become a tenant of a rental housing unit.

Rental Application Fee means any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant is required to pay in order to have his or her rental application considered by the landlord.

...

6-223.1. Rental application fees restricted.

(a) Disclosure of Application Criteria. Before accepting a rental application, a landlord must disclose to the applicant, in writing, the criteria on which the application will be judged.

(b) Disclosure of Application Fee. Before accepting a rental application fee, a landlord shall disclose in writing to the applicant the rental application fee amount. The applicant shall not be charged more than the disclosed rental application fee for that application.

(c) Availability of Units. Landlords shall only advertise rental housing units, receive applications, screen applicants, and accept application fees for rental housing units when such rental housing units are actually available and ready for occupancy or are expected to be available for occupancy within a reasonable time period; provided, however, that an applicant may consent to be screened and placed on a waiting list. For purposes of this Section, a rental housing unit is no longer considered available if a different applicant has been screened by the landlord, has been offered the rental housing unit and accepted it, and has placed a deposit on the rental housing unit. A rental housing unit may be considered available if a tenant of a unit has declared they will not be renewing a lease or have otherwise vacated the property. Landlords shall document the date and time that deposits are placed on rental housing units.

(d) Application Fees. Application fees for rental housing units shall not exceed the actual cost of the screening process or thirty dollars (\$30.00), whichever is lower. The actual cost of the screening process includes only the hard costs associated with a background check. Labor costs and other soft costs associated with application process must be excluded. Hard costs may include, but not be limited to, the following: national, state and local criminal background checks, credit reports, rental history records and/or reference checks, eviction records and/or employment verification. Each adult who intends to reside in a rental housing unit may be charged an application fee.

(e) Disposition and Use of Application Fee. Within ten (10) days of receipt of an application fee, a landlord must provide an explanation for the disposition and use of the application fee and provide a receipt to the applicant detailing how the application fee was used. An application fee shall be refunded in its entirety if a landlord does not incur hard screening costs. A landlord shall also provide the applicant with any paperwork or copies of electronic correspondence generated as result of the screening process, to the extent permitted by State and Federal law.

(f) Current Tenants. A current tenant of a rental housing unit shall not be charged an application fee to move to another rental housing unit owned by the same landlord.

(g) Exemption. The provisions of this Section shall not apply to any landlord who does not charge a rental application fee.

MEMORANDUM

TO: City of Portland City Council
FROM: Anne Torregrossa, Associate Corporation Counsel
DATE: July 15, 2020
RE: Rental Application Prohibition

The Rental Housing Advisory Committee proposed an amendment to the City Code intending to prohibit landlords from collecting application fees from prospective tenants. This amendment passed the Housing Committee with a 2-1 vote and is now before the City Council for consideration. The Council has requested the following:

1. An analysis of the draft ordinance from a legal standpoint.
2. Potential amendments to clarify the language of the proposed ordinance.
3. An analysis of the enforcement of the proposed ordinance.
4. Alternative models to regulating rental application fees.

Legality of Draft Ordinance

The *concept* of prohibiting prospective landlords from collecting a rental application fee is likely a lawful exercise of the City's home rule authority. Although Maine law is very robust in the area of landlord/tenant relationships, it does not address or govern application fees. Therefore, it is unlikely that a City of Portland ordinance regarding application fees would be preempted by state statute. On the flip side, it is likely that banning application fees is a legitimate use of the City's police power to protect its residents and would withstand legal challenge.

However, the language as drafted is more problematic. First, the language may be too broad. It currently prohibits a landlord from charging "any amount" at or prior to the commencement of tenancy. There may be fees or amounts of money that a landlord might choose to charge that are for additional services or features that are legitimate, not coercive, and agreed to by the tenant. Examples might include special parking, additional cleaning services, utility fees, etc. Although the City might be able to prohibit these types of fees, the legislative history does not currently reflect an intent to do so, or make the underlying policy reasons for doing so clear. In the absence of that legislative history and justification, the ordinance could be open to challenge with respect to fees that are not typically thought of as application fees.

Second, to the extent that prohibition is intended to apply to current tenants, that language is unclear and potentially problematic. There may be a variety of reasons why a landlord would charge an existing tenant some additional fee. Again, those reasons might be entirely legitimate and agreed upon by the tenant. If the intent is to protect tenants who are, for example, switching apartments with the same landlord, then that could be made clearer in the ordinance.

Recommendation for Changes to Draft Ordinance

If the Council's goal is to keep the same intended policy of prohibiting rental application fees, I would recommend clarifying the ordinance along the following lines. The definition is

adopted from an ordinance enacted in Boise, Idaho.

6-223.1. Rental application fees restricted.

(a) For purposes of this section, a rental application fee shall mean any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant for a rental housing unit is required to pay in order to have their rental application considered by a landlord.

(b) No landlord may charge an applicant for a rental housing unit any rental application fee.

(c) No landlord may charge an existing tenant who wishes to move to a different apartment under the control of the landlord any rental application fee.

Enforcement

There is no specific enforcement language in the current draft ordinance. Ordinarily that would not be an issue, as City Code § 1-15 covers most violations of City Code, stating, “Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense,” the City can enforce those violations and collect civil penalties. However, § 6-228(a) specifically lists certain sections of the Tenant Housing Rights Code that are enforceable under § 1-15. By leaving out the new section of this explicit enforcement authority, an argument could be made that the City did not intend the same enforcement mechanism for illegal rental application fees. To remedy this issue, I would recommend a minor addition to § 6-228(a) as follows:

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-223.1, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

...

Alternative models

In addition to an outright prohibition, which does not seem to be a model that has been widely adopted (other than Vermont, which has prohibited application fees since 1999, and Massachusetts under a recent court ruling), other jurisdictions have adopted one or more of the following approaches to regulating application fees:

- Limit fees to a certain dollar amount
 - New York: \$20 with some exceptions
 - Delaware: greater of \$50 or 10% monthly rent

- Virginia: actual costs +\$50 for market rent; actual costs +\$32 for public housing or HUD regulated housing
- Limit fees to the lesser of actual costs or a dollar amount
 - California: up to an amount that is adjusted annually, currently ~\$50
 - Wisconsin: up to \$25
- Limit fees to actual costs of a background check
- Prohibit a landlord from using an application fee to perform a background check unless and until the landlord has rejected other prior/higher choice applicants
- Prohibit a landlord from accepting application fees when they have no available apartments
- Require that a copy of the background check report be provided to the applicant
- Require that excess or unused amounts of the application fee be refunded
- Require that landlords allow a prospective tenant to provide a recent credit report or background check in lieu of an application fee

MEMORANDUM

FROM: Rental Housing Advisory Committee
DATE: February 5, 2020
SUBJECT: Rental Application Fees

I. SUMMARY

The Rental Housing Advisory Committee recommends that the City enact an ordinance to ban application fees for rental housing units.

II. BACKGROUND

The Rental Housing Advisory Committee (RHAC) is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, group members brainstormed issues of concern to landlords and tenants. Several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue. City staff informed the group that the Housing Committee suggested that application fees might be a topic the RHAC could take up.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee. Mindful that RHAC's charge includes education, members of the group discussed whether there are education solutions to these issues.

At the October 28, 2019 meeting of the RHAC members of committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant, landlords who collect application fees from multiple applicant and do not conduct background checks, and landlord who do not supply copies of reports to applicants who are not selected as tenants. The group discussed the concern that application fees price low and moderate income tenants out of Portland at multiple meetings.

The RHAC discussed several ways to address application fees. Proposals included a limitation on the amount that could be charged, a requirement that fees collected be refunded to tenants, a requirement that landlords provide copies of background checks to tenants, a prohibition on charging application fees when a tenant provides a landlord with a copy of a recent background check, and a ban on application fees.

Members of the Committee expressed concern that landlords could continue charging application fees by giving those fees another name and the proposed language banning fees is phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

On December 16, 2019 the RHAC voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees. (the committee currently has 8 members because a tenant member resigned) The RHAC drafted a resolution at the December 16th meeting to accompany the recommendation to explain the committee's rationale and the RHAC approved the resolution 6-2.

III. ANALYSIS AND BACKGROUND

RHAC understands that the Housing Committee would like to see “more than anecdotal” evidence demonstrating that application fees are a significant problem in the community. RHAC members have researched this issue and we have not found any studies that are responsive to this request.

Pine Tree Legal Assistance (PTLA) was asked whether they track calls about application fees. RHAC member Katherine McGovern explained that PTLA tracks cases based on the legal issue involved and so can provide data on the number of tenants who called about issues like evictions or security deposits but because there are no state or local laws limiting application fees, inability to afford application fees is not categorized or tracked as a legal problem. Ms. McGovern shared throughout the RHAC’s discussion about this issue that PTLA’s clients struggle to find affordable housing in Portland and application fees are a significant problem for PTLA’s clients.

RHAC co-chair Meredith Cook, who has worked as a housing specialist at Through These Doors and is currently employed by Preble Street as the Maine Hunger Initiative Social Change Advocate, told the committee that application fees are such a significant barrier for low-income tenants that Preble Street caseworkers searching for housing with clients do not even apply with landlord who charge application fees.

RHAC member Wendy Harmon conducted a survey of members of the Southern Maine Landlord Association regarding members’ practices regarding application fees. Ms. Harmon submitted the results of the survey to the group and these results are attached. Some members reported not charging application fees and those that charge application fees reported that they charge between \$25 and \$50 per adult applicant. Landlords who charge application fees reported collecting those fees from somewhere between one and nine applicants per available apartment.

Each RHAC meeting has included time for public comment. At the November 25, 2019 RHAC meeting three members of the public offered their views and testimony about their experiences with application fees. Jenna Dorr described her family’s experience of scrambling to find new housing and spending more than \$500 in application fees without know whether background checks were actually being conducted or whether they were truly being considered for apartments. Alyssa Floyd described paying application fees and never knowing why she was not offered an apartment. Jim Devine encouraged the committee to propose rules that are easy to understand and coherent. (Public comment for this meeting is summarized the meeting minutes and in the Bangor Daily News story attached).

IV. RECOMMENDATION

RHAC recommends that the following provision be added to Chapter 6 of the City’s ordinances:

“At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy; and
- (ii) A security deposit as defined in 14 MRS 6032”

V. LIST ATTACHMENTS

1. Resolution including proposed ordinance language submitted to the Housing Committee
2. “Renters say application fees a barrier to living in Portland’s pricey housing market.” Bangor Daily News article by Nick Schroeder, December 2, 2019
3. “Unregulated application fees make Portland’s housing crisis even more expensive for renters.” Maine Beacon, October 17, 2019

4. Examples of ordinances/statutes from other jurisdictions: Minnesota, Oregon, Minneapolis
5. Survey of Southern Maine Landlord Association members conducted by Wendy Harmon.

Prepared by: Katherine McGovern and approved by the Rental Housing Advisory Committee on a vote of 5-3

Date: February 5, 2020

Resolution

WHEREAS, application fees are a significant barrier to low and moderate income people in finding housing in the City of Portland; and

WHEREAS, tenants are likely to pay multiple fees before finally securing housing, and

WHEREAS, there are no laws in Maine regulating application fees.

THEREFORE BE IT RESOLVED, the Rental Housing Advisory Committee sees application fees as a significant burden on tenants when securing housing; and

THEREFORE BE IT FURTHER RESOLVED, the Rental Housing Advisory Committee recommends to the City Council Housing Committee to address this concern through the recommended policy change in City ordinance, below.

Application Fee Ban:

At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy, and
- (ii) A security deposit as defined in 14 MRS 6032



Jessica Grondin <jgrondin@portlandmaine.gov>

Fwd: Monday nights council meeting

Jessica Grondin <jgrondin@portlandmaine.gov>
To: Jessica Grondin <jgrondin@portlandmaine.gov>

Mon, Aug 3, 2020 at 10:42 AM

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

From: **Pious Ali** <pali@portlandmaine.gov>
Date: Mon, Aug 3, 2020 at 6:39 AM
Subject: Fwd: Monday nights council meeting
To: Carolyn Dorr <cmh@portlandmaine.gov>, Katherine Jones <klj@portlandmaine.gov>

Ms. Dorr
Can you please add this to the packet?

Respectfully**Pious Ali**

City Councilor At-Large

City Hall

389 Congress Street

Portland, ME 04101

PALI@PortlandMaine.gov

2078074283

<http://www.portlandmaine.gov>

Sign up to receive updates on my work

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

From: **Wendy Harmon** <wendyharmon@kw.com>
Date: Sun, Aug 2, 2020 at 7:58 PM
Subject: Monday nights council meeting
To: <ksnyder@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <sthibodeau@portlandmaine.com>, <jcosta@portlandmaine.gov>, <kcook@portlandmaine.gov>, <pali@portlandmaine.gov>, <jduson@portlandmaine.gov>, <nmm@portlandmaine.gov>

Dear Councilors, I am a member of the Rental Advisory Board, and I want to advise you that the vote for stopping the rental application fees was not a unanimous decision. Our committee was asked to provide documentation that the rental fees charged prohibited tenants from finding housing. There were no facts to support that.

I sent out a survey to our Southern Maine Landlords Association. Of the landlords surveyed, many did not charge a fee. Several only charged an application fee, one at a time, until they found a suitable tenant, and of those that charged the fees, some applied it towards the first month's rent.

An application fee bill is due to be presented this fall, to the legislature, it would make sense to wait and see what that looks like.

The SMLA board would appreciate the opportunity to meet and discuss this matter further. We would also like to be part of the homeless discussions. We talk with housing providers regularly and have many ideas that we could bring to the table, thank you,

Wendy Harmon, Realtor

Keller Williams Realty

50 Sewall Street

Portland, Maine 04102

207-939-7523 (cell)

I love referrals!

--

Danielle P. West-Chuhta

Corporation Counsel

City of Portland, Maine

(207) 874.8480

dwchuhta@portlandmaine.gov

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 21, 2020

SUBJECT: **Order 11-20/21 of Discontinuance of a Portion of Emery Street - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: The Economic Development Committee met on May 27, 2020, and voted 3-0 (with Councilor Thibodeau recusing himself due to a conflict) to forward this to the City Council for approval.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No This discontinuance is contemplated in the land exchange agreement with J.B. Brown & Sons approved by the Council on June 15, 2020. If approved, ownership of the portion of Emery Street that will be discontinued will revert to the abutter, J.B. Brown & Sons, and be incorporated into its development and construction of the Veteran's Administration (VA) facility with parking garage. Time is of the essence with respect to the construction of that project.

PRESENTATION: Greg Mitchell will be available to answer any questions.

I. SUMMARY

The discontinuance of this undeveloped portion of Emery Street was contemplated by the land exchange agreement between J.B. Brown & Sons and the City approved by the Council on June 15, 2020. If approved, ownership of this portion of Emery Street will revert to J.B. Brown & Sons, as the abutting property owner - though, as proposed, the City will retain pedestrian and utility easements. Under the terms of the land exchange agreement, in exchange for the Emery Street parcel, the City will acquire undeveloped industrial property owned by J.B. Brown & Sons located at the end of Quarry Road. The City needs additional property adjacent to the City Canco Road Complex for outside storage. The J.B. Brown & Sons property proposed for the land exchange includes 20,000+/- square feet. J.B. Brown & Sons has allowed the City to use this property, at no cost, for over two (2) years.

II. AGENDA DESCRIPTION

The Economic Development Committee met on May 27, 2020 and voted 3-0 (with Councilor Thibodeau recusing himself due to a conflict) to forward this to the City Council for approval.

The process for discontinuing this portion of Emery Street is dictated by state statute. On July 13, 2020, the Council voted in support of discontinuance, and the Order of Discontinuance was posted in the Clerk's Office and a Notice of Order of Discontinuance was sent to abutter.

At this August 3, 2020 meeting, the Public Hearing will be held on Order of Discontinuance.

A Final Vote on Order of Discontinuance will be requested on August 31, 2020.

This discontinuance is contemplated in the land exchange agreement with J.B. Brown & Sons approved by the Council on June 15, 2020. If approved, ownership of the portion of Emery Street that will be discontinued will revert to the abutter, J.B. Brown & Sons, and be incorporated into its development and construction of the Veteran's Administration (VA) facility with parking garage. Time is of the essence with respect to the construction of that project.

Public comment only will be taken at this meeting.

III. BACKGROUND

If in the affirmative, the vote taken on July 13, 2020 initiates the statutory process for discontinuing a public street. Following that vote the notice of discontinuance must be posted in the Clerk's office and a notice of a public hearing (proposed to take place on August 3, 2020) shall be published and provided to the abutting property owner. A second vote must take place 10 business days after the August 3, 2020 public hearing, and approval would make this order final.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

This land exchange will support new construction of a VA facility with parking garage located on West Commercial Street, as well as to add to City-owned property located on Canco Road which supports municipal Public Works and Parks & Recreation Department services.

V. FINANCIAL IMPACT

None - this portion of Emery Street is currently unimproved. In light of the land exchange agreement, damages payable to the abutter are not contemplated.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

City staff recommends the City Council vote to approve this Order of Discontinuance and complete the statutory process for discontinuing this portion of Emery Street.

VIII. LIST ATTACHMENTS

1. Order of Discontinuance of a Portion of Emery Street 7.13.2020

Prepared by:

Date: 7/21/2020

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 OF DISCONTINUANCE OF A PORTION OF EMERY STREET

ORDERED, that the City Council for the City of Portland hereby orders the discontinuance of an unimproved portion of Emery Street, said portion consisting of approximately This portion of Emery Street is now an unimproved city way approximately sixty (60) feet wide beginning at West Commercial Street and running for a distance of approximately one hundred and eighty-four (184) feet in a generally northwesterly direction. This portion of Emery Street containing approximately ten thousand six hundred and eighty-nine (10,689) square feet, as shown more particularly on the City Tax Maps number 60, on file at the Portland Tax Assessor's Office; and

BE IT FURTHER ORDERED, that the Right to enter into this portion of Emery Street for the purposes of installing, maintaining, and repairing public utility infrastructure shall be reserved unto the City of Portland; and

BE IT FURTHER ORDERED, that a public easement will be retained in the discontinued portion of Emery Street upon discontinuance for ingress and egress by pedestrians, bicycles, and similar non-motorized uses.

BE IT FURTHER ORDERED AND ADJUDGED, that the sole abutting owner is J.B. Brown & Sons, which is the petitioner for such discontinuance and no damages shall be paid to said abutter.

BE IT FURTHER ORDERED AND ADJUDGED, that the Mayor and the Portland City Council will hold a public hearing on August 3, 2020 and vote on final approval of the discontinuance on August 31, 2020.

Date of Order: July 13, 2020

SIGNATURES APPEAR ON THE NEXT PAGE

Mayor Kate Snyder

Councilor Belinda S. Ray

Councilor Spencer R. Thibodeau

Councilor Tae Chong

Councilor Justin Costa

Councilor Kimberly M. Cook

Councilor Jill C. Duson

Councilor Pious Ali

Councilor Nicholas M. Mavodones, Jr.

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: July 17, 2020

SUBJECT: **Order 13-20/21 Amending the Downtown Transit Oriented Development and Omnibus Tax Increment Financing District to Make 83 Middle Street/160 Newbury Street an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair**

SPONSOR: Councilor Justin Costa, Chair/Economic Development Committee, meeting held on 5/27/2020 and the vote was unanimous (4-0) to forward to the City Council for approval.

(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 Action is needed on August 3, 2020, in order to meet Maine State Housing Authority Program application deadlines for the Proposed 83 Middle Street Affordable Housing Project.

PRESENTATION: Greg Mitchell/5 Minutes

I. SUMMARY

Amending the Downtown Transit Oriented Development (TOD) TIF District, a companion Order to establishing the 83 Middle Street Affordable Housing TIF, is proposed to support the establishment of an Affordable Housing TIF District at 83 Middle Street/160 Newbury Street.

II. AGENDA DESCRIPTION

City Council approval is needed to amend the Downtown Transit Oriented Development and Omnibus Tax Increment Financing (TIF) District by removing 83 Middle Street and 160 Newbury Street from the District for those properties to be their own free-standing Affordable Housing TIF District to support a proposed affordable housing project. In addition, housekeeping technical revisions are also included.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is approval of Downtown TOD TIF District Amendment to remove 83 Middle Street and 160 Newbury Street from this District in order for those properties to be their own free-standing Affordable Housing TIF District, as well as housekeeping technical revisions.

V. FINANCIAL IMPACT

There is a slight financial impact in amending the Downtown TOD TIF District.

It is noted that City-owned property at 83 Middle Street is tax exempt. This property becomes taxable under the proposed Affordable Housing TIF District. The 83 Middle Street Affordable Housing TIF District proposes the City retain 25% of municipal taxes over 30 years estimated to be \$26,876 annually, with a tax shelter benefit estimated at \$22,145 annually for the proposed project located at 83 Middle and 160 Newbury Streets.

The 160 Newbury Street property is not tax exempt with an assessed taxable value of \$281,100. It is being donated to support the proposed 83 Middle Street Affordable Housing Project.

The tax sheltering savings for the Downtown TOD TIF District continues to be estimated at \$2.8 Million annually.

VI. STAFF ANALYSIS AND BACKGROUND

Staff recommends approval of the amendments to the Downtown TOD TIF District.

VII. RECOMMENDATION

At the May 27, 2020, Economic Development Committee, the Committee voted unanimously (4-0) to forward this item to the City Council for approval.

VIII. LIST ATTACHMENTS

1. Amendment of Downtown Transit Oriented Dev and Omnibus TIF re 83 Middle Street 7.13.2020
2. Amendment Order 13-FY21 Designating Affordable Housing TIF 83 Middle Street 7.13.2020
3. 6-25-2020 CC Memo - Attachment

Prepared by:

Greg Mitchell, Director

Date: 7/17/2020

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 DOWNTOWN TRANSIT ORIENTED DEVELOPMENT AND OMNIBUS
TAX INCREMENT FINANCING DISTRICT TO MAKE 83 MIDDLE STREET AN
AFFORDABLE HOUSING TAX INCREMENT FINANCING DISTRICT

ORDERED, that the Downtown Transit Oriented Development and Omnibus Tax Increment Financing (TIF) District, as adopted by Order 139-14/15 and amended by Order 99-17/18, Order 78-18/19, and Order 279-18/19 is hereby amended to remove 83 Middle Street and 160 Newbury Street in order for those properties to be made an Affordable Housing Tax Increment Financing District in substantially the form attached hereto; and

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

**AMENDMENT TO ORDER 13-20/21
PREPARED BY CORPORATION COUNSEL PER STAFF
RECOMMENDATION
RE: REVISED UTILIZATION AMOUNT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

...

WHEREAS, the City of Portland will utilize ~~50~~25% of the tax revenues generated in the District in its General Fund; and

...

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “83 Middle Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

...

I. Introduction – Portland Downtown Transit Oriented Municipal Development and Omnibus Tax Increment Financing District Amendment #43

On February 9, 2015, the City of Portland (the “City”) designated the Portland Downtown Transit Oriented Municipal Development and Omnibus Tax Increment Financing District (the “District”) and adopted this Development Program (the “Development Program”) for the District in an effort to fully realize the visions and goals of the City of Portland Downtown Revitalization Investment Plan (“Downtown Plan”); the Downtown Plan is attached as Exhibit A. The duration of this District will be 30 years beginning July 1, 2015 (Tax Year 4/1/2015; FY2015-16) ending June 30, 2045 (Tax Year 4/1/2044; FY2044-45).

- a. District Amendment #1 Approved by MDECD February 27, 2018: The purpose of this District amendment was to remove the parcel designated by the City Assessor as 22-F-1 at 54 Lancaster – a tax exempt parcel (so no value attributed to the Original Assessed Value) with approximately .48 acres, which will be turned into a free-standing Affordable Housing TIF District. Portland’s amended District remained the same at approximately 422 acres and bounded by Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF Districts to the north and south. The District encompasses the central business district of Portland and the abutting east and west ends of the District. In creating the District, the outlying residential areas of the Eastern and Western Promenades have been purposely excluded.
- b. District Amendment #2 approved by MDECD February 11, 2019: The purpose of this District Amendment was to increase the allowable uses for Municipal TIF Revenue and increase the percentage capture from up to 22% to up to 100%, all as more detailed in Section II below.
- c. ~~Proposed~~ District Amendment #3 approved by MDECD September 18, 2019: The purpose of District Amendment #3 is to remove the parcel designated by the City Assessor as 44-H-1 at 66 State Street – a tax exempt parcel (so no value attributed to the Original Assessed Value), with approximately .5087 acres, which will be turned into a free-standing Affordable Housing TIF District. Portland’s amended District, with Amendment #3, ~~reduced~~ it from approximately 422 to 421.01 acres. The boundaries remain the same, i.e., bounded by Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF Districts to the north and south. The District encompasses the central business district of Portland and the abutting east and west ends of the District. In creating the District, the outlying residential areas of the Eastern and Western Promenades have been purposely excluded. The Downtown Plan includes a listing of current projects and categories of future investment. It is recognized that meeting the infrastructure needs of Portland’s downtown will be a dynamic process that will be updated locally on an annual

202019 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #43 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-344-H001001 AND TECHNICAL AMENDMENTS

basis or as needed. Though the specific public projects prioritized and undertaken from year to year will change, with the exception of this District funding up to \$100,000 annually for the Creative Portland Corporation, categories of investment for the purpose of eligible uses of the TIF Revenues will remain consistent. Actual project selections and prioritization for funding will continue to be made on an annual basis during the City budget and Capital Improvements Plan (CIP) process, based on categories contained in Table 1 hereinbelow. The CIP is the document that presents the City's capital needs in the current year and plans for capital needs in future years. As a five year plan that is annually updated, the CIP is a dynamic planning document; the FY2015 to 2019 CIP document is included in the Downtown Plan as an appendix~~ee~~.

d. Proposed District Amendment #4: The purpose of District Amendment #4 is to remove the parcels designated by the City Assessor as 28-O-17 at 83 Middle Street – a tax exempt parcel (so no value attributed to the Original Assessed Value), with approximately .2183 acres, and 28-O-3 at 160 Newbury Street with an OAV of \$281,100 with approximately .0665 acres, which parcels will be turned into a free-standing Affordable Housing TIF District.

Proposed District Amendment #4 also includes technical amendments as follows:

- CBL 37-B-14, 17 Shepley Street, a tax exempt parcel, was on the original map but needs to be added to original CBL listing attached to the Assessor's Certificate – increasing acreage by .1512, with no change in OAV as tax exempt;
- CBL 39-A-38, 612 Congress Street, was on original map but needs to be added to original CBL listing attached to the Assessor's Certificate, - increasing acreage by .0449, and increasing the OAV by \$282,400;
- CBL 38-G-1, 486 Fore Street, not on original map and needs to be deleted from listing attached to the Assessor's Certificate – decreasing acreage by 1.8419, and decreasing the OAV by \$3,130,830, and it is now in the Waterfront TIF District as approved by MDECD on August 26, 2019; and,
- CBL 43-C-6, 431 Commercial Street, a tax exempt parcel, was on original map and listing attached to the Assessor's Certificate but was transferred to the Waterfront TIF District as approved by MDECD on April 5, 2019 – decreasing acreage by 1.2912, with no change in OAV as tax exempt.

With the above removal of 83 Middle Street and 160 Newbury Street, and the technical amendments, the net change to the District's OAV is reduced from

\$968,136,850 to \$965,007,320, and the District's acreage is reduced from
421.010 to 417.7882.

II. Development Program Narrative

A. The Development Program as Amended with Amendment #~~43~~

The Amended Development Program for the Downtown Transit Oriented Municipal Development and Omnibus TIF District is structured and proposed pursuant to Chapter 206 of Title 30-A of the Maine Revised TIF Statutes, as amended (the "TIF Statute"). The City's designation of the District, combined with the adoption of this Amended Development Program, creates a single municipal TIF district in order to capture the value of the real property improvements made within the District and enable the use of TIF revenues for various municipal and other development projects.

Under this Amended Development Program, the City captured 12% in year one, ~~and~~ 22% in years 2 through 4, and 25% in year 5. This Amended Development Program ~~would~~ now allow s for the City to capture up to 100% of the new real property value located in the District for remainder of the term of the District, or through Tax Year April 1, 2044/City Fiscal Year 2044/2045. The City may retain those tax revenues generated by the captured assessed value (the "TIF Revenues") to fund infrastructure improvements and other administrative costs, all as further described in Table 1 hereinbelow. The City reserves the right to capture less than the full 100% in years 5 through 30, depending on the then-current needs of the City with respect to the approved project costs. Any reduction in the captured value percentage shall adjust the amount of assessed value eligible for sheltering with respect to the tax shift benefit correspondingly. Although all TIF Revenues will be retained by the City at this time, the City reserves the right in the future to negotiate and execute commercial credit enhancement agreements pursuant to City Council approved TIF Policy as may be amended from time to time. CEAs would be limited, however, to the balance of District term at that time. Such future credit enhancement agreements would require a public hearing and City Council approval. Should the City enter into a credit enhancement agreement, it will provide the Maine Department of Economic and Community Development a description of the terms and conditions of any agreements, contracts, or other obligations related to the development program per City TIF Policy (see Table 1 last item and Exhibit B).

In designating the District and adopting this Amended Development Program, the City can accomplish the following goals:

- Maintain existing tax revenues;
- Invest in the Downtown public infrastructure;
- Invest in the Creative Portland Corporation annually;
- Invest in new and enhanced transit services;
- Enjoy enhanced future tax revenues generated by new development within the District; and
- Create long-term, stable employment opportunities for area residents because of these TIF investments.

In addition, by creating the District, the City will “shelter” the increase in municipal valuation that development in the District will bring about. This tax shift benefit mitigates the adverse effect that the District’s increased assessed property value has upon the City’s share of state aid to education, municipal revenue sharing, and its county tax assessment. An estimate of the tax shift benefits is shown in Revised Exhibit D-2 attached hereto.

The City’s designation of the District and pursuit of this Amended Development Program constitute a good and valid public purpose pursuant to Chapter 206 of Title 30-A because it represents a substantial contribution to the economic well-being of both the City and the region by providing jobs, contributing to property taxes, and diversifying the region’s economic base.

B. The Projects

Development within the District will provide a revenue source for the City’s economic development projects. The City intends to use TIF Revenues to further its overall plan to attract and retain businesses that want to take advantage of Portland’s business-friendly location, while offering their employees a rich, dynamic, and high quality of life. This includes funding of Creative Portland Corporation, of which the City of Portland is the Corporator, of up to \$100,000 annually, as well as City plans to invest in its public infrastructure in these investment focus areas:

- Sidewalk and Other Pedestrian Enhancements
- Streetscape
- Lighting
- Street Alignment
- Utilities
- Bicycle Improvements
- Public Transit
- Wayfinding
- Multi-modal surface and structured parking
- Work force training
- Professional service costs
- Economic Development Department administrative costs and staff salaries, and prorated salaries of the City Manager, Finance Director, Planning and Urban Development Director, and Planning staff.

The District projects at this time are highlighted in Table 1 below:

TABLE 1

NOTE 1: All Citations refer to Title 30-A, Chapter 206, Section 5225

NOTE 2: While this Amended Development Program lists particular projects, the Amended Development Program shall not serve as an appropriation of TIF Revenues for any of these specific purposes, nor shall it commit the City to completing any particular project. The projects will only be undertaken following proper appropriation through the annual budget process and any other applicable required approvals.

**2020~~19~~ PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #~~43~~ - REMOVING ASSESSOR LOT 28-O-17
AND 28-O-344-H001001 AND TECHNICAL AMENDMENTS**

Project	Downtown Revitalization Plan Reference by page no.	Statutory Citation	Estimated Cost
In District: Capital Infrastructure Design and Investments, including Financing Costs, for example: - Multi-modal surface and structured parking - Sidewalk and Other Pedestrian Enhancements - Roadway Realignments/Paving - Crosswalks - Traffic Signals - Intersection Redesigns - Bicycle lanes, racks, and stations Infrastructure - Stormwater Management, including water and sewer upgrades - Telecommunications, lighting, and electrical distribution upgrades; Infrastructure improvements/enhancements - Wayfinding (signage) - Public plaza intersection improvements	19, 47 19, 20, 34,35, 48 19,20,34,35 19, 46 34, 46 19,20,34,35 19, 34,47 19, 33 19, 36 19,23, 35,47 22, 46	(1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(a)(i) (1)(A)(1)(2)(3) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(a)(i) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(7) (1)(A)(1) (1)(A)(1)(2)(3)(6)(7)	\$150 Million over the life of the District for these Capital Infrastructure Items.
In and out of District: New and Enhanced Transit Services, including operational costs, for example (see Exhibit K – Transit Map): - Creation of high frequency bus service on Congress Street at 15-minute intervals between the Portland Transportation Center (PTC) and Washington Avenue; - Enhancing Stevens Avenue- Allen Avenue- Congress Street bus service areas; - Corresponding costs for these enhancements, including transit operator salaries; transit	17, 20, 21, 20 20	(1)(A) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7)	\$15 Million for Transit in this category.

**2020~~19~~ PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #~~43~~ - REMOVING ASSESSOR LOT 28-O-17
AND 28-O-344-H001001 AND TECHNICAL AMENDMENTS**

vehicle fuel, and transit vehicle parts replacements. - Transit capital costs including transit vehicles and related equipment; bus shelters and other related structures; benches; signs, and other transit-related infrastructure. - Shuttle service to downtown businesses.	20 17, 20	(1)(A)(1)(a) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7)	
In and out of District: City Marketing and Promotion through Creative Portland Corporation (CPC), for example (see Exhibit M Arts District Map within Downtown TOD TIF District): - In District: Center for the Arts, including rental residential space; - In District: capital, financing, real property assembly and professional service costs; - In and out of District: CPC staffing, administrative and marketing expenses; revolving loan or investment fund.	20, 21,47 20, 21,47 20, 21, 47	(1)(C)(1)(2) (1)(C)(1)(2) (1)(C)(1)(2)	Up to \$100K annually; \$3 Million over life of District
In and out of District: - Economic Dev. Dept. administrative costs and staff salaries at 100%, and prorated salaries of City Manager, Finance Director, and Planning Urban Development Director, and Planning staff*; - Professional services costs; - Workforce training funds. Costs of services and equipment to provide skills development and training, including scholarships to in-state	21, Also TIF App. P. 3 See TIF App. P.3 See TIF App. P. 3	(1)(A)(5) and (1)(C)(1) (1)(A)(4);(1)(C)(1) (1)(C)(4)	\$15 Million over life of the District.

**2020~~19~~ PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #~~43~~ - REMOVING ASSESSOR LOT 28-O-17
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educational institutions or to online learning entities when in-state options are not available, for jobs created or retained.			
In District: Small Public Capital Infrastructure and Equipment, for example (Downtown Plan pp. 6 and 7) - Parking meters - Vehicles for Public Works Dept., and Fire Dept., including ambulances	19 21, 36 to 44	(1)(A)(1)(a) (1)(A)(1)(a)	\$10 Million over life of the District
In District: Relocation of Displaced Persons (TIF Application, p. 6)	(see TIF application, p. 6)	1(A)(6)	Not budgeted/not anticipated at time of TIF application
In District: CEAs as Approved by City Council (TIF application p. 2) with a maximum average percentage of 65% capture and up to a 20-year term pursuant to City TIF Policy (Exhibit B hereto).	(see TIF application p. 2)	(1)(A)(1)(2)(3)(6)(7)	Unknown at time of TIF application
Total Estimate of TIF Revenue Expenditure over 30 year term:			\$193,000,000

*This item is not unique to this TIF District, it is also included in the Bayside TIF District and, Waterfront TIF District, ~~and partially included Riverwalk TIF District.~~

C. Strategic Growth and Development

This Amended Development Program and the Downtown Plan meld various studies and plans for the District into one document, thereby promoting those studies and plans and making investments at the appropriate time. The studies and plans noted in the Downtown Plan represent a series of community initiatives, both completed and underway, or in planning process. The Amended Development Program and Project List (Table 1) noted hereinabove represents the best thinking of City staff about current opportunities for realizing the City's longstanding, evolving vision for its Downtown.

D. Improvements to the Public Infrastructure

As further set forth in Table 1 hereinabove, the City may use certain TIF Revenues for sidewalk and other pedestrian improvements including crosswalks, roadway realignments/paving, intersection redesigns, traffic signals, bicycle infrastructure, stormwater management improvements (including water and sewer maintenance), communications infrastructure improvements/enhancements, wayfinding, multi-modal surface and structured

parking, and public plaza intersection improvements that are directly related and made necessary by development in the District.

E. Operational Components

1. Public Facilities

The City may use a portion of the TIF Revenues to fund certain projects approved within the District, outlined in Table 1 hereinabove.

2. Commercial Improvements Financed through the Development Program

At this time, no commercial improvements will be financed through the Development Program. The City may, in the future, reimburse a percentage of the TIF Revenues from any particular lot within the District to future developers through a credit enhancement agreement. Future credit enhancement agreements are authorized only if the City Council meets and holds a public hearing and votes to authorize, negotiate, and execute the credit enhancement agreement pursuant to City Council approved TIF Policy. Such credit enhancement agreements would be approved under the City's TIF Policy, as may be amended from time to time, but limited to the balance of the term of this District. Should the City enter into a credit enhancement agreement, it will provide the Maine Department of Economic and Community Development a description of the terms and conditions of any agreements, contracts, or other obligations related to the development program (see Table 1 last item and Exhibit B).

3. Relocation of Displaced Persons

It is not anticipated that any persons will be relocated; however, the City has provided that if, in the future, relocation of persons is necessary to accommodate future redevelopment within the District, the one-time relocation costs of such displaced persons can be paid for with TIF Revenues, exclusive of rent.

4. Transportation Improvements

The City may fund road/transportation improvements made necessary by the increased traffic to the District. Please see Table 1 hereinabove for more details.

5. Environmental Controls

The improvements made under this Development Program will meet or exceed all federal, state, and local environmental laws, regulations, and ordinances and will comply with all applicable land use requirements for the City.

6. Plan of Operation

During the term of the District, the City Manager or his designee will be responsible for all administrative matters within the purview of the City concerning the implementation and operation of the District.

III. Amended Physical Description

The ~~417.7882421~~-acre District is bounded by Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF Districts to the north and south. The District encompasses the central business district of

**2020~~19~~ PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #~~43~~ - REMOVING ASSESSOR LOT 28-O-17
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Portland and the abutting east and west ends of the District. In creating the District, the outlying residential areas of the Eastern and Western Promenades have been purposely excluded. The District is shown on revised Exhibit C. The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in revised Exhibit E.

IV. Financial Plan

A. Amended Financial Characteristics

With Amendment #4, the collective amended original assessed value of the real property in the District is \$96,007,320,136,850 as set forth in Exhibit F, Revised Assessor's Certificate as of March 31, 2014 (Tax Year April 1, 2013) remains unchanged. Please see the Assessor's Certificate of the original assessed value attached as revised Exhibit F with the revision not affecting the OAV. The backup for the Certificate includes revisions from Amendment #3 and #4 removes 44-H-1. It is noted that Downtown TOD/TIF acreage and value calculations are exempt from State TIF law limits.

The City captured 12% in year 1, ~~and~~ 22% in years 2 through 4, and 25% in year 5 of the increased assessed value of the real property located within the District. Amendment 2 provided for the City to capture up to 100% for the duration of the 30-year term of the District. Personal property tax value will not be captured within the District. The TIF Revenues so collected will fund and/or contribute to the funding of the approved projects, including each of the projects described on Table 1 hereinabove, including entering into Credit Enhancement Agreements (see Table 1 last item and Exhibit B), which collectively increase the City's ability to stand out in a competitive marketplace as a dynamic municipality in which to grow a business. All assessed real property value captured in the District will be added to the general tax rolls at the end of the District's term. Please note that at any time during the term of the District, the municipality can vote to reduce the captured value percentage and instead deposit the tax revenues into the General Fund so long as the municipality does not receive the tax shift benefit associated with the tax revenues so deposited.

Upon each payment of real property taxes for property located inside the District, the City will deposit into a development program fund (the "Development Program Fund") the entirety of the property tax payments constituting TIF Revenues. The percentage of increased assessed value of real property within the District that will be captured shall be determined annually during the municipal budget process; however, the City may capture up to 100% in Years 5 through 30 of the increased assessed value of real property as captured assessed value. The Development Program Fund is pledged to and charged with the payment of the project costs in the manner and in the order provided in 30-A M.R.S.A. Section 5227(3). The Development Program Fund will consist of a development sinking fund account (the "Sinking Fund Account") to the extent municipal bonded indebtedness is used to pay for projects costs, and a project cost account (the "Project Cost Account"). From the Development Program Fund, the City will deposit the TIF Revenues into the City's Sinking Fund Account and/or the Project Cost Account to be used to fund projects listed in Table 1 hereinabove. If future credit enhancement agreements are approved by the City Council, then a subaccount within the Project Cost Account

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shall be created for any payments required to be made by the City pursuant to such credit enhancement agreement, dedicated to each credit enhancement agreement.

Estimates of the increased assessed property values of the Amended District, the anticipated TIF Revenues generated by the District, and the estimated tax shifts are shown in Revised Exhibit D-1 and Revised Exhibit D-2.

B. Costs and Sources of Revenues

The current and future developers owning or leasing properties located within the Districted are intended to pay for and/or finance all private improvements located in the District through private sources. Table 1 hereinabove provides estimated costs of the municipal projects costs to be undertaken with TIF Revenues.

C. Indebtedness

The City reserves the option to fund the project costs through public indebtedness.

V. Statutory Requirements and Thresholds

The statutory requirements and thresholds for approval required by Section 5223(3) of the TIF Statute are set forth in revised Exhibit E.

VI. Municipal Approvals

A. Notice of Public Hearing

Attached as Exhibit G hereto is a copy of the Notice of Public Hearing regarding amending the Development Program for the District, published in the *Portland Press Herald*, a newspaper of general circulation in the City, on _____, 20~~2019~~, a date at least ten (10) days prior to the public hearing. The public hearing on the amended District was held on August 3, 2020~~July 2, 2019~~, in accordance with the requirements of 30-A M.R.S.A. Section 5226(1).

B. Minutes of Public Hearing Held by City Council

Attached as Exhibit H hereto is a certified copy of the minutes of the public hearing held on August 3, 2020~~July 15, 2019~~, at which time this amended District was discussed by the public.

C. Authorizing Votes

Attached as Exhibit I hereto is an attested copy of the City of Portland Order approving this amended District with the results of the vote noted on this Order duly called and held on July 15, 2019~~August 3, 2020~~.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

I. Introduction – Portland Downtown Transit Oriented Municipal Development and Omnibus Tax Increment Financing District Amendment #4

On February 9, 2015, the City of Portland (the “City”) designated the Portland Downtown Transit Oriented Municipal Development and Omnibus Tax Increment Financing District (the “District”) and adopted this Development Program (the “Development Program”) for the District in an effort to fully realize the visions and goals of the City of Portland Downtown Revitalization Investment Plan (“Downtown Plan”); the Downtown Plan is attached as Exhibit A. The duration of this District will be 30 years beginning July 1, 2015 (Tax Year 4/1/2015; FY2015-16) ending June 30, 2045 (Tax Year 4/1/2044; FY2044-45).

- a. District Amendment #1 Approved by MDECD February 27, 2018: The purpose of this District amendment was to remove the parcel designated by the City Assessor as 22-F-1 at 54 Lancaster – a tax exempt parcel (so no value attributed to the Original Assessed Value) with approximately .48 acres, which will be turned into a free-standing Affordable Housing TIF District. Portland’s amended District remained the same at approximately 422 acres and bounded by Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF Districts to the north and south. The District encompasses the central business district of Portland and the abutting east and west ends of the District. In creating the District, the outlying residential areas of the Eastern and Western Promenades have been purposely excluded.
- b. District Amendment #2 approved by MDECD February 11, 2019: The purpose of this District Amendment was to increase the allowable uses for Municipal TIF Revenue and increase the percentage capture from up to 22% to up to 100%, all as more detailed in Section II below.
- c. District Amendment #3 approved by MDECD September 18, 2019: The purpose of District Amendment #3 is to remove the parcel designated by the City Assessor as 44-H-1 at 66 State Street – a tax exempt parcel (so no value attributed to the Original Assessed Value), with approximately .5087 acres, which will be turned into a free-standing Affordable Housing TIF District. Portland’s amended District, with Amendment #3, reduced it from approximately 422 to 421.01 acres. The boundaries remain the same, i.e., bounded by Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF Districts to the north and south. The District encompasses the central business district of Portland and the abutting east and west ends of the District. In creating the District, the outlying residential areas of the Eastern and Western Promenades have been purposely excluded. The Downtown Plan includes a listing of current projects and categories of future investment. It is recognized that meeting the infrastructure needs of Portland’s downtown will be a dynamic process that will be updated locally on an annual

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

basis or as needed. Though the specific public projects prioritized and undertaken from year to year will change, with the exception of this District funding up to \$100,000 annually for the Creative Portland Corporation, categories of investment for the purpose of eligible uses of the TIF Revenues will remain consistent. Actual project selections and prioritization for funding will continue to be made on an annual basis during the City budget and Capital Improvements Plan (CIP) process, based on categories contained in Table 1 hereinbelow. The CIP is the document that presents the City's capital needs in the current year and plans for capital needs in future years. As a five year plan that is annually updated, the CIP is a dynamic planning document; the FY2015 to 2019 CIP document is included in the Downtown Plan as an appendix.

- d. Proposed District Amendment #4: The purpose of District Amendment #4 is to remove the parcels designated by the City Assessor as 28-O-17 at 83 Middle Street – a tax exempt parcel (so no value attributed to the Original Assessed Value), with approximately .2183 acres, and 28-O-3 at 160 Newbury Street with an OAV of \$281,100 with approximately .0665 acres, which parcels will be turned into a free-standing Affordable Housing TIF District.

Proposed District Amendment #4 also includes technical amendments as follows:

- CBL 37-B-14, 17 Shepley Street, a tax exempt parcel, was on the original map but needs to be added to original CBL listing attached to the Assessor's Certificate – increasing acreage by .1512, with no change in OAV as tax exempt;
- CBL 39-A-38, 612 Congress Street, was on original map but needs to be added to original CBL listing attached to the Assessor's Certificate, - increasing acreage by .0449, and increasing the OAV by \$282,400;
- CBL 38-G-1, 486 Fore Street, not on original map and needs to be deleted from listing attached to the Assessor's Certificate – decreasing acreage by 1.8419, and decreasing the OAV by \$3,130,830, and it is now in the Waterfront TIF District as approved by MDECD on August 26, 2019; and,
- CBL 43-C-6, 431 Commercial Street, a tax exempt parcel, was on original map and listing attached to the Assessor's Certificate but was transferred to the Waterfront TIF District as approved by MDECD on April 5, 2019 – decreasing acreage by 1.2912, with no change in OAV as tax exempt.

With the above removal of 83 Middle Street and 160 Newbury Street, and the technical amendments, the net change to the District's OAV is reduced from

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

\$968,136,850 to \$965,007,320, and the District's acreage is reduced from 421.010 to 417.7882.

II. Development Program Narrative

A. The Development Program as Amended with Amendment #4

The Amended Development Program for the Downtown Transit Oriented Municipal Development and Omnibus TIF District is structured and proposed pursuant to Chapter 206 of Title 30-A of the Maine Revised TIF Statutes, as amended (the "TIF Statute"). The City's designation of the District, combined with the adoption of this Amended Development Program, creates a single municipal TIF district in order to capture the value of the real property improvements made within the District and enable the use of TIF revenues for various municipal and other development projects.

Under this Amended Development Program, the City captured 12% in year one, 22% in years 2 through 4, and 25% in year 5. This Amended Development Program now allows for the City to capture up to 100% of the new real property value located in the District for remainder of the term of the District, or through Tax Year April 1, 2044/City Fiscal Year 2044/2045. The City may retain those tax revenues generated by the captured assessed value (the "TIF Revenues") to fund infrastructure improvements and other administrative costs, all as further described in Table 1 hereinbelow. The City reserves the right to capture less than the full 100% in years 5 through 30, depending on the then-current needs of the City with respect to the approved project costs. Any reduction in the captured value percentage shall adjust the amount of assessed value eligible for sheltering with respect to the tax shift benefit correspondingly. Although all TIF Revenues will be retained by the City at this time, the City reserves the right in the future to negotiate and execute commercial credit enhancement agreements pursuant to City Council approved TIF Policy as may be amended from time to time. CEAs would be limited, however, to the balance of District term at that time. Such future credit enhancement agreements would require a public hearing and City Council approval. Should the City enter into a credit enhancement agreement, it will provide the Maine Department of Economic and Community Development a description of the terms and conditions of any agreements, contracts, or other obligations related to the development program per City TIF Policy (see Table 1 last item and Exhibit B).

In designating the District and adopting this Amended Development Program, the City can accomplish the following goals:

- Maintain existing tax revenues;
- Invest in the Downtown public infrastructure;
- Invest in the Creative Portland Corporation annually;
- Invest in new and enhanced transit services;
- Enjoy enhanced future tax revenues generated by new development within the District; and
- Create long-term, stable employment opportunities for area residents because of these TIF investments.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

In addition, by creating the District, the City will “shelter” the increase in municipal valuation that development in the District will bring about. This tax shift benefit mitigates the adverse effect that the District’s increased assessed property value has upon the City’s share of state aid to education, municipal revenue sharing, and its county tax assessment. An estimate of the tax shift benefits is shown in Revised Exhibit D-2 attached hereto.

The City’s designation of the District and pursuit of this Amended Development Program constitute a good and valid public purpose pursuant to Chapter 206 of Title 30-A because it represents a substantial contribution to the economic well-being of both the City and the region by providing jobs, contributing to property taxes, and diversifying the region’s economic base.

B. The Projects

Development within the District will provide a revenue source for the City’s economic development projects. The City intends to use TIF Revenues to further its overall plan to attract and retain businesses that want to take advantage of Portland’s business-friendly location, while offering their employees a rich, dynamic, and high quality of life. This includes funding of Creative Portland Corporation, of which the City of Portland is the Corporator, of up to \$100,000 annually, as well as City plans to invest in its public infrastructure in these investment focus areas:

- Sidewalk and Other Pedestrian Enhancements
- Streetscape
- Lighting
- Street Alignment
- Utilities
- Bicycle Improvements
- Public Transit
- Wayfinding
- Multi-modal surface and structured parking
- Work force training
- Professional service costs
- Economic Development Department administrative costs and staff salaries, and prorated salaries of the City Manager, Finance Director, Planning and Urban Development Director, and Planning staff.

The District projects at this time are highlighted in Table 1 below:

TABLE 1

NOTE 1: All Citations refer to Title 30-A, Chapter 206, Section 5225

NOTE 2: While this Amended Development Program lists particular projects, the Amended Development Program shall not serve as an appropriation of TIF Revenues for any of these specific purposes, nor shall it commit the City to completing any particular project. The projects will only be undertaken following proper appropriation through the annual budget process and any other applicable required approvals.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

Project	Downtown Revitalization Plan Reference by page no.	Statutory Citation	Estimated Cost
In District: Capital Infrastructure Design and Investments, including Financing Costs, for example: - Multi-modal surface and structured parking - Sidewalk and Other Pedestrian Enhancements - Roadway Realignments/Paving - Crosswalks - Traffic Signals - Intersection Redesigns - Bicycle lanes, racks, and stations Infrastructure - Stormwater Management, including water and sewer upgrades - Telecommunications, lighting, and electrical distribution upgrades; Infrastructure improvements/enhancements - Wayfinding (signage) - Public plaza intersection improvements	19, 47 19, 20, 34,35, 48 19,20,34,35 19, 46 34, 46 19,20,34,35 19, 34,47 19, 33 19, 36 19,23, 35,47 22, 46	(1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(a)(i) (1)(A)(1)(2)(3) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(a)(i) (1)(A)(1)(2)(3)(6)(7) (1)(A)(1)(2)(3)(7) (1)(A)(1) (1)(A)(1)(2)(3)(6)(7)	\$150 Million over the life of the District for these Capital Infrastructure Items.
In and out of District: New and Enhanced Transit Services, including operational costs, for example (see Exhibit K – Transit Map): - Creation of high frequency bus service on Congress Street at 15-minute intervals between the Portland Transportation Center (PTC) and Washington Avenue; - Enhancing Stevens Avenue- Allen Avenue- Congress Street bus service areas; - Corresponding costs for these enhancements, including transit operator salaries; transit	17, 20, 21, 20 20	(1)(A) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7)	\$15 Million for Transit in this category.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

vehicle fuel, and transit vehicle parts replacements. - Transit capital costs including transit vehicles and related equipment; bus shelters and other related structures; benches; signs, and other transit-related infrastructure. - Shuttle service to downtown businesses.	20 17, 20	(1)(A)(1)(a) and (1)(C)(7) (1)(A)(1)(a) and (1)(C)(7)	
In and out of District: City Marketing and Promotion through Creative Portland Corporation (CPC), for example (see Exhibit M Arts District Map within Downtown TOD TIF District): - In District: Center for the Arts, including rental residential space; - In District: capital, financing, real property assembly and professional service costs; - In and out of District: CPC staffing, administrative and marketing expenses; revolving loan or investment fund.	20, 21,47 20, 21,47 20, 21, 47	(1)(C)(1)(2) (1)(C)(1)(2) (1)(C)(1)(2)	Up to \$100K annually; \$3 Million over life of District
In and out of District: - Economic Dev. Dept. administrative costs and staff salaries at 100%, and prorated salaries of City Manager, Finance Director, and Planning Urban Development Director, and Planning staff*; - Professional services costs; - Workforce training funds. Costs of services and equipment to provide skills development and training, including scholarships to in-state	21, Also TIF App. P. 3 See TIF App. P.3 See TIF App. P. 3	(1)(A)(5) and (1)(C)(1) (1)(A)(4);(1)(C)(1) (1)(C)(4)	\$15 Million over life of the District.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

educational institutions or to online learning entities when in-state options are not available, for jobs created or retained.			
In District: Small Public Capital Infrastructure and Equipment, for example (Downtown Plan pp. 6 and 7) - Parking meters - Vehicles for Public Works Dept., and Fire Dept., including ambulances	19 21, 36 to 44	(1)(A)(1)(a) (1)(A)(1)(a)	\$10 Million over life of the District
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parking, and public plaza intersection improvements that are directly related and made necessary by development in the District.

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With Amendment #4, the collective amended original assessed value of the real property in the District is \$965,007,320 as set forth in Exhibit F, Revised Assessor's Certificate.. The backup for the Certificate includes revisions from Amendment #3 and #4. It is noted that Downtown TOD/TIF acreage and value calculations are exempt from State TIF law limits.

The City captured 12% in year 1, 22% in years 2 through 4, and 25% in year 5 of the increased assessed value of the real property located within the District. Amendment 2 provided for the City to capture up to 100% for the duration of the 30-year term of the District. Personal property tax value will not be captured within the District. The TIF Revenues so collected will fund and/or contribute to the funding of the approved projects, including each of the projects described on Table 1 hereinabove, including entering into Credit Enhancement Agreements (see Table 1 last item and Exhibit B), which collectively increase the City's ability to stand out in a competitive marketplace as a dynamic municipality in which to grow a business. All assessed real property value captured in the District will be added to the general tax rolls at the end of the District's term. Please note that at any time during the term of the District, the municipality can vote to reduce the captured value percentage and instead deposit the tax revenues into the General Fund so long as the municipality does not receive the tax shift benefit associated with the tax revenues so deposited.

Upon each payment of real property taxes for property located inside the District, the City will deposit into a development program fund (the "Development Program Fund") the entirety of the property tax payments constituting TIF Revenues. The percentage of increased assessed value of real property within the District that will be captured shall be determined annually during the municipal budget process; however, the City may capture up to 100% in Years 5 through 30 of the increased assessed value of real property as captured assessed value. The Development Program Fund is pledged to and charged with the payment of the project costs in the manner and in the order provided in 30-A M.R.S.A. Section 5227(3). The Development Program Fund will consist of a development sinking fund account (the "Sinking Fund Account") to the extent municipal bonded indebtedness is used to pay for projects costs, and a project cost account (the "Project Cost Account"). From the Development Program Fund, the City will deposit the TIF Revenues into the City's Sinking Fund Account and/or the Project Cost Account to be used to fund projects listed in Table 1 hereinabove. If future credit enhancement agreements are approved by the City Council, then a subaccount within the Project Cost Account shall be created for any payments required to be made by the City pursuant to such credit enhancement agreement, dedicated to each credit enhancement agreement.

2020 PROPOSED DOWNTOWN/TRANSIT TIF AMENDMENT #4 - REMOVING ASSESSOR LOT 28-O-17 AND 28-O-3 AND TECHNICAL AMENDMENTS

Estimates of the increased assessed property values of the Amended District, the anticipated TIF Revenues generated by the District, and the estimated tax shifts are shown in Revised Exhibit D-1 and Revised Exhibit D-2.

B. Costs and Sources of Revenues

The current and future developers owning or leasing properties located within the Districted are intended to pay for and/or finance all private improvements located in the District through private sources. Table 1 hereinabove provides estimated costs of the municipal projects costs to be undertaken with TIF Revenues.

C. Indebtedness

The City reserves the option to fund the project costs through public indebtedness.

V. Statutory Requirements and Thresholds

The statutory requirements and thresholds for approval required by Section 5223(3) of the TIF Statute are set forth in revised Exhibit E.

VI. Municipal Approvals

A. Notice of Public Hearing

Attached as Exhibit G hereto is a copy of the Notice of Public Hearing regarding amending the Development Program for the District, published in the *Portland Press Herald*, a newspaper of general circulation in the City, on _____, 2020, a date at least ten (10) days prior to the public hearing. The public hearing on the amended District was held on August 3, 2020, in accordance with the requirements of 30-A M.R.S.A. Section 5226(1).

B. Minutes of Public Hearing Held by City Council

Attached as Exhibit H hereto is a certified copy of the minutes of the public hearing held on August 3, 2020, at which time this amended District was discussed by the public.

C. Authorizing Votes

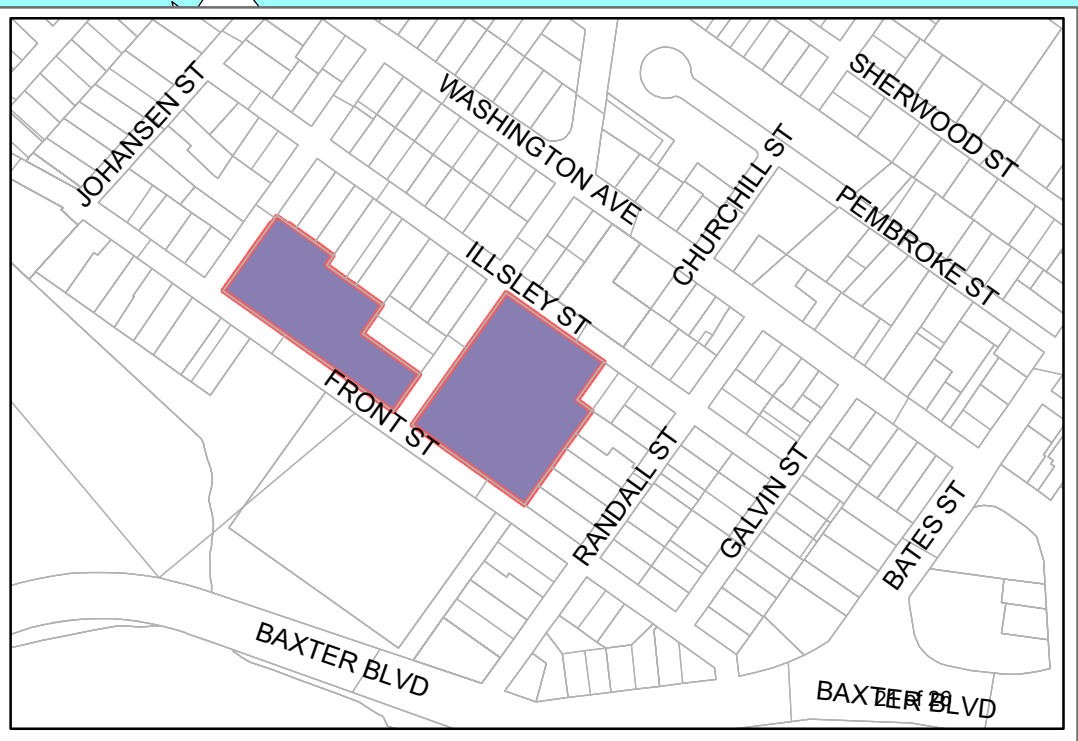
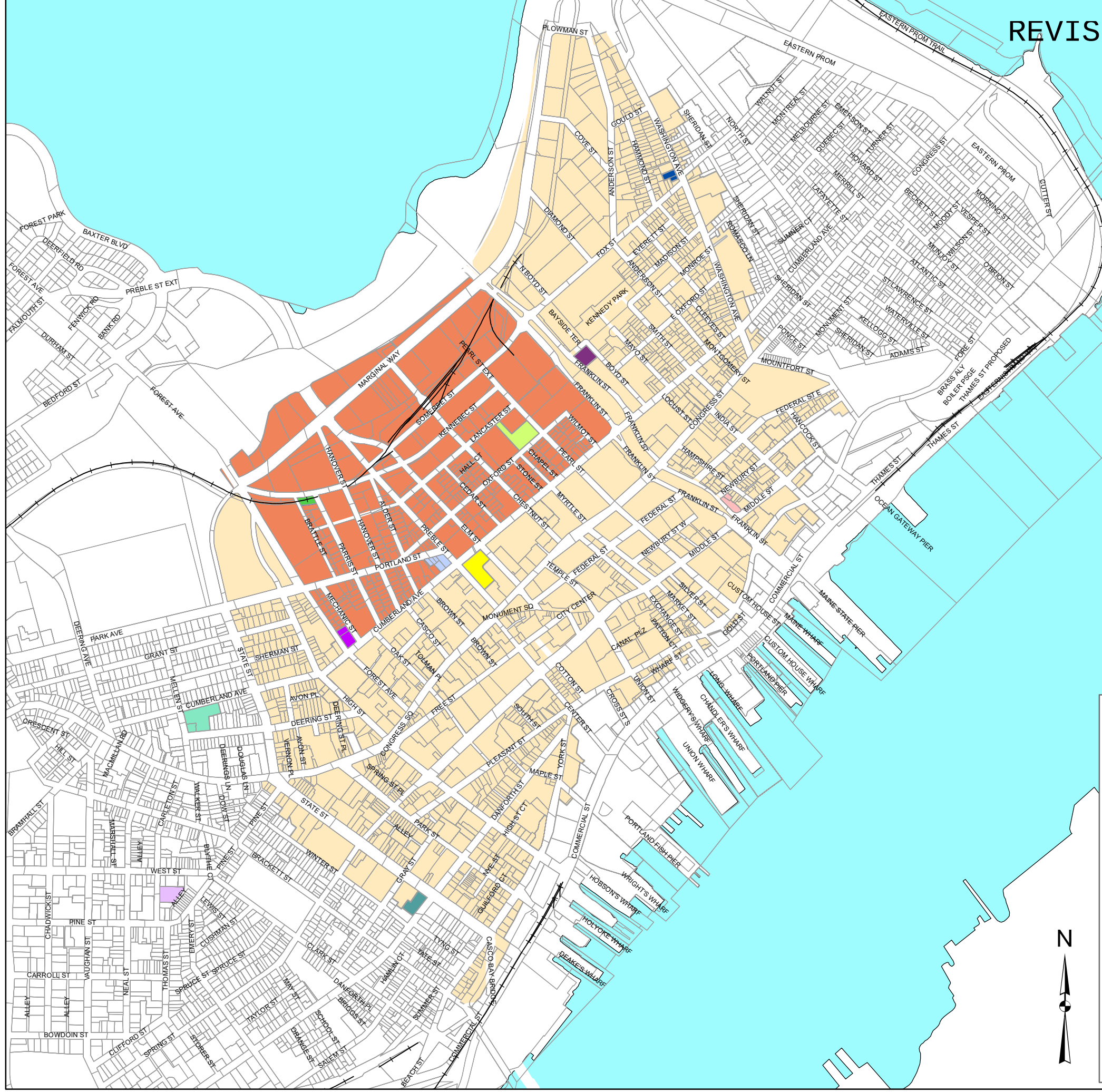
Attached as Exhibit I hereto is an attested copy of the City of Portland Order approving this amended District with the results of the vote noted on this Order duly called and held on August 3, 2020.

REVISED EXHIBIT C

Tax Increment Financing
Districts on Peninsula
June 2020

- Front Street AH
- 178 Kennebec Street 1 AH
- 178 Kennebec Street 2 AH
- Deering Place AH
- 66 State Street AH
- 58 Boyd St AH
- 17 Carleton St AH
- 83 Middle St Affordable Housing
- 337 Cumberland Ave Affordable Housing
- 409 Cumberland Ave Affordable Housing
- 134 Washington Ave Affordable Housing
- Bayside TIF
- Downtown TOD
- Pearl Place AH
- Power Pay

NOTE: WATERFRONT TIF DISTRICT ON SEPARATE MAP



REVISED EXHIBIT D-1

City of Portland - Downtown TOD TIF Model

Actual IAV FY2016 through FY2020

Estimates FY2021 through FY2045

6/30/2020

Annual mil rate increase FY2020 through FY204 2%

Annual valuation increase FY2020 through FY20 1%

Original Assessed Value ao 4/1/2013:

\$968,136,850

Adjusted Original Assessed Value ao 4/1/2020:

\$965,007,320

City of Portland - Downtown TOD TIF Projection Table

TIF Year	Tax Year-April 1	City Fiscal Year	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues	OAV General Fund Revenue
1	2015	FY2015/2016	\$72,245,340	12.00%	\$8,669,441	20.63	\$178,851	\$0	\$178,851	\$1,311,571	\$19,972,663
2	2016	FY2016/2017	\$84,092,870	22.00%	\$18,500,431	21.11	\$390,544	\$0	\$390,544	\$1,384,656	\$20,437,369
3	2017	FY2017/2018	\$126,688,910	22.00%	\$27,871,560	21.65	\$603,419	\$0	\$603,419	\$2,139,396	\$20,960,163
4	2018	FY2018/2019	\$169,840,880	22.00%	\$37,364,994	22.48	\$839,965	\$0	\$839,965	\$2,978,058	\$21,763,716
5	2019	FY2019/2020	\$182,428,630	25.00%	\$45,607,158	23.31	\$1,063,103	\$0	\$1,063,103	\$3,189,309	\$22,567,270
6	2020	FY2020/2021	\$190,804,752	100.00%	\$190,804,752	23.78	\$4,536,612	\$0	\$4,536,612	\$0	\$22,944,207
7	2021	FY2021/2022	\$202,394,165	100.00%	\$202,394,165	24.25	\$4,908,407	\$0	\$4,908,407	\$0	\$23,403,091
8	2022	FY2022/2023	\$214,099,473	100.00%	\$214,099,473	24.74	\$5,296,127	\$0	\$5,296,127	\$0	\$23,871,153
9	2023	FY2023/2024	\$225,921,833	100.00%	\$225,921,833	25.23	\$5,700,345	\$0	\$5,700,345	\$0	\$24,348,576
10	2024	FY2024/2025	\$237,862,418	100.00%	\$237,862,418	25.74	\$6,121,657	\$0	\$6,121,657	\$0	\$24,835,548
11	2025	FY2025/2026	\$249,922,408	100.00%	\$249,922,408	26.25	\$6,560,675	\$0	\$6,560,675	\$0	\$25,332,259
12	2026	FY2026/2027	\$262,102,997	100.00%	\$262,102,997	26.78	\$7,018,034	\$0	\$7,018,034	\$0	\$25,838,904
13	2027	FY2027/2028	\$274,405,393	100.00%	\$274,405,393	27.31	\$7,494,390	\$0	\$7,494,390	\$0	\$26,355,682
14	2028	FY2028/2029	\$286,830,813	100.00%	\$286,830,813	27.86	\$7,990,420	\$0	\$7,990,420	\$0	\$26,882,795
15	2029	FY2029/2030	\$299,380,487	100.00%	\$299,380,487	28.41	\$8,506,825	\$0	\$8,506,825	\$0	\$27,420,451
16	2030	FY2030/2031	\$312,055,657	100.00%	\$312,055,657	28.98	\$9,044,326	\$0	\$9,044,326	\$0	\$27,968,860
17	2031	FY2031/2032	\$324,857,580	100.00%	\$324,857,580	29.56	\$9,603,672	\$0	\$9,603,672	\$0	\$28,528,238
18	2032	FY2032/2033	\$337,787,521	100.00%	\$337,787,521	30.15	\$10,185,635	\$0	\$10,185,635	\$0	\$29,098,802
19	2033	FY2033/2034	\$350,846,762	100.00%	\$350,846,762	30.76	\$10,791,011	\$0	\$10,791,011	\$0	\$29,680,778
20	2034	FY2034/2035	\$364,036,596	100.00%	\$364,036,596	31.37	\$11,420,626	\$0	\$11,420,626	\$0	\$30,274,394
21	2035	FY2035/2036	\$377,358,328	100.00%	\$377,358,328	32.00	\$12,075,329	\$0	\$12,075,329	\$0	\$30,879,882
22	2036	FY2036/2037	\$390,813,277	100.00%	\$390,813,277	32.64	\$12,756,000	\$0	\$12,756,000	\$0	\$31,497,479
23	2037	FY2037/2038	\$404,402,775	100.00%	\$404,402,775	33.29	\$13,463,547	\$0	\$13,463,547	\$0	\$32,127,429
24	2038	FY2038/2039	\$418,128,169	100.00%	\$418,128,169	33.96	\$14,198,909	\$0	\$14,198,909	\$0	\$32,769,978
25	2039	FY2039/2040	\$431,990,816	100.00%	\$431,990,816	34.64	\$14,963,053	\$0	\$14,963,053	\$0	\$33,425,377
26	2040	FY2040/2041	\$445,992,090	100.00%	\$445,992,090	35.33	\$15,756,982	\$0	\$15,756,982	\$0	\$34,093,885
27	2041	FY2041/2042	\$460,133,377	100.00%	\$460,133,377	36.04	\$16,581,728	\$0	\$16,581,728	\$0	\$34,775,762
28	2042	FY2042/2043	\$474,416,077	100.00%	\$474,416,077	36.76	\$17,438,359	\$0	\$17,438,359	\$0	\$35,471,278
29	2043	FY2043/2044	\$488,841,603	100.00%	\$488,841,603	37.49	\$18,327,978	\$0	\$18,327,978	\$0	\$36,180,703
30	2044	FY2044/2045	\$503,411,385	100.00%	\$503,411,385	38.24	\$19,251,723	\$0	\$19,251,723	\$0	\$36,904,317
30 Year TIF Total			\$9,164,093,383		\$8,666,810,337		\$273,068,252	\$0	\$273,068,252	\$11,002,989	\$840,611,010
30 Year Average			\$305,469,779		\$288,893,678		\$9,102,275		\$9,102,275	\$366,766	\$28,020,367

Actual Above Line
Estimates Below Line

City of Portland Downtown TOD TIF Model								
6/30/2020								
Assumptions:								
All tax shifts have been calculated according to Maine DECD best practice guidelines.								
The tax shifts resulting from the sheltering of valuation from the state school funding formula are based on the state EPS funding model in which a statewide mill rate of 8.18 mills in FY 2020-21 and the same thereafter is applied to a district's state valuation to determine the amount of local property taxes to be raised for education. By sheltering valuation through a TIF, the district avoids having to raise an amount equal to the valuation sheltered X mills.								
State Municipal Revenue Sharing amounts are calculated from spreadsheet provided by Maine Revenue Services, FY 2021 Projected Municipal Revenue Sharing - updated 3-4-2020.								
County tax calculations are based on data from the Cumberland County Finance Department for the FY 2018 County Tax Year. For purposes of this analysis, the total county tax assessment is assumed to remain constant throughout the life of the TIF when in actuality increases in the total county tax assessment are likely.								
Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- Downtown TOD TIF Model								
30 years: Year 1 - 12% to Municipal Project Account, 88% to City General Fund; Years 2 through 4: 22% to Municipal Project Account, 78% to City General Fund; Year 5 - 25% to Municipal Project Account, 75% to General Fund; Years 6 through 30: 100% to Municipal Project Account								
TIF Year	Tax Year-April 1	City Fiscal Year	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
					Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2015	FY2015/2016	\$72,245,340	\$8,669,441	\$0	\$8,202	\$4,786	\$12,988
2	2016	FY2016/2017	\$84,092,870	\$18,500,431	\$0	\$17,503	\$10,211	\$27,714
3	2017	FY2017/2018	\$126,688,910	\$27,871,560	\$0	\$26,369	\$15,380	\$41,749
4	2018	FY2018/2019	\$169,840,880	\$37,364,994	\$103,127	\$35,351	\$20,615	\$159,093
5	2019	FY2019/2020	\$182,428,630	\$45,607,158	\$251,752	\$43,148	\$25,157	\$320,057
6	2020	FY2020/2021	\$190,804,752	\$190,804,752	\$1,579,863	\$180,518	\$104,903	\$1,865,285
7	2021	FY2021/2022	\$202,394,165	\$202,394,165	\$1,675,824	\$191,483	\$111,246	\$1,978,553
8	2022	FY2022/2023	\$214,099,473	\$214,099,473	\$1,772,744	\$202,557	\$117,649	\$2,092,949
9	2023	FY2023/2024	\$225,921,833	\$225,921,833	\$1,870,633	\$213,742	\$124,112	\$2,208,487
10	2024	FY2024/2025	\$237,862,418	\$237,862,418	\$1,969,501	\$225,039	\$130,636	\$2,325,176
11	2025	FY2025/2026	\$249,922,408	\$249,922,408	\$2,069,358	\$236,449	\$137,222	\$2,443,029
12	2026	FY2026/2027	\$262,102,997	\$262,102,997	\$2,170,213	\$247,973	\$143,871	\$2,562,056
13	2027	FY2027/2028	\$274,405,393	\$274,405,393	\$2,272,077	\$259,612	\$150,582	\$2,682,270
14	2028	FY2028/2029	\$286,830,813	\$286,830,813	\$2,374,959	\$271,368	\$157,356	\$2,803,683
15	2029	FY2029/2030	\$299,380,487	\$299,380,487	\$2,478,870	\$283,241	\$164,195	\$2,926,306
16	2030	FY2030/2031	\$312,055,657	\$312,055,657	\$2,583,821	\$295,233	\$171,097	\$3,050,151
17	2031	FY2031/2032	\$324,857,580	\$324,857,580	\$2,689,821	\$307,344	\$178,065	\$3,175,230
18	2032	FY2032/2033	\$337,787,521	\$337,787,521	\$2,796,881	\$319,577	\$185,098	\$3,301,556
19	2033	FY2033/2034	\$350,846,762	\$350,846,762	\$2,905,011	\$319,577	\$192,198	\$3,416,786
20	2034	FY2034/2035	\$364,036,596	\$364,036,596	\$3,014,223	\$344,411	\$199,364	\$3,557,999
21	2035	FY2035/2036	\$377,358,328	\$377,358,328	\$3,124,527	\$357,015	\$206,598	\$3,688,140
22	2036	FY2036/2037	\$390,813,277	\$390,813,277	\$3,235,934	\$369,744	\$213,900	\$3,819,578
23	2037	FY2037/2038	\$404,402,775	\$404,402,775	\$3,348,455	\$382,601	\$221,270	\$3,952,326
24	2038	FY2038/2039	\$418,128,169	\$418,128,169	\$3,462,101	\$395,587	\$228,709	\$4,086,397
25	2039	FY2039/2040	\$431,990,816	\$431,990,816	\$3,576,884	\$408,702	\$236,218	\$4,221,804
26	2040	FY2040/2041	\$445,992,090	\$445,992,090	\$3,692,815	\$421,948	\$243,797	\$4,358,560
27	2041	FY2041/2042	\$460,133,377	\$460,133,377	\$3,809,904	\$435,327	\$251,448	\$4,496,679
28	2042	FY2042/2043	\$474,416,077	\$474,416,077	\$3,928,165	\$448,840	\$259,170	\$4,636,175
29	2043	FY2043/2044	\$488,841,603	\$488,841,603	\$4,047,608	\$462,488	\$266,964	\$4,777,060
30	2044	FY2044/2045	\$503,411,385	\$503,411,385	\$4,168,246	\$476,272	\$274,830	\$4,919,349
30 Year TIF Total			\$9,164,093,383	\$8,666,810,337	\$70,973,316	\$8,187,223	\$4,746,647	\$83,907,186
30 Year Average			\$305,469,779	\$288,893,678	\$2,365,777	\$272,907	\$158,222	\$2,796,906

REVISED EXHIBIT E
STATUTORY REQUIREMENTS AND THRESHOLDS
Portland Downtown TOD TIF Amendment #4 August 3, 2020

SECTION A. Acreage Caps		
1. Total municipal acreage;	12,386	
2. Acreage of proposed Municipal TIF District;	417.7882	
3. Downtown-designation ¹ acres in proposed Municipal TIF District;	417.7882	
4. Transit-Oriented Development ² acres in proposed Municipal TIF District;	0	
5. Total acreage [=A2-A3-A4] of proposed Municipal TIF District counted <u>toward</u> 2% limit;	0	
6. Percentage [=A5÷A1] of total acreage in proposed Municipal TIF District (CANNOT EXCEED 2%).	0	
7. Total acreage of all <u>existing/proposed</u> Municipal TIF districts in municipality including Municipal Affordable Housing Development districts: ³ See attached listing.	Existing	274.126
	Proposed	417.7882
	Total:	691.914
30-A § 5223(3) EXEMPTIONS⁴		
8. Acreage of an <u>existing/proposed</u> Downtown Municipal TIF district;	417.7882	
9. Acreage of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts: Thompson's Point TOD TIF/30 Acres	30	
10. 1Acreage of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts: None	0	
11. Acreage in all <u>existing/proposed</u> Municipal TIF districts common to ⁵ Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such acreage also factored in Exemptions 8-10 above: None	0	
12. Total acreage [=A7-A8-A9-A10-A11] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	240.904	
13. Percentage of total acreage [=A12÷A1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.944%	
14. Real property in proposed Municipal TIF District that is:	ACRES	% [=Acres÷A2]
a. A blighted area;		
b. In need of rehabilitation, redevelopment or conservation;		
c. Suitable for commercial or arts district uses.	417.882	100%
TOTAL (except for § 5223 (3) exemptions a., b. OR c. must be at least 25%)		

¹ Before final designation, the Commissioner will seek advice from MDOACF and MDOT per 30-A § 5226(2).

² For Transit-Oriented Development (TOD) definitions see 30-A § 5222 sub-§§ 19-24.

³ For AH-TIF acreage requirement see 30-A § 5247(3)(B). Alternatively, Section B. must exclude AH-TIF valuation.

⁴ Downtown/TOD overlap nets single acreage/valuation caps exemption.

⁵ PTZ districts approved through December 31, 2008.

REVISED EXHIBIT E
STATUTORY REQUIREMENTS AND THRESHOLDS
Portland Downtown TOD TIF Amendment #4 August 3, 2020

SECTION B. Valuation Cap		
1. Total TAXABLE municipal valuation—use most recent April 1;	\$10,507,000,000	
2. Taxable Original Assessed Value (OAV) of proposed Municipal TIF District as of March 31 preceding municipal designation—same as April 1 prior to such March 31 – For purposes of this Technical Amendment, the OAV is as of March 31, 2020:	\$965,007,320	
3. Taxable OAV of all <u>existing/proposed</u> Municipal TIF districts in municipality excluding Municipal Affordable Housing Development districts: See Attached Listing	Existing	\$163,502,860
	Proposed	\$965,007,320
	Total:	\$1,128,510,180
30-A § 5223(3) EXEMPTIONS		
4. Taxable OAV of an <u>existing/proposed</u> Downtown Municipal TIF district;	\$965,007,320	
5. Taxable OAV of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts: Thompson's Point TOD TIF	\$4,970,470	
6. Taxable OAV of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts: None	\$0	
7. Taxable OAV of all <u>existing/proposed</u> Single Taxpayer/High Valuation ⁶ Municipal TIF districts: None	\$0	
8. Taxable OAV in all <u>existing/proposed</u> Municipal TIF districts common to Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such OAV also factored in Exemptions 4-7 above: None	0	
9. Total taxable OAV [=B3-B4-B5-B6-B7-B8] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	\$155,402,860	
10. Percentage of total taxable OAV [=B9÷B1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.47%	

COMPLETED BY	
NAME :	Lori Paulette
DATE :	7/8/2020

⁶ For this exemption see 30-A §5223(3)(C) sub-§§ 1-4.



CITY OF PORTLAND
Tax Assessor Office
Christopher Huff, Tax Assessor

TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

REVISED EXHIBIT F

**ASSESSOR'S CERTIFICATE OF ORIGINAL ASSESSED VALUE FOR THE
DOWNTOWN TRANSIT ORIENTED DEVELOPMENT TIF DISTRICT**

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. Section 5254 that the taxable Original Assessed Value for the Bayside TIF District as described in the Bayside Redevelopment Tax Increment Financing Program to which this Certificate is included, is as follows:

	OAV as of:	OAV of Taxable Real Property
Original App.	3/31/2014; Tax Year 4/1/2013	\$968,136,850
Removing 83 Middle Street and 160 Newbury Street, and Housekeeping Technical Amendments Reducing OAV	3/31/2021; Tax Year 4/1/2020	-\$3,129,530
Total Revised OAV:		\$965,007,320

IN WITNESS WHEREOF, this certificate has been executed as of this ____ day of August, 2020.

Witness:

City Assessor

Christopher Huff

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: July 17, 2020

SUBJECT: **Order 14-20/21 Amending the Bayside Tax Increment Financing District to Make 337 Cumberland Avenue an Affordable Housing Tax Increment Financing District - Sponsored by the Economic Development Committee, Justin Costa, Chair**

SPONSOR: Councilor Justin Costa, Chair/Economic Development Committee, meeting held 5/27/2020 and the vote was unanimous (4-0) to forward to the City Council for approval.

(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 Action is needed on August 3, 2020, in order to meet Maine State Housing Authority Program application deadlines for the Proposed 337 Cumberland Avenue Affordable Housing Project.

PRESENTATION: Greg Mitchell/5 Minutes

I. SUMMARY

Amending the Bayside Tax Increment Financing (TIF) District, a companion Order to establishing the 337 Cumberland Avenue Affordable Housing TIF, is proposed to support the establishment of an Affordable Housing TIF District at 337 Cumberland Avenue.

II. AGENDA DESCRIPTION

City Council approval is needed to amend the Bayside Tax Increment Financing (TIF) District to establish an Affordable Housing TIF District for the 337 Cumberland Avenue Affordable Housing Project. TIF financial assistance will assist with the construction of a six-story structure with 60 mixed income rental units in a mixed use building, which would include expanded space for Youth and Family Outreach to increase childcare spots from 58 to 107.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is approval of Bayside TIF District Amendment to establish an Affordable Housing TIF District for the 377 Cumberland Avenue affordable housing project.

The City goal is to expand the supply of affordable housing.

V. FINANCIAL IMPACT

The three financial impacts associated with amending the Bayside TIF District include:

1. A slight reduction in municipal property taxes captured in the Bayside TIF District associated with removing the 337 Cumberland Avenue property with a municipal assessed valuation of \$940,040 as of March 31, 2020 (Tax Year April 1, 2019).
2. For the proposed new 337 Cumberland Avenue Affordable Housing TIF District, 75% of the captured taxes will support the project, estimated at \$90,735 annually, and 25% will be retained in the City General Fund, estimated at \$30,245 annually over the life of the 30-year TIF District. It is noted following expiration of this Affordable Housing TIF District in year 31, the City retains 100% of all annual taxes.
3. Tax Sheltering savings in the Bayside TIF District, with this amendment, remains relatively constant averaging just over \$613,000 annually through the life of the District, which ends with City Fiscal Year 2032.

VI. STAFF ANALYSIS AND BACKGROUND

Staff recommends approval of the amendment to the Bayside TIF District.

VII. RECOMMENDATION

At the May 27, 2020, Economic Development Committee, the Committee voted unanimously (4-0) to forward this item to the City Council for approval.

VIII. LIST ATTACHMENTS

1. Amending Bayside TIF re 337 Cumberland Ave. 7.13.2020
2. 6-25-2020 CC Memo - Attachment

Prepared by:

Greg Mitchell, Director

Date: 7/17/2020

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 BAYSIDE TAX INCREMENT
FINANCING DISTRICT TO MAKE 377 CUMBERLAND AVENUE AN
AFFORDABLE HOUSING TAX INCREMENT FINANCING DISTRICT**

ORDERED, that the Bayside Tax Increment Financing (TIF) District approved by City Council Order 135-03/04 and as amended by Orders 255-04/05, 239-05/06, 224-06/07, 242-07/08, 262-08/09, 217-09/10, 86-14/15, 13-15/16, 266-17/18 and 77-18/19 is hereby further amended to remove the property at 377 Cumberland Avenue, in order for it to be made an Affordable Housing Tax Increment Financing District in substantially the form attached hereto; and

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

I. Introduction/Updated 202018

East and West Bayside continue to be gateways to Portland’s peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF District was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, two new grocery stores, pharmacies, and financial institutions have transformed West Bayside’s industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. Additionally, City Council approval, during 2017 and 2018, of the sale of six Bayside properties formerly occupied by the Public Works Department will continue to support area wide economic revitalization.

East Bayside has been experiencing its own transformation with new coffee shops, artist studios, and new housing. Continued attention to the West Bayside TIF District is needed to fulfill the *Bayside Vision*.

History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield’s Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield’s Project Area and has since created a \$500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129 acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled “A New Vision for Bayside”. The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

Development Principles

- Urban Gateway
- Economic and Employment Opportunities
- A Walkable District
- A Critical Mass of Dwellings
- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space
- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels
- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention has been focused on the need for structured parking associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members stated unequivocally that the Bayside Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated \$38,400,000 in new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit 5) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

Amendment #7 Approved by MDECD March 28, 2016

The purpose of Amendment #7 to this TIF application was to amend the Development Program to include municipal use of TIF funds for costs of public transportation improvement projects – including traffic signals, costs associated with environmental site assessment and remediation work to support commercial development, costs associated with environmental sea level adaptation planning and public infrastructure to support commercial development, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II*

The public benefits associated with an amended Bayside TIF District include:

- Provide support for Portland’s **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of \$680,307 annually at that time;
- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

Amendment #8 Approved by MDECD November 6, 2018

Amendment #8 includes a single property in the Expanded Bayside TIF District located at 178 Kennebec Street, Assessor Chart, Block, and Lot Number 034 F001001. The City is in the process of selling this property to a private developer. This developer proposes an elderly affordable housing project on that property with two condominium units. Unit 1 would be ground level commercial space and Unit 2 (air rights above Unit 1) is proposed to be an elderly affordable housing project.

The amendments will exclude all floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to below as “178 Kennebec Street Unit 2” or “Unit 2”.

The amendments will provide that the following specified area will remain: the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all

**PROPOSED BAYSIDE TIF DISTRICT ~~REMOVING 337 CUMBERLAND AVENUE CITY~~
~~INVESTMENT OPTIONS –AMENDMENT 109~~**

rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 1 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland.

Amendment #9 Approved by MDECD January 29, 2019

Amendment #9 increased and clarified the allowable uses of Municipal TIF Revenue in the District. Additional uses from that Amendment included:

- Professional service costs to administer the TIF District Program and to assist the City’s Economic Development Department to market and prepare for Bayside Redevelopment;
- Pro-rated salaries of the City’s Finance Director, and the City’s Planning staff;
- Workforce training funds.

II. Amended Development Program

A. The Amended Project

Amendment #10 would be take out property at 337 Cumberland Avenue (033-K-005, 006, 007, 009, 010, and 013) for it to be its own freestanding Affordable Housing TIF (AHTIF) District.

~~Amendment #8/Approved by MDECD November 6, 2018~~

~~With this amended and restated Development Program, the City of Portland seeks to amend the Bayside Redevelopment Tax Increment Financing District to allow for 178 Kennebec Street, Condominium Unit 1 on the ground level/commercial space to remain in the Bayside TIF District; and, Condominium Unit 2, floors above the ground level commercial space, to be an Affordable Housing TIF District.~~

~~The amendments will exclude all floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to below as “178 Kennebec Street Unit 2” or “Unit 2”.~~

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~~“Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 1 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland.~~

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* are detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City’s ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City’s Economic Development Department will continue to market other City land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

~~Amendment #9—Proposed to Portland City Council~~

~~Amendment #9 would increase and clarify the allowable uses of Municipal TIF Revenue in the District. Proposed additional uses include:~~

- ~~—Professional service costs to administer the TIF District Program and to assist the City’s Economic Development Department to market and prepare for Bayside Redevelopment;~~
- ~~—Pro-rated salaries of the City’s Finance Director, and the City’s Planning staff;~~
- ~~—Workforce training funds.~~

B. The Amended Development District

Properties that are to be designated as part of the Amended TIF District are shown on the attached map (Revised Exhibit 4), containing approximately ~~128.728918~~ acres with an amended original assessed value as shown on Revised Exhibit 11 as \$~~121,378,140~~22,318,180

Revised Exhibit 4(A) is a Portland GIS map of the parcel for 337 Cumberland Avenue, particularly Chart Lot and Block Numbers 033 K-005-006-007-009-010-013 as taken out of the District shown on Revised Exhibit 4. This lot has a \$940,040 Original Assessed Value as of March 31, 2020 (Tax Year April 1, 2019) so the Bayside TIF OAV will be reduced from \$122,318,180 to \$121,378,140. The acreage of 337 Cumberland Avenue is .452, so the amended total acreage of the Bayside TIF will be reduced to 128.728.

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

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The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. The Projects

The projects/public benefits associated with an amended Bayside TIF District include:

- Provide support for Portland’s **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of ~~\$61.3K~~Million annually;
- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

The City of Portland ~~has~~seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Table 1

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
In District: Create Additional Parking	(1)(A)(1)(2)(3)(7)	\$10,000,000
In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per City of Portland TIF Policy as may be amended from time to time	(1)(A)(1)(2)(3)(7)	\$6,000,000 over life of TIF District for existing CEAs
In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)(1)(2)(3)(6)(7)	T/B/D
In District: Design, upgrades, and construction of public infrastructure,	(1)(A)(1)(2)(3)(7)	T/B/D

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utilities, and financing costs (but not limited to roadway, sidewalk, water, stormwater, sewer systems, telecommunication, electrical distribution upgrades, and transportation improvement projects) located in District		
In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment	(1)(A)(2)	\$6,000,000 over life of TIF District
In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A))(1)(2)(3)(7)	T/B/D
In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment and professional service costs to administer the TIF District Program	(1)(A)(4)(5)	\$500,000
In and out of District:		
a.) Cover the City's Economic Development Department costs, including pro-rated salaries of City Manager, Finance Director, and Planning and Urban Development Director and Planning staff*;	(1)(A)(5) and (1)(C)(1)	\$250,000/annual or \$7,500,000 over life of TIF District (30 Years)
b.) Environmental site assessment and remediation to support commercial development;	(1)(C)(2)	\$150,000
c.) Environmental sea level adaptation planning and public infrastructure to support commercial development;	(1)(C)(2)	T/B/D
d.) Workforce training funds. Costs of services and equipment to provide skills development and training, including scholarships to in-state educational institutions or to online learning entities when in-state options are not available, for jobs created or retained.*	(1)(C)(4)	\$200,000 annually FY20 through FY33 or a total of \$2,800,000
e.) Professional services costs.	(1)(A)(4); (1)(C)(1)	\$10,000 annually FY20 through FY33 or a total of \$140,000
Total:		\$33,090,000

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*This item is not unique to this TIF District; it is ~~also partially included in the Riverwalk TIF District, and is proposed to be fully~~ included Downtown TIF District and the Waterfront TIF District.

E. Operational Components

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, and as outlined in Table 1 above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Amended Physical Description

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~~As noted previously, p~~ Properties that are to be designated as part of the Amended TIF District are shown on the attached map (~~Revised~~ Exhibit 4), ~~-totaling 128.7289-18~~ acres.

The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in ~~Revised~~ Exhibit 6.

~~Amendment #8 did not change the acreage numbers for the Bayside TIF District because the 178 Kennebec Street Unit 1 (ground level commercial space) will remain in the Bayside TIF District and Unit 2 (affordable residential units located in the upper floors) is proposed to be an Affordable Housing TIF District.~~

 Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (~~see new~~ Exhibit 3(A)).
2. Site map showing tax map locations of the Amended TIF District (see
~~Revised~~new Exhibit 4(A)).
3. Portland GIS Map of the subject parcel being taken out of the District at 337
Cumberland Avenue as Revised Exhibit 4(A).

IV. Financial Plan

A. Costs and Sources of Revenues

With ~~proposed~~ Amendment #~~106~~ to this TIF District, the acreage ~~will be decreased from 129.180 to 128.728~~~~as increased to 129.18 acres~~, with ~~thean~~ associated OAV ~~to be decreased from \$122,318,180 to \$121,378,140~~~~set at \$122,318,180~~ as set forth in ~~Revised~~ Exhibit 11. ~~Revised~~ Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1st expansion via Amendment 1, and 2nd expansion via Amendment 6. ~~Revised~~ Exhibit 4 is the map which highlights the District encompassing the entire ~~128.7289-18~~ acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached ~~Revised~~ Exhibit 1, as revised and updated for Amendment ~~109~~, details the actual numbers from its inception – Tax Year 2003/City Fiscal Year 2003/2004 – through Tax Year April 1, 20~~1918~~/City Fiscal Year 20~~1918~~/20~~2019~~; and estimates beginning Tax Year April 1, 20~~2019~~/City Fiscal Year 20~~2019~~/202~~10~~ through the life of District ending with Tax Year April 1, 2032/City Fiscal Year 2032/2033. The

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projections of retained revenues is based upon the anticipated assessed value increases within the District for the remainder of the District term. Revised Exhibit 1 is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. *Development Program Account*

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5227(3).

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. Financing Plan

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

Proposed Amendment #10 does change the Financing Plan, as the OAV will be reduced from \$122,318,180 to \$121,378,140, and reduces the acreage for the district from 129.180 to 128.728.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on revised Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)

- A. Estimate of increased assessed value by year after implementation of the development program: See Revised Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Revised Exhibit 1
- C. Estimated annual tax increment: \$1,5~~71,973~~~~28,312~~ (Average)
- D. Total average annual value of development program fund: \$1,5~~71,973~~~~28,312~~ (Average)
- E. Annual principal and interest payment of bonded indebtedness: \$400,000
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts (See Revised Exhibit 2)

- A. *Average Annual Amount:*
 - General Purpose Aid to Education Tax Shift: \$5~~19,226~~~~30,331~~
 - Municipal Revenue Sharing Tax Shift: \$~~59,490~~~~36,549~~
 - County Tax Shift: \$34,~~693~~~~468~~
 - Total Average Annual Savings: \$6~~13,409~~~~01,349~~

VII. Municipal Approvals

A. *Public Hearing Notice*

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5226(1). The notice was published on _____, ~~2020, October 3, 2018~~, in a newspaper of general circulation (see new Exhibit 8).

B. *Public Hearing*

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on August 3, 2020~~October 15, 2018~~, via

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INVESTMENT OPTIONS –AMENDMENT ~~109~~**

~~Zoom in the Portland City Council Chambers.~~ A copy of the minutes of that meeting is included as new Exhibit 9.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

D. Assessor's Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

I. Introduction/Updated 2020

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| • Urban Gateway | • Multi-level Parking Structures |
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| • A Walkable District | • Recreation and Open Space |
| • A Critical Mass of Dwellings | • A Social Service Network |
| • Transit Oriented Development | • Environmental Remediation |
| | • Scrap yard Redevelopment |

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– AMENDMENT 10**

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels
- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

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- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

Amendment #8 Approved by MDECD November 6, 2018

Amendment #8 includes a single property in the Expanded Bayside TIF District located at 178 Kennebec Street, Assessor Chart, Block, and Lot Number 034 F001001. The City is in the process of selling this property to a private developer. This developer proposes an elderly affordable housing project on that property with two condominium units. Unit 1 would be ground level commercial space and Unit 2 (air rights above Unit 1) is proposed to be an elderly affordable housing project.

The amendments will exclude all floors above the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 2 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland. Such specified area is referred to below as “178 Kennebec Street Unit 2” or “Unit 2”.

The amendments will provide that the following specified area will remain: the first floor in a multi-story building to be constructed on a parcel of approximately 0.22 acres presently owned by the City of Portland located at 178 Kennebec Street, Portland and to be conveyed to 100 Parris Street, LP or its designee (the “Developer”), together with all

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

rights appurtenant thereto including without limitation in the land comprising said parcel. It is the intention of the Developer to declare this specified area as Unit 1 in the Furman at Bayside Condominium following acquisition of the land from the City of Portland.

Amendment #9 Approved by MDECD January 29, 2019

Amendment #9 increased and clarified the allowable uses of Municipal TIF Revenue in the District. Additional uses from that Amendment included:

- Professional service costs to administer the TIF District Program and to assist the City's Economic Development Department to market and prepare for Bayside Redevelopment;
- Pro-rated salaries of the City's Finance Director, and the City's Planning staff;
- Workforce training funds.

II. Amended Development Program

A. The Amended Project

Amendment #10 would be take out property at 337 Cumberland Avenue (033-K-005, 006, 007, 009, 010, and 013) for it to be its own freestanding Affordable Housing TIF (AHTIF) District.

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* are detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City's Economic Development Department will continue to market other City land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. The Amended Development District

Properties that are to be designated as part of the Amended TIF District are shown on the attached map (Revised Exhibit 4), containing approximately 128.728 acres with an amended original assessed value as shown on Revised Exhibit 11 as \$121,378,140

Revised Exhibit 4(A) is a Portland GIS map of the parcel for 337 Cumberland Avenue, particularly Chart Lot and Block Numbers 033 K-005-006-007-009-010-013 as taken out of the District shown on Revised Exhibit 4. This lot has a \$940,040 Original Assessed Value as of March 31, 2020 (Tax Year April 1, 2019) so the

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

Bayside TIF OAV will be reduced from \$122,318,180 to \$121,378,140. The acreage of 337 Cumberland Avenue is .452, so the amended total acreage of the Bayside TIF will be reduced to 128.728.

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. The Projects

The projects/public benefits associated with an amended Bayside TIF District include:

- Provide support for Portland’s **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of \$613K annually;
- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

The City of Portland has authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

Table 1

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
In District: Create Additional Parking	(1)(A)(1)(2)(3)(7)	\$10,000,000
In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per City of Portland TIF Policy as may be amended from time to time	(1)(A)(1)(2)(3)(7)	\$6,000,000 over life of TIF District for existing CEAs
In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)(1)(2)(3)(6)(7)	T/B/D
In District: Design, upgrades, and construction of public infrastructure, utilities, and financing costs (but not limited to roadway, sidewalk, water, stormwater, sewer systems, telecommunication, electrical distribution upgrades, and transportation improvement projects) located in District	(1)(A)(1)(2)(3)(7)	T/B/D
In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment	(1)(A)(2)	\$6,000,000 over life of TIF District
In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A))(1)(2)(3)(7)	T/B/D
In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment and professional service costs to administer the TIF District Program	(1)(A)(4)(5)	\$500,000
In and out of District:		
a.) Cover the City’s Economic Development Department costs, including pro-rated salaries of City Manager, Finance Director, and Planning and Urban Development Director and Planning staff*;	(1)(A)(5) and (1)(C)(1)	\$250,000/annual or \$7,500,000 over life of TIF District (30 Years)
b.) Environmental site assessment and remediation to support commercial development;	(1)(C)(2)	\$150,000
c.) Environmental sea level adaptation planning and public infrastructure	(1)(C)(2)	T/B/D

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

to support commercial development;	(1)(C)(4)	\$200,000 annually FY20 through FY33 or a total of \$2,800,000
d.) Workforce training funds. Costs of services and equipment to provide skills development and training, including scholarships to in-state educational institutions or to online learning entities when in-state options are not available, for jobs created or retained.*	(1)(A)(4); (1)(C)(1)	\$10,000 annually FY20 through FY33 or a total of \$140,000
e.) Professional services costs.		
Total:		\$33,090,000

*This item is not unique to this TIF District; it is included Downtown TIF District and the Waterfront TIF District.

E. Operational Components

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, and as outlined in Table 1 above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Amended Physical Description

Properties that are to be designated as part of the Amended TIF District are shown on the attached map (Revised Exhibit 4), totaling 128.728 acres.

The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in Revised Exhibit 6.

Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (see new Exhibit 3(A)).
2. Site map showing tax map locations of the Amended TIF District (see Revised Exhibit 4).
3. Portland GIS Map of the subject parcel being taken out of the District at 337 Cumberland Avenue as Revised Exhibit 4(A).

IV. Financial Plan

A. Costs and Sources of Revenues

With proposed Amendment #10 to this TIF District, the acreage will be decreased from 129.180 to 128.728, with the associated OAV to be decreased from \$122,318,180 to \$121,378,140 as set forth in Revised Exhibit 11. Revised Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1st expansion via Amendment 1, and 2nd expansion via Amendment 6. Revised Exhibit 4 is the map which highlights the District encompassing the entire 128.728 acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
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activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached Revised Exhibit 1, as revised and updated for Amendment 10, details the actual numbers from its inception – Tax Year 2003/City Fiscal Year 2003/2004 – through Tax Year April 1, 2019/City Fiscal Year 2019/2020; and estimates beginning Tax Year April 1, 2020/City Fiscal Year 2020/2021 through the life of District ending with Tax Year April 1, 2032/City Fiscal Year 2032/2033. The projections of retained revenues is based upon the anticipated assessed value increases within the District for the remainder of the District term. Revised Exhibit 1 is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5227(3).

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. Financing Plan

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

Proposed Amendment #10 does change the Financing Plan, as the OAV will be reduced from \$122,318,180 to \$121,378,140, and reduces the acreage for the district from 129.180 to 128.728.

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
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The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on revised Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)

- A. Estimate of increased assessed value by year after implementation of the development program: See Revised Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Revised Exhibit 1
- C. Estimated annual tax increment: \$1,571,973 (Average)
- D. Total average annual value of development program fund: \$1,571,973 (Average)
- E. Annual principal and interest payment of bonded indebtedness: \$400,000
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts (See Revised Exhibit 2)

- A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$519,226

Municipal Revenue Sharing Tax Shift: \$59,490

County Tax Shift: \$34,693

Total Average Annual Savings: \$613,409

VII. Municipal Approvals

- A. *Public Hearing Notice*

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5226(1). The notice was published on _____, 2020, in a newspaper of general circulation (see new Exhibit 8).

**PROPOSED BAYSIDE TIF DISTRICT REMOVING 337 CUMBERLAND AVENUE
– AMENDMENT 10**

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on August 3, 2020, via Zoom. A copy of the minutes of that meeting is included as new Exhibit 9.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

D. Assessor's Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.

REVISED EXHIBIT 1

City of Portland -BAYSIDE TIF Model
6/29/2020

Total OAV ao 4/1/2001: \$1,608,190
Total OAV ao 4/1/2006: \$44,066,380
Total OAV ao of 4/1/2013: \$122,318,180
Total OAV ao 4/1/2020: \$121,378,140

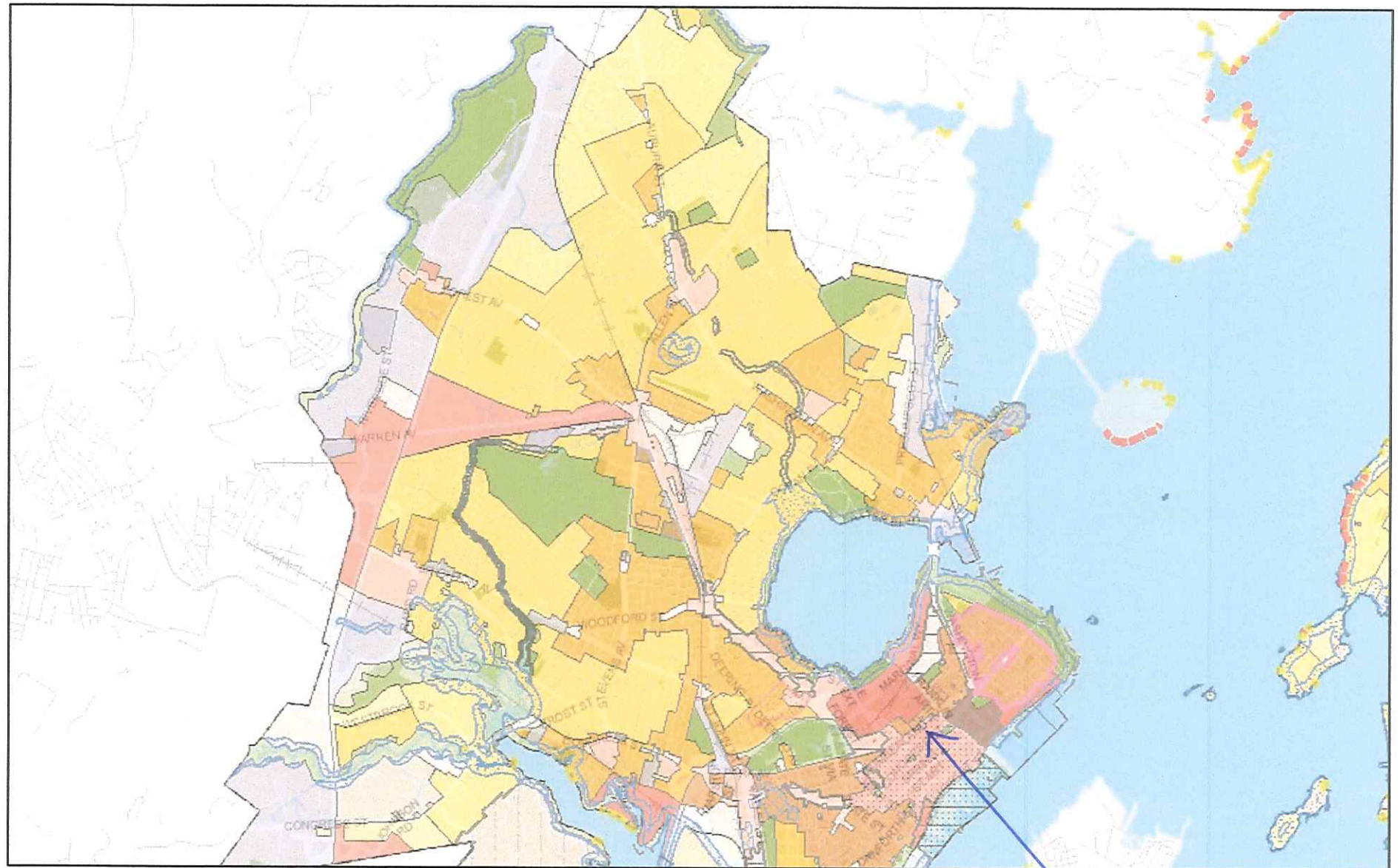
BAYSIDE TIF TABLE/Actuals through FY2020; Estimates FY2021 through FY2033												
TIF Year	Tax Year- April 1	City Fiscal Year	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Municipal Project and CEAs Account	City Non- Captured General Fund Revenues	OAV General Fund Revenue	Captured Revenue to Municipal Project Account	Captured Revenue to CEAs
1	2003	FY2003/2004	\$5,468,950	1.00%	\$54,690	26.80	\$1,466	\$1,466	\$145,102	\$43,099	\$1,466	
2	2004	FY2004/2005	\$7,295,740	1.00%	\$72,957	26.53	\$1,936	\$1,936	\$191,620	\$42,665	\$1,936	
3	2005	FY2005/2006	\$9,171,480	54.16%	\$4,967,274	20.13	\$99,991	\$99,991	\$84,631	\$32,373	\$99,991	
4	2006	FY2006/2007	\$11,052,960	27.74%	\$3,066,091	16.31	\$50,008	\$50,008	\$130,266	\$718,723	\$50,008	
5	2007	FY2007/2008	\$23,657,250	1.00%	\$236,573	17.10	\$4,045	\$4,045	\$400,494	\$753,535	\$4,045	
6	2008	FY2008/2009	\$49,496,900	100.00%	\$49,496,900	17.74	\$878,075	\$878,075	\$0	\$781,738	\$452,194	\$425,881
7	2009	FY2009/2010	\$69,217,260	78.00%	\$53,989,463	17.74	\$957,773	\$957,773	\$270,141	\$781,738	\$602,773	\$355,000
8	2010	FY2010/2011	\$68,355,920	71.00%	\$48,532,703	17.92	\$869,706	\$869,706	\$355,232	\$789,670	\$395,064	\$474,642
9	2011	FY2011/2012	\$62,808,110	73.00%	\$45,849,920	18.28	\$838,063	\$838,063	\$309,969	\$805,463	\$483,063	\$355,000
10	2012	FY2012/2013	\$66,477,790	47.00%	\$31,244,561	18.82	\$588,023	\$588,023	\$663,089	\$829,329	\$141,688	\$446,335
11	2013	FY2013/2014	\$65,716,350	97.72%	\$64,218,017	19.41	\$1,246,472	\$1,246,472	\$29,083	\$855,328	\$800,235	\$446,237
12	2014	FY2014/2015	\$65,131,890	83.00%	\$54,059,469	20.00	\$1,081,189	\$1,081,189	\$221,448	\$2,446,364	\$634,952	\$446,237
13	2015	FY2015/2016	\$67,362,090	54.58%	\$36,766,229	20.63	\$758,487	\$758,487	\$631,193	\$2,523,424	\$294,738	\$463,749
14	2016	FY2016/2017	\$70,121,790	54.97%	\$38,545,948	21.11	\$813,705	\$813,705	\$666,566	\$2,582,137	\$349,899	\$463,806
15	2017	FY2017/2018	\$82,037,690	58.27%	\$47,803,362	21.65	\$1,034,943	\$1,034,943	\$741,173	\$2,648,189	\$571,631	\$463,312
16	2018	FY2018/2019	\$80,301,620	63.27%	\$50,806,835	24.48	\$1,243,751	\$1,243,751	\$722,032	\$2,994,349	\$918,751	\$325,000
17	2019	FY2019/2020	\$83,155,350	100.00%	\$83,155,350	23.31	\$1,938,351	\$1,938,351	\$0	\$2,851,237	\$1,613,351	\$325,000
18	2020	FY2020/2021	\$86,046,485	100.00%	\$86,046,485	23.78	\$2,045,858	\$2,045,858	\$0	\$2,885,911	\$1,720,858	\$325,000
19	2021	FY2021/2022	\$88,120,732	100.00%	\$88,120,732	24.25	\$2,137,080	\$2,137,080	\$0	\$2,943,629	\$1,812,080	\$325,000
20	2022	FY2022/2023	\$90,215,720	100.00%	\$90,215,720	24.74	\$2,231,644	\$2,231,644	\$0	\$3,002,502	\$1,906,644	\$325,000
21	2023	FY2023/2024	\$92,331,659	100.00%	\$92,331,659	25.23	\$2,329,666	\$2,329,666	\$0	\$3,062,552	\$2,329,666	
22	2024	FY2024/2025	\$94,468,757	100.00%	\$94,468,757	25.74	\$2,431,260	\$2,431,260	\$0	\$3,123,803	\$2,431,260	
23	2025	FY2025/2026	\$96,627,226	100.00%	\$96,627,226	26.25	\$2,536,546	\$2,536,546	\$0	\$3,186,279	\$2,536,546	
24	2026	FY2026/2027	\$98,807,279	100.00%	\$98,807,279	26.78	\$2,645,650	\$2,645,650	\$0	\$3,250,004	\$2,645,650	
25	2027	FY2027/2028	\$101,009,134	100.00%	\$101,009,134	27.31	\$2,758,699	\$2,758,699	\$0	\$3,315,005	\$2,758,699	
26	2028	FY2028/2029	\$103,233,006	100.00%	\$103,233,006	27.86	\$2,875,825	\$2,875,825	\$0	\$3,381,305	\$2,875,825	
27	2029	FY2029/2030	\$105,479,118	100.00%	\$105,479,118	28.41	\$2,997,164	\$2,997,164	\$0	\$3,448,931	\$2,997,164	
28	2030	FY2030/2031	\$107,747,690	100.00%	\$107,747,690	28.98	\$3,122,857	\$3,122,857	\$0	\$3,517,909	\$3,122,857	
29	2031	FY2031/2032	\$110,038,949	100.00%	\$110,038,949	29.56	\$3,253,050	\$3,253,050	\$0	\$3,588,268	\$3,253,050	
30	2032	FY2032/2033	\$112,353,120	100.00%	\$112,353,120	30.15	\$3,387,893	\$3,387,893	\$0	\$3,660,033	\$3,387,893	
30 Year TIF Total			\$2,173,308,015		\$1,899,345,216		\$47,159,176	\$47,159,176	\$5,562,039	\$64,845,489	\$41,192,512	\$5,965,199
30 Year Average			\$72,443,601		\$63,311,507		\$1,571,973	\$1,571,973	\$185,401	\$2,161,516	\$1,373,084	\$198,840

Actual Above This Line
Estimates Below This Line

REVISED EXHIBIT 2

City of Portland Bayside TIF Model								
6/29/2020								
Assumptions:								
All tax shifts have been calculated according to Maine DECD best practice guidelines.								
The tax shifts resulting from the sheltering of valuation from the state school funding formula are based on the state EPS funding model in which a statewide mill rate of 8.18 mills in FY 2020-21 and the same thereafter is applied to a district's state valuation to determine the amount of local property taxes to be raised for education. By sheltering valuation through a TIF, the district avoids having to raise an amount equal to the valuation sheltered X mills.								
State Municipal Revenue Sharing amounts are calculated from spreadsheet provided by Maine Revenue Services, FY 2021 Projected Municipal Revenue Sharing - updated 3-4-2020.								
County tax calculations are based on data from the Cumberland County Finance Department for the FY 2018 County Tax Year. For purposes of this analysis, the total county tax assessment is assumed to remain constant throughout the life of the TIF when in actuality increases in the total county tax assessment are likely.								
Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model								
TIF Year	Tax Year- April 1	City Fiscal Year	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
					Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2003	FY2003/2004	\$5,468,950	\$54,690	\$0	\$52	\$30	\$82
2	2004	FY2004/2005	\$7,295,740	\$72,957	\$0	\$69	\$40	\$109
3	2005	FY2005/2006	\$9,171,480	\$4,967,274	\$0	\$4,699	\$2,742	\$7,442
4	2006	FY2006/2007	\$11,052,960	\$3,066,091	\$8,462	\$2,901	\$1,693	\$13,056
5	2007	FY2007/2008	\$23,657,250	\$236,573	\$1,306	\$224	\$131	\$1,660
6	2008	FY2008/2009	\$49,496,900	\$49,496,900	\$409,834	\$46,828	\$27,300	\$483,963
7	2009	FY2009/2010	\$69,217,260	\$53,989,463	\$447,033	\$51,079	\$29,775	\$527,887
8	2010	FY2010/2011	\$68,355,920	\$48,532,703	\$401,851	\$45,916	\$26,769	\$474,536
9	2011	FY2011/2012	\$62,808,110	\$45,849,920	\$379,637	\$43,378	\$25,291	\$448,306
10	2012	FY2012/2013	\$66,477,790	\$31,244,561	\$258,705	\$29,560	\$17,240	\$305,505
11	2013	FY2013/2014	\$65,716,350	\$64,218,017	\$531,725	\$60,756	\$35,408	\$627,889
12	2014	FY2014/2015	\$65,131,890	\$54,059,469	\$447,612	\$51,145	\$29,814	\$528,571
13	2015	FY2015/2016	\$67,362,090	\$36,766,229	\$304,424	\$34,784	\$20,284	\$359,493
14	2016	FY2016/2017	\$70,121,790	\$38,545,948	\$319,160	\$36,468	\$21,266	\$376,894
15	2017	FY2017/2018	\$82,037,690	\$47,803,362	\$395,812	\$45,226	\$26,367	\$467,405
16	2018	FY2018/2019	\$80,301,620	\$50,806,835	\$420,681	\$48,068	\$28,022	\$496,770
17	2019	FY2019/2020	\$83,155,350	\$83,155,350	\$688,526	\$78,672	\$45,830	\$813,028
18	2020	FY2020/2021	\$86,046,485	\$85,210,085	\$705,540	\$80,616	\$46,960	\$833,116
19	2021	FY2021/2022	\$88,120,732	\$87,284,332	\$722,714	\$80,616	\$48,101	\$851,432
20	2022	FY2022/2023	\$90,215,720	\$89,379,320	\$740,061	\$84,561	\$49,253	\$873,875
21	2023	FY2023/2024	\$92,331,659	\$91,495,259	\$757,581	\$86,563	\$50,417	\$894,560
22	2024	FY2024/2025	\$94,468,757	\$93,632,357	\$775,276	\$88,585	\$51,592	\$915,452
23	2025	FY2025/2026	\$96,627,226	\$95,790,826	\$793,148	\$90,627	\$52,779	\$936,553
24	2026	FY2026/2027	\$98,807,279	\$97,970,879	\$811,199	\$92,689	\$53,977	\$957,865
25	2027	FY2027/2028	\$101,009,134	\$100,172,734	\$829,430	\$94,772	\$55,187	\$979,390
26	2028	FY2028/2029	\$103,233,006	\$102,396,606	\$847,844	\$96,876	\$56,410	\$1,001,130
27	2029	FY2029/2030	\$105,479,118	\$104,642,718	\$866,442	\$99,001	\$57,644	\$1,023,087
28	2030	FY2030/2031	\$107,747,690	\$106,911,290	\$885,225	\$101,148	\$58,891	\$1,045,264
29	2031	FY2031/2032	\$110,038,949	\$109,202,549	\$904,197	\$103,315	\$60,150	\$1,067,662
30	2032	FY2032/2033	\$112,353,120	\$111,516,720	\$923,358	\$105,505	\$61,421	\$1,090,284
30 Year TIF Total			\$2,173,308,015	\$1,888,472,016	\$15,576,785	\$1,784,701	\$1,040,784	\$18,402,270
30 Year Average			\$72,443,601	\$62,949,067	\$519,226	\$59,490	\$34,693	\$613,409

ArcGIS Web Map



7/8/2020 3:17:32 PM

Zoning

☐ IR-1 Island Residential

☐ IR-2 Island Residential

☐ IR-3 Island Residential

☐ I-B Island Business

 I-TS Island Transfer Station

☐ R1 Residential

 R2 Residential

 R3 Residential

 R4 Residential

 R5 Residential

 R-5A Residential

 R6 Residential

R-6A Residential

1:55,030

0 0.47 0.95 1.9 mi

0 0.75 1.5 3 km

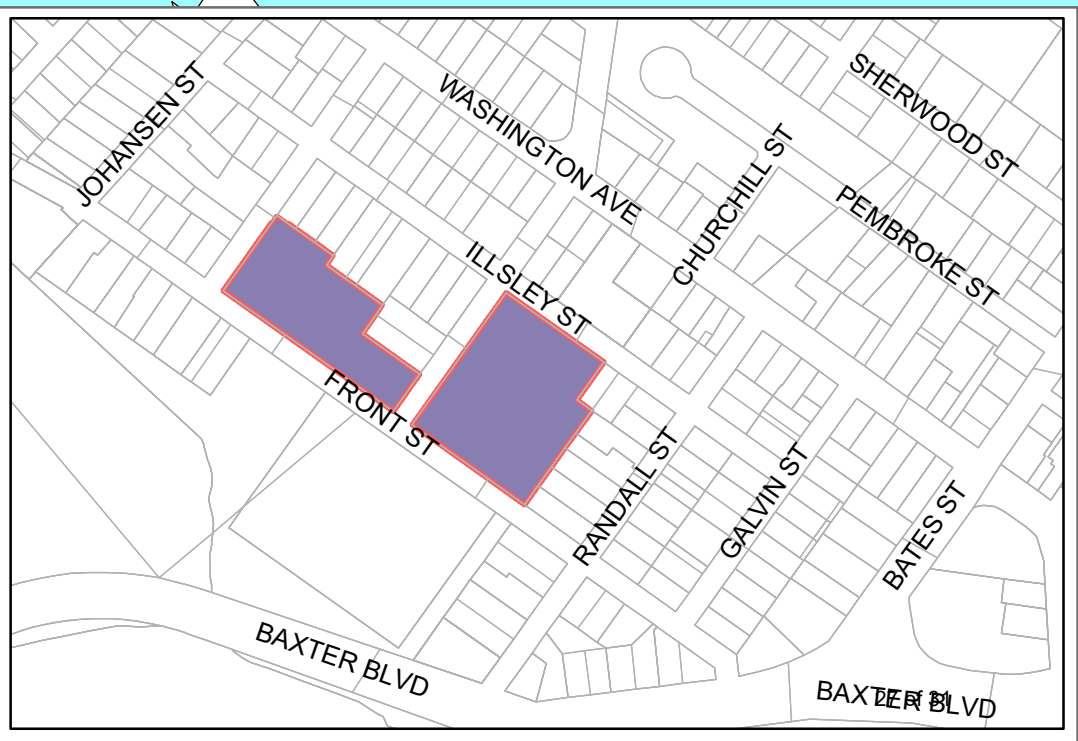
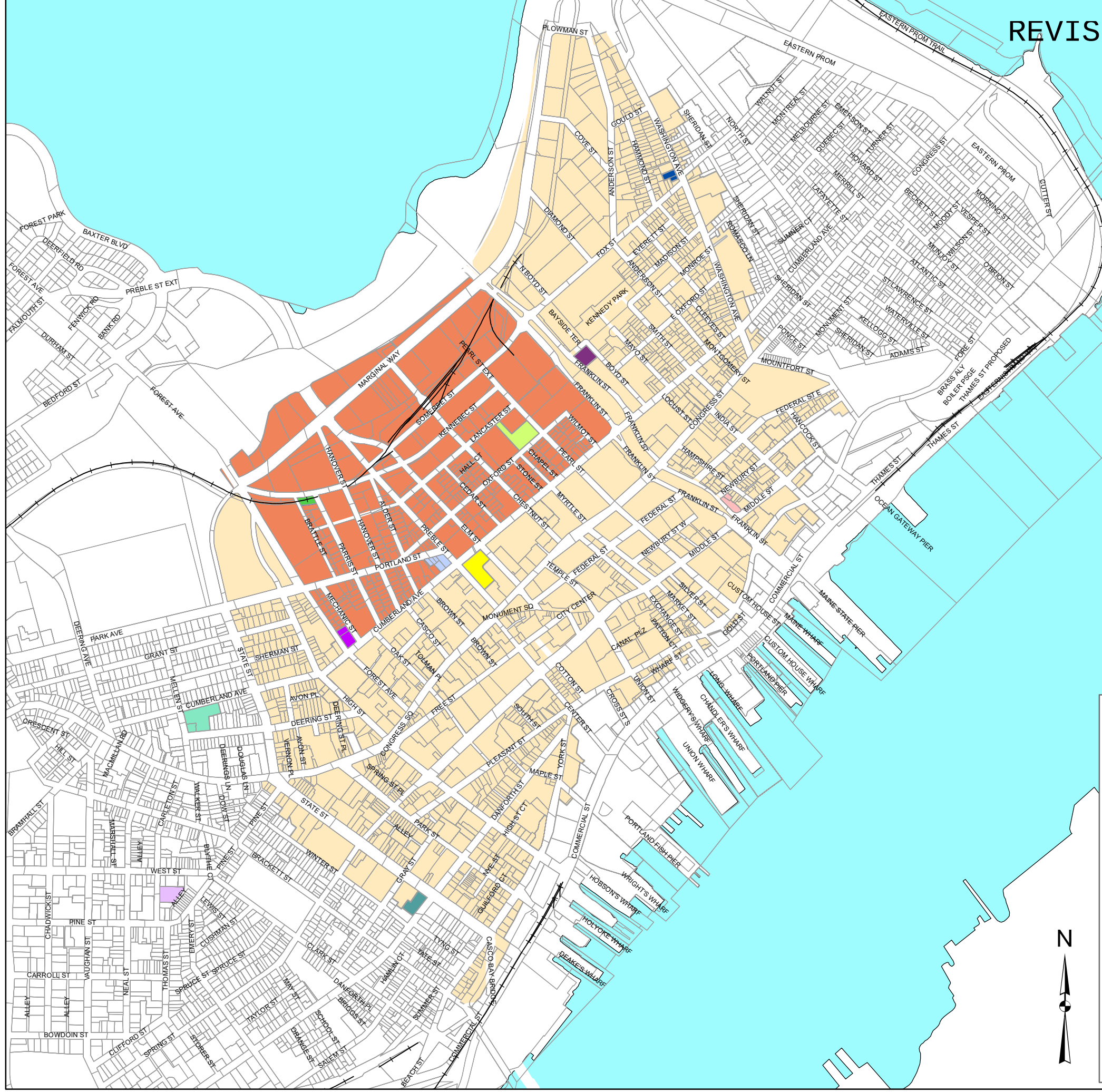
City of Portland, DPS

REVISED EXHIBIT 4

**Tax Increment Financing
Districts on Peninsula
June 2020**

- Front Street AH
- 178 Kennebec Street 1 AH
- 178 Kennebec Street 2 AH
- Deering Place AH
- 66 State Street AH
- 58 Boyd St AH
- 17 Carleton St AH
- 83 Middle St Affordable Housing
- 337 Cumberland Ave Affordable Housing
- 409 Cumberland Ave Affordable Housing
- 134 Washington Ave Affordable Housing
- Bayside TIF
- Downtown TOD
- Pearl Place AH
- Power Pay

NOTE: WATERFRONT TIF DISTRICT ON SEPARATE MAP



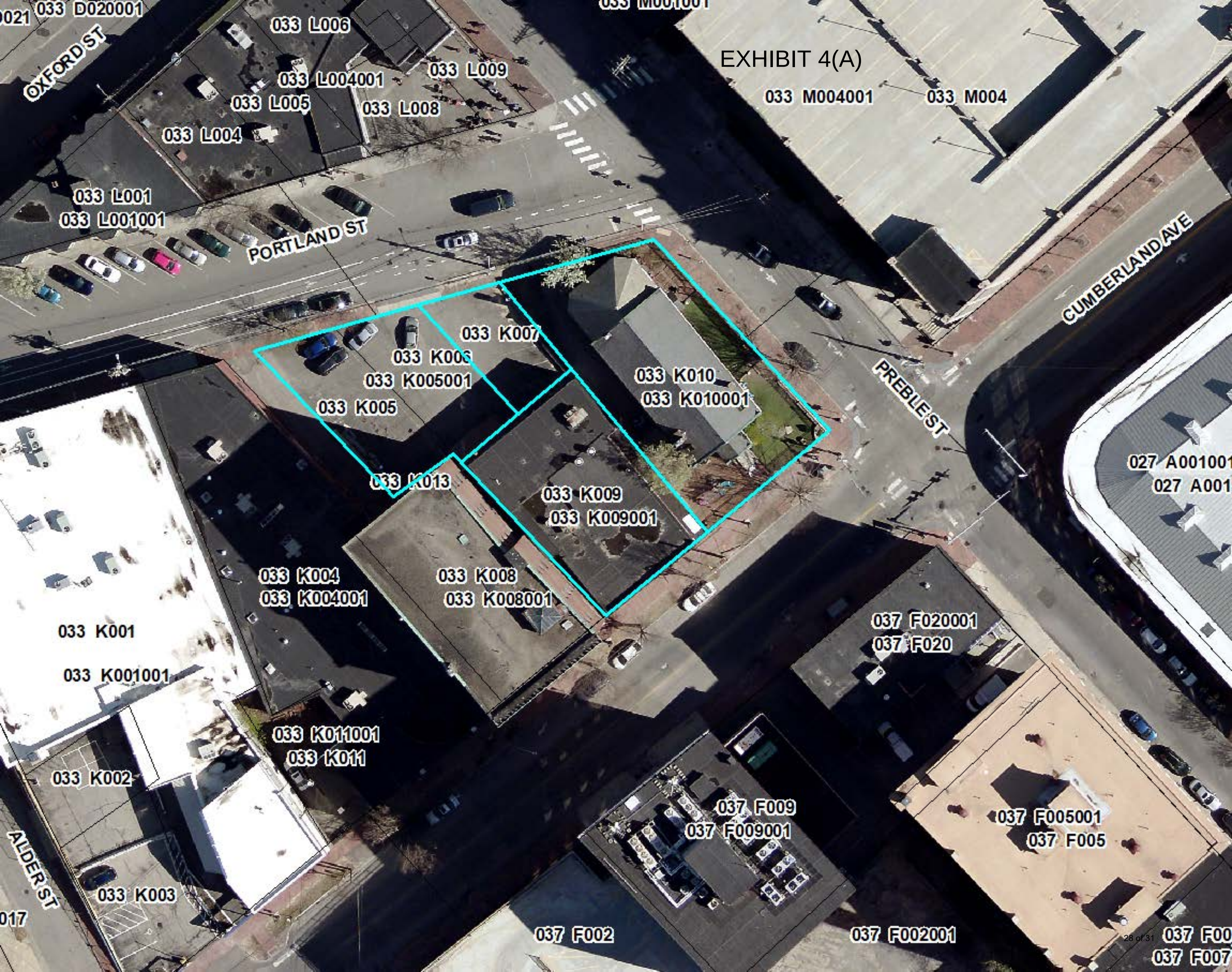


EXHIBIT 4(A)

OXFORD ST

PORTLAND ST

CUMBERLAND AVE

PREBLE ST

ALDER ST

REVISED EXHIBIT 6
STATUTORY REQUIREMENTS AND THRESHOLDS
Portland Bayside TIF Amendment #10 August 3, 2020

SECTION A. Acreage Caps		
1. Total municipal acreage;	12,386	
2. Acreage of proposed Municipal TIF District;	128.728	
3. Downtown-designation ¹ acres in proposed Municipal TIF District;	0	
4. Transit-Oriented Development ² acres in proposed Municipal TIF District;	0	
5. Total acreage [=A2-A3-A4] of proposed Municipal TIF District counted <u>toward</u> 2% limit;	0	
6. Percentage [=A5÷A1] of total acreage in proposed Municipal TIF District (CANNOT EXCEED 2%).	0	
7. Total acreage of all <u>existing/proposed</u> Municipal TIF districts in municipality including Municipal Affordable Housing Development districts: ³ See attached listing.	Existing	566.123
	Proposed	128.728
	Total:	694.851
30-A § 5223(3) EXEMPTIONS⁴		
8. Acreage of an <u>existing/proposed</u> Downtown Municipal TIF district;	421.010	
9. Acreage of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts: Thompson's Point TOD TIF/30 Acres	30	
10. 1Acreage of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts: None	0	
11. Acreage in all <u>existing/proposed</u> Municipal TIF districts common to ⁵ Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such acreage also factored in Exemptions 8-10 above: None	0	
12. Total acreage [=A7-A8-A9-A10-A11] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	243.841	
13. Percentage of total acreage [=A12÷A1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.968%	
14. Real property in proposed Municipal TIF District that is:	ACRES	% [=Acres÷A2]
a. A blighted area;		
b. In need of rehabilitation, redevelopment or conservation;		
c. Suitable for commercial or arts district uses.	128.728	100%
TOTAL (except for § 5223 (3) exemptions a., b. OR c. must be at least 25%)		

¹ Before final designation, the Commissioner will seek advice from MDOACF and MDOT per 30-A § 5226(2).

² For Transit-Oriented Development (TOD) definitions see 30-A § 5222 sub-§§ 19-24.

³ For AH-TIF acreage requirement see 30-A § 5247(3)(B). Alternatively, Section B. must exclude AH-TIF valuation.

⁴ Downtown/TOD overlap nets single acreage/valuation caps exemption.

⁵ PTZ districts approved through December 31, 2008.

REVISED EXHIBIT 6
STATUTORY REQUIREMENTS AND THRESHOLDS
Portland Bayside TIF Amendment #10 August 3, 2020

SECTION B. Valuation Cap		
1. Total TAXABLE municipal valuation—use most recent April 1;	\$10,507,000,000	
2. Taxable Original Assessed Value (OAV) of proposed Municipal TIF District as of March 31 preceding municipal designation—same as April 1 prior to such March 31 – For purposes of this Technical Amendment, the OAV is as of March 31, 2020:	\$121,378,140	
3. Taxable OAV of all <u>existing/proposed</u> Municipal TIF districts in municipality excluding Municipal Affordable Housing Development districts: See Attached Listing	Existing	\$1,009,321,530
	Proposed	\$121,378,140
	Total:	\$1,130,699,670
30-A § 5223(3) EXEMPTIONS		
4. Taxable OAV of an <u>existing/proposed</u> Downtown Municipal TIF district;	\$968,136,850	
5. Taxable OAV of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts: Thompson's Point TOD TIF	\$4,970,470	
6. Taxable OAV of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts: None	\$0	
7. Taxable OAV of all <u>existing/proposed</u> Single Taxpayer/High Valuation ⁶ Municipal TIF districts: None	\$0	
8. Taxable OAV in all <u>existing/proposed</u> Municipal TIF districts common to Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such OAV also factored in Exemptions 4-7 above: None	0	
9. Total taxable OAV [=B3-B4-B5-B6-B7-B8] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	\$157,592,350	
10. Percentage of total taxable OAV [=B9÷B1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.50%	

COMPLETED BY	
NAME :	Lori Paulette
DATE :	7/8/2020

⁶ For this exemption see 30-A §5223(3)(C) sub-§§ 1-4.



CITY OF PORTLAND
Tax Assessor Office
Christopher Huff, Tax Assessor

TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

EXHIBIT 11

**ASSESSOR'S CERTIFICATE OF ORIGINAL ASSESSED VALUE FOR THE
BAYSIDE TIF DISTRICT**

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. Section 5254 that the taxable Original Assessed Value for the Bayside TIF District as described in the Bayside Redevelopment Tax Increment Financing Program to which this Certificate is included, is as follows:

	OAV as of:	Taxable Real Property	Taxable Person Property	Total OAV
Original App.	3/31/2002; Tax Year 4/1/2001	\$1,597,180	\$11,010	\$1,608,190
1 st Expansion (in- cludes properties in orig. app. but with a new OAV as of 3/31/2007)	3/31/2007; Tax Year 4/1/2006	\$40,646,940	\$3,419,440	\$44,066,380
2 nd Expansion (additional tional properties only)	3/31/2014; Tax Year 4/1/2013	\$78,251,800	\$0	\$78,251,800
1 st Reduction taking out 337 Cumberland Ave.	3/31/2021; Tax Year 4/1/2020	-\$940,040	\$0	-\$940,040
Total OAV for Expanded Bayside TIF:				\$121,378,140

IN WITNESS WHEREOF, this certificate has been executed as of this ____ day of August, 2020.

Witness:

City Assessor

Christopher Huff

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 17, 2020

SUBJECT: **Order 15-20/21 Designating the 83 Middle Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
Justin Costa, Chair of the Economic Development Committee

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No This project is seeking a 9% Low Income Housing Tax Credit (LIHTC) and tax-exempt debt with Maine Housing contingent upon a reduction in operating costs through a tax increment financing district program.

In order for the developer to maximize the project's competitiveness in the LIHTC application, the TIF application must be filed with Maine State Housing Authority no later than August 25, 2020. A Notice of Public Hearing must be published 10 days before the date of the August 3 hearing.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Community Housing of Maine (CHOM) is proposing to construct 50 units of affordable housing for residents 55 and over on a City-owned site located at 83 Middle Street. CHOM is requesting additional financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 50% of the increased taxable value, currently estimated at an average \$51,976 annually over 30 years.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Staff requests an amendment to the utilization rate in the order, attached in the back up material, because TIF values have been revised since the first read; adjustments made include the value of land donated to the developer and added to the district as well as the underwriter's recommendation to reduce the value of captured revenue returned to the developer from 75% to 50%. The numbers that follow reflect this change.

Community Housing of Maine (CHOM) is proposing to construct a five-story building with 50 units of affordable rental housing for residents age 55+ and is requesting City financial assistance in the form of an

Affordable Housing Tax Increment Financing (AHTIF) District and Credit Enhancement Agreement (CEA) to assist with project operating costs.

The project will include 23 studios, 23 one-bedroom and 4 two-bedroom apartments. 40% (20 units) would be available for rent to households earning 50% of the area median income (AMI). 60% (30 units) would be available to households earning 60% AMI. The planned development will include an 11 unit preference for people experiencing homelessness. The units will have affordability restrictions through the AHTIF Program.

CHOM has received 3 forms of financial assistance for the proposed project, including \$330,000 through the Affordable Housing Development Program (HOME and Housing Trust funds); \$200,000 in CDBG funds and an Option to Lease Agreement for City-owned property at 83 Middle St. (Option expires 06/30/2021; option payment \$1.00; ground lease term 99 years and aggregate lease payment of \$99.00).

If approved, the AHTIF financing would be provided through a CEA at 50% of the increased taxable value, currently estimated at a 30-year annual average of \$51,976 with an estimated total of \$1,559,287 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$51,976, with an estimated total of \$1,559,287, will be general fund revenue. The proposed building would be taxable on this city-owned property, with an estimated annual assessment of \$3,465,000 and estimated annual tax of \$80,769.15 at the current millage rate.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Approval of this AHTIF request is key to making the project application competitive in the Low Income Housing Tax Credit application with MaineHousing.

The City Council must:

- (1) authorize the creation of the AHTIF District; and
- (2) approve the Credit Enhancement Agreement

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establish an Affordable Housing TIF District to support the development of 50 new units of rental housing.

Increase access to rental and ownership housing that is safe and affordable for working and low income families.

V. FINANCIAL IMPACT

When completed, this project's new building assessed value is estimated at \$3,465,000, which would yield \$80,769.15 in annual property value at the current millage rate. Fifty (50%) percent of the increased tax revenue (approximately \$1,559,287 over 30 years) will be captured revenue returned to the developer. The remaining 50% (approximately \$1,559,287 over 30 years) will be general fund revenue.

A Credit Enhancement Agreement will return approximately \$1,559,287 in captured revenue to the project (averaged at \$51,976 annually over thirty years) to off-set project operating costs. The proposed project will be taxable.

Total development costs are estimated at \$10.7 million. At full build out, the development is projected to pay a 30 year annual average of \$51,976 annually in projected new taxes captured. Non-captured general fund revenues are estimated at an average \$51,976 annually over thirty years. In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$14,275+, or \$428,257+ over the life of the district.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The terms of the CEA were adjusted from 75% to 50% as a result of the financial underwriting.

TIF projections are included in the backup to this memo along with the underwriting analysis.

VI. STAFF ANALYSIS AND BACKGROUND

Public Benefits: In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 50 units of 55+ housing, one-hundred percent (100%) of which will be affordable to households at or below sixty percent (60%) of the area median income.

Additionally, the TIF would create tax sheltering benefits estimated at an average of \$14,275+ per year, or \$428,257+ over the life of the district.

VII. RECOMMENDATION

Staff is requesting the City Council (1) approve the establishment of the 83 Middle Street Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Community Housing of Maine, Inc. and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

VIII. LIST ATTACHMENTS

1. Order Designating Affordable Housing TIF 83 Middle Street 7.13.2020
2. Amendment Order 15-FY21 Designating Affordable Housing TIF 83 Middle Street 7.13.2020
3. Attachments Council meeting 7.13.20 83 Middle Street (1)
4. 83 Middle Street DEV PROGRAM clean for Council 072020
5. 83 Middle St DEC OF COV clean for Council 070720

Prepared by:

Mary Davis, Division Director

Date: 7/17/2020

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 DESIGNATING THE 83 MIDDLE STREET AFFORDABLE HOUSING
DEVELOPMENT DISTRICT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Middle Street Housing Partners, L.P. intends to construct certain improvements within the 83 Middle Street Affordable Housing Development Tax Increment Financing (“TIF”) District, including 50 rental units of affordable housing; and

WHEREAS, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the senior citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 83 Middle Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the 83 Middle Street Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 83 Middle Street Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 83 Middle Street Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “83 Middle Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “83 Middle Street Affordable Housing Development District” as more particularly

described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “83 Middle Street Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “83 Middle Street Affordable Housing Development District” on behalf of the municipal legislative body.

**AMENDMENT TO ORDER 15-20/21
PREPARED BY CORPORATION COUNSEL PER STAFF
RECOMMENDATION
RE: REVISED UTILIZATION AMOUNT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

...

WHEREAS, the City of Portland will utilize ~~50~~25% of the tax revenues generated in the District in its General Fund; and

...

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “83 Middle Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

...

Project Summary

The Portland City Council voted unanimously to approve a 99-year land lease for the surface parking lot located at 83 Middle Street (CBL: 028 0017001) to Community Housing of Maine (CHOM), in order to develop 50 units of affordable rental housing with eleven units set aside for Long Term Stayers (LTS), people who have stayed in a shelter for more than 180 days. The proposed building will fit into the rigors and complex design structure of the India Street Form Based Code and will not require a zoning change. The project will include a central laundry facility, community space, tenant storage, and a management office.

The development will be one 5-story elevator accessible building containing 50 units of affordable rental housing, a first-floor commercial space, and a below grade parking garage on the .2183 site. The 50 units consist of 23 studios, 24 one-bedroom, and 3 two-bedroom units; 17 units will be accessible, 12 more than required by code. The planned development will include an 11-unit preference for people experiencing homelessness. All of the components of the building will be designed to Passive House Standards, the industry standard for sustainable building construction. As shown in the attached site plan, the project will also make changes to the sidewalk along Middle and Franklin streets, making the intersection safer and more accessible to pedestrians and bicyclists while reconnecting the India Street Neighborhood to the Old Port.

The project has been designed to be affordable for households making 60% or less of the Area Median Income (AMI), with at least 40% of the project to be occupied by households making 50% or less of AMI. The project will further assist lower income populations through the use of 25 Project Based Housing Vouchers, which were awarded through a competitive process through Portland Housing Authority.

TIF funds will be used in partnership with the other financing to assist in the creation of affordable housing in downtown Portland. The TIF will allow for the creation of Affordable Housing through leveraging the reduced tax obligation to generate additional capital in order to fund the construction of the building. 100% of the acreage is within the current Downtown TIF district and is suitable for residential use and redevelopment. The total acreage is less than 1% of the TIF district.

The project has received \$330,000 through the City's Housing Assistance funds. In addition, Middle Street Apartments has requested debt, subsidy and LIHTC equity from MaineHousing. In total, the project is raising more than \$11.5M in capital and has secured Letters of Intent for construction financing from Bangor Savings Bank.

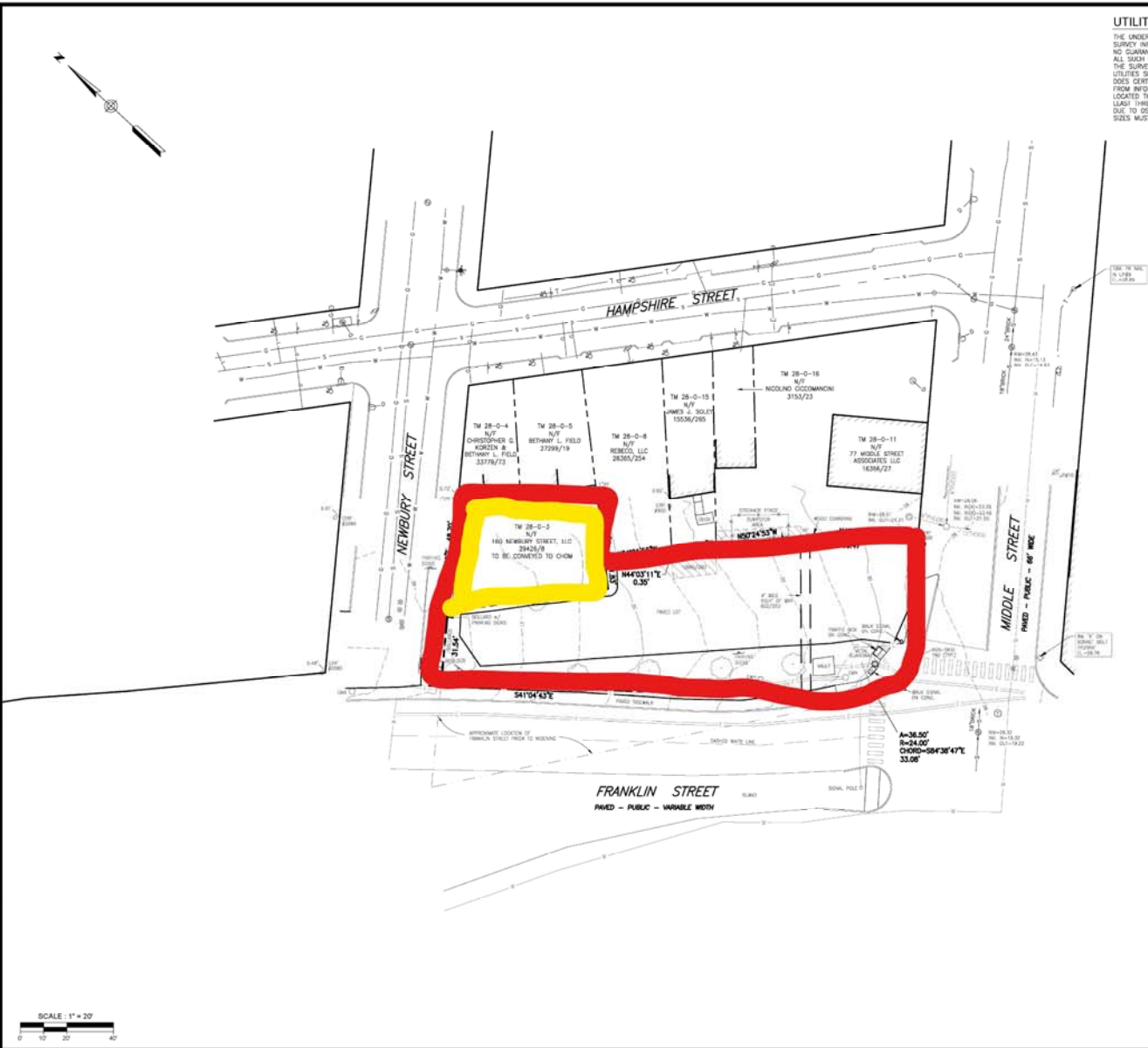
The India Street Neighborhood has seen a dramatic increase in development in recent years. As other parts of the neighborhood have gentrified, many of the long-time residents of the neighborhood have been priced out of their apartments, and homes. Creating a more equitable ratio of affordable housing is paramount to the continued long-term success of the neighborhood. According to the National Low-Income Housing Coalition, Maine currently has a shortage of more than 20,000 rental homes available, and affordable to households with extremely low incomes (ELI). Many of the low-income households that have been able to secure affordable

rental housing must sacrifice other necessities in order to maintain their housing. 53% of ELI households are severely rent overburdened, spending more than half of their income on housing costs. According to a Maine Real Estate Managers Association survey, there are 32,649 households on a waitlist for 13,824 units of affordable housing; a ratio of more than 2:1. Middle Street Apartments will target these individuals and provide permanently affordable housing, to reduce the burden that housing costs have levied against these households.

Middle Street Apartments will set aside eleven (11) units for long term shelter stayers. These individuals will be able make use of the twenty-five (25) Project Based Housing Vouchers (PBV) supplied by Portland Housing Authority and dedicated to Middle Street Apartments. The 25 PBV will allow the LTS households, and an additional 14 other households, to pay 30% of their income towards rent, with federal assistance paying for the remainder of their rent. The City of Portland will assist each of these individuals with sustained wraparound support services. Each LTS will have an individual support plan tailored to their individual needs. This individual support allows LTS to focus on the issues that caused their homelessness and allow them to successfully live independently. The units set aside for LTS will directly and immediately reduce the strain on the city's shelter system, removing more people from the street, and allowing people to access safe, affordable, and service enriched housing.

Furthermore, the need to reconnect the India Street Neighborhood to downtown has been ever-present since the construction of the Franklin Arterial. The corner of Middle and Franklin is an oversized intersection that promotes speed and dangerous traffic conditions. The proposed changes to the corner of the Middle and Franklin would increase the use of walkways and other means of travel while maintaining the current volume of automotive transportation.

CHOM has developed 79 housing sites in 32 communities, creating 776 units of high quality, inclusive, affordable, and service-enriched housing. CHOM currently serves 1,034 people, 337 were homeless at entry, 127 were LTS, 57 were homeless Veterans at entry, 94 were fleeing domestic violence, and 102 are people with intellectual/developmental disabilities. In the City of Portland alone, CHOM has more than 250 units of affordable and supportive housing under its charge. CHOM partnerships have provide low barrier housing to previously underserved populations. CHOM will partner with Preservation Management INC, a national property management company, based in Maine with expertise in the management and compliance of Affordable Housing.



LEGEND

○	IRON PIPE OR ROD FOUND	—	FENCE
○	MONUMENT FOUND	—	CURB
○	UTILITY POLE	—	OVERHEAD WIRES
○	MANHOLE	—	1" CONTOUR
○	SOIL	—	IRON PIPE OR ROD FOUND
○	DITCH BASIN	—	NUT
○	HYDRAULIC	—	NOW OR FORMERLY
○	WATER VALVE OR SHUTOFF	—	DEED BOOK / PAGE
○	LIGHT POLE	—	CONC.
○	DECIDUOUS TREE	—	UNDERGROUND POWER
○		—	WATER LINE
○		—	GAS LINE
○		—	SEWER DRAIN
○		—	SANITARY SEWER

PLAN REFERENCES

- STANDARD BOUNDARY SURVEY PLAN OF PROPERTY AT 77 MIDDLE STREET PORTLAND MAINE FOR GEORGE W. BEALS DATED NOVEMBER 23, 1992 BY LEROY A. BETHAM LOCATED IN THE CITY OF PORTLAND'S ENGINEERING ARCHIVES AS PLAN 886/71.
- CITY OF PORTLAND PUBLIC WORKS DEPARTMENT CONTRACT DRAWINGS HAMPSHIRE STREET RECONSTRUCTION BRATTLE STREET RECONSTRUCTION PROJECT NO. 210-3100-430 DATED 11/16/01. ON FILE AT THE CITY OF PORTLAND.

GENERAL NOTES

- DRAWN BY: CITY OF PORTLAND
TAX MAP 28 BLOCK 9 LOT 17
C.C.R.D. BOOK 3028 PAGE 347
C.E.A.D. BOOK 10865 PAGE 240
- BEARINGS AND COORDINATES ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM WEST ZONE, NAD 83. ELEVATIONS ARE BASED ON CITY DATUM, NGVD 29. HORIZONTAL AND VERTICAL CONTROL DATA PROVIDED BY THE CITY OF PORTLAND AND TAKEN FROM PLAN REFERENCE 2.
- UTILITIES SHOWN ARE TAKEN FROM PLAN REFERENCE #2.
- THE RIGHT OF WAY LINE SHOWN ALONG FRANKLIN STREET IS A PROPOSED LOCATION. THE EXISTING RIGHT OF WAY LINE IS THE SOUTHWESTERLY PROPERTY LINES ALONG LOTS 28-0-4, 28-0-5, 28-0-8, 28-0-19 & 28-0-11.
- THE DEEDS FOR PARCELS 28-0-4 & 28-0-5 CALL FOR 50 FEET (MORE OR LESS) ALONG THE SIDE PROPERTY LINES TO FEET ALONG NEWBURY STREET AND THE REAR LINE BEING PARALLEL WITH HAMPSHIRE STREET GOING BACK TO AN ANGLE OF 125.5°. THE DEEDS FOR 28-0-5 CALLS FOR THE POINT OF BEGINNING AT A STAKE 48.1 FEET FROM THE INTERSECTION OF HAMPSHIRE STREET AND NEWBURY STREET THENCE AN ANGLE OFF NEWBURY STREET TO A STAKE GOING BACK TO MAP 1895 WHEN PLOTTED THENCE DEED LINES CROSS AS SHOWN, THEREFORE A BOUNDARY LINE AGREEMENT IS RECOMMENDED WITH THESE ADJUTING.

CERTIFICATE

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

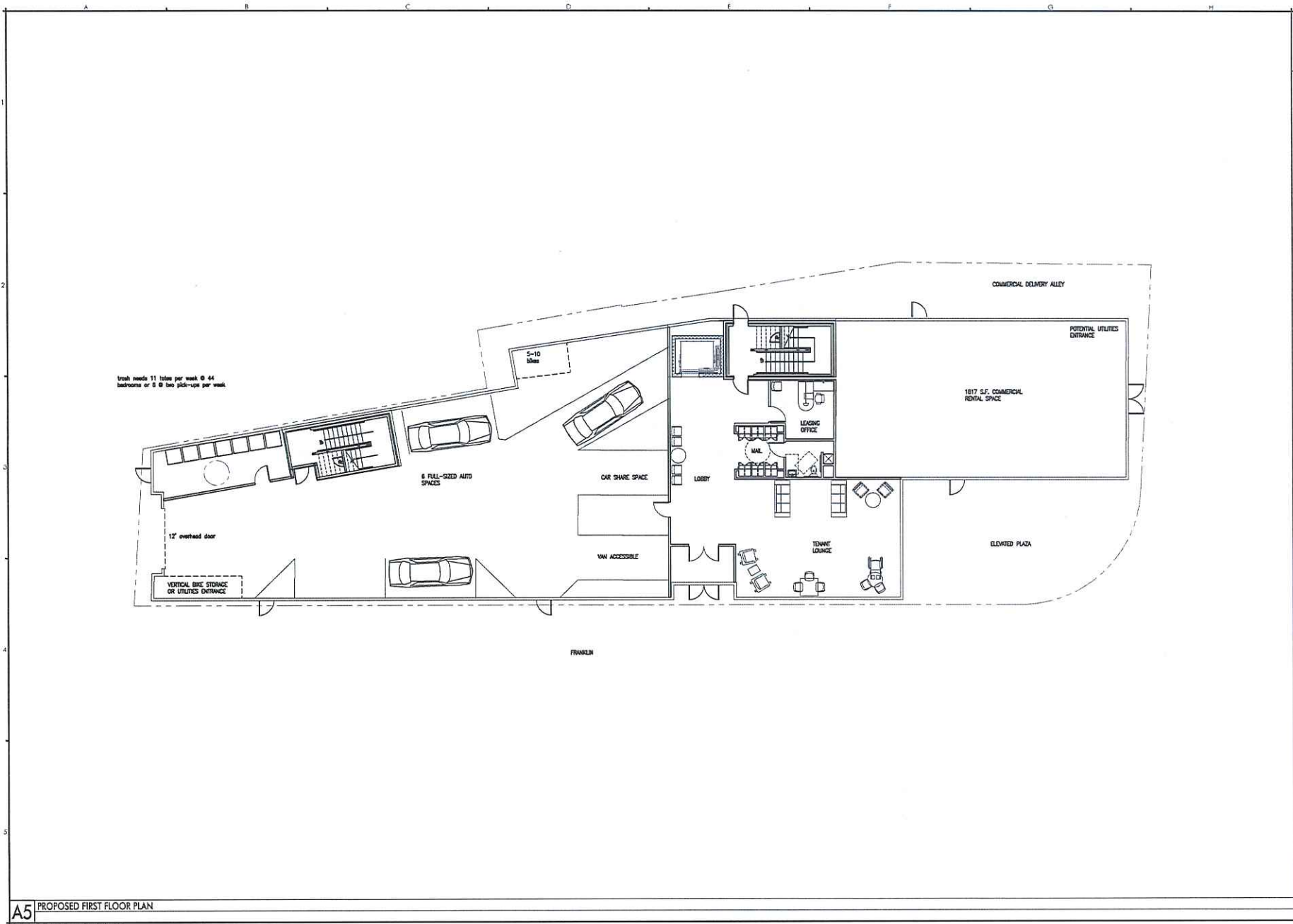
Owen Haskell
OWEN H. LOUBER, PLS #2407
6/23/20
DATE

Boundary & Topographic Survey
At
#83 Middle Street, Portland, Maine
Made for
Community Housing of Maine
One City Center, 4th Floor Portland, ME 04101

OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS
390 U.S. ROUTE ONE, UNIT 10, FALMOUTH, MAINE 04105

DRAWN BY: BOB JONES DATE: JUNE 23, 2020 JOB NO: 20190205 P
CHECKED BY: ERIC J. JAMES SCALE: 1"=30' DRAWN NO: 1





CWS ARCHITECTS
ARCHITECTURE | INTERIOR DESIGN

4074 Cumberland Avenue Portland ME 04103
PHONE: (207) 734-6861 FAX: (207) 734-6861

DESIGNER

CWS ARCHITECTS
ARCHITECTURE | INTERIOR DESIGN
4074 CUMBERLAND AVENUE
PORTLAND, ME 04103
PHONE: (207) 734-6861
FAX: (207) 734-6861

OWNER

CHOW COMMUNITY
HOUSING OF MAINE
1000 STATE STREET
PORTLAND, ME 04103

PROJECT

MIDDLE STREET
APARTMENTS
1000 STATE STREET
PORTLAND, ME 04103

DRAWING

PROPOSED FIRST FLOOR
PLAN
07/08/2019

REVISIONS

1	
2	
3	
4	
5	

DRAWING NUMBER
A1.01

SCALE: 1/8" = 1'-0"
DATE: 07/08/2019

A5

PROPOSED FIRST FLOOR PLAN

83 Middle Street

DEVELOPMENT BUDGET

		Total	LIHTC BASIS		
			REHAB	ACQ	INELIGIBLE
Acquisition:					
Acquisition: Land		\$ 99			
Acquisition: Building	\$ 99	\$ -		\$ -	
Acquired Reserves		\$ -			
Construction:					
Construction/Rehab		\$ 8,659,286	\$ 8,659,286		
Site Improvements		\$ -	\$ -		
Environmental		\$ -	\$ -		
Contractor Fee	\$ 8,659,286	\$ -	\$ -		
P&P Bonds		\$ -	\$ -		
FF&E		\$ -	\$ -		
5.0% Contingency		\$ 432,964	\$ 432,964		
Soft Costs:					
1.50% Permits & Fees		\$ 88,804	\$ 88,804		
Architect - Design		\$ 320,000	\$ 320,000		
Architect - Supervision		\$ 120,000	\$ 120,000		
Environmental Engineering		\$ 10,000	\$ 10,000		
Engineering & Survey		\$ 20,000	\$ 20,000		
Pre-construction services		\$ 20,000	\$ 20,000		
Relocation					
Third Party Reports		\$ 20,000	\$ 20,000		
Accounting & Audit		\$ 10,500	\$ 10,500		
Developer Legal		\$ 77,000	\$ 72,000	\$ 5,000	
Taxes + Insurance		\$ 60,000	\$ 60,000		
Soft Cost Contingency		\$ 13,575	\$ 13,575		
Historic + Green Consultants		\$ -	\$ -		
Title and Recording		\$ 14,000		\$ 13,000	\$ 700
Transfer Tax		\$ 0		\$ 0	
Financing:					
Construction Loan Fee	0.35%	\$ 22,050	\$ 22,050		
Construction loan interest		\$ 129,157	\$ 129,157		
Construction lender legal		\$ 20,000	\$ 20,000		
MH Commitment fee		\$ 2,000			\$ 2,000
Bank Inspections		\$ 7,500	\$ 7,500		
Syndication Fees		\$ 5,000			\$ 5,000
MH Loan Fee	2%	\$ 50,080			\$ 50,080
MH application fees		\$ 4,500			\$ 4,500
Allocation Fee	7.50%	\$ 61,875			\$ 61,875
Monitoring Fee	\$1,000	\$ 49,000			\$ 49,000
Other:					
Lease Up + Marketing					\$ -
Misc:		\$ -			\$ -
Startup & Organization		\$ -			\$ -
Developer Fees		\$ 750,000	\$ 725,000	\$ 25,000	\$ -
Reserves:					
Supportive Services Reserve		\$ -			\$ -
Replacement Reserves		\$ 86,593			\$ 86,593
Operating Reserves		\$ 245,631			\$ 245,631
Tax and Insurance Reserve		\$ 69,417			\$ 69,417
Lease Up Reserve		\$ 1,599			\$ 1,599
TOTAL		\$ 11,370,630	\$ 11,101,956	\$ 43,300	\$ 576,394

83 Middle Street

INCOME INFORMATION

Unit Type	UNIT COUNT	AFFORDABLE UNITS		Square Feet	Target AMI	Current Rents	Market Rents	Fair Market Rents	LIHTC Rents (2018)	Utility Allowance	Pro Forma Rents	Rent/SF	Gross Monthly Rent
		Sec 8	LIHTC										
Studio	9		9	400	50%			\$820	\$813	\$33	\$780	\$1.95	\$7,020
Studio	14		14	400	60%			\$989	\$976	\$33	\$943	\$2.36	\$13,202
1BR	10		10	650	50%			\$1,071	\$871	\$43	\$828	\$1.27	\$8,280
1BR	13		13	650	60%			\$1,071	\$1,046	\$43	\$1,003	\$1.54	\$13,039
2BR	1		1	875	50%			\$1,387	\$1,046	\$56	\$990	\$1.13	\$990
2BR	2		2	875	60%			\$1,387	\$1,255	\$56	\$1,199	\$1.37	\$2,398
3BR	0		0	1040	50%			\$1,829	\$1,209	\$70	\$1,139	\$1.10	\$0
3BR	0		0	1040	60%			\$1,829	\$1,451	\$70	\$1,381	\$1.33	\$0
												Total Monthly	\$44,929
												Total Annual	\$539,148

TOTAL	49	0	49
		50%	40.8%
		60%	59.2%
		market	0.0%

% of LIHTC Units by BR Type	
0BR	46.94%
1BR	46.94%
2BR	6.12%
3BR	0.00%

Parking Analysis		Parking Cost	
Units	49	Off-Site	
Est Ratio		\$: overnight	
Total Demand		\$: full day	
On-Site	6	Monthly Exp	

83 Middle Street

EXPENSE INFORMATION

	Escalation	Pro Forma Expenses	Per Unit
real estate taxes	3.0%	\$ 58,800	1,200
insurance	3.0%	\$ 34,300	700
utilities	3.0%	\$ 65,170	1,330
management fee	5.0%	\$ 30,851	630
parking	3.0%	\$ -	0
administrative	3.0%	\$ 55,125	1,125
audit	3.0%	\$ 8,575	175
repairs + maintenance	3.0%	\$ 58,800	1,200
resident services	3.0%	\$ 14,210	290
other	3.0%	\$ 4,900	100
replacement reserve	2.0%	\$ 22,050	450
TOTAL	3.0%	\$ 352,781	7,200
	PER UNIT	\$ 7,200	
Interest on Reserves	1.5%		

83 Middle Street

DEBT INFORMATION

	DSCR	AMOUNT	RATE	TERM	AMORT	ANNUAL DEBT SERVICE	LOAN AMT PER UNIT	LOAN AMT PER LI UNIT
MH Amortizing Loan	1.25	\$2,504,003	6.000%	30	30	\$150,240	\$51,102	\$51,102
MH RLP	1.25	\$ 980,000	0.00%	30	30	\$0	\$20,000	\$20,000
City HOME Funds		\$ 330,000	0.00%	0	0		\$6,735	\$6,735
AHP Grant	0.00	\$ -	0.00%	30	30			
Deferred Developer Fee	0.00	\$ 212,500	5.00%	15	15			
other		\$ -						
Blended Debt	1.15					\$150,240		
						\$22,929	net surplus cash	
Total Tax-Exempt Bond Debt		0						
construction loan		\$ 6,300,000	4.85%	0				

83 Middle Street

15-YEAR PRO FORMA

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Income															
Potential Gross Income	539,148	549,931	560,930	572,148	583,591	598,181	613,135	628,464	644,175	660,280	676,787	693,706	711,049	728,825	747,046
Vacancy Loss	(26,957)	(27,497)	(28,046)	(28,607)	(29,180)	(29,909)	(30,657)	(31,423)	(32,209)	(33,014)	(33,839)	(34,685)	(35,552)	(36,441)	(37,352)
Commercial Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Income	2,000	2,020	2,040	2,061	2,081	2,102	2,123	2,144	2,166	2,187	2,209	2,231	2,254	2,276	2,299
Effective Gross Income	514,191	524,454	534,923	545,601	556,493	570,374	584,602	599,185	614,132	629,453	645,157	661,252	677,750	694,660	711,993
Expenses															
real estate taxes	47,040	48,451	49,905	51,402	52,944	54,532	56,168	57,853	59,589	61,377	63,218	65,114	67,068	69,080	71,152
insurance	34,300	35,329	36,389	37,481	38,605	39,763	40,956	42,185	43,450	44,754	46,096	47,479	48,904	50,371	51,882
utilities	65,170	67,125	69,139	71,213	73,349	75,550	77,816	80,151	82,555	85,032	87,583	90,211	92,917	95,704	98,575
management fee	30,851	31,777	32,730	33,712	34,724	35,765	36,838	37,943	39,082	40,254	41,462	42,706	43,987	45,306	46,666
parking	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
administrative	55,125	56,779	58,482	60,237	62,044	63,905	65,822	67,797	69,831	71,926	74,083	76,306	78,595	80,953	83,382
audit	8,575	8,832	9,097	9,370	9,651	9,941	10,239	10,546	10,863	11,188	11,524	11,870	12,226	12,593	12,970
repairs + maintenance	58,800	60,564	62,381	64,252	66,180	68,165	70,210	72,317	74,486	76,721	79,022	81,393	83,835	86,350	88,940
resident services	14,210	14,636	15,075	15,528	15,993	16,473	16,967	17,477	18,001	18,541	19,097	19,670	20,260	20,868	21,494
other	4,900	5,047	5,198	5,354	5,515	5,680	5,851	6,026	6,207	6,393	6,585	6,783	6,986	7,196	7,412
replacement reserve	22,050	22,491	22,941	23,400	23,868	24,345	24,832	25,329	25,835	26,352	26,879	27,416	27,965	28,524	29,095
Operating Expenses	(341,021)	(351,032)	(361,338)	(371,948)	(382,873)	(394,120)	(405,700)	(417,623)	(429,899)	(442,537)	(455,550)	(468,947)	(482,742)	(496,944)	(511,567)
Net Operating Income	173,169	173,423	173,586	173,653	173,620	176,254	178,901	181,562	184,234	186,916	189,607	192,305	195,009	197,716	200,425
TIF Reimbursement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Financing Expenses															
MH Amortizing Loan	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)	(150,240)
DF Loan	0	(1,000)	(4,000)	(4,000)	(4,000)	(4,000)	(14,000)	(15,000)	(18,000)	(20,000)	(22,000)	(24,000)	(27,000)	(28,500)	(27,000)
	(150,240)	(151,240)	(154,240)	(154,240)	(154,240)	(154,240)	(164,240)	(165,240)	(168,240)	(170,240)	(172,240)	(174,240)	(177,240)	(178,740)	(177,240)
Net Cash Flow	22,929	22,183	19,346	19,413	19,380	22,013	14,661	16,322	15,994	16,676	17,367	18,065	17,768	18,976	23,185
DSCR	1.15	1.15	1.13	1.13	1.13	1.14	1.09	1.10	1.10	1.10	1.10	1.10	1.10	1.11	1.13
NOI/Unit	\$468	\$453	\$395	\$396	\$396	\$449	\$299	\$333	\$326	\$340	\$354	\$369	\$363	\$387	\$473

Middle Street Apartments

Sources & Uses Summary

Sources

MH Amortizing Loan	2,900,000
MH RLP	5,700,000
CDBG	200,000
City HOME Funds	330,000
Federal HTC Equity	0
State HTC Equity	0
Federal LIHTC Equity	4,587,396
Subsidized Advance	0
Developer Fee Loan	0
	13,717,396

Uses

Acquisition	99
Direct Construction	11,140,637
Soft Costs	999,391
Financing Costs	308,715
Reserves	518,554
Developer Fee	750,000
	13,717,396

City of Portland - Affordable Housing (AH) TIF Model
83 Middle Street, 28-O-17, and 160 Newbury Street, 28-O-3
OAV: \$62,400 as 3/31/2020
2% Mil Rate Escalation
50% Capture to AH TIF Project; 50% to City General Fund

City of Portland- TIF Projection Table for 83 Middle Street AH TIF										
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues	City OAV General Fund Revenues
1	2020	\$0	50.00%	\$0	23.78	\$0	\$0	\$0	\$0	\$1,484
2	2021	\$0	50.00%	\$0	24.25	\$0	\$0	\$0	\$0	\$1,513
3	2022	\$3,402,600	50.00%	\$1,701,300	24.74	\$42,085	\$42,085	\$0	\$42,085	\$1,544
4	2023	\$3,402,600	50.00%	\$1,701,300	25.23	\$42,926	\$42,926	\$0	\$42,926	\$1,574
5	2024	\$3,402,600	50.00%	\$1,701,300	25.74	\$43,785	\$43,785	\$0	\$43,785	\$1,606
6	2025	\$3,402,600	50.00%	\$1,701,300	26.25	\$44,661	\$44,661	\$0	\$44,661	\$1,638
7	2026	\$3,402,600	50.00%	\$1,701,300	26.78	\$45,554	\$45,554	\$0	\$45,554	\$1,671
8	2027	\$3,402,600	50.00%	\$1,701,300	27.31	\$46,465	\$46,465	\$0	\$46,465	\$1,704
9	2028	\$3,402,600	50.00%	\$1,701,300	27.86	\$47,394	\$47,394	\$0	\$47,394	\$1,738
10	2029	\$3,402,600	50.00%	\$1,701,300	28.41	\$48,342	\$48,342	\$0	\$48,342	\$1,773
11	2030	\$3,402,600	50.00%	\$1,701,300	28.98	\$49,309	\$49,309	\$0	\$49,309	\$1,809
12	2031	\$3,402,600	50.00%	\$1,701,300	29.56	\$50,295	\$50,295	\$0	\$50,295	\$1,845
13	2032	\$3,402,600	50.00%	\$1,701,300	30.15	\$51,301	\$51,301	\$0	\$51,301	\$1,882
14	2033	\$3,402,600	50.00%	\$1,701,300	30.76	\$52,327	\$52,327	\$0	\$52,327	\$1,919
15	2034	\$3,402,600	50.00%	\$1,701,300	31.37	\$53,374	\$53,374	\$0	\$53,374	\$1,958
16	2035	\$3,402,600	50.00%	\$1,701,300	32.00	\$54,441	\$54,441	\$0	\$54,441	\$1,997
17	2036	\$3,402,600	50.00%	\$1,701,300	32.64	\$55,530	\$55,530	\$0	\$55,530	\$2,037
18	2037	\$3,402,600	50.00%	\$1,701,300	33.29	\$56,640	\$56,640	\$0	\$56,640	\$2,077
19	2038	\$3,402,600	50.00%	\$1,701,300	33.96	\$57,773	\$57,773	\$0	\$57,773	\$2,119
20	2039	\$3,402,600	50.00%	\$1,701,300	34.64	\$58,929	\$58,929	\$0	\$58,929	\$2,161
21	2040	\$3,402,600	50.00%	\$1,701,300	35.33	\$60,107	\$60,107	\$0	\$60,107	\$2,205
22	2041	\$3,402,600	50.00%	\$1,701,300	36.04	\$61,309	\$61,309	\$0	\$61,309	\$2,249
23	2042	\$3,402,600	50.00%	\$1,701,300	36.76	\$62,536	\$62,536	\$0	\$62,536	\$2,294
24	2043	\$3,402,600	50.00%	\$1,701,300	37.49	\$63,786	\$63,786	\$0	\$63,786	\$2,340
25	2044	\$3,402,600	50.00%	\$1,701,300	38.24	\$65,062	\$65,062	\$0	\$65,062	\$2,386
26	2045	\$3,402,600	50.00%	\$1,701,300	39.01	\$66,363	\$66,363	\$0	\$66,363	\$2,434
27	2046	\$3,402,600	50.00%	\$1,701,300	39.79	\$67,691	\$67,691	\$0	\$67,691	\$2,483
28	2047	\$3,402,600	50.00%	\$1,701,300	40.58	\$69,044	\$69,044	\$0	\$69,044	\$2,532
29	2048	\$3,402,600	50.00%	\$1,701,300	41.39	\$70,425	\$70,425	\$0	\$70,425	\$2,583
30	2049	\$3,402,600	50.00%	\$1,701,300	42.22	\$71,834	\$71,834	\$0	\$71,834	\$2,635
30 Year TIF Total		\$95,272,800		\$47,636,400		\$1,559,287	\$1,559,287	\$0	\$1,559,287	\$60,188
30 Year Average				\$1,587,880		\$51,976	\$51,976		\$51,976	\$2,006

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 83 Middle Street Affordable Housing TIF							
50% Sheltered - 30 years - 50% to Developer Project Account - 50% to City General Fund							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$3,402,600	\$1,701,300	\$0	\$1,275	\$939	\$2,214
4	2023	\$3,402,600	\$1,701,300	\$4,696	\$1,275	\$939	\$6,910
5	2024	\$3,402,600	\$1,701,300	\$9,391	\$1,275	\$939	\$11,606
6	2025	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
7	2026	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
8	2027	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
9	2028	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
10	2029	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
11	2030	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
12	2031	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
13	2032	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
14	2033	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
15	2034	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
16	2035	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
17	2036	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
18	2037	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
19	2038	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
20	2039	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
21	2040	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
22	2041	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
23	2042	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
24	2043	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
25	2044	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
26	2045	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
27	2046	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
28	2047	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
29	2048	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
30	2049	\$3,402,600	\$1,701,300	\$14,087	\$1,275	\$939	\$16,301
30 Year TIF Total		\$95,272,800	\$47,636,400	\$366,256	\$35,699	\$26,303	\$428,257
30 Year TIF Avg.		\$3,175,760	\$1,587,880	\$12,209	\$1,190	\$877	\$14,275

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: 83 Middle Street, a CHOM project
Date: 7/20/20

CHOM requests a 75% 30 year TIF for 83 Middle Street, a proposed new construction 50 unit affordable senior rental housing development with one commercial unit. The project will be built on land leased for 99 years from the City. CHOM has received a conditional commitment of \$330,000 in capital subsidy from the City in the 2019 funding round and \$200,000 in CDBG funds, which is a total City capital subsidy of \$10,600 per unit, plus the value of the land lease. CHOM has also received 25 Project Based Vouchers.

Eleven units will be set aside for “Long Term Stayers,” individuals exiting homelessness who have stayed in a shelter more than 180 days. The building will be Passive House certified.

Sources and Uses

Sources:		Uses:	
Maine Housing Amortizing Loan	\$3,544,997	Acquisition (99 yr lease & legal)	\$10,099
Maine Housing Rental Loan Program	\$1,000,000	Construction hard costs	\$10,792,504
City HOME/HTF Funds	\$330,000	Hard & Soft Contingency	\$563,575
City CDBG	\$200,000	Soft costs	\$1,377,893
LIHTC Equity (syndication proceeds)	\$8,045,574		
AHP amortizing loan	\$240,000	Reserves	\$516,285
AHP Subsidy	\$650,000	Developer Fee	<u>\$750,000</u>
Total Sources:	\$14,010,571	Total Uses:	\$14,010,356

CHOM has successfully completed 11 LIHTC projects throughout Maine, and has existing relationships with each of the projected sources. City of Portland capital subsidy funds are committed (HOME/HTF & CDBG).

CHOM is resubmitting Middle Street to Maine Housing with a request for LIHTC and mortgage funding this fall – Middle Street just missed the funding cut off for LIHTCs last year and was the top scoring LIHTC application on the waitlist. In this round, CHOM’s TIF will generate extra points which CHOM hopes will be sufficient to receive a LIHTC award. funding approval. CHOM has a letter of interest from Boston Capital to purchase the Low Income Housing Tax Credits (LIHTC) at the price of \$.88 per dollar of tax credit.

An AHP application will be submitted July 30th. Based on their current AHP self score, the project would have been funded for each of the past two years.

For analysis of “Uses,” see Development Budget.

Development Budget

Construction Costs:

Construction costs are based on a trades break down estimate by Allied Cook Construction (this is preferable to a cost per square foot estimate). The construction cost divided among the 50 residential

units is \$215,830. (This slightly overstates the construction cost per unit, since the cost of the commercial unit is not broken out, however, the shell cost for the 1,000 sq foot commercial space will not have a large impact on price per unit.) When CHOM applied for capital subsidy in 2019, the cost per unit was \$186,893, so the project has experienced a 15% construction cost escalation over 1 year. This 15% cost escalation is consistent with construction cost increases across all applicants and appears to reflect market conditions.

There are several factors which contribute to the increase in costs since last year:

- 1) On-going steep price inflation in construction due to tight labor markets in construction trades;
- 2) Prevailing wage requirements associated with TIF funding;
- 3) GC uncertainty about pricing due to COVID pandemic.

Though these per unit costs are high, they are comparable to other new construction per unit costs this year.

Soft Costs:

Soft costs are typical for a deal of this scale with LIHTC financing, and includes costs for Passive House certification. Reserves are budgeted consistent with the requirements of LIHTC underwriting, and includes a prefunded replacement reserve of \$99,392. Developer fee is modest at 5.89% of total development costs (excluding reserves and developer fee).

Contingency:

Both hard and soft cost contingency are under budgeted. The hard cost contingency is just below minimum industry standard of 5%. Soft cost budget of \$25,000 is only 1% of soft costs. The risk of inadequate contingencies is partially offset by the fairly advanced level of predevelopment – many third party reports, for instance, are in hand. It is further offset by the overall financial strength of the developer.

Acquisition:

CHOM is working with the City to lease the lot at 83 Middle St which is currently used for surface parking. The proposed lease fee is \$99 for a 99 year lease. This subsidized lease fee is an integral part of the subsidy package to achieve affordability. The donated adjacent lot significantly strengthens the design of the project.

Operating Budget & 20 Year Cashflow Projection

Project Income:

The 50 unit proforma includes 30 units at 50% AMI (25 of which will be supported with Project Based Vouchers) and 20 units at 60% AMI. Rents are set to the maximum allowable LIHTC rent.

Eleven units in this project which will be designated for “Long Term Stayers” in the City’s homeless system. CHOM has a demonstrated track record of successful integration of formerly homeless individuals into affordable senior housing projects, including Danforth on High in Portland.

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Operating Expense

The pro forma reflects a \$7,954 per unit operating cost. While other expenses are consistent with industry standards, insurance continues to be budgeted extraordinarily high. At \$882 per unit, it is more than double comparable applicants. Utility expense of \$1,096 per unit seems ample for Passive House. Maintenance is also ample at \$1,948 per unit, which is on the high end for new construction senior housing.

20 Year Cashflow & Debt Service Coverage Ratio (DSCR)

With the requested 75% TIF, the project shows a 1.26 DSCR in year one, rising to 1.33 in year 11, and falls slightly to 1.32 in year 20. For a project with half the units subsidized with Project Based Vouchers and very limited conventional debt, there is no reason to carry such a high DSCR. At the requested TIF level, the project appears over subsidized.

With a 50% TIF, the project shows a 1.18 DSCR in year one, rising to 1.23 in year 11 and falls slightly to 1.20 in year 20. These are acceptable ratios which balance the long-term stability of the property with the City's interest to provide the appropriate level of subsidy.

Developer Financials

Impact of Pandemic: As with other applicants in this round, CHOM has not seen a significant drop in rent revenue through June. It has responded to COVID-19 with changes in operations which may slightly increase operating costs (PPE) but will not dramatically impact their financial position.

CHOM, Inc.:

CHOM has submitted their audit for FY 2019, which ends June 30th. Looking only at CHOM Inc., the developer ended FY 2019 in good and improving financial condition, with liquid assets of \$861,817 and current liabilities of \$210,173. The resulting Quick Ratio (or "Acid Test") of 4.1 is very healthy. Management statements through end of April 2020 (first 3 quarters of FY2020) show liquid assets of \$965,428 and current liabilities of \$398,071 for a healthy Quick Ratio of 2.4. However, that snapshot significantly understates CHOM's cash position. The current liabilities includes a Payroll Protection loan which is likely to be forgiven. If one treats the (very likely to be fully forgiven) grant liability as if it were cash, the Quick Ratio is an even stronger 4.7. CHOM Inc's net assets have been restated to correct for an understatement of unrestricted assets. FY19 net assets were \$9,563,378, up 45% from FY18. CHOM Inc. management statements show further growth of over \$400,000 in net assets in FY2020.

CHOM Consolidated Entities:

The audit of CHOM Inc excludes 14 partnerships wholly controlled by CHOM Inc, and in so doing, dramatically understates the functional size (and the functional financial risks) of CHOM. The consolidated net assets controlled by CHOM were over \$42 million at the end of FY2019 (up from \$35 million at the end of FY 2018 and \$23 million in 2015). Looking at the 2019 Quick Ratio for the consolidated entity, we see liquid assets of \$2.4 million and current liabilities of \$5.3 million for an alarming Quick Ratio of .45. This is entirely due to short term liabilities within one of the 14 partnerships -- NFG Housing, which had Accounts Payable of \$1.8 million and a Current Portion of Long Term Debt of \$2,366,699. This was due to the timing of conversion from short term construction loan to permanent debt and a miscategorization of permanent debt in the June 2019 CHOM Inc. audit. The NFG

Housing entity audit for 12/31/2019 shows this issue fully resolved, with a slender Quick Ratio of 1.2, which is acceptable given the larger context of CHOM's overall financial health. As with the much smaller CHOM Inc, CHOM + consolidated entities is in good and improving financial condition.

CHOM Financial Reporting:

CHOM has submitted consolidated audited financials for 2015, 2016 and 2017. Consistent with Generally Accepted Accounting Principles (GAAP), these consolidated audits reflect both CHOM Inc and all its wholly controlled partnerships. In 2018, CHOM's auditor changed its policy about how the partnerships would be reflected, which would have resulted in additional audit expense to meet GAAP standards. Instead of incurring the additional audit expense, CHOM chose not to have their consolidated statements audited. The CHOM Inc. 2018 and 2019 audits are qualified audits, because excluding the wholly controlled partnerships from the audit is inconsistent with GAAP. Each partnership is still individually audited, and the consolidated material reflecting those individual partnership audits is included with the CHOM Inc. audit, but reflected as "unaudited."

CHOM has made a financial management choice which reduces audit expense at the cost of compliance with GAAP and transparency about their financial situation. While each entity is audited, it is no longer possible to see an audit which reflects the full picture of CHOM's assets and liabilities. In fact, CHOM Inc. and CHOM including its consolidated entities are both in strong financial health. Plenty strong enough to afford the additional audit expense which will transparently reflect their actual financial position to the public, consistent with GAAP. The need for a consolidated audit is only further demonstrated by the NFG Housing audit misstatement which, while it did not reflect an actual problem in the project's finances, does demonstrate how the absence of a consolidated audit can lead to an incomplete, and potentially inaccurate, picture of CHOM's financial health.

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward.

Recommendations

I recommend no more than a 50% TIF for 30 years, with the following conditions:

Prior to loan closing, satisfactory review of:

- 1) CHOM Inc current audit and most recent quarterly management financial statements; and
- 2) All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Project Operating Pro Forma

Date	July 18, 2020
Project Name	83 Middle St
Project Address	
Developer/Sponsor	CHOM

Rental Income

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Per Unit Net Rent Per Sq Ft	Total Monthly Net Income	Total Annual Net Rent
0 BR	13		0	50%	\$878	\$35		\$843	#DIV/0!	\$10,959	\$131,508
0 BR	10		0	60%	\$1,054	\$35		\$1,019	#DIV/0!	\$10,190	\$122,280
1 BR	16		0	50%	\$941	\$46		\$895	#DIV/0!	\$14,320	\$171,840
1 BR	7		0	60%	\$1,129	\$46		\$1,083	#DIV/0!	\$7,581	\$90,972
2 BR	1		0	50%	\$1,128	\$60		\$1,068	#DIV/0!	\$1,068	\$12,816
2 BR	3		0	60%	\$1,354	\$60		\$1,294	#DIV/0!	\$3,882	\$46,584
3 BR			0	50%				\$0	#DIV/0!	\$0	\$0
3 BR			0	60%				\$0	#DIV/0!	\$0	\$0
4 BR			0	50%				\$0	#DIV/0!	\$0	\$0
4 BR			0	60%				\$0	#DIV/0!	\$0	\$0
Other			0	50%				\$0	#DIV/0!	\$0	\$0
Other			0	60%				\$0	#DIV/0!	\$0	\$0
Total:	50		0							\$48,000	\$576,000

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

Note: Year 1 is the first full year of stabilized operations

	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Sch. Gross Income - Residential	\$576,000	\$11,520	\$587,520	\$599,270	\$611,256	\$623,481	\$635,951	\$648,670	\$661,643	\$674,876	\$688,373
Vacancy Loss 5.0%	(\$28,800)	(\$576)	(\$29,376)	(\$29,964)	(\$30,563)	(\$31,174)	(\$31,798)	(\$32,433)	(\$33,082)	(\$33,744)	(\$34,419)
Other income: PBV rent different	\$78,474	\$1,569	\$80,043	\$81,644	\$83,277	\$84,943	\$86,641	\$88,374	\$90,142	\$91,945	\$93,783
Other Income: TIF	\$37,000	\$740	\$37,740	\$38,495	\$39,265	\$40,050	\$40,851	\$41,668	\$42,501	\$43,351	\$44,218
Effective Gross Income	\$662,674	\$13,253	\$675,927	\$689,446	\$703,235	\$717,299	\$731,645	\$746,278	\$761,204	\$776,428	\$791,957

Administrative											
Management Fee	\$35,254	\$705	\$36,312	\$37,401	\$38,523	\$39,679	\$40,869	\$42,095	\$43,358	\$44,659	\$45,998
Management Charges		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Marketing Expense	\$10,625	\$213	\$10,944	\$11,272	\$11,610	\$11,959	\$12,317	\$12,687	\$13,067	\$13,459	\$13,863
Legal	\$3,000	\$60	\$3,090	\$3,183	\$3,278	\$3,377	\$3,478	\$3,582	\$3,690	\$3,800	\$3,914
Audit & Accounting	\$8,575	\$172	\$8,832	\$9,097	\$9,370	\$9,651	\$9,941	\$10,239	\$10,546	\$10,863	\$11,188
Admin Other	\$28,080	\$562	\$28,922	\$29,790	\$30,684	\$31,604	\$32,552	\$33,529	\$34,535	\$35,571	\$36,638
Total Administrative	\$85,534	\$1,711	\$88,100	\$90,743	\$93,465	\$96,269	\$99,157	\$102,132	\$105,196	\$108,352	\$111,602

Supportive Services	\$14,500	\$290	\$14,935	\$15,383	\$15,383	\$15,845	\$15,845	\$16,320	\$16,320	\$16,809	\$16,809
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Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$17,598	\$352	\$18,126	\$18,670	\$19,230	\$19,807	\$20,401	\$21,013	\$21,643	\$22,293	\$22,961
Electric	\$21,598	\$432	\$22,246	\$22,913	\$23,601	\$24,309	\$25,038	\$25,789	\$26,563	\$27,360	\$28,180
Water / Sewer	\$15,598	\$312	\$16,066	\$16,548	\$17,044	\$17,556	\$18,082	\$18,625	\$19,184	\$19,759	\$20,352
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$54,794	\$1,096	\$56,438	\$58,131	\$59,875	\$61,671	\$63,521	\$65,427	\$67,390	\$69,411	\$71,494

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$10,250	\$205	\$10,558	\$10,874	\$11,200	\$11,536	\$11,883	\$12,239	\$12,606	\$12,984	\$13,374
Janitorial		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Trash Removal	\$10,376	\$208	\$10,687	\$11,008	\$11,338	\$11,678	\$12,029	\$12,389	\$12,761	\$13,144	\$13,538
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$12,000	\$240	\$12,360	\$12,731	\$13,113	\$13,506	\$13,911	\$14,329	\$14,758	\$15,201	\$15,657
Maintenance	\$17,500	\$350	\$18,025	\$18,566	\$19,123	\$19,696	\$20,287	\$20,896	\$21,523	\$22,168	\$22,834
Maintenance Contracts	\$30,000	\$600	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Other	\$17,250	\$345	\$17,768	\$18,301	\$18,850	\$19,415	\$19,997	\$20,597	\$21,215	\$21,852	\$22,507
Total Maintenance	\$97,376	\$1,948	\$100,297	\$103,306	\$106,405	\$109,598	\$112,885	\$116,272	\$119,760	\$123,353	\$127,054

Taxes & Insurance											
Real Estate Taxes or PILOT	\$74,000	\$1,480	\$76,220	\$78,507	\$80,862	\$83,288	\$85,786	\$88,360	\$91,011	\$93,741	\$96,553
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$44,100	\$882	\$45,423	\$46,786	\$48,189	\$49,635	\$51,124	\$52,658	\$54,237	\$55,865	\$57,540
Other	\$4,900	\$98	\$5,047	\$5,198	\$5,354	\$5,515	\$5,680	\$5,851	\$6,026	\$6,207	\$6,393
Total Taxes & Insurance	\$123,000	\$2,460	\$126,690	\$130,491	\$134,405	\$138,438	\$142,591	\$146,868	\$151,274	\$155,813	\$160,487

Replacement Reserves	\$22,500	\$450	\$23,175	\$23,870	\$24,586	\$25,324	\$26,084	\$26,866	\$27,672	\$28,502	\$29,357
Operating Reserves		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$397,704	\$7,954	\$409,635	\$421,924	\$434,120	\$447,144	\$460,083	\$473,885	\$487,612	\$502,241	\$516,804
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Net Operating Income	\$264,970	\$5,299	\$266,292	\$267,522	\$269,114	\$270,155	\$271,562	\$272,393	\$273,591	\$274,187	\$275,153
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Debt Service											
Maine Housing Lien	\$212,700	\$4,254	\$212,700	\$212,700	\$212,700	\$212,700	\$212,700	\$212,700	\$212,700	\$212,700	\$212,700
AHP amortizng loan	\$12,142	\$243	\$12,142	\$12,142	\$12,142	\$12,142	\$12,142	\$12,142	\$12,142	\$12,142	\$12,142
Other: Partnership Fees		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$224,842	\$4,497	\$224,842	\$224,842	\$224,842	\$224,842	\$224,842	\$224,842	\$224,842	\$224,842	\$224,842

Cash Flow (after Must Pay Debt)	\$40,128	\$803	\$41,450	\$42,680	\$44,272	\$45,313	\$46,720	\$47,551	\$48,749	\$49,345	\$50,311
Debt Service Coverage Ratio	1.18		1.18	1.19	1.20	1.20	1.21	1.21	1.22	1.22	1.22

Cash Flow Debt Payments											
City of Portland	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$40,128	\$803	\$41,450	\$42,680	\$44,272	\$45,313	\$46,720	\$47,551	\$48,749	\$49,345

Retained Cash Flow % 10%

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Income										
Sch. Gross Income - Residential	\$702,141	\$716,184	\$730,507	\$745,117	\$760,020	\$775,220	\$790,725	\$806,539	\$822,670	\$839,123
Vacancy Loss 5.0%	(\$35,107)	(\$35,809)	(\$36,525)	(\$37,256)	(\$38,001)	(\$38,761)	(\$39,536)	(\$40,327)	(\$41,133)	(\$41,956)
Other income (laundry)	\$95,659	\$97,572	\$99,524	\$101,514	\$103,545	\$105,615	\$107,728	\$109,882	\$112,080	\$114,322
Supportive Services Funding	\$45,103	\$46,005	\$46,925	\$47,863	\$48,821	\$49,797	\$50,793	\$51,809	\$52,845	\$53,902
Effective Gross Income	\$807,796	\$823,952	\$840,431	\$857,239	\$874,384	\$891,872	\$909,709	\$927,903	\$946,461	\$965,391

Administrative										
Advertising	\$47,378	\$48,800	\$50,264	\$51,772	\$53,325	\$54,925	\$56,572	\$58,269	\$60,018	\$61,818
Office Payroll & Benefits	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Office Supplies, Phone, Misc.	\$14,279	\$14,707	\$15,149	\$15,603	\$16,071	\$16,553	\$17,050	\$17,562	\$18,088	\$18,631
Mngr or Super Rent Free Unit	\$4,032	\$4,153	\$4,277	\$4,406	\$4,538	\$4,674	\$4,814	\$4,959	\$5,107	\$5,261
Audit & Accounting	\$11,524	\$11,870	\$12,226	\$12,593	\$12,970	\$13,360	\$13,760	\$14,173	\$14,598	\$15,036
Admin Other	\$37,737	\$38,869	\$40,035	\$41,236	\$42,474	\$43,748	\$45,060	\$46,412	\$47,804	\$49,238
Total Administrative	\$114,951	\$118,399	\$121,951	\$125,610	\$129,378	\$133,259	\$137,257	\$141,375	\$145,616	\$149,984

Supportive Services	\$17,314	\$17,833	\$18,368	\$18,919	\$19,487	\$20,071	\$20,674	\$21,294	\$21,933	\$22,591
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Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$23,650	\$24,360	\$25,091	\$25,843	\$26,619	\$27,417	\$28,240	\$29,087	\$29,959	\$30,858
Gas	\$29,026	\$29,897	\$30,794	\$31,717	\$32,669	\$33,649	\$34,658	\$35,698	\$36,769	\$37,872
Water / Sewer	\$20,962	\$21,591	\$22,239	\$22,906	\$23,593	\$24,301	\$25,030	\$25,781	\$26,555	\$27,351
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$73,639	\$75,848	\$78,123	\$80,467	\$82,881	\$85,367	\$87,928	\$90,566	\$93,283	\$96,082

Development Budget with Permanent Sources

Date 7/18/2020
Project Name 83 Middle St
Project Address _____
Developer/Sponsor CHOM

Total Units 44
Total Square Feet 45,582 includes 2,000 commercial & 3,672 parking

Total Units 50
45688

	Initial Application Values			July 2020 TIF Application Values			Change	
	Total	Per Unit	Per Sq Ft	Total	Per Unit	Per Sq Ft	Capital Ap to JulyTIF Ap	
Sources of Funds								
Permanent Financing - Maine Housing Amortizing Lien	\$1,290,000	\$29,318	\$28	\$3,544,997	\$70,900	\$78	\$ 2,254,997	175%
Permanent Financing - Maine Housing Subsidy	\$1,755,115	\$39,889	\$39	\$1,000,000	\$20,000	\$22	\$ (755,115)	-43%
Equity (LIHTC/tenant contributions)	\$7,108,274	\$161,552	\$156	\$8,045,574	\$160,911	\$176	\$ 937,300	13%
AHP Amortizing Loan	\$0	\$0	\$0	\$240,000	\$4,800	\$5	\$ 240,000	#DIV/0!
AHP Subsidy	\$330,000	\$7,500	\$7	\$650,000	\$13,000	\$14	\$ 320,000	97%
City of Portland Capital Subsidy				\$530,000				
GAP	\$0	\$0	\$0	\$0	\$10,600	\$12	\$ 530,000	#DIV/0!
Total Sources of Funds	\$10,483,389	\$238,259	\$230	\$14,010,571	\$280,211	\$307	\$ 3,527,182	34%

Uses of Funds

Hard Costs								
Site Improvements	\$100,000	\$2,273	\$2	\$853,255	\$17,065	\$19	\$ 753,255	753%
Rehabilitation		\$0	\$0		\$0	\$0		
New Construction	\$7,731,744	\$175,721	\$170	\$8,988,325	\$179,767	\$197	\$ 1,256,581	16%
Contractor's Profit, Overhead, & Gen. Requirements 8.6%		\$0	\$0	\$844,428	\$16,889	\$18	\$ 844,428	#DIV/0!
Hazardous Materials abatement (if contracted separately)		\$0	\$0	\$0	\$0	\$0	\$ -	#DIV/0!
Demolition Cost (if contracted separately)		\$0	\$0	\$0	\$0	\$0	\$ -	#DIV/0!
Bond Premium		\$0	\$0	\$106,496	\$2,130	\$2	\$ 106,496	#DIV/0!
Other		\$0	\$0		\$0	\$0		
Hard Cost Contingency (% of hard costs) 4.99%	\$391,587	\$8,900	\$9	\$538,575	\$10,772	\$12	\$ 146,988	38%
Total Hard Costs	\$8,223,331	\$186,894	\$180	\$11,331,079	\$226,622	\$248	\$ 3,107,748	38%

Soft Costs								
Building Permit & Fees	\$79,935	\$1,817	\$2	\$96,000	\$1,920	\$2	\$ 16,065	20%
Survey & Engineering	\$20,000	\$455	\$0	\$130,000	\$2,600	\$3	\$ 110,000	550%
Design & Permitting (% of const exp) 5.9%	\$440,000	\$10,000	\$10	\$520,000	\$10,400	\$11	\$ 80,000	18%
Borrower Legal (all closings, excluding syndication legal)	\$81,500	\$1,852	\$2	\$70,000	\$1,400	\$2	\$ (11,500)	-14%
Title & Recording	\$14,000	\$318	\$0	\$7,900	\$158	\$0	\$ (6,100)	-44%
Accounting	\$10,500	\$239	\$0	\$10,500	\$210	\$0	\$ -	0%
Construction Period Taxes	\$80,000	\$1,818	\$2	\$37,013	\$740	\$1	\$ (42,987)	-54%
Construction Period Insurance		\$0	\$0	\$37,012	\$740	\$1	\$ 37,012	#DIV/0!
Other: FF&E	\$50,000	\$1,136	\$1	\$25,000	\$500	\$1	\$ (25,000)	-50%
Other: Passive Certification, Archeology Survey, Traffic Plan, misc		\$0	\$0	\$72,866	\$1,457	\$2	\$ 72,866	#DIV/0!
Total Soft Costs	\$775,935	\$17,635	\$17	\$1,006,291	\$20,126	\$22	\$ 230,356	30%

Financing Costs								
Construction Loan Origination Fees	\$28,000	\$636	\$1	\$30,000	\$600	\$1	\$ 2,000	7%
Construction Period Interest	\$110,320	\$2,507	\$2	\$91,705	\$1,834	\$2	\$ (18,615)	-17%
Lender Inspection Fees	\$7,500	\$170	\$0		\$0	\$0		
Letter of Credit Fee		\$0	\$0		\$0	\$0		
Permanent Loan Fee (various Maine Housing fees)	\$98,500	\$2,239	\$2	\$73,900	\$1,478	\$2	\$ (24,600)	-25%
Construction Lender Legal	\$20,000	\$455	\$0		\$0	\$0		
Other		\$0	\$0	\$32,500	\$650	\$1	\$ 32,500	#DIV/0!
Total Financing Costs	\$264,320	\$6,007	\$6	\$228,105	\$4,562	\$5	\$ (36,215)	-14%

Miscellaneous								
Market Survey ("3rd Party Reports")	\$20,000	\$455	\$0	\$6,000	\$120	\$0	\$ (14,000)	-70%
Appraisal		\$0	\$0	\$8,000	\$160	\$0	\$ 8,000	#DIV/0!
Environmental Engineering	\$10,000	\$227	\$0	\$4,000	\$80	\$0	\$ (6,000)	-60%
LIHTC Fees -- prepaid monitoring	\$44,000	\$1,000	\$1	\$125,497	\$2,510	\$3	\$ 81,497	185%
Other: Commissioning		\$0	\$0		\$0	\$0		
Relocation Costs	\$0	\$0	\$0		\$0	\$0		
Other: Construction Management	\$20,000	\$455	\$0		\$0	\$0		
Soft Cost Contingency (% of soft costs excl Dev Fee) 1.05%	\$10,000	\$227	\$0	\$25,000	\$500	\$1	\$ 15,000	150%
Total Miscellaneous:	\$104,000	\$2,364	\$8	\$168,497	\$3,370	\$9	\$ 64,497	62%

Acquisition								
Acquisition: Buildings		\$0	\$0		\$0	\$0		
Acquisition: Land (99 year lease)	\$99	\$2	\$0	\$99	\$2	\$0	\$ -	0%
Acquisition: Legal		\$0	\$0	\$10,000	\$200	\$0	\$ 10,000	#DIV/0!
Other		\$0	\$0		\$0	\$0		
Total Acquisition	\$99	\$2	\$0	\$10,099	\$202	\$0	\$ 10,000	10101%

Reserves and Developer Fee								
Operating Deficit Escrow	\$215,172	\$4,890	\$5	\$311,273	\$6,225	\$7	\$ 96,101	45%
Prefunded Replacement Reserve	\$77,317	\$1,757	\$2	\$99,382	\$1,988	\$2	\$ 22,065	29%
Taxes & Insurance Escrow	\$112,032	\$2,546	\$2	\$88,450	\$1,769	\$2	\$ (23,582)	-21%
Developer Overhead	\$710,000	\$16,136	\$16	\$750,000	\$15,000	\$16	\$ 40,000	6%
Developer Profit		\$0	\$0		\$0	\$0		
Rent Up Reserve & Marketing	\$1,182	\$27	\$0	\$0	\$0	\$0	\$ (1,182)	-100%
Other: Working Capital	\$0	\$0	\$0	\$17,180	\$344	\$0	\$ 17,180	#DIV/0!
Total Reserves and Developer Fee	\$1,115,703	\$25,357	\$24	\$1,266,285	\$25,326	\$28	\$ 150,582	13%

Total Uses of Funds	\$10,483,388	\$238,259	\$236	\$14,010,356	\$280,207	\$312	\$ 3,526,968	34%
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Developer Fee Analysis: Total Fees: \$710,000
(excluding reserves & developer fee) Percent TDC: 7.58%

Total Fees: \$750,000
Percent of TDC: 5.89%

Cost per unit increase: 18%
Cost per sq ft increase: 32%

Cost p
Cost p

CITY OF PORTLAND
83 MIDDLE STREET
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Date: , 2020

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83 Middle Street
Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 83 Middle Street in Portland. The area includes approximately .2183 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 83 Middle Street Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Middle Street Housing Partners, L.P., its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 83 Middle Street involves the construction of approximately .2183 acres, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of one five story building to be built which will contain a total of 50

(fifty) units of rental housing, a first-floor commercial space, and a below grade parking garage. The 50 units consist of 23 (twenty-three) studios, 23 (twenty-three) one-bedroom, and 4 (four) two-bedroom units with 20 (twenty) of those units affordable to households at or below 50% of the area median income and 30 (thirty) of those units affordable to households at or below 60% of the area median income. The zoning for the project assures that this number of units and this affordability objective will be met.

The 83 Middle Street project is projected to have a total local increased assessed valuation at build out of approximately \$3,~~402,600,000,000~~ based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will generate approximately a thirty year annual average of \$~~51,97668,740~~ in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$~~51,97668,740~~ (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay Qualified Reimbursable Costs, as defined in the Credit Enhancement Agreement, for the project at 83 Middle Street. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No relocation is necessary as a result of this project. The property is currently used as a parking lot.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City’s Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .2183 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 694.739 acres) is approximately 5.61% of total acreage in the City. The 694.739 acres includes 451.01 acres two exempt districts—a transit oriented district and a downtown/transit oriented district—which, when subtracted from the 694.739 acres is 243.729, which is 1.968% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area all existing affordable housing development districts in the City and this proposed affordable housing development district is 9.444 acres or 0.076% of the total acreage of the City, which does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto, and the Original Assessed Value of all existing and this proposed affordable housing development district within the City is \$1,824,610 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 (thirty) years, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 100% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 83 Middle Street Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of the end of the City's Fiscal Year 2020, which was March 31, 2020. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is ~~5075%~~ (FiftySeventy-five percent). Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement, which will be the entire amount of the ~~5075%~~ of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be ~~5075~~% of the Increased Assessed Value. Accordingly, ~~fiftyseventy-five~~ percent (~~5075~~%) of the Tax Increment Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement ~~fiftyseventy-five~~ percent (~~5075~~%) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 83 Middle Street project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on [enter date notice was published in the paper], a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2020. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on [enter date of city council meeting] designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Jon P. Jennings City Manager,
City of Portland, ME

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 83 Middle Street Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **Middle Street Housing Partners, L.P.**, a Maine Limited Partnership with a mailing address of One City Center, Fourth Floor, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of fifty (50) units of rental housing located at 83 Middle Street, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of fifty (50) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the number of the units in the Development.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years at least twenty (20) of the units will be occupied by households with incomes at or below fifty percent (50%) of the area median income, and thirty (30) of the units will be occupied by households with incomes at or below sixty percent (60%) of the area median income (collectively referred to as the "Low Income Units").
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, ("Section 42") and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the "Determination").
 - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household's income may exceed the Applicable Income Limit, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next

Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.

- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12th) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:

- i. For a unit without a separate bedroom, one individual.
- ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.

- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
- 4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
 - 5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request

for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications.** This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability.** The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns.** This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer with a copy to Counsel, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor.** This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ **[construction lender and any other entities providing financing will also be parties]** dated _____, _____ to be recorded in the Cumberland County Registry of Deeds herewith.

Signature page follows.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2020.

CITY OF PORTLAND, ME

Witness

By: _____
Jon P. Jennings
Its City Manager

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

MIDDLE STREET HOUSING PARTNERS, L.P.
By: CHOM Development Corporation, Its General
Partner

Witness

By: _____

Name:

Its:

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named, of CHOM Development Corporation, General Partner of Middle Street Housing Partners, L.P. and acknowledged the foregoing instrument to be free act and deed in said capacity and the free act and deed of said partnership and corporation.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 17, 2020

SUBJECT: **Order 16-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Middle Street Housing Partners, L.P. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Justin Costa, Chair of the Economic Development Committee
Jill C. Duson, Chair of the Housing Committee

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: Yes The project is requesting 9% Low Income Housing Tax Credits (LIHTC) with MaineHousing. In order to maximize the projects competitiveness in the LIHTC application, the TIF application must be filed with MaineHousing no later than August 25. A notice of public hearing must be filed 10 days before the date of the August 3 public hearing.

PRESENTATION: Mary Davis will be available for questions.

I. SUMMARY

This is a companion order to Order -19/20 above.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 15-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Economic Development Committee voted (4-0) to forward this item to the City Council with a

recommendation for passage.

VIII. LIST ATTACHMENTS

1. 83 Middle Street Affordable Housing Credit Enhancement 7.13.2020
2. 83 Middle St CEA clean for Council 072020

Prepared by:

Mary Davis, Division Director

Date: 7/17/2020

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 AND AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE 83 MIDDLE STREET AFFORDABLE HOUSING CREDIT ENHANCEMENT
AGREEMENT
WITH MIDDLE STREET HOUSING PARTNERS, L.P.**

ORDERED, that the credit enhancement agreement between the City of Portland and Middle Street Housing Partners, L.P. related to the 83 Middle Street Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

**MIDDLE STREET
HOUSING PARTNERS,
L.P.**

DATED: _____, 2020

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EXHIBITS
Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Middle Street Housing Partners, L.P., a Maine Limited Partnership (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *83 Middle Street Municipal Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on August 3, 2020, Order _____ - 19/20 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by Maine Housing] and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the

District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means ~~Sixty-Two Thousand Four Two Hundred Eighty-One One Hundred~~ Dollars (\$~~62,400~~~~281,100~~), which is the taxable assessed real property value of the District as of March 31, 2020 (April 1, 2019).

“Non-Captured Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the difference between the Increased Assessed Value and the Captured Assessed Value.

“Project” means the planned fifty (50) unit low-income housing project to be named 83 Middle Street located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II
AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND
AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the 83 Middle Street Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Project Cost Account which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Project Cost Account is pledged to and

charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2020 and continuing thereafter through the Tax Year beginning April 1, 2049 (collectively the “CEA Years”), the City shall retain in the District ~~fiftyseventy-five~~ percent (~~5075~~%) of the Increased Assessed Value as Captured Assessed Value. The remaining ~~fiftytwenty-five~~ percent (~~5025~~%) of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value. The remaining ~~5025~~% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to ~~fiftyseventy-five~~ percent (~~5075~~%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such ~~fiftyseventy-five~~ percent (~~5075~~%) portion into the Project Cost Account. The remaining ~~fiftytwenty-five~~ percent (~~5025~~%) portion of the property tax payment constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3), subject to the payment obligations set forth in Article III below.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in the Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into the Project Cost Account under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer, subject to the payment obligations set forth in Article III below.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain due to the City from and unpaid by Developer, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer and stormwater fees, ambulance fees, or assessments, remain unpaid, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real or personal property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide financial statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state

prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into the Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to the Project Cost Account and its obligation to make payment out of the Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Project Cost Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or

encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into the Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.

(h) Any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director’s unconditional approval of the City’s designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2020, and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to

Developer in the event that Developer does not receive a certificate of occupancy for the Project by June 30, 2023.

Section 6.2. Termination by City.

Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination, except that in the event that the foreclosing lienholder agrees (for itself, its successors, assigns, and transferees) to be bound by the terms of this Agreement and that the Declaration (as described in Section 8.15 hereof) shall remain in full force and effect, then this Agreement shall remain in full force and effect and City shall have no right to terminate this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution, Maine State Housing Authority, or other public and private lending institutions and organizations to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any

portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

Middle Street Housing Partners, L.P.
c/o Community Housing of Maine, Inc.
One City Center
Fourth Floor
Portland, Maine 04101

With a copy to:

Drummond Woodsum
Attn: Lisa Magnacca
84 Marginal Way
Suite 600
Portland, Maine 04101-2480

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may file suit to resolve the dispute in the Superior Court located in Cumberland County, State of Maine, which the parties agree shall have exclusive jurisdiction for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder. This clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the units in the Project as required by the Development Program, Maine State Housing Authority and applicable laws,

regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____
Name: Jon P. Jennings
Its City Manager, Duly Authorized by the City
Council at its meeting on August 3, 2020

WITNESS:

**MIDDLE STREET HOUSING PARTNERS,
L.P.
BY: CHOM Development Corporation, Its
General Partner**

By: _____
Name:
Its

EXHIBIT 1

Copy of District Map

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 17-20/21 Designating the 200 Valley Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
Justin Costa, Chair of the Economic Development Committee

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt Maine Housing contingent upon a reduction in operating costs through a tax increment financing program. In order for the developer to maximize the projects competitiveness in the Low Income Housing Tax Credit application, the TIF application must be filed with Maine State Housing Authority no later than August 25, 2020. A Notice of Public Hearing must be published 10 days before the August 35 hearing date.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Avesta Housing Development Corporation (AHDC) is proposing to construct 60 units of affordable housing on a site they own located at 200 Valley Street. AHDC is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$136,409 annually over 30 years.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 60 apartment units on a site they own located at 200 Valley Street and is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with the cost of construction of the project.

The project will include 11 studios, 25 one-bedroom, 14 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. The units will have affordability restrictions through the AHTIF Program.

The site is in the B-2 zone, and is within 100' of the Western Promenade, requiring review by Historic Preservation Staff. Staff found; the development is not located in a historic district, historic landscape district or City designated landmark; the development is adjacent to a historic landscape district, but not adjacent to a historic district or a historic City designated landmark.

AHDC has requested two forms of financial assistance: \$595,000 in Affordable Housing Development funding and AHTIF financing. If approved, the AHTIF financing would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$136,409 with an estimated total of \$4,092,269 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$45,470, with an estimated total of \$1,364,090, will be general fund revenue. The proposed project will be taxable with an estimated annual assessment of \$6.2 million and estimated annual tax of \$144,500 at the current FY20 millage rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with MaineHousing contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Approval of this AHTIF request is key to making the project application competitive in the Low Income Housing Tax Credit application with MaineHousing.

The City Council must:

- (1) authorize the creation of the AHTIF District; and
- (2) approve the Credit Enhancement Agreement

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establish an Affordable Housing TIF District to support the development of 50 new units of rental housing.

Increase access to rental and ownership housing that is safe and affordable for working and low income families.

V. FINANCIAL IMPACT

When completed, this project's new building assessed value is estimated at \$6.2 million, which would yield \$144,500 in annual assessed property value at the current FY20 millage rate. Seventy-five (75%) percent of the increased tax revenue (approximately \$4,092,269) will be captured revenue returned to the developer. The remaining 25% (approximately \$1,364,090) will be general fund revenue.

A Credit Enhancement Agreement will return approximately \$4,092,269 in captured revenue to the project (averaged at \$136,409 annually over thirty years) to off-set project operating costs. The proposed project will be taxable.

Total development costs are estimated at \$14.0 million. At full build out, the development is projected to pay an average \$136,409 annually in projected new taxes captured. Non-captured general fund revenues are

estimated at an average \$45,470 annually over thirty years. In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$37,464+, or \$1,123,934+ over the life of the district.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. Final loan terms will be as noted and subject to the conditions in the attached financial underwriting analysis.

TIF projections and proposed district map are included in the backup to this memo.

VI. STAFF ANALYSIS AND BACKGROUND

Public Benefits: In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 60 units of rental housing, eighty percent (80%) of which will be affordable to households at or below sixty percent (60%) of the area median income.

Additionally, the TIF will create tax sheltering benefits estimated at an average of \$37,464+ per year, or \$1,123,934+ over the life of the district.

VII. RECOMMENDATION

Staff is requesting the City Council (1) approve the establishment of the 200 Valley Street Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Community Housing of Maine, Inc. and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

VIII. LIST ATTACHMENTS

1. Order Designating Affordable Housing TIF 200 Valley for 7.13.2020
2. Attachments Council 7.13.20 200 Valley Street (1)
3. 200 Valley DEVELOPMENT PROGRAM Clean for Council 070120
4. 200 Valley DEC OF COV Clean for Council 070120

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 DESIGNATING THE 200 VALLEY STREET AFFORDABLE HOUSING
DEVELOPMENT DISTRICT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Avesta Valley Street, LP, intends to construct certain improvements within the 200 Valley Street Affordable Housing Development Tax Increment Financing (“TIF”) District, including 60 rental units of affordable housing; and

WHEREAS, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 200 Valley Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the 200 Valley Street Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 200 Valley Street Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 200 Valley Street Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “200 Valley Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “200 Valley Street Affordable Housing Development District” as more particularly described in said Development Program is hereby designated

as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “200 Valley Street Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “200 Valley Street Affordable Housing Development District” on behalf of the municipal legislative body.



City of Portland 2020 AHTIF Application
Valley Street Apartments | A – Project Summary
April 27, 2020

Avesta Housing is proposing a 60-unit mixed-income family housing development at 200 Valley Street in Portland, ME. Avesta Housing is requesting a 30-year Affordable Housing TIF at 75% of the increased taxable value. The TIF will be utilized to pay operational expenses, is required to meet the minimum debt coverage ratio requirements, and is a critical component of receiving the federal Low Income Housing Tax Credits (LIHTC) needed to finance the project.

Property address	200 Valley Street, Portland, ME <i>Includes parcels addressed as 204 & 210 Valley St and 6 C St</i>
Tax chart, block and lot number	064 F015, 064 F007, 064 F008, 064 F009
Total district acreage	.34 acres (14,964sf)
Zoning designation where district is located, including allowed uses in that zone	Zone: B-2 Allowed Uses: Multifamily housing, among others. See attached for complete list. This project is currently undergoing the site plan approval process with the City of Portland, and we look forward to a project that is compatible with and complementary of the surrounding neighborhood and architecture.
Municipal housing need addressed by the creation of the district and how the district addresses that need	Valley Street Apartments will create 60 homes in the St. John/Valley Street Neighborhood of Portland. This neighborhood has traditionally been home to Portland's workforce, and the recent MaineMed expansion has strengthened the neighborhood's dedication to preserving its identity as a home for people of all income levels who live and work in Portland. Portland is in desperate need of housing for individuals and families living at all income levels. Of the 60 units at Valley Street Apartments, 48 will have income restrictions: 36 will be reserved for households at or below 50% AMI and 12 will be reserved for households at or below 60% AMI. The remaining 12 apartments will be unrestricted market rate units. All units will have the same design features and characteristics, thus promoting economic integration and destigmatizing affordable housing.

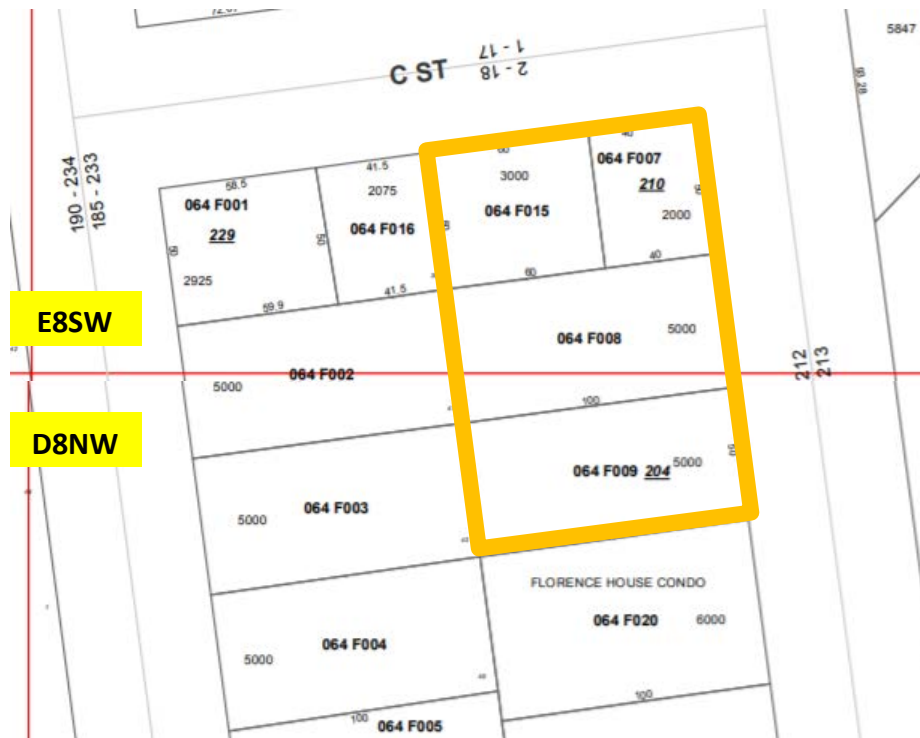
	There is significant, proven need for the sixty homes that would be created at Valley Street Apartments. There are 1093 income-eligible households on the waitlist for the 778 income-restricted apartments Avesta manages in the Greater Portland area, with additional households on preference lists for these properties. Because of the average tenancy length at Avesta's properties, the current households on the waitlist would not secure an apartment through Avesta until 2028. In 2019, over 3,380 households applied for housing and only 359 were able to move in.
Percentage of district acreage that is suitable for residential use, blighted, or in need of rehabilitation/redevelopment	100% of the parcel is suitable for residential use. 204 Valley Street is currently vacant and suitable for redevelopment. A two-story residential building with the address 210 Valley Street is located at the corner of Valley and C Streets and will be demolished prior to redevelopment. 6 C Street is vacant and used as unpaved surface parking.
Number and type of units to be constructed or rehabilitated	A total of 60 rental units: • 11 efficiency, of which 3 are Type A ADA/ADAAG units - o 7 at 50% AMI - o 4 at 60% AMI • 25 one-bedroom, of which 4 are Type A/ADAAG units - o 10 at 50% AMI - o 3 at 60% AMI - o 12 market • 14 two-bedroom, of which 4 are Type A/ADAAG units - o 11 at 50% AMI - o 3 at 60% AMI • 10 three-bedroom, of which 3 are Type A ADA/ADAAG units - o 8 at 50% AMI - o 2 at 60% AMI
Residential and non-residential uses in the district and acreage of each	The proposed development designates the entire parcel for residential use. Valley Street Apartments will have a footprint of approx. 12,300 square feet, including the construction of up to 40 parking spots.
Accessory uses relating to residential use, if any	None.
How housing and facilities in the district will be operated after completion	Avesta Housing Management Corporation (AHMC) will provide property management services for Valley Street Apartments. AHMC is a non-profit affordable housing management company that currently manages over 2700 units in more than 100 different properties.
Description of planned uses of tax increment revenues from the district	Tax increment revenue leverages millions of dollars from federal, state, and private sources to fund the construction of Valley Street Apartments and is critical to a successful LIHTC application and acceptable debt coverage ratios for the building operations. TIF revenue allows the project to carry over \$1.8 million in debt, which is a critical piece of funding for the project to move forward. Current annual property tax: \$5,750.58 Estimated annual property tax after redevelopment: \$132,000



City of Portland 2020 AHTIF Application
Valley Street Apartments | B6 – Tax Map with District Boundaries
April 8, 2020

Note: The parcels in question appear on two tax maps.

- **E8SW:** 064 F015, 064 F007, portion of 064 F008
- **D8NW:** portion of 064 F008, 064 F009



APARTMENTS
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020



1 PERSPECTIVE 1
NTS

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Not for Construction

RYAN SENATORE **ARCHITECTURE**



APARTMENTS

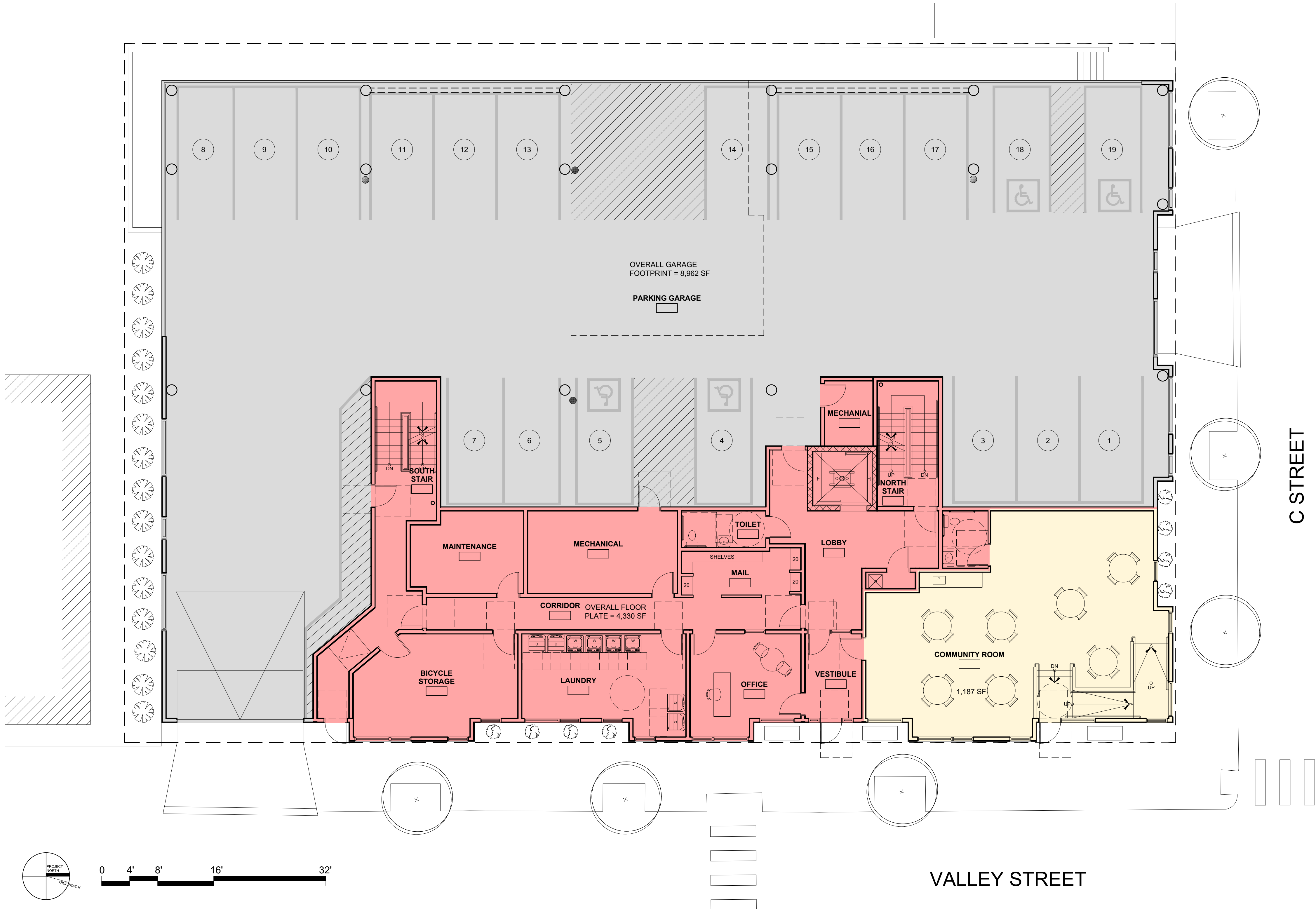
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020

UNIT ACCESSIBILITY SUMMARY		
REGULATION: HUD 504 AND ADA, STANDARD: ADAAG 2010	PROVIDED IN PROJECT	EXCESS UNITS
SCOPING REQUIREMENT: 5% units accessible and additional 2% of units to be hearing and vision impaired		
60 units within building X 5% = 3 units to meet ADAAG	3 ADAAG units	0 Excess
60 units within building X 2% = 1.2 or 2 units to be hearing and vision impaired	2 Hearing and Vision Impaired Units	0 Excess
REGULATION: MAINE HUMAN RIGHTS ACT (MHRA), STANDARD: ANSI A117.1-2009		
SCOPING REQUIREMENT: 10% of Ground Floor units to be Type A		
0 Ground Floor (First Floor total) Units X 10% = 0 or 0 units		
SCOPING REQUIREMENT: 10% of Upper Floor units to be Type A		
60 Upper Floor (2,3,4,5 Floors) Units X 10% = 6 or 6 units	15 Type-A units (includes 3 ADAAG)	
	12 Type-A units total	6 Excess Type-A units total
All the rest to be Type B	45 Type-B units (includes 2 H/V)	
MHRA requires ALL units to either be Type A or B units		
All units to meet Federal Fair Housing Act		

UNIT TYPES - 60 TOTAL UNITS				
SECOND FLOOR	3 EFFICIENCY UNITS	6 ONE BEDROOM UNITS	3 TWO BEDROOM UNITS	3 THREE BEDROOM UNITS
THIRD FLOOR	3 EFFICIENCY UNITS	6 ONE BEDROOM UNITS	3 TWO BEDROOM UNITS	3 THREE BEDROOM UNITS
FOURTH FLOOR	3 EFFICIENCY UNITS	6 ONE BEDROOM UNITS	3 TWO BEDROOM UNITS	3 THREE BEDROOM UNITS
FIFTH FLOOR	2 EFFICIENCY UNITS	7 ONE BEDROOM UNITS	5 TWO BEDROOM UNITS	1 THREE BEDROOM UNITS
TOTALS	11 EFFICIENCY UNITS	25 ONE BEDROOM UNITS	14 TWO BEDROOM UNITS	10 THREE BEDROOM UNITS

ACCESSIBLE UNIT TYPES									
FLOOR	TYPE - A EFFICIENCY	TYPE - A ONE BED	TYPE - ADDAG ONE BED	H/V IMPAIRED ONE BED	TYPE - A TWO BED	TYPE - ADDAG TWO BED	H/V IMPAIRED TWO BED	TYPE - A THREE BED	TYPE - ADDAG THREE BED
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THIRD FLOOR	1	1	0	0	0	1	0	1	0
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FIFTH FLOOR	0	1	0	0	1	0	1	0	0
TOTALS	3	3	1	1	3	1	1	2	1



SQUARE FOOTAGES ARE MEASURED TO THE OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS



1 FIRST FLOOR PLAN
1/8" = 1'-0"

RYAN SENATORE ARCHITECTURE

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APARTMENTS

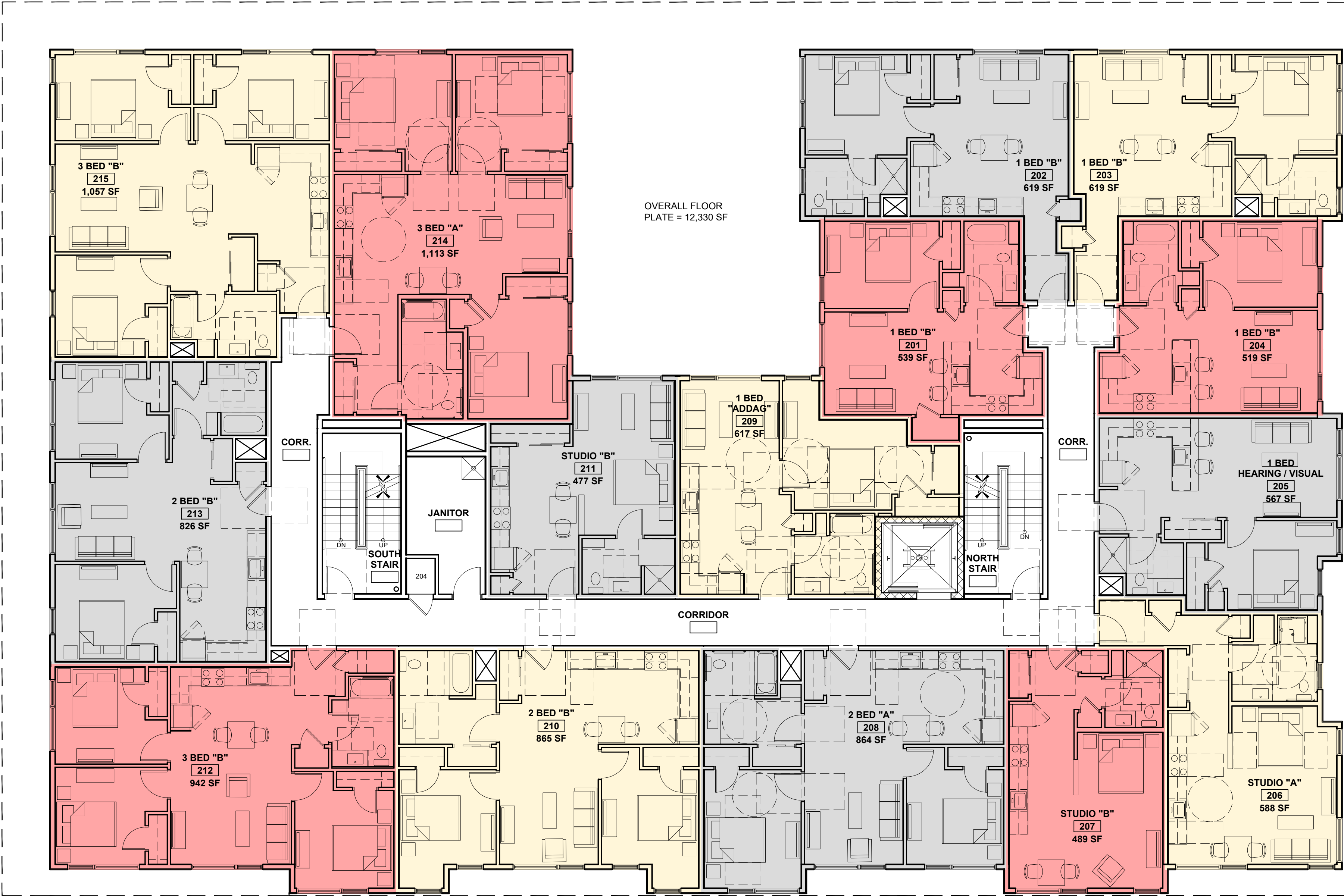
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020

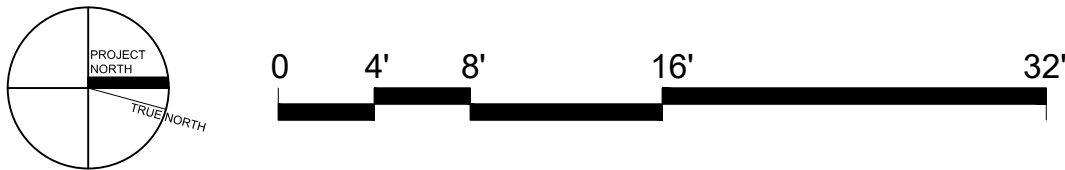
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TOTALS	3	3	1	1	3	1	1	2	1



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1 SECOND FLOOR PLAN
1/8" = 1'-0"

VALLEY STREET

C STREET

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APARTMENTS

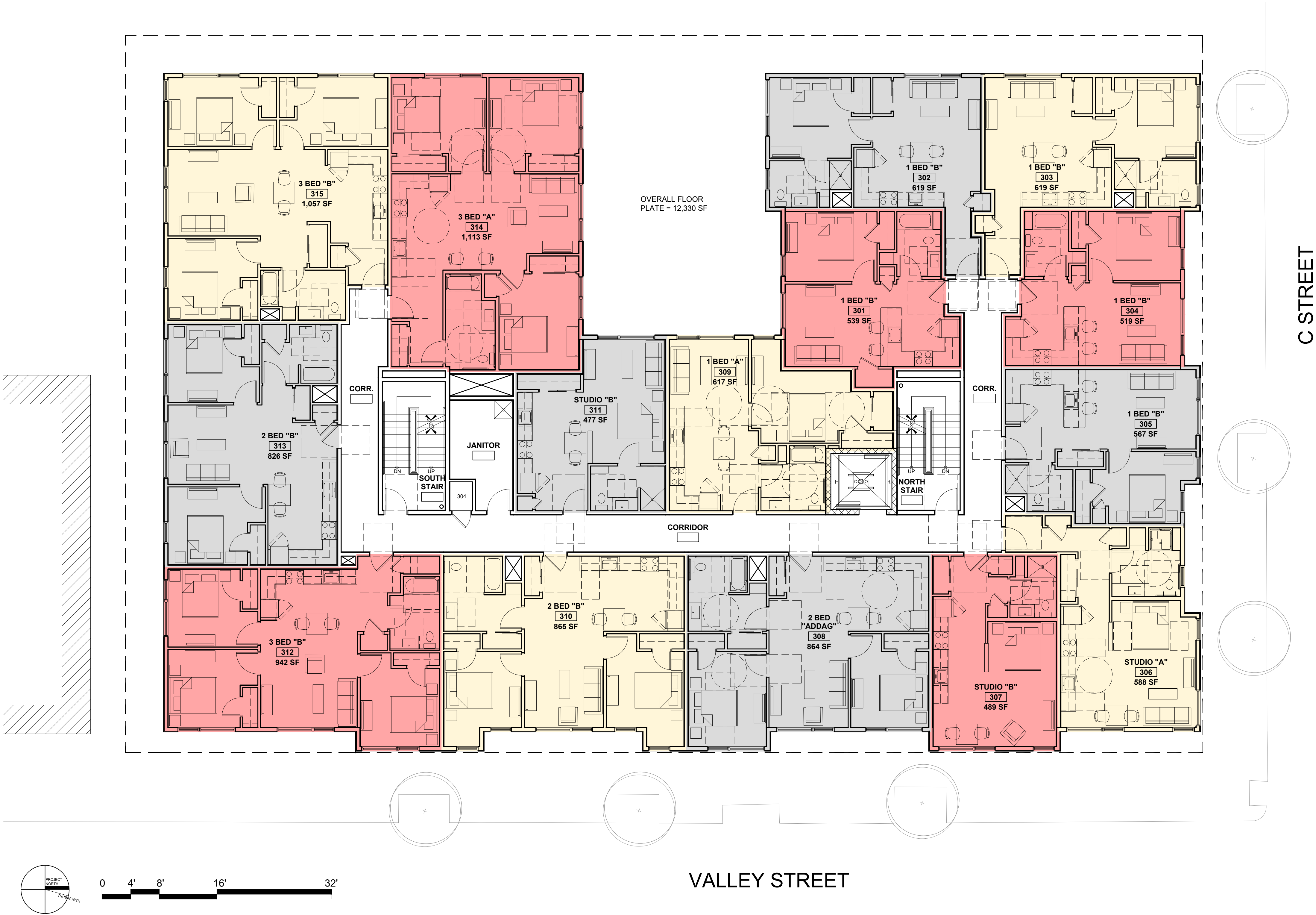
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JUNE 16, 2020

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TOTALS	3	3	1	1	3	1	1	2	1



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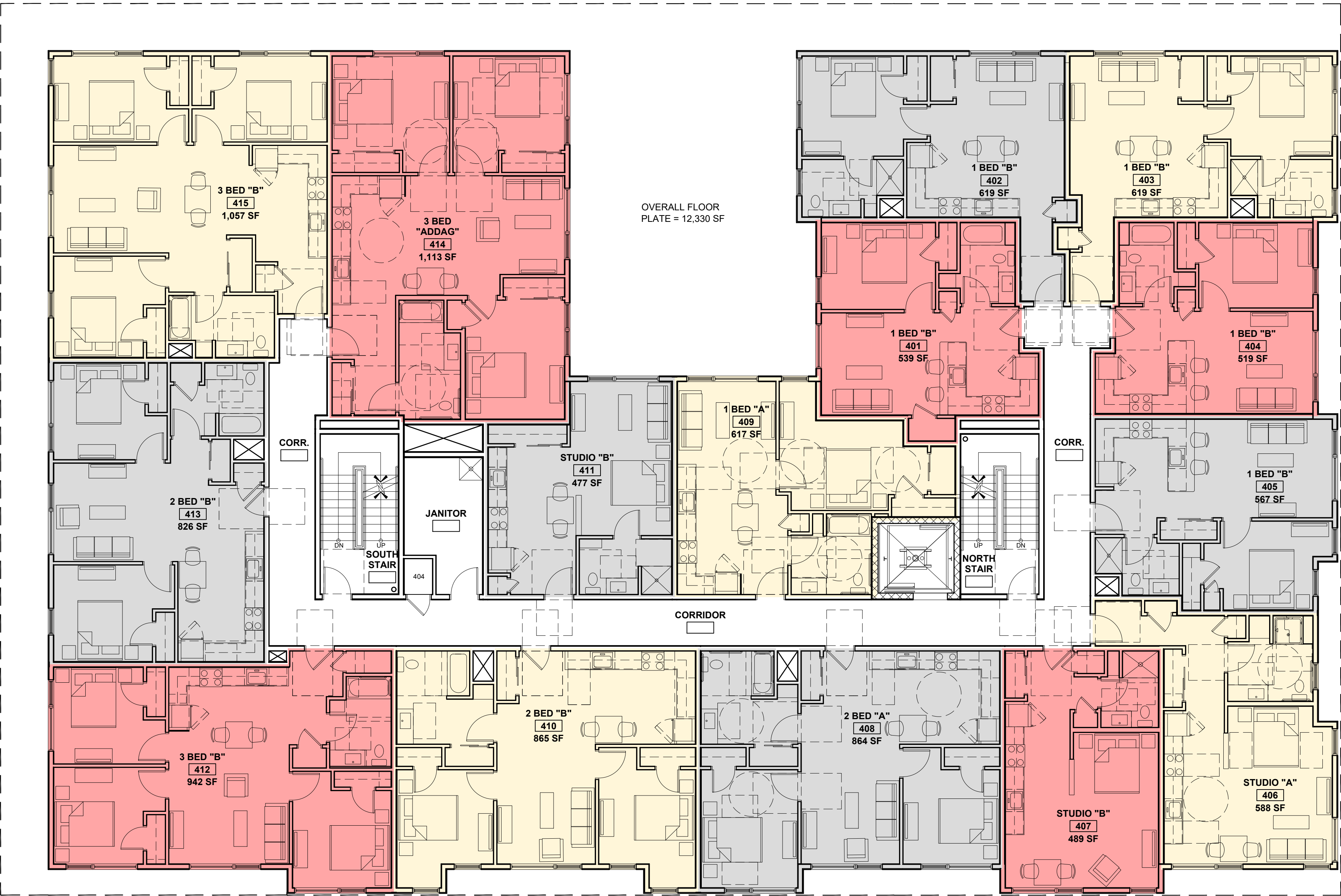
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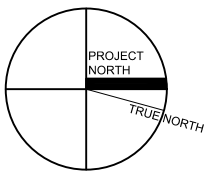
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0 4' 8' 16' 32'

VALLEY STREET

C STREET

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APARTMENTS

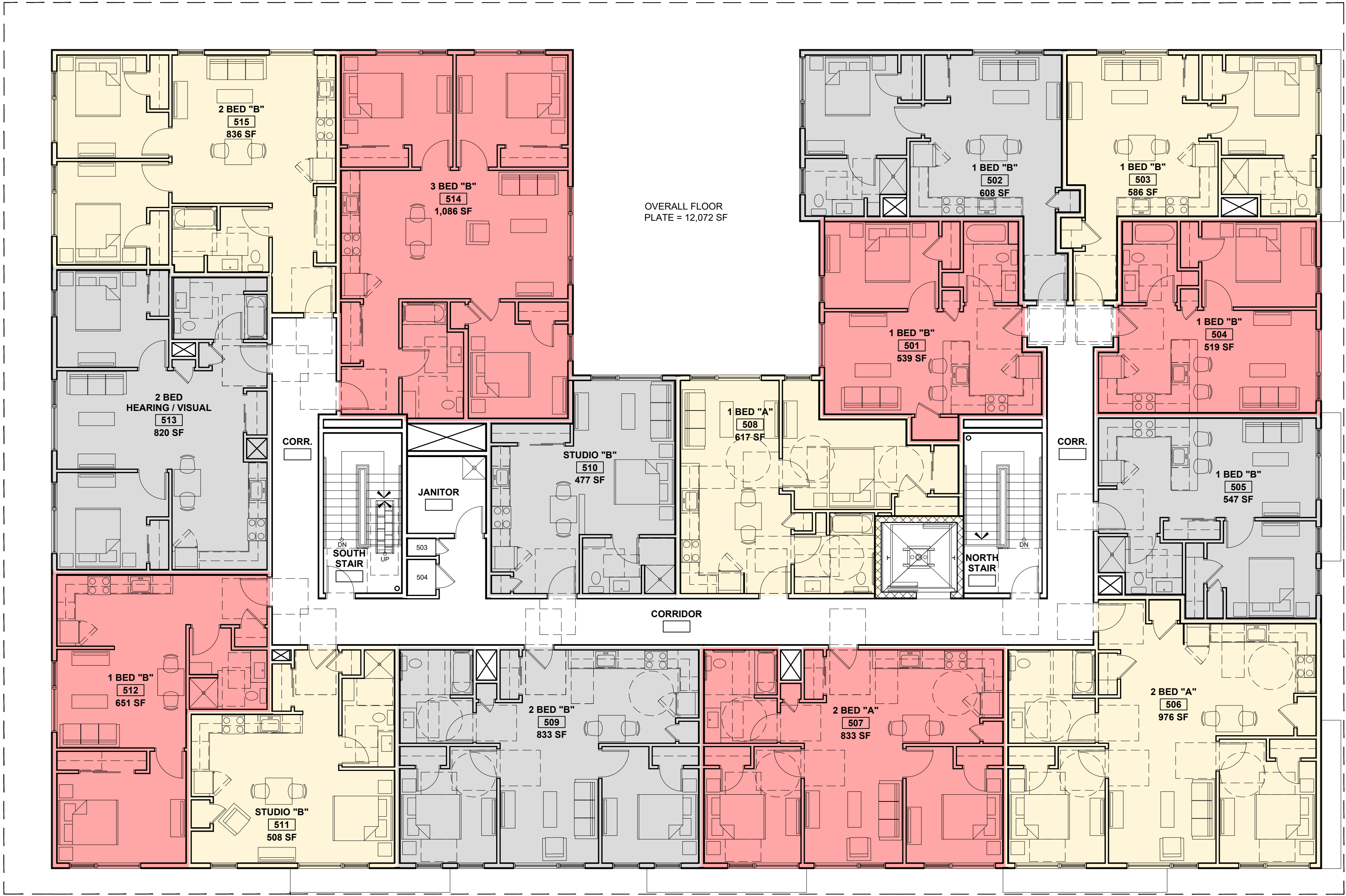
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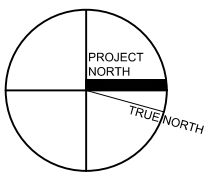
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VALLEY STREET

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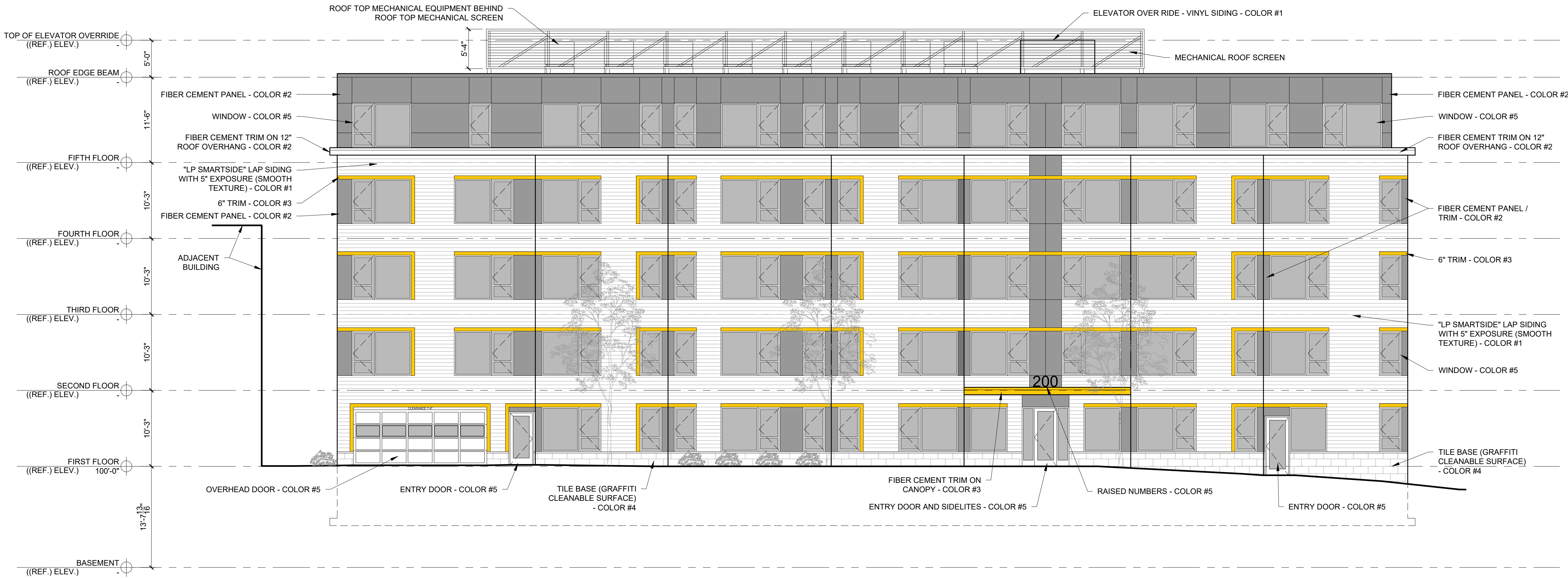
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020

MATERIAL FINISH SCHEDULE			
#	COLOR	SIDING TYPE	MANUFACTURER
1)	QUARRY GRAY	LAP SIDING - 5" EXPOSURE	LP SMARTSIDE
2)	NIGHT GRAY	FIBER CEMENT PANEL SIDING / TRIM	JAMES HARDIE
3)	PAINTED "HIGHLIGHT COLOR" T.B.D.	FIBER CEMENT TRIM	JAMES HARDIE
4)	T.B.D.	12"x24" TILE BASE	T.B.D.
5)	BLACK / BRONZE	DOORS AND WINDOWS	T.B.D.



1 VALLEY STREET EAST ELEVATION
1/8" = 1'-0"



1 VALLEY STREET EAST ELEVATION
1/8" = 1'-0"



RYAN SENATORE **ARCHITECTURE**

PROGRESS PRINT ONLY
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PROJECT NAME: **Valley Street Apartments**
LOCATION: 200-210 Valley St, Portland, ME

Date: 04/27/20

DEVELOPMENT ASSUMPTIONS					
Total Units	60	Inflation Adjustments	Yr 1-5	Yr. 6-15	Yr. 16-30
# @ 30% AMI (Low HOME)	0.0%	0	Rent	2.00%	2.00%
# @ 50% AMI (Low HOME)	0.0%	0	Operating Expense	3.00%	3.00%
# @ 50% AMI (LIHTC)	60.0%	36	Other Income	2.00%	2.00%
# @ 60% AMI (LIHTC)	20.0%	12	Debt Coverage Ratio	1.15	
# @ Market	20.0%	12	Vacancy	5.0%	

LIHTC Alloc.	945,149
Equity yield	0.86
Synd. %	99.99%
Equity Raise	8,128,281

Solar Credit FED	0
Equity yield	0.95
Synd. %	99.99%
Equity Raise	0

PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	12,271,000	204,517		12,271,000
General Requirements	0	0		0
Solar	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.0% 613,550	10,226		613,550
Subtotal Construction Costs	12,884,550	214,743	0	12,884,550
Building Permits and Fees	377,000	6,283		377,000
Off-Site Improvements	0	0		0
On-Site Improvements	0	0		0
Survey & Engineering	36,000	600		36,000
Design & Permitting	520,000	8,667		520,000
Legal	68,000	1,133		68,000
Title & Recording	18,885	315		18,885
Accounting	10,000	167		10,000
Construction Period Tax	15,000	250		15,000
Construction Period Insurance	30,000	500		30,000
Other: FF&E, Security, Soft Contingency	80,000	1,333		80,000
Subtotal Soft Costs	1,154,885	19,248	0	1,154,885
Construction Loan Origination Fees	28,750	479		28,750
Construction Loan Interest	425,000	7,083		425,000
Equity Bridge Loan Costs	0			0
Lender Inspection Fees	12,000	200		12,000
Letter of Credit Fee	5,000	83		5,000
Permanent Loan Fees	10,000	167		10,000
Other: Constrct Lender Legal, Constrct Close Fee; P	15,000	250		15,000
Subtotal Finance Costs	495,750	8,263	0	495,750
Market Survey	5,000	83		5,000
Appraisal	6,500	108		6,500
Environmental Study	4,000	67		4,000
LIHTC Fees - prepaid monitoring	124,386	2,073		124,386
Other: Testing & Special Inspections	25,000	417		25,000
Other:	0	0		0
Subtotal Miscellaneous	164,886	2,748	0	164,886
Acquisition: Buildings	0	0		0
Acquisition: Land	629,500	10,492		629,500
Acquisition: Legal	0	0		0
Subtotal Acquisition	629,500	10,492	0	629,500
Operating Deficit Escrow	409,000	6,817		409,000
Pre-funded Replacements	122,710	2,045		122,710
Tax & Insurance Escrow	87,000	1,450		87,000
Total Syndication Expenses	0	0		0
Consultant Fee	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,418,710	23,645	0	1,418,710
Total Development Costs	16,748,281	279,138	0	16,748,281

16,214,895 237,665 QAP TDC Index

Total Dev Costs	16,748,281
Less Commercial Construction:	0
Less: Equity Bridge Interest	
Less: Prepaid Monitoring Fees	124,386
Less: ODE	409,000
Scored TDC	16,214,895
Per Unit	270,248

New TDC calculation
 $[(2 \times \text{TDC/unit}) + (\text{TDC/bedroom})] / 3$
TDC Per Unit \$237,665

Notes

- Proposed funding reflects a 75% TIF for 30 years.
- This application contemplates \$595,000 in City HOME/HTF and/or Healthy Neighborhoods Funding. Avesta intends to respond to the Healthy Neighborhoods RFP issued in April and any funds awarded through that process could be used in lieu of an equal amount of City HOME/HTF funds for a total funding level of \$595,000.

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS								
Sources	CLC 8/15/2021	11/13/21	During Construction			PLC 10/14/2022	2023	2024
			2/11/22	4/12/22	8/10/22			Total
Beginning Cash	0	331,106	0	0	0	0	0	0
Construction Loan	0	2,404,253	3,385,359	5,024,913	726,562			11,541,087
Capital Contribution	1,219,242	0	0	0	1,019,242	5,689,797	150,000	50,000 8,128,281
--								0
MSHA Subsidy	480,000	0				480,000		960,000
MSHA Debt	0	0				5,390,000		5,390,000
City HOME/Healthy Neighborhoods	595,000	0				0		595,000
FHLBBoston Loan	0	0	0			1,025,000		1,025,000
FHLBBoston Subsidy		650,000				0		650,000
Conventional loan								0
Healthy Neighborhoods	0					0		0
Other	0	0				0		0
Development Fee Loan						0		0
TOTAL SOURCES	2,294,242	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000 28,289,368
Uses								
Acquisition	629,500							629,500
Construction		3,221,138	3,221,138	4,831,706	1,610,569			12,884,550
Soft Costs	923,000	57,971	57,971	86,957	28,986	0		1,154,885
Financing Costs	70,750	106,250	106,250	106,250	106,250			495,750
Miscellaneous	139,886					75,000		214,886
Dev Fee	200,000					350,000	150,000	750,000
Reserves						618,710	50,000	618,710
TOTAL DEV. COSTS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	1,043,710	150,000	50,000 16,748,281
Repay Equity Bridge Loan						0		0
Repay Construction Loan						11,541,087		11,541,087
Other Syndication Costs	0					0		0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	11,541,087	0	11,541,087
TOTAL USES OF FUNDS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000 28,289,368
Ending Cash	331,106	0	0	0	0	0	0	0

PROJECT FINANCING								
Source		Amount	Rate	Term	Lien	Annual D/S		
						Yr. 1-5	Yr. 6-15	Yr. 16-30
Source 1:	MSHA Subsidy	960,000	0.00%	30	First	0	0	0
Source 2:	MSHA Debt	5,390,000	6.00%	30	First	323,400	323,400	323,400
Source 3:	City HOME/Healthy Neighborhood	595,000	0.00%	0	First	0	0	0
Source 4:	FHLBBoston Loan	1,025,000	2.50%	30	Second	48,600	48,600	48,600
Source 5:	FHLBBoston Subsidy	650,000	0.00%	0	Second	0	0	0
Source 6:	Conventional loan	0	5.50%	30	Second	0	0	0
Source 7:	Healthy Neighborhoods	0			Third	0	0	0
Source 8:	Other	0	0.00%	30	Unsecured	0	0	0
Source 9:	Development Fee Loan	0			Unsecured	0	0	0
Source 10:	Net Syndication	8,128,281	\$0.86					
Capitalization Gap (Surplus)		(0)						
Total Development Costs		16,748,281						

PROPOSED RENT SCHEDULE								
Type	AMI	# Units	Contract Rent	LIHTC Max Rents	Total Gross Rent*	Market Rent	Utility Allow.	Total Rent
Efficiency	50% LowHOME				0	\$1,300		0
	50% - PBV				0	\$1,300	33	0
	50% LIHTC	7	878	878	878	\$1,300	33	70,980
	60% LIHTC	4	1,054	1,054	1,054	\$1,300	33	49,008
	Market	0			1,100	\$1,300		0
11 BR	50% LowHOME		0	0	0	\$1,600	43	0
	50% - PBV				0	\$1,600	43	0
	50% LIHTC	10	941	941	941	\$1,600	43	107,760
	60% LIHTC	3	1,129	1,129	1,129	\$1,600	43	39,096
	Market	12			1,400	\$1,600		201,600
25 BR	50% LowHOME		0	0	0	\$1,800	56	0
	50% - PBV				0	\$1,800	56	0
	50% LIHTC	11	1,128	1,128	1,128	\$1,800	56	141,504
	60% LIHTC	3	1,354	1,354	1,354	\$1,800	56	46,728
	Market	0			1,600	\$1,800		0
14 BR	50% LowHOME				0	\$2,000	70	0
	50% - PBV				0	\$2,000	70	0
	50% LIHTC	8	1,304	1,209	1,304	\$2,000	70	118,464
	60% LIHTC	2	1,565	1,451	1,565	\$2,000	70	35,880
	Market				1,700	\$2,000		0
10 BR	50% LowHOME							0
	50% - PBV						0	0
	50% LIHTC						0	0
	60% LIHTC						0	0
	Market							0
Other:								0
Subtotals								811,020
Total Bedrooms		94						
			Vacancy Rate	5.00%				(40,551)
			Other Income	TIF		75%		99,000
			Other Income	Laundry				2,880
			Effective Gross Income					872,349

AFFORDABLE MORTGAGE CALCULATION		
Effective Gross Income		872,349
Annual Operating Expense		445,841
Stabilized NOI		426,508
DSC	1.15	
\$ Avail for D/S		
Other DS		372,000
DCR		1.15
Affordable Mortgage		

BREAKEVEN ANALYSIS:		RENT SENSITIVITY	OCCUPANCY
		Total	Annual
Operating Expense	445,841		Gross Revenues
Debt Service	372,000		912,900
Breakeven Rent	1,136	Breakeven Occupancy	90%

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,907	848	71
Management Charges	50,907	848	71
Marketing Expenses	500	8	1
Legal Expenses	500	8	1
Auditing Expenses	7,500	125	10
Other Administrative Expenses	0	0	0
Administrative Expenses	110,313	1,839	153
Operating Expenses:		0	0
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	10,000	167	14
Natural Gas	30,000	500	42
Electricity	15,000	250	21
Water and Sewer	12,500	208	17
Garbage and Trash Removal	6,500	108	9
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	74,000	1,233	103
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	10,000	167	14
Miscellaneous Ground Maintenance	0	0	0
Tenant Damage Charges - Grounds	0	0	0
Building Maintenance Payroll	0	0	0
Building Tools and Supplies	0	0	0
Building Contractual Services	20,000	333	28
Building Systems Maintenance	30,000	500	42
Miscellaneous Building Maintenance	0	0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	60,000	1,000	83
General Expenses:			
Property Taxes	132,000	2,200	183
Property and Liability Insurance	21,000	350	29
Investor Fees		0	0
Tenant Service Expenses	21,528	359	30
General Expenses	174,528	2,909	242
Replacement Reserve Funding	27,000	450	38
Parking Lease		0	0
Commercial Expenses (if applicable)		0	0
Total	445,841	7,431	619

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
	3 Months		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10
	9/1/2022	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/30/2028	12/31/2029	12/31/2030	12/31/2031	12/30/2032
Effective Gross Income		218,087	872,349	889,796	907,592	925,744	944,259	963,144	982,407	1,002,055	1,022,096	1,042,538
Less Operating Expense		111,460	445,841	459,217	472,993	487,183	501,798	516,852	532,358	548,329	564,779	581,722
Net Operating Income		106,627	426,508	430,579	434,599	438,561	442,460	446,291	450,049	453,726	457,317	460,816
Less RLP Repay		80,850	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400
Less Other Repay		12,150	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600
Cash Flow		13,627	54,508	58,579	62,599	66,561	70,460	74,292	78,049	81,726	85,317	88,816
Cash Flow per Unit		908	908	976	1,043	1,109	1,174	1,238	1,301	1,362	1,422	1,480
Debt Coverage Ratio(RLP)		1.15	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.22	1.23	1.24
Operating Reserve Balance	409,000	429,450	450,923	473,469	497,142	521,999	548,099	575,504	604,279	634,493	666,218	699,529

Total Cash Flow
Projected over 12 Years
922,257

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued												
	Yr 11	Yr 12	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20		
	12/31/2033	12/31/2034	12/31/2035	12/30/2036	12/31/2037	12/31/2038	12/31/2039	12/30/2040	12/31/2041	12/31/2042		
Effective Gross Income	1,063,389	1,084,656	1,106,349	1,128,476	1,151,046	1,174,067	1,197,548	1,221,499	1,245,929	1,270,848		
Less Operating Expense	599,174	617,149	635,663	654,733	674,375	694,606	715,445	736,908	759,015	781,786		
Net Operating Income	464,215	467,508	470,686	473,743	476,671	479,461	482,104	484,591	486,914	489,062		
Less RLP Repay	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400		
Less Other Repay	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600		
Cash Flow	92,215	95,508	98,686	101,743	104,671	107,461	110,104	112,591	114,914	117,062		
Cash Flow per Unit	1,537	1,592	1,645	1,696	1,745	1,791	1,835	1,877	1,915	1,951		
Debt Coverage Ratio(RLP)	1.25	1.26	1.27	1.27	1.28	1.29	1.30	1.30	1.31	1.31		
Operating Reserve Balance	699,529	734,505	771,230	809,792	850,282	892,796	937,435	984,307	1,033,523	1,085,199	1,139,459	

City of Portland - Affordable Housing (AH) TIF Model
200 Valley Street, 064-F-7-8-9-15
OAV: [\\$\\$246,700 ao 3/31/2020](#)
2% Mil Rate Escalation
75% Capture to AH TIF Project; 25% to City General Fund

City of Portland- TIF Projection Table for 200 Valley Street AH TIF										
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues	City OAV General Fund Revenues
1	2020	\$0	75.00%	\$0	23.78	\$0	\$0	\$0	\$0	\$5,866
2	2021	\$0	75.00%	\$0	24.25	\$0	\$0	\$0	\$0	\$5,983
3	2022	\$5,953,300	75.00%	\$4,464,975	24.74	\$110,449	\$110,449	\$0	\$36,816	\$6,103
4	2023	\$5,953,300	75.00%	\$4,464,975	25.23	\$112,658	\$112,658	\$0	\$37,553	\$6,225
5	2024	\$5,953,300	75.00%	\$4,464,975	25.74	\$114,911	\$114,911	\$0	\$38,304	\$6,349
6	2025	\$5,953,300	75.00%	\$4,464,975	26.25	\$117,209	\$117,209	\$0	\$39,070	\$6,476
7	2026	\$5,953,300	75.00%	\$4,464,975	26.78	\$119,554	\$119,554	\$0	\$39,851	\$6,606
8	2027	\$5,953,300	75.00%	\$4,464,975	27.31	\$121,945	\$121,945	\$0	\$40,648	\$6,738
9	2028	\$5,953,300	75.00%	\$4,464,975	27.86	\$124,384	\$124,384	\$0	\$41,461	\$6,872
10	2029	\$5,953,300	75.00%	\$4,464,975	28.41	\$126,871	\$126,871	\$0	\$42,290	\$7,010
11	2030	\$5,953,300	75.00%	\$4,464,975	28.98	\$129,409	\$129,409	\$0	\$43,136	\$7,150
12	2031	\$5,953,300	75.00%	\$4,464,975	29.56	\$131,997	\$131,997	\$0	\$43,999	\$7,293
13	2032	\$5,953,300	75.00%	\$4,464,975	30.15	\$134,637	\$134,637	\$0	\$44,879	\$7,439
14	2033	\$5,953,300	75.00%	\$4,464,975	30.76	\$137,329	\$137,329	\$0	\$45,776	\$7,588
15	2034	\$5,953,300	75.00%	\$4,464,975	31.37	\$140,076	\$140,076	\$0	\$46,692	\$7,740
16	2035	\$5,953,300	75.00%	\$4,464,975	32.00	\$142,878	\$142,878	\$0	\$47,626	\$7,894
17	2036	\$5,953,300	75.00%	\$4,464,975	32.64	\$145,735	\$145,735	\$0	\$48,578	\$8,052
18	2037	\$5,953,300	75.00%	\$4,464,975	33.29	\$148,650	\$148,650	\$0	\$49,550	\$8,213
19	2038	\$5,953,300	75.00%	\$4,464,975	33.96	\$151,623	\$151,623	\$0	\$50,541	\$8,378
20	2039	\$5,953,300	75.00%	\$4,464,975	34.64	\$154,655	\$154,655	\$0	\$51,552	\$8,545
21	2040	\$5,953,300	75.00%	\$4,464,975	35.33	\$157,748	\$157,748	\$0	\$52,583	\$8,716
22	2041	\$5,953,300	75.00%	\$4,464,975	36.04	\$160,903	\$160,903	\$0	\$53,634	\$8,890
23	2042	\$5,953,300	75.00%	\$4,464,975	36.76	\$164,121	\$164,121	\$0	\$54,707	\$9,068
24	2043	\$5,953,300	75.00%	\$4,464,975	37.49	\$167,404	\$167,404	\$0	\$55,801	\$9,249
25	2044	\$5,953,300	75.00%	\$4,464,975	38.24	\$170,752	\$170,752	\$0	\$56,917	\$9,434
26	2045	\$5,953,300	75.00%	\$4,464,975	39.01	\$174,167	\$174,167	\$0	\$58,056	\$9,623
27	2046	\$5,953,300	75.00%	\$4,464,975	39.79	\$177,650	\$177,650	\$0	\$59,217	\$9,816
28	2047	\$5,953,300	75.00%	\$4,464,975	40.58	\$181,203	\$181,203	\$0	\$60,401	\$10,012
29	2048	\$5,953,300	75.00%	\$4,464,975	41.39	\$184,827	\$184,827	\$0	\$61,609	\$10,212
30	2049	\$5,953,300	75.00%	\$4,464,975	42.22	\$188,524	\$188,524	\$0	\$62,841	\$10,416
30 Year TIF Total		\$166,692,400		\$125,019,300		\$4,092,269	\$4,092,269	\$0	\$1,364,090	\$237,956
30 Year Average				\$4,167,310		\$136,409	\$136,409		\$45,470	\$7,932

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 200 Valley Street Affordable Housing TIF							
75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund							
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$5,953,300	\$4,464,975	\$0	\$3,346	\$2,465	\$5,811
4	2023	\$5,953,300	\$4,464,975	\$12,323	\$3,346	\$2,465	\$18,135
5	2024	\$5,953,300	\$4,464,975	\$24,647	\$3,346	\$2,465	\$30,458
6	2025	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
7	2026	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
8	2027	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
9	2028	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
10	2029	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
11	2030	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
12	2031	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
13	2032	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
14	2033	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
15	2034	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
16	2035	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
17	2036	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
18	2037	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
19	2038	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
20	2039	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
21	2040	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
22	2041	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
23	2042	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
24	2043	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
25	2044	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
26	2045	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
27	2046	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
28	2047	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
29	2048	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
30	2049	\$5,953,300	\$4,464,975	\$36,970	\$3,346	\$2,465	\$42,781
30 Year TIF Total		\$166,692,400	\$125,019,300	\$961,220	\$93,689	\$69,026	\$1,123,934
30 Year TIF Avg.		\$5,556,413	\$4,167,310	\$32,041	\$3,123	\$2,301	\$37,464

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: 200 Valley Street, an Avesta project
Date: July 22, 2020

Executive Summary

Avesta requests a total capital subsidy of \$595,000 from HOME/HTF and/or Healthy Neighborhoods, and a 30 year TIF for 75% of real estate taxes to support the proposed new construction of 60 units of affordable housing adjacent to their existing Florence House property. This is a \$9,916/unit requested capital subsidy. The site consists of two vacant parcels and a single family residence which will be demolished. The new building will be 5 stories at the street level, with 2 levels of parking, built into the hillside. Units will range in size from efficiency to 3 bedroom. The housing will serve a mix of income levels with 60% of units affordable to households at 50% AMI, 20% affordable at 60% AMI, and 20% of units rented at market rates.

Sources and Uses

Sources:		Uses:	
Maine Housing 1 st Mortgage	\$6,175,000	Construction Hard Costs	\$12,832,572
Maine Housing Subsidy	\$ 960,000	Hard Cost Contingency	585,879
FHLB Loan	\$1,025,000	Financing & Soft Costs	2,027,521
FHLB Subsidy	\$650,000	Acquisition	629,500
Net Syndication Proceeds	\$8,128,281	Reserves	707,809
City capital subsidy Funds	<u>\$ 595,000</u>	Developer Fee	<u>750,000</u>
Total Sources:	\$17,533,281	Total Uses:	\$17,533,281

The FHLB AHP subsidy and loan are committed. Avesta is preparing to submit a request to Maine Housing for first mortgage, subsidy and LIHTC allocation, and requests funding from the City to support this application. Gorham Savings is the likely construction lender and has worked with FHLB for the AHP funding. Boston Capital has provided a detailed letter of interest for syndicating the tax credits, with \$.88 on dollar return to project.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

At this early stage of project development, construction costs are based on square footage estimates. Avesta has budgeted \$245/sq foot for construction. This is \$1,219,504 less than the construction cost estimate from Wright-Ryan Construction which estimated total construction cost at \$14,052,076 -- and did not include prevailing wage rates in the cost estimate. Avesta has provided a detailed line item analysis of how this level of savings can be realized through changes to finish specifications, exterior

building materials, HVAC redesign, plus reductions in price escalators for labor & materials, contingency, & construction management fee.

Construction cost per unit are up significantly compared to 2019 across all applicants which is the primary driver of the upswing in total development costs. Construction costs are rising due to tight job markets in the construction trades and the added uncertainty that these cost estimates were created in a peak of uncertainty about the impact of COVID-19 on the economy. This project, with total development cost per unit of \$292,221, leads the way with the highest per unit cost, but it is in the same range as the other new construction applicants (Cumberland at \$262,412/unit, Middle Street at \$280,207 per unit.) Avesta's revised budget figure is more consistent with current market conditions, as demonstrated by other current applicants, than is the GC's cost estimate. It is also reasonable to expect Valley cost per unit to be somewhat higher than the other applicants because the project includes more community amenities, more covered parking (and two levels of parking), and site acquisition costs (while the other applicants do not include acquisition costs in the budget).

Soft Costs:

Soft costs are typical for a project of this scale. Developer fee is on the low end, at 4.89% of total development costs (less reserves and developer fee).

Contingency:

Hard cost contingency is budgeted at 4.6%, below the industry standard 5% for new construction. Considering the early stage of development, multiple outstanding questions about site conditions, and the construction estimate already rounded down, this is too thin. Soft cost contingency at \$20,000, which is 1.11% of total soft costs, is inadequate, especially given the early stage of development. Review of a satisfactory revised development budget is a recommended condition of closing.

Acquisition and Appraisal:

The public has an interest in insuring that the property is purchased for no more than its market value. This review is especially important in cases like this one where the seller plays multiple roles in the transaction. Avesta HDC acquired the sites and will resell the sites to the newly created project entity it controls, so Avesta is both seller and buyer of the site.

The site consists of 3 parcels, one acquired in 2015, and two of which were acquired in 2019. The acquisition cost reflected in the sources and uses is \$629,500 for the three parcels. Avesta did not have an appraisal done prior to acquiring the sites. Approval of an appraisal which supports the sales price to the newly created entity is a recommended condition of closing. The \$629,500 price is substantially above the current assessed value. However, it is consistent with the estimated value generated by the 2020 revaluation process which will be implemented for FY22 tax rolls. The land cost per housing unit developed (\$10,492) is also consistent with other recent new construction projects in greater Portland, which range from a low of \$6,426 to a high of \$14,000 per unit.

Operating Budget & 20 Year Cashflow Projection

Project Income and Market Study:

Rents for LIHTC supported units are budgeted at the maximum allowable LIHTC rate for each unit type for a range of rents from \$878 for an efficiency at 50% AMI to \$1,565 for a 3 bedroom at 60% AMI. The project received a commitment for 12 Project Based Vouchers which supplement the income stream and allow a wider range of households to be served. The rent for voucher units is projected at 110% of FMR. The rent for the 12 market rate 1 bedroom unit is \$1,400, substantially above the Fair Market Rent of \$1,167, but consistent with market rate rents documented in market studies for comparable properties.

Avesta commissioned a Market Study for the project when it was envisioned as a senior housing development, so the conclusions are no longer fully applicable. A market study which supports demand for the current project configuration is a recommended condition of closing. However, Avesta's experience in the Portland market demonstrates the need, and effective demand, for this housing. Avesta has a waiting list of almost 1,300 households for their 778 Portland area units, with at least one qualified household waiting for each unit at all unit sizes.

Operating Expense

Operating expenses are budgeted at \$8,099, including \$2,454 in taxes. Adjusting out real estate taxes, operating expense per unit is a lean but adequate \$5,645.

20 Year Cashflow & Debt Service Coverage Ratio (DSCR)

Year 1 debt service coverage is satisfactory at 1.13, rising steadily to 1.290 in year 20 with standard income and expense inflators of 2% for income and 3% for expenses and a 5% vacancy rate. Given the extremely tight multi-family market, the project is likely to outperform the 5% vacancy. The relative security of income from Project Based Vouchers decreases the minimum acceptable DSCR.

Developer Financials

Avesta's 2019 consolidated audit has been delayed by COVID-19, so this analysis is based on 2018 and prior year audits. Satisfactory review of the 2019 audit is a recommended condition of closing. 2019 year end management statements, and 1st Quarter 2020 management statements have been provided. However, comparing data from audits to data from internal statements is misleading, so this analysis will focus on audited information. 2019 information should be understood as tentative at this time.

Avesta closed out 2018 in good financial condition, with current assets of \$11.6 million and current liabilities of \$10.2 million. The resulting Current Ratio (current assets divided by current liabilities) is 1.14, a bit lean but manageable for the scale of their operations. Of that current liability, \$4.4 million was current portion of long term debt, which was subsequently refinanced in 2019, per note in audit. Net assets were \$138 million, up \$2 million over 2017. There has been annual, substantial growth in net assets since 2012, with net assets more than doubling in 7 years (2012 net assets were \$66 million).

In 2018, revenues were \$35.6 million, down \$1.6 million from 2017 due to reduced developer fee and lower “other” income. Avesta’s tenant and subsidy income was up \$1.3 million in 2018, consistent with Avesta’s growing real estate portfolio. Operating expenses were also up in almost every category, with wages up over \$900,000. 2018 net operating income was \$7.1 million. Depreciation resulted in a paper loss of \$6.2 million, but this paper loss was more than outweighed by the capital contributions from tax credit investors, i.e the growth in real estate portfolio, resulting in growth in net assets. Performance in 2018 is not problematic in itself, but the trend lines which have been positive have dipped. As Avesta’s real estate portfolio grows, Avesta and its funders need to pay attention to finding the correct scale for long term sustainable operations.

Impact of pandemic: In a conversation with Avesta’s CFO and Executive Director, Avesta reports that the pandemic has not led to declines in rent revenue as of June. Analysis of Avesta’s workforce housing projects shows most properties have sufficient reserves to weather a 20% reduction in collections for 12-18 months. Only a handful of properties might struggle if a 20% rent reduction continued for 6 months. Avesta has not reduced staff size, in fact has continued hiring, and has provided hazard pay to some front line staff. The additional costs related to the pandemic and some delay in real estate development leads to their estimate for stable Net Operating Income in 2020 (adjusted downward from the 2020 budgeted growth in NOI).

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward. Their financial strength as an organization (unrestricted net assets of \$21 million) mitigates the risk inherent in any construction project.

Recommendations

I recommend a loan in the amount of no more than \$595,000 (as reduced by any funding provided by Healthy Neighborhoods), zero percent interest, payment deferred for 30 years, and a 75% TIF for 30 years, with the following conditions:

Prior to loan closing, satisfactory review of:

- 1) Market study for the development as family housing;
- 2) Appraised value supporting acquisition price of land;
- 3) Phase II Environmental Site Assessment;
- 4) Relocation plan and budget for the existing tenant, or evidence that the tenant is not eligible for relocation;
- 5) Revised development budget which reflects soil conditions, any needed environmental remediation, any needed relocation, satisfactory hard and soft cost contingencies, and applicable prevailing wages;
- 6) Avesta’s 2019 audit.
- 7) All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Project Operating Pro Forma

Date	July 16, 2020
Project Name	200 Valley Street
Project Address	
Developer/Sponsor	Avesta

Rental Income

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Per Unit Net Rent Per Sq Ft	Total Monthly Net Income	Total Annual Net Rent
0 BR	1		0	50%	\$1,179	\$33		\$1,146	#DIV/0!	\$1,146	\$13,752
0 BR	6		0	50%	\$878	\$33		\$845	#DIV/0!	\$5,070	\$60,840
0 BR	4		0	60%	\$1,054	\$33		\$1,021	#DIV/0!	\$4,084	\$49,008
1 BR	1		0	50%	\$1,284	\$43		\$1,241	#DIV/0!	\$1,241	\$14,892
1 BR	9		0	50%	\$941	\$43		\$898	#DIV/0!	\$8,082	\$96,984
1 BR	3		0	60%	\$1,129	\$43		\$1,086	#DIV/0!	\$3,258	\$39,096
1 BR	12		0	market	\$1,350			\$1,350	#DIV/0!	\$16,200	\$194,400
2 BR	6		0	50%	\$1,668	\$56		\$1,612	#DIV/0!	\$9,670	\$116,035
2 BR	5		0	50%	\$1,128	\$56		\$1,072	#DIV/0!	\$5,360	\$64,320
2 BR	3		0	60%	\$1,354	\$56		\$1,298	#DIV/0!	\$3,894	\$46,728
3 BR	4		0	50%	\$2,100	\$70		\$2,030	#DIV/0!	\$8,120	\$97,440
3 BR	4		0	50%	\$1,304	\$70		\$1,234	#DIV/0!	\$4,936	\$59,232
3 BR	2		0	50%	\$1,565	\$70		\$1,495	#DIV/0!	\$2,990	\$35,880
4 BR			0	60%				\$0	#DIV/0!	\$0	\$0
Other			0	50%				\$0	#DIV/0!	\$0	\$0
Other			0	60%				\$0	#DIV/0!	\$0	\$0
Total:	60		0							\$74,051	\$888,607

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

Note: Year 1 is the first full year of stabilized operations

		<u>Year 1</u>	<u>Year 1/Unit</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>
Income												
Sch. Gross Income - Residential		\$888,607	\$14,810	\$906,379	\$924,507	\$942,997	\$961,857	\$981,094	\$1,000,716	\$1,020,730	\$1,041,145	\$1,061,968
<u>Vacancy Loss</u>	5.0%	(\$44,430)	(\$741)	(\$45,319)	(\$46,225)	(\$47,150)	(\$48,093)	(\$49,055)	(\$50,036)	(\$51,037)	(\$52,057)	(\$53,098)
Other income (TIF)		\$110,449	\$1,841	\$112,658	\$114,911	\$117,209	\$119,553	\$121,944	\$124,383	\$126,871	\$129,408	\$131,996
Other income (laundry)		\$2,880	\$48	\$2,938	\$2,996	\$3,056	\$3,117	\$3,180	\$3,243	\$3,308	\$3,374	\$3,442
Effective Gross Income		\$957,506	\$15,958	\$976,656	\$996,189	\$1,016,113	\$1,036,435	\$1,057,164	\$1,078,307	\$1,099,873	\$1,121,870	\$1,144,308

Administrative

[illegible]

Supportive Services

Utilities

Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$27,500	\$458	\$28,325	\$29,175	\$30,050	\$30,951	\$31,880	\$32,836	\$33,822	\$34,836	\$35,881
Electric	\$25,000	\$417	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Water / Sewer	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$67,500	\$1,125	\$69,525	\$71,611	\$73,759	\$75,972	\$78,251	\$80,599	\$83,016	\$85,507	\$88,072

\$57,500

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Janitorial	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Trash Removal	\$6,500	\$108	\$6,695	\$6,896	\$7,103	\$7,316	\$7,535	\$7,761	\$7,994	\$8,234	\$8,481
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$5,000	\$83	\$5,150	\$5,305	\$5,464	\$5,628	\$5,796	\$5,970	\$6,149	\$6,334	\$6,524
Maintenance	\$40,000	\$667	\$41,200	\$42,436	\$43,709	\$45,020	\$46,371	\$47,762	\$49,195	\$50,671	\$52,191
Maintenance Contracts	\$30,000	\$500	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$101,500	\$1,692	\$104,545	\$107,681	\$110,912	\$114,239	\$117,666	\$121,196	\$124,832	\$128,577	\$132,434

[illegible]

Net Operating Income	\$471,581	\$7,860	\$476,153	\$480,671	\$485,129	\$489,522	\$493,843	\$498,087	\$502,246	\$506,315	\$510,286
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[illegible]

Cash Flow Debt Payments												
DHCD	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$50,481	\$841	\$55,053	\$59,571	\$64,029	\$68,422	\$72,743	\$76,987	\$81,146	\$85,215	\$89,186

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,083,207	\$1,104,871	\$1,126,969	\$1,149,508	\$1,172,498	\$1,195,948	\$1,219,867	\$1,244,265	\$1,269,150	\$1,294,533
Vacancy Loss	5.0%	(\$54,160)	(\$55,244)	(\$56,348)	(\$57,475)	(\$58,625)	(\$59,797)	(\$60,993)	(\$62,213)	(\$64,727)
Other income (TIF)	\$134,636	\$137,329	\$140,076	\$142,877	\$145,735	\$148,649	\$151,622	\$154,655	\$157,748	\$160,903
Other income (laundry)	\$3,511	\$3,581	\$3,653	\$3,726	\$3,800	\$3,876	\$3,954	\$4,033	\$4,113	\$4,196
Effective Gross Income	\$1,167,194	\$1,190,538	\$1,214,349	\$1,238,636	\$1,263,408	\$1,288,676	\$1,314,450	\$1,340,739	\$1,367,554	\$1,394,905

Administrative										
Management Fee	\$61,573	\$63,420	\$65,323	\$67,282	\$69,301	\$71,380	\$73,521	\$75,727	\$77,999	\$80,339
Management Charges	\$61,573	\$63,420	\$65,323	\$67,282	\$69,301	\$71,380	\$73,521	\$75,727	\$77,999	\$80,339
Marketing Expense	\$672	\$692	\$713	\$734	\$756	\$779	\$802	\$826	\$851	\$877
Legal	\$672	\$692	\$713	\$734	\$756	\$779	\$802	\$826	\$851	\$877
Audit & Accounting	\$10,079	\$10,382	\$10,693	\$11,014	\$11,344	\$11,685	\$12,035	\$12,396	\$12,768	\$13,151
Admin Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$134,569	\$138,606	\$142,764	\$147,047	\$151,459	\$156,002	\$160,682	\$165,503	\$170,468	\$175,582

Supportive Services	\$28,932	\$29,800	\$30,694	\$31,615	\$32,563	\$33,540	\$34,546	\$35,583	\$36,650	\$37,749
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Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$36,958	\$38,066	\$39,208	\$40,385	\$41,596	\$42,844	\$44,129	\$45,453	\$46,817	\$48,221
Gas	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838
Water / Sewer	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$90,714	\$93,436	\$96,239	\$99,126	\$102,100	\$105,163	\$108,318	\$111,567	\$114,914	\$118,362

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Grounds	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Janitorial	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Trash Removal	\$8,735	\$8,998	\$9,267	\$9,545	\$9,832	\$10,127	\$10,431	\$10,744	\$11,066	\$11,398
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$6,720	\$6,921	\$7,129	\$7,343	\$7,563	\$7,790	\$8,024	\$8,264	\$8,512	\$8,768
Maintenance	\$53,757	\$55,369	\$57,030	\$58,741	\$60,504	\$62,319	\$64,188	\$66,114	\$68,097	\$70,140
Maintenance Contracts	\$40,317	\$41,527	\$42,773	\$44,056	\$45,378	\$46,739	\$48,141	\$49,585	\$51,073	\$52,605
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$136,408	\$140,500	\$144,715	\$149,056	\$153,528	\$158,134	\$162,878	\$167,764	\$172,797	\$177,981

Development Budget with Permanent Sources

Date _____
Project Name 200 Valley Street
Project Address _____
Developer/Sponsor Avesta

Total Units 60
Total Square Feet 54,767 interior
17030 covered parking

	Initial Application Values			7/13 Application Values			Change	
	Total	Per Unit	Per Sq Ft	Total	Per Unit	Per Sq Ft	Application to Reservation	
Sources of Funds								
Permanent Financing - 1st Lien MSHA Debt	\$5,390,000	\$89,833	\$98	\$6,175,000	\$102,917	\$113	\$ 785,000	15%
Permanent Financing - City of Portland HOME/HTF/Healthy Neig	\$595,000	\$9,917	\$11	\$595,000	\$9,917	\$11	\$ -	0%
FLHB Boston Loan	\$1,025,000	\$17,083	\$19	\$1,025,000	\$17,083	\$19		
FLHB Boston Subsidy	\$650,000	\$10,833	\$12	\$650,000	\$10,833	\$12		
Equity (LIHTC/tenant contributions)	\$8,128,281	\$135,471	\$148	\$8,128,281	\$135,471	\$148	\$ -	0%
Deferred development fee	\$0	\$0	\$0		\$0	\$0		
Other MSHA Subsidy	\$960,000	\$16,000	\$18	\$960,000	\$16,000	\$18	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Sources of Funds	\$16,748,281	\$279,138	\$306	\$17,533,281	\$292,221	\$320	\$ 785,000	5%

Uses of Funds

Hard Costs								
Site Improvements		\$0	\$0	\$700,000	\$11,667	\$13	\$ 700,000	#DIV/0!
Rehabilitation		\$0	\$0		\$0	\$0		
New Construction	\$12,271,000	\$204,517	\$224	\$11,017,572	\$183,626	\$201	\$ (1,253,428)	-10%
Contractor's Profit, Overhead, & Gen. Requirements 0.0%		\$0	\$0	\$1,050,000	\$17,500	\$19	\$ 1,050,000	#DIV/0!
Hazardous Materials abatement (if contracted separately)		\$0	\$0		\$0	\$0		
Demolition Cost (if contracted separately)		\$0	\$0		\$0	\$0		
Bond Premium		\$0	\$0	\$65,000	\$1,083	\$1	\$ 65,000	#DIV/0!
Other		\$0	\$0		\$0	\$0		
Hard Cost Contingency (% of hard costs) 4.6%	\$613,550	\$10,226	\$11	\$585,879	\$9,765	\$11	\$ (27,671)	-5%
Total Hard Costs	\$12,884,550	\$214,743	\$235	\$13,418,451	\$223,641	\$245	\$ 533,901	4%

Soft Costs								
Building Permit & Fees	\$377,000	\$6,283	\$7	\$382,000	\$6,367	\$7	\$ 5,000	1%
Survey & Engineering	\$36,000	\$600	\$1	\$36,000	\$600	\$1	\$ -	0%
Design & Permitting (% of const exp) 4.5%	\$520,000	\$8,667	\$9	\$520,000	\$8,667	\$9	\$ -	0%
Borrower Legal (all closings, excluding syndication legal)	\$68,000	\$1,133	\$1	\$68,000	\$1,133	\$1	\$ -	0%
Title & Recording	\$18,885	\$315	\$0	\$18,885	\$315	\$0	\$ -	0%
Accounting	\$10,000	\$167	\$0	\$10,000	\$167	\$0	\$ -	0%
Construction Period Taxes	\$15,000	\$250	\$0	\$15,000	\$250	\$0	\$ -	0%
Construction Period Insurance	\$30,000	\$500	\$1	\$30,000	\$500	\$1	\$ -	0%
Other: FF&E, Security	\$60,000	\$1,000	\$1	\$60,000	\$1,000	\$1	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Soft Costs	\$1,134,885	\$18,915	\$21	\$1,139,885	\$18,998	\$21	\$ 5,000	0%

Financing Costs								
Construction Loan Origination Fees	\$28,750	\$479	\$1	\$28,750	\$479	\$1	\$ -	0%
Construction Period Interest	\$425,000	\$7,083	\$8	\$500,000	\$8,333	\$9	\$ 75,000	18%
Lender Inspection Fees	\$12,000	\$200	\$0	\$12,000	\$200	\$0	\$ -	0%
Letter of Credit Fee	\$5,000	\$83	\$0	\$5,000	\$83	\$0	\$ -	0%
Permanent Loan Fee	\$10,000	\$167	\$0	\$10,000	\$167	\$0	\$ -	0%
Construction Lender Legal	\$15,000	\$250	\$0	\$147,000	\$2,450	\$3	\$ 132,000	880%
Other		\$0	\$0		\$0	\$0		
Total Financing Costs	\$495,750	\$8,263	\$9	\$702,750	\$11,713	\$13	\$ 207,000	42%

Miscellaneous								
Market Survey	\$5,000	\$83	\$0	\$5,000	\$83	\$0	\$ -	0%
Appraisal	\$6,500	\$108	\$0	\$6,500	\$108	\$0	\$ -	0%
Environmental Study	\$4,000	\$67	\$0	\$4,000	\$67	\$0	\$ -	0%
LIHTC Fees -- prepaid monitoring	\$124,386	\$2,073	\$2	\$124,386	\$2,073	\$2	\$ -	0%
Other: Commissioning		\$0	\$0		\$0	\$0		
Relocation Costs		\$0	\$0		\$0	\$0		
Other "Testing & Special Inspections"	\$25,000	\$417	\$0	\$25,000	\$417	\$0	\$ -	0%
Soft Cost Contingency (% of soft costs excl Dev Fee) 1.11%	\$20,000	\$333	\$0	\$20,000	\$333	\$0	\$ -	0%
Total Miscellaneous:	\$184,886	\$3,081	\$12	\$184,886	\$3,081	\$16	\$ -	0%

Acquisition								
Acquisition: Buildings		\$0	\$0		\$0	\$0		
Acquisition: Land	\$629,500	\$10,492	\$11	\$629,500	\$10,492	\$11	\$ -	0%
Acquisition: Legal		\$0	\$0		\$0	\$0		
Other		\$0	\$0		\$0	\$0		
Total Acquisition	\$629,500	\$10,492	\$11	\$629,500	\$10,492	\$11	\$ -	0%

Reserves and Developer Fee								
Operating Deficit Escrow	\$409,000	\$6,817	\$7	\$453,000	\$7,550	\$8	\$ 44,000	11%
Prefunded Replacement Reserve	\$122,710	\$2,045	\$2	\$110,176	\$1,836	\$2	\$ (12,534)	-10%
Taxes & Insurance Escrow	\$87,000	\$1,450	\$2	\$94,633	\$1,577	\$2	\$ 7,633	9%
Developer Overhead		\$0	\$0		\$0	\$0		
Developer Profit	\$750,000	\$12,500	\$14	\$750,000	\$12,500	\$14	\$ -	0%
Rent Up Reserve & Marketing	\$50,000	\$833	\$1	\$50,000	\$833	\$1	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Reserves and Developer Fee	\$1,418,710	\$23,645	\$26	\$1,457,809	\$24,297	\$27	\$ 39,099	3%

Total Uses of Funds	\$16,748,281	\$279,138	\$315	\$17,533,281	\$292,221	\$333	\$ 785,000	5%
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Developer Fee Analysis: Total Fees: \$750,000
(excluding reserves & developer fee) Percent TDC: 4.67%

Total Fees: \$750,000
Percent of TDC: 4.67%

CITY OF PORTLAND
200 VALLEY STREET
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Date: , 2020

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200 Valley Street **Affordable Housing Development District Development Program**

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- Section 2.04 Relocation Plan
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- Section 2.06 District Operation
- Section 2.07 Assurance of Compliance
- Section 2.08 Program Duration
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Article III. Financial Plan

- Section 3.01 Cost Estimates for the Development Program
- Section 3.02 Amount of Indebtedness to be Incurred
- Section 3.03 Sources of Anticipated Revenues
- Section 3.04 Estimated Increased Assessed Value; Portion Applied to Development Program
- Section 3.05 Description of Terms and Conditions of Agreements
- Section 3.06 Calculation of Tax Shifts

Article IV. Municipal Approvals

- Section 4.01 Public Hearing
- Section 4.02 Authorizing Votes

Exhibits

- Exhibit A Estimated Allocation of Tax Increment and Estimated Tax Increment Revenues
- Exhibit B Estimated Development Costs
- Exhibit C Property Description and Configuration of the District
- Exhibit D Certificate of Assessor
- Exhibit E Credit Enhancement Agreement
- Exhibit F Tax Shift Computations
- Exhibit G Notice of Public Hearing
- Exhibit H City Council Orders
- Exhibit I Declaration of Covenants, Conditions and Restrictions
- Exhibit J District Narrative

200 Valley Street
Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 200 Valley Street in Portland. The land area of the District includes approximately .3444 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 200 Valley Street Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable project and operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Avesta Valley Street LP, its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through debt and equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into the Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues on uncaptured assessed value from the District will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District (i.e., the Original Assessed Value) will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 200 Valley Street involves the construction of a five story, 60 unit building on approximately .3444 acres, into an affordable housing neighborhood. The objective of the project is that 80% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of the construction of a five story,

60 unit building on a site owned or to be owned by Avesta Valley Street LP. The first floor will feature a large community space, secure indoor bike storage, laundry, office space, and secured covered parking. The four upper floors will be comprised of 11 (eleven) studio apartments, 25 (twenty-five) one-bedroom apartments, 14 (fourteen) two-bedroom apartments, and ten (ten) three-bedroom apartments. Of the 60 (sixty) units, 48 (forty-eight) will have income restrictions: 36 (thirty-six) will be reserved for households at or below 50% area median income and 12 (twelve) will be reserved for households at or below 60% area median income. The remaining 12 (twelve) apartments will be unrestricted market rate. The zoning for the project assures that this number of units and this affordability objective will be met.

The 200 Valley Street project (the “Project”) is projected to have a total local increased assessed valuation at build out of approximately \$5,953,300 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the Project will generate approximately a thirty-year annual average of \$136,409 in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes, and funding of the Project’s capital reserve account, and credit enhancement.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$136,409 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay [operating costs, etc.] for the project at 200 Valley Street. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No relocation is necessary as a result of this Project. The entire parcel is comprised of an empty lot, unpaved surface parking, and two-story residential building that is expected to be unoccupied at the time of approval by the City Council.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management).

The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .3444 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 694.865 acres) is 5.61% of total acreage in the City. The 694.865 acres includes two exempt districts—a transit oriented district and a downtown/transit oriented district—which, when subtracted from the 694.865 acres is 243.855, which is 1.97% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing affordable housing development districts in the City and this proposed affordable housing development district is 9.5701 acres, or 0.077% of the total acreage of the City, which does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto, and the Original Assessed Value of all existing and this proposed affordable housing development district within the City is \$2,017,310 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 80% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 200 Valley Street Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of the end of the City's Fiscal Year 2020, which was March 31, 2020. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 100% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be 75% of the Increased Assessed Value. Accordingly, seventy-five percent (75%) of the Tax Increment Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement seventy-five percent (75%) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 200 Valley Street project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the

formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on [enter date notice was published in the paper], a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2020. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on [enter date of city council meeting] designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Jon P. Jennings City Manager,
City of Portland

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 200 Valley Street Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **Avesta Valley Street LP**, a Maine Limited Partnership with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs and credit enhancement associated with the development of sixty (60) units of mixed-income rental housing located at 200 Valley Street, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City as a borrower. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of sixty (60) units of mixed-income rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the nature, size, number or location of the units in the Development and the facilities in the units.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years at least 36 (thirty-six) units will be occupied by households at or below 50% area median income and 12 (twelve) will be reserved for households at or below 60% area median income (the “Applicable Income Limit”). The units subject to the Applicable Income Limit are collectively referred to as the “Low Income Units”). The remaining twelve (12) units will be market rate units.
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”). Any reasonable Determination made by Maine State Housing Authority (“MaineHousing”) that a household satisfies the Applicable Income Limit shall automatically be deemed satisfactory to the City.

- iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household's income may exceed the Applicable Income Limit, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.
 - iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.
 - d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:
 - i. For a unit without a separate bedroom, one individual.
 - ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.
 - e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
 5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases

or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by MaineHousing shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City

arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications.** This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability.** The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns.** This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer **simultaneously to [_____]**, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor.** This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ **[construction lender and any other entities providing financing will also be parties]** dated _____, _____ to be recorded in the Cumberland County Registry of Deeds herewith.

Signature page follows.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2020.

CITY OF PORTLAND

Witness

By:_____
Jon P. Jennings
Its City Manager

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

AVESTA VALLEY STREET LP
By: Pinecone Housing Corporation, its General Partner

Witness

By:_____
Name: Dana Totman
Its President

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Dana Totman, President of Pinecone Housing Corporation, General Partner of Avesta Valley Street LP, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation and limited partnership.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 18-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Avesta Valley Street LP - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Justin Costa, Chair of the Economic Development Committee
Jill C. Duson, Chair of the Housing Committee

(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

This is a companion order to Order -19/20 above.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 17-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

VIII. LIST ATTACHMENTS

1. 200 Valley Street Affordable Housing Credit Enhancement 7.13.2020

2. 200 Valley CEA Clean for Council 070120

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 AND AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE 200 VALLEY STREET AFFORDABLE HOUSING CREDIT ENHANCEMENT
AGREEMENT
WITH AVESTA VALLEY STREET, LP,**

ORDERED, that the credit enhancement agreement between the City of Portland and Avesta Valley Street, LP, related to the 200 Valley Street Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

AVESTA VALLEY STREET LP

DATED: _____, 2020

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EXHIBITS
Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Avesta Valley Street LP, a Maine Limited Partnership (the “Developer”).

**WITNESSETH
THAT**

WHEREAS, the City designated the *200 Valley Street Municipal Affordable Housing Development and Tax Increment Financing District* pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on August 3, 2020, Order _____ - 19/20 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by MaineHousing] and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as

specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Two Hundred Forty-Six Thousand Seven Hundred Dollars (\$246,700), which is the taxable assessed real property value of the District as of March 31, 2020 (April 1, 2019).

“Non-Captured Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the difference between the Increased Assessed Value and the Captured Assessed Value.

“Project” means the planned sixty (60) unit mixed-income housing project to be named Valley Street Apartments located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged

or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II

AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “200 Valley Street Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Project Cost Account which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Developer Project Cost Subaccount is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2020 and continuing thereafter through the Tax Year beginning April 1, 2049 (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the “Non-Captured Increased Assessed Value.”

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such 75% portion into the Project Cost Account. The remaining 25% portion of the payment of Property Taxes constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3), subject to the payment obligations set forth in Article III below.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into Project Cost Account under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of Developer, subject to the payment obligations set forth in Article III below.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into the Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to

any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain due to the City from and unpaid by Developer, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer, including but not limited to sewer or stormwater fees, ambulance fees, or assessments, remain unpaid, no payment of Developer 's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real or personal property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide financial statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a monthly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater. The City will provide the Developer with information that the Developer must include in all bid materials that the Developer provides to prospective contractors who may bid on the project to ensure that the wage requirements set forth in this section are met.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to Project Cost Account and its obligation to make payment out of Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest

therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in Developer Project Cost Subaccount and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.
- (h) Any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default

described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director's unconditional approval of the City's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2020, and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination

to Developer in the event that Developer does not receive a certificate of occupancy for the Project by June 30, 2023.

Termination by City. Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined in Section 8.15 below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination. If the City elects to exercise its right to terminate this Agreement due to a foreclosure of the Declaration, the Developer shall have the right to attempt to reinstate the Declaration and this Agreement. If the Developer elects to exercise its right to reinstate the Declaration and this Agreement, it shall provide written notice to the City within 30 days of receipt of the City's notice of its intent to terminate the Agreement. The Developer will then have one (1) year to reinstate the Declaration and this Agreement or cause the Declaration to be reinstated by the foreclosing party; provided, however, that the City shall have no obligation to make payments to Developer hereunder after it provides the termination notice unless and until the Declaration is reinstated and in full force and effect. Reinstatement of the Declaration shall automatically reinstate this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing provided by a bank, financial institution, Maine State Housing Authority, or other public or private lending institutions and organizations to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any

and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability

or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's
Office
389 Congress Street
Portland, Maine 04101

If to Developer:

Avesta Valley Street LP
c/a Avesta Housing Development Corporation
307 Cumberland Avenue

Portland, ME 04101

With a copy to:

Curtis Thaxter
One Canal Plaza, Suite 1000
Portland, ME 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may file suit to resolve the dispute in the Superior Court located in Cumberland County, State of Maine, which the parties agree shall have exclusive jurisdiction for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder. This clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the units in the Project as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____

Name: Jon P. Jennings

Its City Manager Duly Authorized by the City
Council at its meeting on [Enter meeting date]

WITNESS:

AVEST VALLEY STREET LP

**BY: Pinecone Housing Corporation, its General
Partner**

By: _____

Name: Dana Totman

Its President

EXHIBIT
1

Copy of District Map

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 19-20/21 Designating the 337 Cumberland Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
Justin Costa, Chair of the Economic Development Committee

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No

This project is seeking a 9% Low Income Housing Tax Credit (LIHTC) and tax-exempt debt with MaineHousing contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer. In order for the developer to maximize the projects competitiveness in the LIHTC application, the TIF application must be filed with MaineHousing no later than August 25, 2020. A Notice of Public Hearing must be published 10 days before the August 3 hearing date.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Portland Housing Development Corporation (PHDC) is proposing to construct 60 units of affordable housing on a site located at 337 Cumberland Avenue. PHDC is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$109,900 annually over 30 years.

II. AGENDA DESCRIPTION

During a meeting held on June 16, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (APHDC) is proposing to construct 60 rental units within a six-story mixed-use building on a site currently owned by Youth and Family Outreach (YFO), who will lease the site for 90 years to 337 Cumberland Avenue, LP who will be the development owner. 337 Cumberland Avenue is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with project operating costs.

The project will include 20 studios, 15 one-bedroom, 15 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of

the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. 10% or 6 of the units will be set aside for families residing in a Portland shelter. The units will have affordability restrictions.

PHDC has requested two forms of financial assistance, \$500,000 in Affordable Housing Development funding and Affordable Housing Tax Increment Financing. If approved, the AHTIF financing would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$109,900 with an estimated total of \$3,296,995 in captured revenue returned to the developer over the term of the district, to off-set project operating costs. The remaining 25% of the increased taxable value, currently estimated at a 30 year annual average of \$36,633, with an estimated total of \$1,098,998 will be general fund revenue. The proposed project will be taxable with an estimated annual assessment of \$4.9 million and estimated annual tax of \$114,219 at the current FY20 millage rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with MaineHousing contingent upon a reduction in operating costs through a tax increment financing program that provides for a minimum of 75% of the projects annual property tax revenue to be returned to the developer.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Approval of this AHTIF request is key to making the project application competitive in the Low Income Housing Tax Credit application with MaineHousing.

The City Council must:

- (1) authorize the creation of the AHTIF District; and
- (2) approve the Credit Enhancement Agreement

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establish an Affordable Housing TIF District to support the development of 60 new units of rental housing.

Increase access to rental and ownership housing that is safe and affordable for working and low income families.

V. FINANCIAL IMPACT

When completed, this project's new building assessed value is estimated at \$4.9 million, which would yield \$146,533 in annual assessed property value at the current FY20 millage rate. Seventy-five (75%) percent of the increased tax revenue (approximately \$3,296,995 over 30 years) will be captured revenue returned to the developer. The remaining 25% (approximately \$1,098,998 over 30 years) will be retained by the City as general fund revenue.

A Credit Enhancement Agreement will return approximately \$3,296,995 in captured revenue to the developer (averaged at \$109,900 annually over thirty years) to off-set project operating costs, and approximately \$1,098,998 in general fund revenue to the City (averaged at \$36,633 annually over thirty years). The proposed project will be taxable.

Total development costs are estimated at \$13.5 million. At full build out, the development is projected to pay

an average \$146,533 annually in projected new taxes captured. Non-captured general fund revenues are estimated at an average \$36,633 annually over thirty years. In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$40,245+, or \$1,207,351+ over the life of the district.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The underwriting analysis is attached and supports this request.

TIF projections are included in the backup to this memo.

VI. STAFF ANALYSIS AND BACKGROUND

The site consists of an existing building containing a restaurant, and a chapel that provides space for YFO to offer early childhood education and other supportive services for 58 children. The chapel will be updated and the restaurant will be demolished. The first floor of the new building will provide expansion space for YFO that will allow for an increase in childcare spots from 58 to 107, floors two through five will be residential housing. 337 Cumberland would attempt to secure Project Based Housing Choice Vouchers from PHA for some of the 50% AMI units.

Public Benefits: In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 60 units of rental housing, eighty percent (80%) of which will be affordable to households at or below sixty percent (60%) of the area median income.

Additionally, the TIF will create tax sheltering benefits estimated at an average of \$40,245+ per year, or \$1,207,351+ over the life of the district.

VII. RECOMMENDATION

Staff is requesting the City Council (1) approve the establishment of the 337 Cumberland Avenue Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Community Housing of Maine, Inc. and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

VIII. LIST ATTACHMENTS

1. Order Designating Affordable Housing TIF 337 Cumberland Ave 7.13.2020
2. Attachments for City Council 8.3.20 337 Cumberland Ave
3. 337 Cumberland Ave DEV PROG clean for council 070820
4. 337 Cumberland Ave DEC OF COV clean for council 070620

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 DESIGNATING THE 337 CUMBERLAND AVENUE AFFORDABLE
HOUSING DEVELOPMENT DISTRICT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, 337 Cumberland Avenue, LP intends to construct certain improvements within the 337 Cumberland Avenue Affordable Housing Development Tax Increment Financing (“TIF”) District, including 60 rental units of housing 80% of which will be affordable; and

WHEREAS, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 337 Cumberland Avenue Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the 337 Cumberland Avenue Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 337 Cumberland Avenue Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 337 Cumberland Avenue Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “337 Cumberland Avenue Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “337 Cumberland Avenue Affordable Housing Development District” as more

particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “337 Cumberland Avenue Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “337 Cumberland Avenue Affordable Housing Development District” on behalf of the municipal legislative body.



Project Summary – 337 Cumberland Ave Affordable Housing Development Application

Youth and Family Outreach creates opportunities that support learning and enhance the quality of life for children, teens, and families in Greater Portland. Together with its community partners, the Portland Housing Development Corporation provides and expands affordable housing and services that improve quality of life, build community, enhance safety and promote personal success for the people we serve and the neighborhoods in which they reside. Youth and Family Outreach and Portland Housing Development Corporation acknowledge the importance of residing in an affordable, stable home, particularly for our most vulnerable families. Combining the foundations of home and high-quality education increase the opportunity to grow with a sense of purpose, well-being, and stability. By increasing the availability of affordable homes and childcare opportunities within Portland's downtown core, YFO and PHA will provide even more opportunity for residents of Portland to engage and prosper.

The proposed redevelopment of 337 Cumberland Ave supports the common goals of the sponsor organizations and the City of Portland by providing a newly constructed structure containing 60 mixed-income apartments and space for YFO to increase the number of families they support through early childhood education and other support services. Active and lively street frontages, families living steps from job and educational opportunities, and two community partners working together to provide a community hub are just some of the benefits from building 337 Cumberland Ave, a model sustainable building designed to embrace beauty, equity, and a stable climate for now and future generations.

The existing restaurant located at 337 Cumberland Ave will be demolished, and in its place a new 6 story building will be constructed. On the first floor will be expansion space for Youth and Family Outreach; the new space will allow the long-time neighborhood organization to support 49 additional children. The neighboring Chapel building, currently used by YFO for childcare, will be renovated to contain community space and childcare classrooms. The upper five floors will contain 60 apartments with a mix of apartment types and a blend of income targets. There will be twelve market rate units, and all apartments will be comparable in size and furnishings. Market rate units, combined with a variety of lower-targeted apartments, supports the City's goal of promoting economic diversity in the neighborhood. A non-smoking policy will be building-wide and will extend to within 25 feet of entrances. In alignment with the sponsors' missions to ensure children have stability and a good foundation, 10% of the homes (6 units) will be set-aside for families residing in a Portland shelter.

The building is located on an underdeveloped site in the urban core and will be a mixed-use building with uses that are fully appropriate for the site. This will provide apartments in a location within easy walking distance of the largest concentration of employment in the state, a transit hub with direct connections across Greater Portland, and on the edge of the residential neighborhood of West Bayside. Along both Portland Street and Cumberland Street the building will have appropriately designed entries and enhancements along the sidewalk edges. The YFO childcare playground areas at the street level will be improved. The team is planning for the building to meet the Core Green Building and Passive House standards, in addition to meeting the City's Green Building Ordinance. Accessibility requirements will be



met, and careful attention will be made to compartmentalization of the apartments in order to provide optimal levels of visual, acoustical, and odor privacy. The following amenities will be available to all residents: secure entrance lobby containing a site manager's office, ADA bathroom, mailbox and package area, and gathering space for working or visiting. Additional building amenities include a laundry room, easily accessible storage for bicycles, strollers, and items that support human-powered mobility, onsite handicap parking, a community room, free wireless internet throughout the building, and access of YFO's playground spaces.

The development conforms to City of Portland and MaineHousing underwriting criteria. The developer requests \$500,000 in HOME funds, roughly \$8,333 per unit. PHDC understands and is prepared to meet all the requirements set forth by the City and HUD related to using these funds. Additionally, it is understood that the affordability period will be for at least 90 years. Below is a breakdown of the proposed unit affordability mix. The project will attempt to secure Project Based Housing Choice Vouchers from Portland Housing Authority for some of 50% AMI apartments.

Unit Size	Income Targeting (% of AMI or less)	# of Units
Studio	50% AMI	10
	60% AMI	4
	Market Rate	6
1-Bedroom	50% AMI	7
	60% AMI	3
	Market Rate	5
2-Bedroom	50% AMI	11
	60% AMI	3
	Market Rate	1
3-Bedroom	50% AMI	8
	60% AMI	2
Total		60

Portland Housing Development Corporation has a strong organizational and financial background and has organized a development team with experience and capacity to complete the project. Matthew Peters, of Elysian Enterprises LLC, will lead the development project management. Kaplan Thompson Architects and Atlantic Resource Consultants will lead the design and permitting. Portland Housing Authority will provide ongoing property management. Their background in facilities, financial compliance, and the needs of Portland residents will ensure that the building is an asset to the neighborhood and broader community.

The site is currently owned by YFO, who will lease it for 90 years to 337 Cumberland Avenue, LP, who will be the development owner. Development can be completed using current zoning and will not require a contract, conditional zone, or zoning amendment. The current timeline allows for planning board related approvals to be completed prior to City Council approval of this application. A ESA Phase I and II have been completed through Brownfields support funds through the City. Soil contamination on the site was identified that is typical for this location. A plan for containment and proper removal, as recommended by the report, is included in the project budget. The project timeline is to complete all local planning approvals by August 2020, obtain all financing commitments by the end of 2020, begin design development in January 2021, with construction starting August 2021 and lasting 16 months.

337 Cumberland Ave

Site Context Images



Looking South West from corner of Cumberland Ave and Preble St



Looking West along Portland St toward Preble St. Site is parking lot on the right.

337 Cumberland Ave

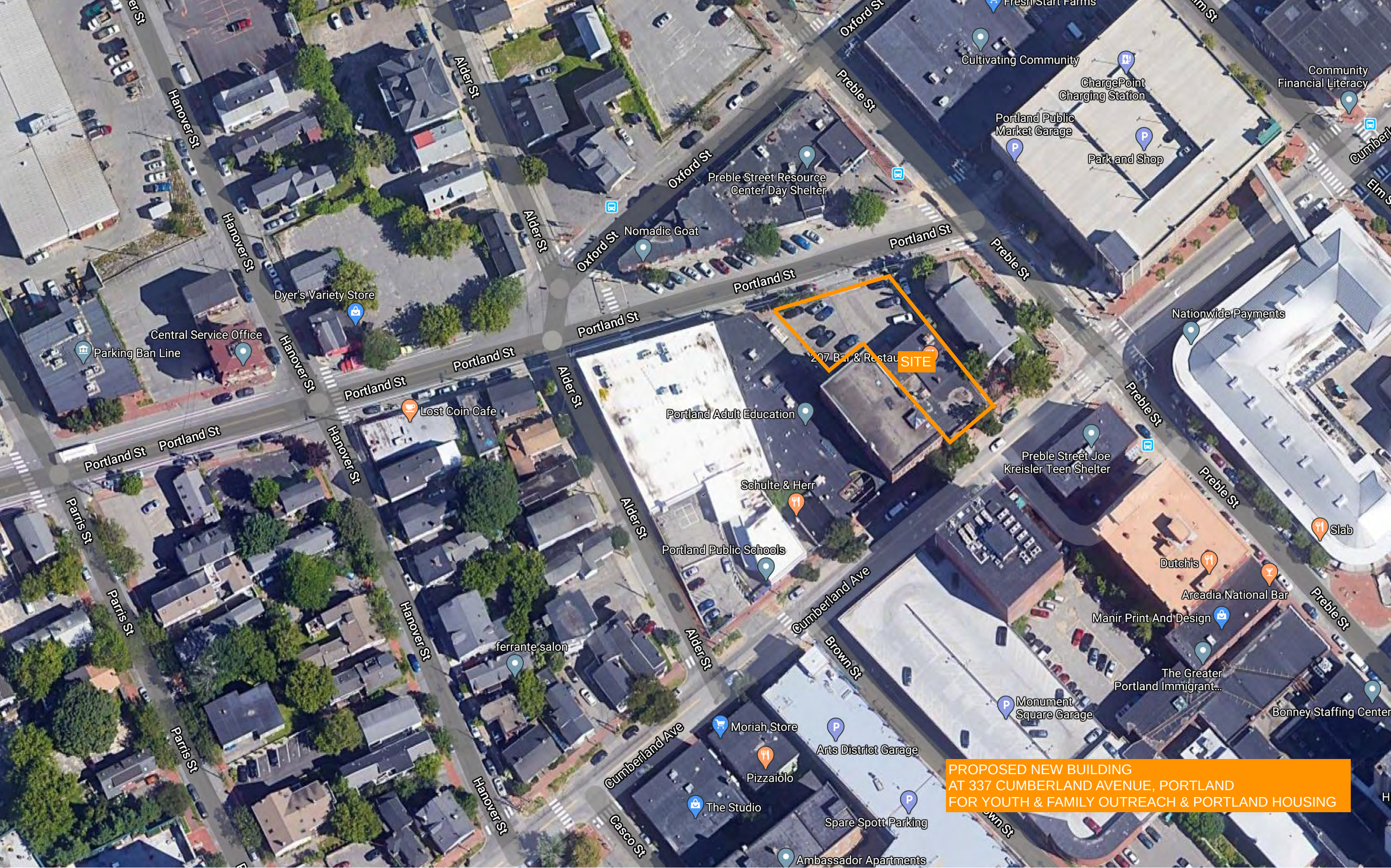
Site Context Images



Preble Chapel. New building will be located between chapel and brick building.



Parking lot behind restaurant to be redeveloped. Portland St to right of image.



PROPOSED NEW BUILDING
AT 337 CUMBERLAND AVENUE, PORTLAND
FOR YOUTH & FAMILY OUTREACH & PORTLAND HOUSING



Bayside Bowl

PeopleReady

PROPOSED NEW BUILDING
AT 337 CUMBERLAND AVENUE, PORTLAND
FOR YOUTH & FAMILY OUTREACH & PORTLAND HOUSING



VIEW FROM CUMBERLAND AVENUE

**Kaplan
Thompson
Architects**

102 Exchange Street
Portland, ME 04101
(207) 842-2888
kaplanthompson.com

PROJECT
337 CUMBERLAND

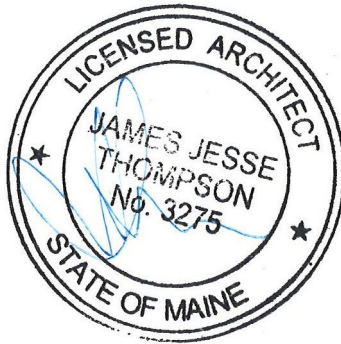
CHILDCARE, MULTI-FAMILY HOUSING,
& COMMUNITY SERVICES

337 Cumberland Avenue
Portland, ME 04101

CLIENT PARTNER
**PORTLAND HOUSING
DEVELOPMENT
CORPORATION**
14 Baxter Boulevard
Portland, ME 04101
p: (207) 221-8009

CIVIL & LANDSCAPING
**ATLANTIC RESOURCE
CONSULTANTS**
541 US-1, Suite 21
Freeport, ME 04032
p: (207) 869-9050

EARLY CHILDCARE EDUCATION
STUDIO MLA ARCHITECTS
320 Washington Street
Brookline, MA 02445
p: (617) 608-1551



NOT FOR CONSTRUCTION

PROJECT	YFP
DATE	06/01/2020

DRAWN BY	RL/CB
PHASE	SITE PLAN REVIEW

PERSPECTIVE
A-9.1



VIEW FROM PORTLAND STREET

**Kaplan
Thompson
Architects**

102 Exchange Street
Portland, ME 04101
(207) 842-2888
kaplanthompson.com

PROJECT
337 CUMBERLAND

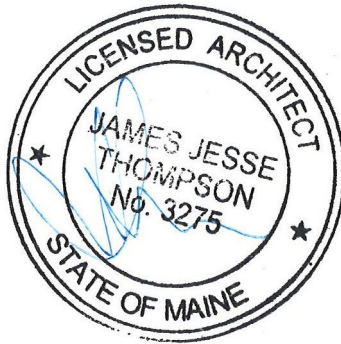
CHILDCARE, MULTI-FAMILY HOUSING,
& COMMUNITY SERVICES

337 Cumberland Avenue
Portland, ME 04101

CLIENT PARTNER
**PORTLAND HOUSING
DEVELOPMENT
CORPORATION**
14 Baxter Boulevard
Portland, ME 04101
p: (207) 221-8009

CIVIL & LANDSCAPING
**ATLANTIC RESOURCE
CONSULTANTS**
541 US-1, Suite 21
Freeport, ME 04032
p: (207) 869-9050

EARLY CHILDCARE EDUCATION
STUDIO MLA ARCHITECTS
320 Washington Street
Brookline, MA 02445
p: (617) 608-1551



NOT FOR CONSTRUCTION

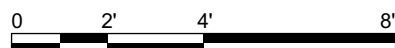
PROJECT	YFP
DATE	06/01/2020

DRAWN BY	RL/CB
PHASE	SITE PLAN REVIEW

PERSPECTIVE
A-9.2



1 ENLARGED ELEVATION - CUMBERLAND AVENUE
SCALE: 1/4" = 1'-0"



**Kaplan
Thompson
Architects**
102 Exchange Street
Portland, ME 04101
(207) 842-2888
kaplanthompson.com

PROJECT
337 CUMBERLAND

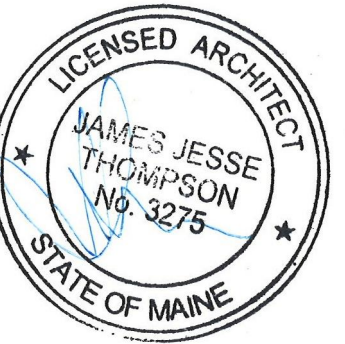
CHILDCARE, MULTI-FAMILY HOUSING,
& COMMUNITY SERVICES

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NOT FOR CONSTRUCTION

PROJECT YFP
DATE 06/01/2020

DRAWN BY RL/CB
PHASE SITE PLAN REVIEW

ENLARGED
ELEVATION
CUMBERLAND
AVENUE
A-2.1

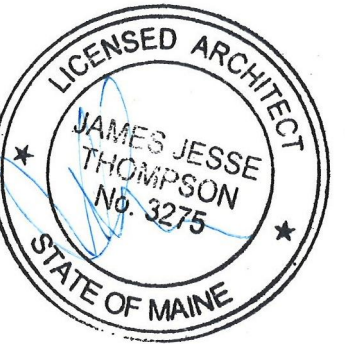
CHILD CARE, MULTI-FAMILY HOUSING,
& COMMUNITY SERVICES

337 Cumberland Avenue
Portland, ME 04101

CLIENT PARTNER
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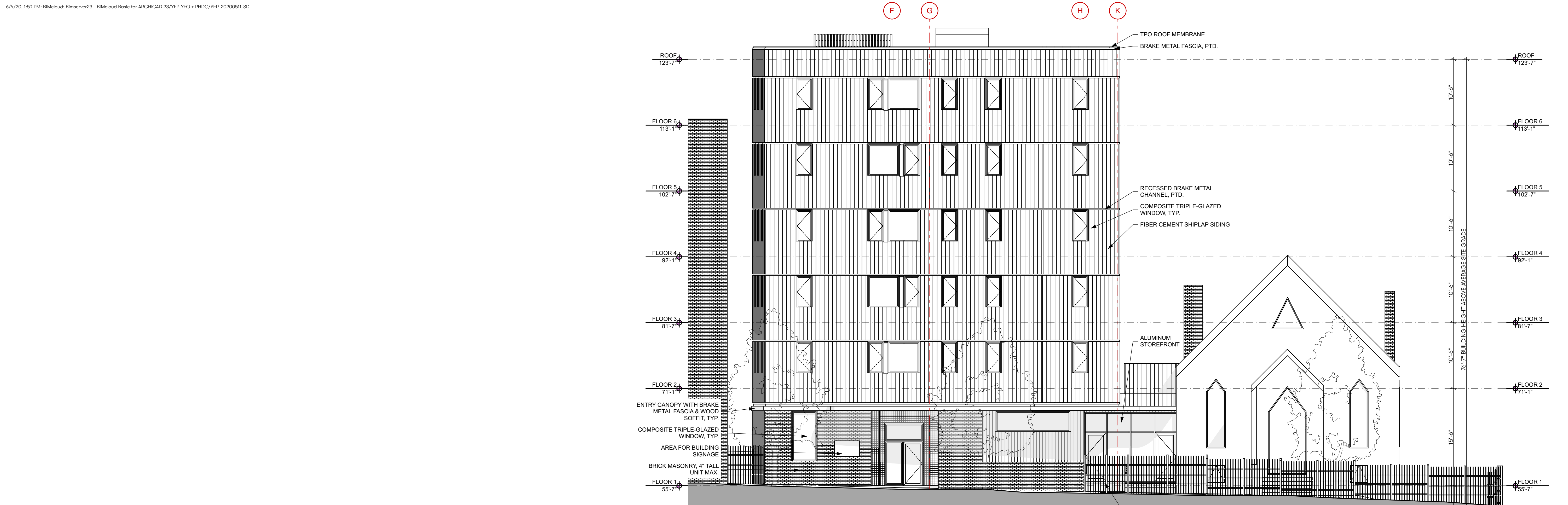
NOT FOR CONSTRUCTION

PROJECT	YFP
DATE	06/01/2020

DRAWN BY	RL/CB
PHASE	SITE PLAN REVIEW

CUMBERLAND
AVENUE (SE) &
PORTLAND STREET
(NW) ELEVATIONS

A-2.2



1 SOUTH-EAST ELEVATION - CUMBERLAND AVENUE



② NORTH-WEST ELEVATION - PORTLAND STREET

PROJECT NAME: 337 Cumberland
LOCATION: 337 Cumberland Ave Portland, ME 04101

Date: 4/22/2020
Proforma:

DEVELOPMENT ASSUMPTIONS					
Total Units		60	Initiation Adjustments	Yr 1-5	Yr. 6-15 Yr. 16-30
# @ 50% AMI (low HOME)	25.0%	15	Rent	2.00%	2.00% 3.00%
# @ 50% AMI (LIHTC)	35.0%	21	Operating Expense	3.00%	3.00% 3.00%
# @ 60% AMI (High HOME)	0.0%	0	Other Income	2.00%	2.50% 3.00%
# @ 60% AMI (LIHTC)	20.0%	12	Debt Coverage Ratio	1.15	
# @ Market Rate	20.0%	12	Vacancy	5%	
Appraised Market Value		3,866,041	Market Value/Unit	\$64,434	

PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	13,550,628	225,844		13,550,628
Childcare	0	0		0
Builder Overhead	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.2% 708,531	11,809		708,531
Subtotal Construction Costs	14,259,159	237,653	0	14,259,159
Building Permits and Fees	383,068	6,384		383,068
Survey & Engineering	60,500	1,008		60,500
Design & Permitting	944,649	15,744		944,649
Legal	70,000	1,167		70,000
Title & Recording	11,000	183		11,000
Accounting	10,000	167		10,000
Construction Period Tax	30,000	500		30,000
Construction Period Insurance	20,000	333		20,000
Other: FF&E, Security	145,000	2,417		145,000
Subtotal Soft Costs	1,674,217	27,904	0	1,674,217
Construction Loan Origination Fees	52,000	867		52,000
Construction Loan Interest	273,000	4,550		273,000
Lender Inspection Fees	5,400	90		5,400
Letter of Credit Fee	250	4		250
Permanent Loan Fees	50,410	840		50,410
Other: Construction Lender Legal	15,000	250		15,000
Subtotal Finance Costs	396,060	6,601	0	396,060
Market Survey	6,000	100		6,000
Appraisal	7,000	117		7,000
Environmental Study	7,200	120		7,200
LIHTC Fees - prepaid monitoring	123,375	2,056		123,375
Other: Commissioning	30,000	500		30,000
Relocation Costs	0			0
Soft Cost Contingency	50,000	833		50,000
Subtotal Miscellaneous	223,575	3,726	0	223,575
Acquisition: Buildings	0	0		0
Acquisition: Land	0	0		0
Acquisition: Legal	0	0		0
Subtotal Acquisition	0	0	0	0
Operating Deficit Escrow	447,108	7,452		447,108
Pre-funded Replacements	135,506	2,258		135,506
Tax & Insurance Escrow	69,110	1,152		69,110
Reserve for Golden Rents	0	0		0
Consultant	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,451,724	24,195	0	1,451,724
Total Development Costs	18,004,735	300,079	0	18,004,735
	\$17,434,252	\$290,571 max allowed		
		254,887 Bedroom Calculation		

LIHTC Alloc.	945,000
Equity yield	0.81
Synd. %	99.99%
Equity Raise	7,653,735

Historic Credit FED	0
Equity yield	0.88
Synd. %	99.99%
Equity Raise	0

Number of Tax-payers	1
Historic Credit STATE	0
Equity yield	0.89
Synd. %	99.99%
Equity Raise	0

Total Equity:	7,653,735
---------------	-----------

Gross Square Footage	69,170
Construction Cost/Sq ft.	\$206

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS									
Sources	CLC 7/1/2021	10/1/2021	During Construction			PLC 9/1/2022	2023	2024	Total
			1/1/2022	4/1/2022	7/1/2022				
Beginning Cash	0	0	0	0	0	0	0	0	0
Capital Contribution	382,687		50,000			6,915,048	153,000	153,000	7,653,735
Construction Loan	1,163	2,606,688	2,376,688	4,006,688	4,006,688				12,997,914
--									
MSHA Subsidy	0		480,000			480,000			960,000
MSHA Interest Only Mortgage						5,041,000			5,041,000
--						0			0
City of Portland Funds	0		450,000			50,000			500,000
AHP Loan						1,600,000			1,600,000
AHP Subsidy	0		650,000						650,000
YFO Subsidy	100,000	1,400,000				100,000			1,600,000
Reserves	0	0							0
Development Fee Loan						0			0
TOTAL SOURCES	483,850	4,006,688	4,006,688	4,006,688	4,006,688	14,186,048	153,000	153,000	31,002,649
Uses									
Acquisition	0					0			0
Construction		3,564,790	3,564,790	3,564,790	3,564,790	0			14,259,159
Soft Costs	300,000	340,554	340,554	340,554	340,554	12,000			1,674,217
Financing Costs	67,250	69,600	69,600	69,600	69,600	50,410			396,060
Miscellaneous	16,600	31,744	31,744	31,744	31,744	80,000			223,575
Dev Fee	100,000					344,000	153,000	153,000	750,000
Reserves	0					701,724			701,724
TOTAL DEV. COSTS	483,850	4,006,688	4,006,688	4,006,688	4,006,688	1,188,134	153,000	153,000	18,004,735
Repay GP Bridge Loan						0			0
Repay Construction Loan						12,997,914			12,997,914
Reserve for Golden Rents						0			0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	12,997,914	0	0	12,997,914
TOTAL USES OF FUNDS	483,850	4,006,688	4,006,688	4,006,688	4,006,688	14,186,048	153,000	153,000	31,002,649
Ending Cash	0	0	0	0	0	0	0	0	0

PROJECT FINANCING									
Source	Amount	Rate	Term	Lien	Annual D/S			Debt Constants	
					Yr. 1-5	Yr. 6-15	Yr. 16-30		
Source 1: MSHA Subsidy	960,000	0.00%	30	First	0	0	0		
Source 2: MSHA Interest Only Mortgage	5,041,000	6.00%	40	First	302,460	302,460	302,460	\$0.06000	
Source 3: --	0	5.00%	30	--	0	0	0	\$0.06442	
Source 4: City of Portland Funds	500,000	0.00%	30	Second	0	0	0		
Source 5: AHP Loan	1,600,000	3.35%	30	--	84,617	84,617	84,617	\$0.05289	
Source 6: AHP Subsidy	650,000	0.00%	30	Second	0	0	0		
Source 7: YFO Subsidy	1,600,000	0.00%	30	--					
Source 8: Reserves	0	0.00%	30	Third		Cash Flow			
Source 9: Development Fee Loan	0	0.00%	0	Unsecured		Cash Flow			
Source 10: Net Syndication	7,653,735	\$0.81							
Capitalization Gap (Surplus)	0								
Total	18,004,735								

PROPOSED RENT SCHEDULE								
Type	AMI	# Units	HAP Rents	LIHTC Max Rents	Gross Rent	Market Rent	Utility Allow.	Total Rent
Efficiency	50% HOME	0			1,017	\$1,165		0
	50% LIHTC	10		878	878	\$1,165		105,360
	60% HighHOME	0				\$1,165		0
	60% LIHTC	4		1054	1,054	\$1,165		50,592
	Market	6			1,165	\$1,165		83,880
20								
1BR	50% HOME				1,109	\$1,445	0	0
	50% LIHTC	7		941	941	\$1,445	0	79,044
	60% HighHOME				984	\$1,445	0	0
	60% LIHTC	3		1129	1,129	\$1,445	0	40,644
	Market	5			1,445	\$1,445	0	86,700
15							0	0
2BR	PBV Section 8	7			1,440	\$1,725	0	120,960
	50% LIHTC	4		1128	1,128	\$1,725	0	54,144
	60% HighHOME				1,450	\$1,725	0	0
	60% LIHTC	3		1354	1,354	\$1,725	0	48,744
	Market	1			1,725	\$1,725	0	20,700
29.2%		0					0	0
15		0					0	0
3BR	PBV Section 8	8			1,882	\$1,882		180,672
	50% LIHTC	0		1304	1,304	\$1,882	0	0
	50.0% HighHOME	0				\$1,882		0
	20.8% 60% LIHTC	2		1565	1,565	\$1,882	0	37,560
	Market	0			1,882	\$1,882		0
10								
4BR	50% HOME	0			1,882	\$2,000	0	0
	50% LIHTC	0			1,209	\$2,000	0	0
	60% HOME					\$2,000	0	0
	60% LIHTC	0			1,451	\$2,000	0	0
	Market				2,000	\$2,000		0
0								0
Other:								0
Subtotals		60						909,000
			Vacancy Rate		5%			(45,450)
			Other Income		Tax Relief	75%		85,664
			Other Income		Laundry			3,000
			Effective Gross Income					952,214

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,599	843	70
Management Charges	50,599	843	70
Marketing Expenses	0	0	0
Legal Expenses	2,000	33	3
Auditing Expenses	6,000	100	8
Other Administrative Expenses		0	0
Administrative Expenses	109,198	1,820	152
Operating Expenses:			
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	15,000	250	21
Natural Gas	6,000	100	8
Electricity	41,000	683	57
Water and Sewer	14,000	233	19
Garbage and Trash Removal	4,500	75	6
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	80,500	1,342	112
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	15,000	250	21
Miscellaneous Ground Maintenance		0	0
Tenant Damage Charges - Grounds		0	0
Building Maintenance Payroll	70,000	1,167	97
Building Tools and Supplies	10,000	167	14
Building Contractual Services	25,000	417	35
Building Systems Maintenance	15,000	250	21
Miscellaneous Building Maintenance		0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	135,000	2,250	188
General Expenses:			
Property Taxes	114,219	1,904	159
Property and Liability Insurance	24,000	400	33
		0	0
Tenant Service Expenses	17,222	287	24
General Expenses	155,441	2,591	216
Replacement Reserve Funding	27,000	450	38
		0	0
Total	507,139	8,452	704

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Yr 12
	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033
Effective Gross Income	952,214	971,259	990,684	1,010,497	1,030,707	1,051,321	1,072,348	1,115,671	1,137,984	1,160,744	1,183,959	1,207,638
Less Operating Expense	507,139	522,353	538,024	554,165	570,790	587,913	605,551	623,717	642,429	661,702	681,553	701,999
Net Operating Income	445,075	448,905	452,660	456,333	459,918	463,408	466,797	491,954	495,555	499,042	502,406	505,639
Less RLP Repay	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460
Other Loans	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617
Cash Flow	57,998	61,828	65,583	69,256	72,841	76,331	79,720	104,877	108,478	111,965	115,329	118,562
Cash Flow per Unit	967	1,030	1,093	1,154	1,214	1,272	1,329	1,748	1,808	1,866	1,922	1,976
Debt Coverage Ratio(RLP)	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.27	1.28	1.29	1.30	1.31

Total Cash Flow
Projected over 12 Years
1,042,768

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued

	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20	Yr 21	Yr 22	Yr 23
	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	12/31/2043	12/31/2044
Effective Gross Income	1,231,791	1,256,426	1,281,555	1,307,186	1,346,402	1,386,794	1,428,398	1,471,249	1,515,387	1,560,849	1,607,674
Less Operating Expense	723,059	744,751	767,094	790,106	813,810	838,224	863,371	889,272	915,950	943,428	971,731
Net Operating Income	508,731	511,675	514,461	517,080	532,592	548,570	565,027	581,978	599,437	617,420	635,943
Less RLP Repay	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460
Other Loans	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617
Cash Flow	121,654	124,598	127,384	130,003	145,515	161,493	177,950	194,901	212,360	230,343	248,866
Cash Flow per Unit	2,028	2,077	2,123	2,167	2,425	2,692	2,966	3,248	3,539	3,839	4,148
Debt Coverage Ratio(RLP)	1.31	1.32	1.33	1.34	1.38	1.42	1.46	1.50	1.55	1.60	1.64

City of Portland - Affordable Housing (AH) TIF Model
337 Cumberland Avenue, 33-K-5-6-7-9-10-13
[OAV: \\$940,040 ao 3/31/2020](#)
2% Mil Rate Escalation
75% Capture to AH TIF Project; 25% to City General Fund

City of Portland- TIF Projection Table for 337 Cumberland Avenue AH TIF										
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues	City OAV General Fund Revenues
1	2020	\$0	75.00%	\$0	23.78	\$0	\$0	\$0	\$0	\$22,351
2	2021	\$0	75.00%	\$0	24.25	\$0	\$0	\$0	\$0	\$22,798
3	2022	\$3,959,960	75.00%	\$2,969,970	24.74	\$73,467	\$73,467	\$0	\$24,489	\$23,254
4	2023	\$3,959,960	75.00%	\$2,969,970	25.23	\$74,937	\$74,937	\$0	\$24,979	\$23,719
5	2024	\$3,959,960	75.00%	\$2,969,970	25.74	\$76,436	\$76,436	\$0	\$25,479	\$24,193
6	2025	\$3,959,960	75.00%	\$2,969,970	26.25	\$77,964	\$77,964	\$0	\$25,988	\$24,677
7	2026	\$3,959,960	75.00%	\$2,969,970	26.78	\$79,524	\$79,524	\$0	\$26,508	\$25,170
8	2027	\$3,959,960	75.00%	\$2,969,970	27.31	\$81,114	\$81,114	\$0	\$27,038	\$25,674
9	2028	\$3,959,960	75.00%	\$2,969,970	27.86	\$82,736	\$82,736	\$0	\$27,579	\$26,187
10	2029	\$3,959,960	75.00%	\$2,969,970	28.41	\$84,391	\$84,391	\$0	\$28,130	\$26,711
11	2030	\$3,959,960	75.00%	\$2,969,970	28.98	\$86,079	\$86,079	\$0	\$28,693	\$27,245
12	2031	\$3,959,960	75.00%	\$2,969,970	29.56	\$87,800	\$87,800	\$0	\$29,267	\$27,790
13	2032	\$3,959,960	75.00%	\$2,969,970	30.15	\$89,556	\$89,556	\$0	\$29,852	\$28,346
14	2033	\$3,959,960	75.00%	\$2,969,970	30.76	\$91,348	\$91,348	\$0	\$30,449	\$28,913
15	2034	\$3,959,960	75.00%	\$2,969,970	31.37	\$93,174	\$93,174	\$0	\$31,058	\$29,491
16	2035	\$3,959,960	75.00%	\$2,969,970	32.00	\$95,038	\$95,038	\$0	\$31,679	\$30,081
17	2036	\$3,959,960	75.00%	\$2,969,970	32.64	\$96,939	\$96,939	\$0	\$32,313	\$30,683
18	2037	\$3,959,960	75.00%	\$2,969,970	33.29	\$98,877	\$98,877	\$0	\$32,959	\$31,296
19	2038	\$3,959,960	75.00%	\$2,969,970	33.96	\$100,855	\$100,855	\$0	\$33,618	\$31,922
20	2039	\$3,959,960	75.00%	\$2,969,970	34.64	\$102,872	\$102,872	\$0	\$34,291	\$32,561
21	2040	\$3,959,960	75.00%	\$2,969,970	35.33	\$104,930	\$104,930	\$0	\$34,977	\$33,212
22	2041	\$3,959,960	75.00%	\$2,969,970	36.04	\$107,028	\$107,028	\$0	\$35,676	\$33,876
23	2042	\$3,959,960	75.00%	\$2,969,970	36.76	\$109,169	\$109,169	\$0	\$36,390	\$34,554
24	2043	\$3,959,960	75.00%	\$2,969,970	37.49	\$111,352	\$111,352	\$0	\$37,117	\$35,245
25	2044	\$3,959,960	75.00%	\$2,969,970	38.24	\$113,579	\$113,579	\$0	\$37,860	\$35,950
26	2045	\$3,959,960	75.00%	\$2,969,970	39.01	\$115,851	\$115,851	\$0	\$38,617	\$36,668
27	2046	\$3,959,960	75.00%	\$2,969,970	39.79	\$118,168	\$118,168	\$0	\$39,389	\$37,402
28	2047	\$3,959,960	75.00%	\$2,969,970	40.58	\$120,531	\$120,531	\$0	\$40,177	\$38,150
29	2048	\$3,959,960	75.00%	\$2,969,970	41.39	\$122,942	\$122,942	\$0	\$40,981	\$38,913
30	2049	\$3,959,960	75.00%	\$2,969,970	42.22	\$125,401	\$125,401	\$0	\$41,800	\$39,691
30 Year TIF Total		\$110,878,880		\$83,159,160		\$2,722,057	\$2,722,057	\$0	\$907,352	\$906,720
30 Year Average				\$2,771,972		\$90,735	\$90,735		\$30,245	\$30,224

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 337 Cumberland Avenue Affordable Housing TIF							
337 Cumberland Ave TIF Model/75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$3,959,960	\$2,969,970	\$0	\$2,226	\$1,640	\$3,866
4	2023	\$3,959,960	\$2,969,970	\$8,197	\$2,226	\$1,640	\$12,063
5	2024	\$3,959,960	\$2,969,970	\$16,394	\$2,226	\$1,640	\$20,260
6	2025	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
7	2026	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
8	2027	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
9	2028	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
10	2029	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
11	2030	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
12	2031	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
13	2032	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
14	2033	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
15	2034	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
16	2035	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
17	2036	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
18	2037	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
19	2038	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
20	2039	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
21	2040	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
22	2041	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
23	2042	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
24	2043	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
25	2044	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
26	2045	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
27	2046	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
28	2047	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
29	2048	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
30	2049	\$3,959,960	\$2,969,970	\$24,591	\$2,226	\$1,640	\$28,457
30 Year TIF Total		\$110,878,880	\$83,159,160	\$639,375	\$62,319	\$45,915	\$747,610
30 Year TIF Avg.		\$3,695,963	\$2,771,972	\$21,313	\$2,077	\$1,531	\$24,920

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: 337 Cumberland Street
a partnership between Portland Housing Development Corp & Youth & Family Outreach
Date: July 20, 2020

Portland Housing Development Corporation (PHDC) requests a capital subsidy of \$500,000 and a 75% 30 year TIF to support the proposed 60 unit 337 Cumberland Street new construction project. This is a \$8,333/unit requested capital subsidy from the City. PHDC proposes to partner with Youth and Family Outreach (YFO) to construct a new mixed used building with childcare at street level, parking below, and 60 residential units in 5 upper floors. Residential units will range from studio to 3 bedroom. The YFO newly constructed space will include 9 classrooms and administrative facilities and will renovate YFO's (contiguous) current child care center. Parking will be entered at grade in the rear of the property on the sloping site.

Sources and Uses

Sources:		Uses:	
Maine State 1 st Mortgage	\$5,041,000	Residential Construction	10,113,128
Maine State Subsidy	\$960,000	YFO New Const & Rehab	\$2,260,000
City of Portland	\$500,000	Shared Facilities Construction	\$1,177,500
AHP Loan	\$1,600,000	Hard Cost Contingency	\$708,531
AHP Subsidy	\$650,000	Soft Costs:	\$2,293,800
YFO Capital Investment	\$1,600,000	Acquisition	0
Net Syndication	\$7,653,735	Reserves:	\$701,775
		Developer Fee:	<u>\$750,000</u>
Total Sources:	\$18,004,735	Total Uses:	\$18,004,734

PHDC is at the beginning of the process to line up financing for this project, with plans to submit applications to Maine Housing for mortgage, subsidy and LIHTC allocation and to FHLB for AHP loan and subsidy. Bangor Savings has issued a draft term sheet for a construction loan to convert to permanent financing, contingent upon a successful application for AHP funding and other (public) subsidy funds. PHDC has a history of successful AHP applications.

For analysis of "Uses," see Development Budget.

Development Budget

On the face of it, the total development cost per unit looks too high, at \$300,079 per unit. However, that includes the cost of the YFO space in the per residential unit cost. Removing the direct construction expense for the YFO spaces reduces the per residential unit total development cost to \$262,412. This project is in the same per unit cost range as the other applicants this round. The primary driver of this upswing in total development costs is the rising cost of construction, exacerbated by tight job market in

construction trades leading to increased labor prices and the added uncertainty that these cost estimates were created in a peak of uncertainty about the impact of COVID-19 on the economy.

Construction Costs:

Construction costs are based on a construction estimate by Zachau Construction dated 4/22/20. It is based on cost per square foot construction figures, differentiated by type of construction and ranging from \$90/sq ft for the garage to \$200/sq ft for the YFO new construction. Residential construction is estimated at \$190/sq ft. Contractor overhead, insurance and general conditions are additional to that, as is a 4% “estimating contingency” because the estimate is based on “very preliminary information.” This estimate includes provision for prevailing wage labor costs.

A Phase I and Phase II have been conducted. The Phase II found evidence of environmental hazards typical for this area, including the site of an abandoned UST, lead and arsenic in the soil, but all within the approved range of values. The Phase II suggests several voluntary steps PHDC can take to further reduce risk associated with the site, including a Soil Management Plan and a passive sub-slab ventilation system or vapor barrier. The recommendations in the Phase II are incorporated in the recommended conditions prior to closing.

The development budget and operating projections do not break out commercial development costs and commercial operating costs from the total budget. This makes it difficult to evaluate the impact of the commercial project on the total budget. A set of revised financial projections which break out the commercial expense and income, both in the development and the operating phase, is a recommended condition of closing.

Soft Costs:

Total soft costs are reasonable at \$62,426 per unit, including developer fee.

Relocation plan and budget has not yet been submitted for this project, and is likely to be required. The existing commercial building has a restaurant tenant. Satisfactory relocation plan, or determination that the commercial tenant is not eligible for relocation, is a recommended condition of closing.

Contingency:

The hard cost contingency is 5.2% of total hard costs. This is 5% of the new construction costs and 10% of the renovation. This is the minimum industry standard, which is not ideal at this early stage of project development. Some risk of cost increases has been reduced by completing the Phase II.

The soft cost total includes a soft cost contingency of 2.23%, too slender for a budget at this stage of development. This risk is mitigated by PHDC’s substantial available resources to cover unexpected costs, see Developer Financial Analysis below.

Acquisition:

The acquisition price of the site is not currently reflected in this development budget. YFO purchased the site for \$895,000, and will continue to own the site, signing a 90 year lease with the PHDC/YFO controlled partnership which will own the improvements. The property was appraised at \$955,000 in 2018 which demonstrates the sales price was consistent with market values.

Operating Budget & 20 Year Cashflow Projection

Project Income:

There will be a total of 60 residential units in this mixed income development. Twelve units will be market rate (20% of units). Twenty-one units will be affordable to residents at 50% AMI (35% of units), twelve will be affordable at 60% AMI (20% of units), and 15 will have Project Based Vouchers (25% of units). Rents for LIHTC supported units are budgeted at the maximum allowable LIHTC rate for each unit type.

A market study has not been submitted for this development; review of a satisfactory market study to justify the projected market rate rents is a recommended condition of closing. Market rents are projected at \$1,165 for efficiency, \$1,445 for 1 bedroom, \$1,725 for 2 bedroom. These are substantially higher than 2020 Fair Market Rents, which were established in December, 2019 based on a market survey (FMR: efficiency \$1,072, 1 bed \$1,167, 2 bed \$1,516), but they are lower than market rents for comparable new construction projects as evidenced by market studies for comparable projects submitted in the last year. Portland Housing Authority's experience in the Portland market amply demonstrates the need, and effective demand, for the affordable units. Portland Housing Authority has a waiting list of 1,400 households for their roughly 1,000 Portland area units, and an occupancy rate of almost 98%.

Operating Expense

The per unit operating expense of \$8,452 appears high by industry standards. However, this includes all utilities and reflects the full tax bill (\$1,904/unit). The maintenance budget of \$2,575 per unit per year is on the high end but is reasonable considering this is family housing and day care. It is reasonable to expect this property to sustain substantial wear and tear. Maintenance budget at this level will be sufficient to keep the property in good condition. Since the property will be built to Passive House standards, the utility budget of \$1,017 should be ample. Per Maine Housing requirement for supportive services funding, the project budget includes \$17,222 for tenant services.

According to PHDC, YFO will make payment to the partnership to cover its proportional share of overall property expenses. This will be fairly minimal – property insurance, real estate taxes, portion of reserves which serve full building (like roof), and will slightly improve the property's cashflow. There is not yet a written agreement between the parties defining these expenses. Satisfactory review of a written agreement for shared expenses, and a revised operating budget reflective of that agreement, is a recommended condition of closing.

20 Year Cashflow & Debt Service Coverage Ratio (DSCR)

PHCD's cashflow projections show a 1.15 debt service coverage ratio in the first full year of operations, which grows steadily over 20 years to 1.29 using industry standard inflators of 2% for operating income and 3% for operating expenses.

Developer Financials

Portland Housing Authority has submitted audits for FY2 2017, 2018 and 2019. Their fiscal year ends 6/30. From an operating perspective, 2019 was a very strong year for PHA. Their audit as of 6/30/19

shows strong financial health, with current assets of \$15.8 million and current liabilities of \$1.9 million, resulting in a very strong current ratio of 8.3. The Quick Ratio (cash and cash equivalents divided by current liabilities) is a remarkably healthy 4.8. In 2019, current year operations showed growth of \$1,858,174, substantially exceeding their already strong 2018 growth of \$1,095,622. Revenues grew by 7.63% while expenses were contained to 5.4% growth, with falling administrative expenses.

While the balance sheet (“Statement of Net Position”) is still strong, with Total Net Position over \$15.7 million, the audit reflects a one-time restatement of non-pension retirement liability which shrank the “Total Net Position” by \$7.7 million. This one-time restatement was required to comply with Governmental Accounting Standards Board Statement #75. It was implemented a year after the required date, so it is included in the audit as a correction of an error in their 2018 audit.

Quarterly financials through March 31, 2020 show another good start to FY2020 for PHA, with income above budget and expenses below budget in every category for net operating income of \$942,422.

Impact of pandemic: PHDC reports that the pandemic has not led to significant declines in rent revenue for PHA or PHDC as of June. One PHDC project in construction was slowed a few weeks due to COVID-19 related supply chain disruptions, but the impact has not been extraordinary.

Overall, PHA has very strong financial health. This developer has the financial capacity to intervene in a development facing unexpected setbacks and/or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin soft cost contingency.

This property will be owned by a partnership formed by PHDC and YFO, so YFO’s financial health is also relevant to the success of the project. YFO has submitted audits for FY 2016, 2017, 2018 and 2019. Their fiscal year ends 9/30. The scale of YFO operations is much smaller than PHA, but it also had a good in FY19, with growth in net worth of \$200,000, almost 20% over FY18. Their audit as of 9/30/19 shows current assets of \$210,486 and current liabilities of 72,905, resulting in a current ratio of 2.8. This is a significant improvement over the 1.6 Current Ratio in 2016, suggesting growth in the scale of their operations has had a positive impact on their financials. The FY19 Quick Ratio (cash and cash equivalents divided by current liabilities) was a healthy 2.17. In 2019, income was up in every major category, for a 28% growth in income. Contributions were more than 4.5 times the level of 2018, but government grant income was also up 11% and program service fees were up 19%, while operating expense increased by only 5.3%. Management’s financials for the half year ending 3/30/20 show lower income and a small operating loss.

Impact of pandemic: The pandemic has been much more disruptive to the child care industry than to subsidized affordable housing. YFO was closed for months. It has reopened, but its operations are severely limited by the precautions necessary to prevent the spread of COVID-19. Class sizes are cut in half and before and after care eliminated, severely reducing income. In the absence of significant governmental support, FY2020 will be a challenging year for YFO financially. YFO has more margin than many child care providers, but still must find a sustainable business plan for radically altered circumstances. This is a systemic problem, not in any way a reflection of YFO’s management. YFO’s pandemic response reflects best practices for the industry and the level of care reflected in their revised protocols demonstrate their operation is an important resource for the community.

Recommendations :

This is an appropriate urban in-fill development by a developer with the development experience and financial resources to make the project successful.

I recommend a loan in the amount of no more than \$500,000, zero percent interest, payment deferred for 30 years, and a 75% TIF for 30 years, with the following conditions:

Prior to loan closing, satisfactory review of:

1. relocation plan and budget, or evidence that relocation is not required;
2. A set of revised financial projections which break out the commercial expense and income, both in the development and the operating phase, and which includes relocation as needed.
3. Market study supporting projected demand consistent with projected rents;
4. Scope of work which includes satisfactory site environmental risk mitigation;
5. written agreement between PHDC & YFO for shared building expenses, and a revised operating budget reflective of that agreement;
6. current audit and quarterly management financial statements for PHA and YFO;
7. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Development Budget with Permanent Sources

Date 6/22/2020
 Project Name _____
 Project Address 337 Cumberland
 Developer/Sponsor PHDC, in partnership with Youth & Family Outreach

Total Residential Units 60
 Total Residential Square Feet 43,850
 Total Garage/Basement 10,950 (shared space)
 Total Educational Sq Feet 14400
 Total New Construction: 69,200

	Initial Application Values		
	Total	Per Unit	Per Sq Ft
Sources of Funds			
Permanent Financing - Maine Housing 1st Lien	\$5,041,000	\$84,017	\$115
Permanent Financing - Maine Housing Subsidy	\$960,000	\$16,000	\$22
Permanent Financing - City of Portland	\$500,000	\$8,333	\$11
LIHTC net syndication proceeds	\$7,653,735	\$127,562	\$175
AHP Loan	\$1,600,000	\$26,667	\$36
AHP Subsidy	\$650,000	\$10,833	\$15
YFO Capital Contribution	\$1,600,000	\$26,667	\$36
Total Sources of Funds	\$18,004,735	\$300,079	\$411

Uses of Funds

Hard Costs			
Site Improvements		\$0	\$0
Rehabilitation (YFO existing facility)		\$620,000	\$10,333
New Construction (YFO)		\$1,640,000	\$27,333
New Construction (residential, shared)		\$10,069,887	\$167,831
Contractor's Profit, Overhead, & Gen. Requirements	11.4%	\$1,220,741	\$20,346
Hazardous Materials abatement (if contracted separately)		\$0	\$0
Demolition Cost (if contracted separately)		\$0	\$0
Bond Premium		\$0	\$0
Other		\$0	\$0
Hard Cost Contingency (% of hard costs)	5.2%	\$708,531	\$11,809
Total Hard Costs		\$14,259,159	\$237,653

Soft Costs			
Building Permit & Fees		\$383,068	\$6,384
Survey & Engineering		\$60,500	\$1,008
Design & Permitting (% of const exp)	7.4%	\$944,597	\$15,743
Borrower Legal (all closings, excluding syndication legal)		\$70,000	\$1,167
Title & Recording		\$11,000	\$183
Accounting		\$10,000	\$167
Construction Period Taxes		\$30,000	\$500
Construction Period Insurance		\$20,000	\$333
Other: FF&E, Security		\$145,000	\$2,417
Other		\$0	\$0
Total Soft Costs		\$1,674,165	\$27,903

Financing Costs			
Construction Loan Origination Fees		\$52,000	\$867
Construction Period Interest		\$273,000	\$4,550
Lender Inspection Fees		\$5,400	\$90

Letter of Credit Fee	\$250	\$4	\$0
Permanent Loan Fee	\$50,410	\$840	\$1
Construction Lender Legal	\$15,000	\$250	\$0
Other		\$0	\$0
Total Financing Costs	\$396,060	\$6,601	\$9

Miscellaneous			
Market Survey	\$6,000	\$100	\$0
Appraisal	\$7,000	\$117	\$0
Environmental Study	\$7,200	\$120	\$0
LIHTC Fees -- prepaid monitoring	\$123,375	\$2,056	\$3
Other: Commissioning	\$30,000	\$500	\$1
Relocation Costs		\$0	\$0
Other		\$0	\$0
Soft Cost Contingency (% of soft costs excl Dev Fee)	2.23%	\$50,000	\$833
Total Miscellaneous:	\$223,575	\$3,726	\$14

Acquisition			
Acquisition: Buildings		\$0	\$0
Acquisition: Land		\$0	\$0
Acquisition: Legal		\$0	\$0
Other		\$0	\$0
Total Acquisition	\$0	\$0	\$0

Reserves and Developer Fee			
Operating Deficit Escrow	\$447,159	\$7,453	\$10
Prefunded Replacement Reserve	\$135,506	\$2,258	\$3
Taxes & Insurance Escrow	\$69,110	\$1,152	\$2
Developer Overhead	\$750,000	\$12,500	\$17
Developer Profit		\$0	\$0
Rent Up Reserve & Marketing	\$50,000	\$833	\$1
Other		\$0	\$0
Total Reserves and Developer Fee	\$1,451,775	\$24,196	\$33

Total Uses of Funds	\$18,004,734	\$300,079	\$382
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per unit TDC excluding YFO construction: **\$262,412**
 Developer Fee Analysis: Total Fees: **\$750,000**
 (excluding reserves & developer fee) Percent TDC: **4.53%**

Project Operating Pro Forma

Date	June 25, 2020
Project Name	337 Cumberland
Project Address	
Developer/Sponsor	PHDC/YFO

Rental Income

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Per Unit Net Rent Per Sq Ft	Total Monthly Net Income	Total Annual Net Rent
0 BR	10		0	50%	\$878	\$0		\$878	#DIV/0!	\$8,780	\$105,360
0 BR	4		0	60%	\$1,054			\$1,054	#DIV/0!	\$4,216	\$50,592
0 BR	5		0	market	\$1,165			\$1,165	#DIV/0!	\$5,825	\$69,900
1 BR	7		0	50%	\$941			\$941	#DIV/0!	\$6,587	\$79,044
1 BR	3		0	60%	\$1,129			\$1,129	#DIV/0!	\$3,387	\$40,644
1 BR	6		0	market	\$1,445			\$1,445	#DIV/0!	\$8,670	\$104,040
2 BR	8		0	PBV	\$1,440			\$1,440	#DIV/0!	\$11,520	\$138,240
2 BR	3		0	50%	\$1,128			\$1,128	#DIV/0!	\$3,384	\$40,608
2 BR	3		0	60%	\$1,354			\$1,354	#DIV/0!	\$4,062	\$48,744
2 BR	1		0	market	\$1,725			\$1,725	#DIV/0!	\$1,725	\$20,700
3 BR	7		0	PBV	\$1,882			\$1,882	#DIV/0!	\$13,174	\$158,088
3 BR	1		0	50%	\$1,304			\$1,304	#DIV/0!	\$1,304	\$15,648
3 BR	2		0	60%	\$1,565			\$1,565	#DIV/0!	\$3,130	\$37,560
Total:	60		0							\$75,764	\$909,168

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%
TIF Rate	2.0%

Note: Year 1 is the first full year of stabilized operations

	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Sch. Gross Income - Residential	\$909,168	\$15,153	\$927,351	\$945,898	\$964,816	\$984,113	\$1,003,795	\$1,023,871	\$1,044,348	\$1,065,235	\$1,086,540
Vacancy Loss	5.0%	(\$45,458)	(\$758)	(\$46,368)	(\$47,295)	(\$48,241)	(\$49,206)	(\$50,190)	(\$51,194)	(\$52,217)	(\$53,262)
Other income (laundry)	\$3,000	\$50	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585
TIF (75%, 30 yrs)	\$85,664	\$1,428	\$87,377	\$89,125	\$90,907	\$92,725	\$94,580	\$96,472	\$98,401	\$100,369	\$102,376
Effective Gross Income	\$952,374	\$15,873	\$971,421	\$990,849	\$1,010,666	\$1,030,880	\$1,051,497	\$1,072,527	\$1,093,978	\$1,115,857	\$1,138,175

Administrative											
Management Fee	\$50,650	\$844	\$52,170	\$53,735	\$55,347	\$57,007	\$58,717	\$60,479	\$62,293	\$64,162	\$66,087
Management Charges	\$50,650	\$844	\$52,170	\$53,735	\$55,347	\$57,007	\$58,717	\$60,479	\$62,293	\$64,162	\$66,087
Marketing Expense	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Legal	\$2,000	\$33	\$2,060	\$2,122	\$2,185	\$2,251	\$2,319	\$2,388	\$2,460	\$2,534	\$2,610
Audit & Accounting	\$6,000	\$100	\$6,180	\$6,365	\$6,556	\$6,753	\$6,956	\$7,164	\$7,379	\$7,601	\$7,829
Admin Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$109,300	\$1,822	\$112,579	\$115,956	\$119,435	\$123,018	\$126,709	\$130,510	\$134,425	\$138,458	\$142,612

Supportive Services	\$17,222	\$287	\$17,739	\$18,271	\$18,819	\$19,384	\$19,965	\$20,564	\$21,181	\$21,816	\$22,471
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Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$6,000	\$100	\$6,180	\$6,365	\$6,556	\$6,753	\$6,956	\$7,164	\$7,379	\$7,601	\$7,829
Electric	\$41,000	\$683	\$42,230	\$43,497	\$44,802	\$46,146	\$47,530	\$48,956	\$50,425	\$51,938	\$53,496
Water / Sewer	\$14,000	\$233	\$14,420	\$14,853	\$15,298	\$15,757	\$16,230	\$16,717	\$17,218	\$17,735	\$18,267
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$61,000	\$1,017	\$62,830	\$64,715	\$66,656	\$68,656	\$70,716	\$72,837	\$75,022	\$77,273	\$79,591

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Janitorial	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Trash Removal	\$4,500	\$75	\$4,635	\$4,774	\$4,917	\$5,065	\$5,217	\$5,373	\$5,534	\$5,700	\$5,871
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Maintenance	\$85,000	\$1,417	\$87,550	\$90,177	\$92,882	\$95,668	\$98,538	\$101,494	\$104,539	\$107,675	\$110,906
Maintenance Contracts	\$25,000	\$417	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$154,500	\$2,575	\$159,135	\$163,909	\$168,826	\$173,891	\$179,108	\$184,481	\$190,016	\$195,716	\$201,587

Taxes & Insurance											
Real Estate Taxes or PILOT	\$114,219	\$1,904	\$117,646	\$121,175	\$124,810	\$128,554	\$132,411	\$136,383	\$140,475	\$144,689	\$149,030
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$24,000	\$400	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$138,219	\$2,304	\$142,366	\$146,637	\$151,036	\$155,567	\$160,234	\$165,041	\$169,992	\$175,092	\$180,344

Replacement Reserves	\$27,000	\$450	\$27,810	\$28,644	\$29,504	\$30,389	\$31,300	\$32,239	\$33,207	\$34,203	\$35,229
Operating Reserves		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$507,241	\$8,454	\$522,458	\$538,132	\$554,276	\$570,904	\$588,031	\$605,672	\$623,842	\$642,558	\$661,834
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Net Operating Income	\$445,133	\$7,419	\$448,963	\$452,718	\$456,391	\$459,976	\$463,466	\$466,855	\$470,135	\$473,300	\$476,340
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Debt Service											
First Lien -- MSHA	\$302,460	\$5,041	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460
Second Lien -- AHP	\$84,617	\$1,410	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$387,077	\$6,451	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077

Cash Flow (after Must Pay Debt)	\$58,056	\$968	\$61,886	\$65,641	\$69,314	\$72,899	\$76,389	\$79,778	\$83,058	\$86,223	\$89,263
Debt Service Coverage Ratio	1.15		1.16	1.17	1.18	1.19	1.20	1.21	1.21	1.22	1.23

Cash Flow Debt Payments											
City of Portland	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$58,056	\$968	\$61,886	\$65,641	\$69,314	\$72,899	\$76,389	\$79,778	\$83,058	\$86,223

Retained Cash Flow % 11%

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,108,271	\$1,130,436	\$1,153,045	\$1,176,106	\$1,199,628	\$1,223,620	\$1,248,093	\$1,273,055	\$1,298,516	\$1,324,486
Vacancy Loss 5.0%	(\$55,414)	(\$56,522)	(\$57,652)	(\$58,805)	(\$59,981)	(\$61,181)	(\$62,405)	(\$63,653)	(\$64,926)	(\$66,224)
Other income (laundry)	\$3,657	\$3,730	\$3,805	\$3,881	\$3,958	\$4,038	\$4,118	\$4,201	\$4,285	\$4,370
TIF (75%, 30 yrs)	\$104,424	\$106,512	\$108,643	\$110,816	\$113,032	\$115,292	\$117,598	\$119,950	\$122,349	\$124,796
Effective Gross Income	\$1,160,938	\$1,184,157	\$1,207,840	\$1,231,997	\$1,256,637	\$1,281,769	\$1,307,405	\$1,333,553	\$1,360,224	\$1,387,429

Administrative										
Advertising	\$68,069	\$70,111	\$72,215	\$74,381	\$76,613	\$78,911	\$81,278	\$83,717	\$86,228	\$88,815
Office Payroll & Benefits	\$68,069	\$70,111	\$72,215	\$74,381	\$76,613	\$78,911	\$81,278	\$83,717	\$86,228	\$88,815
Office Supplies, Phone, Misc.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Mngr or Super Rent Free Unit	\$2,688	\$2,768	\$2,852	\$2,937	\$3,025	\$3,116	\$3,209	\$3,306	\$3,405	\$3,507
Audit & Accounting	\$8,063	\$8,305	\$8,555	\$8,811	\$9,076	\$9,348	\$9,628	\$9,917	\$10,215	\$10,521
Admin Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$146,890	\$151,297	\$155,836	\$160,511	\$165,326	\$170,286	\$175,394	\$180,656	\$186,076	\$191,658

Supportive Services	\$23,145	\$23,839	\$24,554	\$25,291	\$26,050	\$26,831	\$27,636	\$28,465	\$29,319	\$30,199
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Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$8,063	\$8,305	\$8,555	\$8,811	\$9,076	\$9,348	\$9,628	\$9,917	\$10,215	\$10,521
Gas	\$55,101	\$56,754	\$58,456	\$60,210	\$62,016	\$63,877	\$65,793	\$67,767	\$69,800	\$71,894
Water / Sewer	\$18,815	\$19,379	\$19,961	\$20,559	\$21,176	\$21,812	\$22,466	\$23,140	\$23,834	\$24,549
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$81,979	\$84,438	\$86,971	\$89,581	\$92,268	\$95,036	\$97,887	\$100,824	\$103,848	\$106,964

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Janitorial	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Exterminating	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Trash Removal	\$6,048	\$6,229	\$6,416	\$6,608	\$6,807	\$7,011	\$7,221	\$7,438	\$7,661	\$7,891
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Maintenance	\$114,233	\$117,660	\$121,190	\$124,825	\$128,570	\$132,427	\$136,400	\$140,492	\$144,707	\$149,048
Elevator, HVAC, pool contracts	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$207,635	\$213,864	\$220,280	\$226,888	\$233,695	\$240,706	\$247,927	\$255,365	\$263,026	\$270,917

Taxes & Insurance										
Real Estate Taxes or PILOT	\$153,501	\$158,106	\$162,849	\$167,734	\$172,766	\$177,949	\$183,288	\$188,787	\$194,450	\$200,284
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$32,254	\$33,222	\$34,218	\$35,245	\$36,302	\$37,391	\$38,513	\$39,668	\$40,858	\$42,084
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$185,755	\$191,327	\$197,067	\$202,979	\$209,069	\$215,341	\$221,801	\$228,455	\$235,309	\$242,368

Replacement Reserves	\$36,286	\$37,374	\$38,496	\$39,650	\$40,840	\$42,065	\$43,327	\$44,627	\$45,966	\$47,345
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$681,689	\$702,140	\$723,204	\$744,901	\$767,248	\$790,265	\$813,973	\$838,392	\$863,544	\$889,450
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Net Operating Income	\$479,249	\$482,017	\$484,636	\$487,096	\$489,389	\$491,505	\$493,432	\$495,161	\$496,680	\$497,978
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Debt Service										
First Lien	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460
Second Lien	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077

Cash Flow (after Must Pay Debt)	\$92,172	\$94,940	\$97,559	\$100,019	\$102,312	\$104,428	\$106,355	\$108,084	\$109,603	\$110,901
Debt Service Coverage Ratio	1.24	1.25	1.25	1.26	1.26	1.27	1.27	1.28	1.28	1.29

Cash Flow Debt Payments										
DHCD	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$92,172	\$94,940	\$97,559	\$100,019	\$102,312	\$104,428	\$106,355	\$108,084	\$110,901
Retained Cash Flow %		11%								

CITY OF PORTLAND
337 CUMBERLAND AVENUE
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Date: , 2020

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337 Cumberland Avenue
Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 337 Cumberland Avenue in Portland Maine. The area includes approximately .452 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 337 Cumberland Avenue Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of and loans to the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 337 Cumberland Avenue involves the construction of approximately .452 acres, into an affordable housing neighborhood. The objective of the project is that 80% of the units in the District will be affordable housing for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of sixty (60) mixed-income rental units within one six-story mixed-use building. The first floor of the new building will provide expansion space for

Youth and Family Outreach that will allow for an increase in childcare spots from 58 to 106, floors two through five will be residential housing containing twenty (20) studio units, fifteen (15) one-bedroom units, fifteen (15) two-bedroom units, and ten (10) three-bedroom units. Forty-eight (48) units will have income restrictions: thirty-six (36) will be reserved for households that income qualify at or below 50% AMI and twelve (12) will be reserved for households that income qualify at or below 60% AMI. The remaining twelve (12) apartments will be unrestricted market rate. The neighboring Chapel building that is currently used by Youth and Family Outreach for childcare will be renovated. The zoning for the project assures that this number of units and this affordability objective will be met.

The 337 Cumberland Avenue project is projected to have a total local increased assessed valuation at build out of approximately ~~\$3,959,960~~~~4,796,360~~ based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will generate approximately a thirty-year annual average of ~~\$90,735~~~~109,900~~ in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is ~~\$90,735~~~~109,900~~ (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay ongoing operating expenses for the project at 337 Cumberland Avenue. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. The property currently contains an existing restaurant and a neighboring Chapel building currently used by Youth and Family Outreach for childcare. No businesses or persons will be displaced as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management).

The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .452 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 694.973 acres) is 5.611% of total acreage in the City. The 694.973 acres, this includes 451.01 acres in two exempt districts—a transit oriented district and a downtown/transit oriented district—which, when subtracted from the 694.973 is 243.963, which is representing 1.969% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing affordable housing development districts in the City and this proposed affordable housing development district is 9.667 acres, or 0.08% of the total acreage of the City, which does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing [affordable housing development districts](#) and this proposed affordable housing development district within the City is \$~~2,764,650~~~~1,928,150~~ and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least thirty (30) years for rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 80% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 337 Cumberland Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of the end of the City's Fiscal Year 2020, which was March 31, 2020. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Project Cost Account of the Affordable Housing

Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement, which will be the entire amount of the 75% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be 75% of the Increased Assessed Value. Accordingly, seventy-five percent (75%) of the Tax Increment Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement seventy-five percent (75%) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Subaccount shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 337 Cumberland Avenue project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the

formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on [enter date notice was published in the paper], a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2020. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on August 3, 2020 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Jon P. Jennings City Manager,
City of Portland, ME

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 337 Cumberland Avenue
Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **337 Cumberland Avenue, LP**, a Maine Limited Partnership with a mailing address of 14 Baxter Boulevard, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of sixty (60) units of rental housing located at 337 Cumberland Avenue, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of sixty (60) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the size or number of the units in the Development.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years at least thirty-six (36) of the units will be occupied by households with incomes at or below fifty percent (50%) area median income) and twelve (12) of the units will be occupied by households with incomes at or below sixty percent (60%) area median income (collectively referred to as the “Low Income Units”). The remaining twelve (12) units will be market rate units.
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”).
 - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household’s income may exceed the Applicable Income Limit, adjusted for family size, at the time of the

most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.
- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12th) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:
- i. For a unit without a separate bedroom, one individual.
 - ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.
- Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.
- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City,

and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or

willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns**. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law**. This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices**. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer simultaneously to the Limited Partners at, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor**. This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ **[construction lender and any other entities providing financing will also be parties]** dated _____, 2020 to be recorded in the Cumberland County Registry of Deeds herewith.

Signature page follows.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2020.

CITY OF PORTLAND, ME

Witness

By:_____
Jon P. Jennings
Its City Manager

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

337 CUMBERLAND AVENUE, LP
By: YFO PHDC Development LLC, its General
Partner

Witness

By: _____
Its

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named, of YFO PHDC Development LLC, General Partner of 337 Cumberland Avenue, LP, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said limited liability company and limited partnership.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 20-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with 337 Cumberland Avenue, LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Justin Costa, Chair of the Economic Development Committee
Jill C. Duson, Chair of the Housing Committee

(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

This is a companion order to Order -19/20 above.

II. AGENDA DESCRIPTION

During a meeting held on June 16, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 19-20/21 above.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

VIII. LIST ATTACHMENTS

1. 337 Cumberland Avenue Affordable Housing Credit Enhancement 7.13.2020

2. 337 Cumberland Ave CEA clean for council 070820

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 AND AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE 337 CUMBERLAND AVENUE AFFORDABLE HOUSING CREDIT
ENHANCEMENT AGREEMENT
WITH 337 CUMBERLAND AVENUE, LP**

ORDERED, that the credit enhancement agreement between the City of Portland and 337 Cumberland Avenue, LP related to the 337 Cumberland Avenue Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

337 CUMBERLAND AVENUE, LP

DATED: _____, 2020

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EXHIBITS
Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and 337 Cumberland Avenue, LP (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *337 Cumberland Avenue Municipal Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on August 3, 2020, Order []-19/20 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by MaineHousing] and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Nine Hundred Forty Thousand Forty Dollars (\$940,040), which is the taxable assessed real property value of the District as of March 31, 2020.

“Project” means the planned sixty (60) unit mixed-income housing project named 337 Cumberland Avenue located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as

amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.
- (f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.
- (g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “337 Cumberland Avenue Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A (3). The Development Program Fund shall consist of the Project Cost Account, which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Project Cost Account is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2020 and continuing thereafter through the Tax Year beginning April 1, 2049 (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such 75% portion into the Project Cost Account. The remaining 25% portion of the payment of Property Taxes constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3).

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into Project Cost Account under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of ~~Original \$~~ Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer or stormwater fees, ambulance fees, or assessments, remain unpaid, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real or personal property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide financial statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to Project Cost Account and its obligation to make payment out of Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Project Cost

Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.

(h) Any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director’s unconditional approval of the City’s designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2020, and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project

by June 30, 2023.

Section 6.2. Termination by City.

Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination, except that in the event that the foreclosing lienholder agrees (for itself, its successors, assigns and transferees) to be bound by the terms of this Agreement and that the Declaration (as described in Section 8.15 hereof) shall remain in full force and effect, then this Agreement shall remain in full force and effect and City shall have no right to terminate this Agreement.

Section 6.3. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution or Maine State Housing Authority to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

337 Cumberland Avenue LP
c/o Portland Housing Development Corporation
14 Baxter Boulevard
Portland, Maine 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous

understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Portland, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____
Name: Jon P. Jennings
Its City Manager, Duly Authorized by the City
Council at its meeting on [Enter meeting date]

WITNESS:

337 CUMBERLAND AVENUE, LP
BY: YFO PHDC Development LLC, Its General Partner

By: _____,
Name:
Its General Partner

EXHIBIT 1

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 21-20/21 Designating the 577 Washington Avenue Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair, and the Economic Development Committee, Councilor Justin Costa, Chair.**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
Justin Costa, Chair of the Economic Development Committee

(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 A Notice of Public Hearing must be published 10 days before the date of the August 3 public hearing.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Portland Housing Development Corporation (PHDC) is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at a site located at 577 Washington Avenue. PHDC is requesting financial assistance from the City in the form of an Affordable Housing TIF (AHTIF) to assist with the project. If approved, the AHTIF financing will be provided through a Credit Enhancement Agreement at 75% of the increased taxable value, currently estimated at an average \$190,500 annually over 30 years.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHCD) is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at 577 Washington Avenue (Washington Gardens) to a project-based voucher funding platform. PHDC is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District (AHTIF) and Credit Enhancement Agreement (CEA) to assist with the cost of construction of the project.

The development district will include 100 units of low income housing within 15 two-story residential buildings. There are currently sixty (60) studio, thirty-six (36) one-bedroom, and four (4) two-bedroom units. Sixty percent (60%) or sixty (60) of the units will be available to households earning 50% of the area median income. Forty percent (40%) or forty (40) of the units will be available to households earning 60% of the area median income. The units will have affordability restrictions through the Affordable Housing TIF Program.

PHDC has requested three forms of financial assistance including \$400,000 from the Affordable Housing

Development Program, \$184,150 received through the CDBG Program and AHTIF.

If approved, the AHTIF would be provided through a CEA at 75% of the increased taxable value, currently estimated at a 30-year annual average of \$190,500 with an estimated total of \$5,714,987 in captured revenue returned to the developer to off-set project operating costs. The remaining increased taxable value, currently estimated at a 30-year annual average of \$63,500 with an estimated total of \$1,904,996, will be general fund revenue.

The proposed project will be taxable, with an estimated annual assessment of \$7.9 million and estimated annual tax of \$184,149 at the current FY20 millage rate.

This project has received 9% Low Income Housing Tax Credit and tax-exempt debt from MaineHousing.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

III. BACKGROUND

The City Council must:

- (1) authorize the creation of the AHTIF District; and
- (2) approve the Credit Enhancement Agreement

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establish an Affordable Housing TIF District to support the rehabilitation of 100 units of rental housing.

Increase access to rental and ownership housing that is safe and affordable for working and low income families.

V. FINANCIAL IMPACT

577 Washington Avenue is currently under a Payment In Lieu of Taxes (PILOT) agreement with the City of Portland due to PHA's tax-exempt status. The PILOT is a voluntary payment made annually as a substitute for property taxes. The current PILOT amount is small in comparison to its taxable potential. Rehabilitation and creation of AHTIF district would negate this property's PILOT and bring it onto the City Assessor's books.

When completed, this project's new assessed value is estimated at \$7.9 million, which would yield \$184,149 in annual assessed property value at the current FY20 millage rate. Seventy-five (75%) percent of the increased tax revenue (approximately \$5,714,987 over 30 years) will be captured revenue returned to the developer. The remaining 25% (approximately \$1,904,996 over 30 years) will be general fund revenue.

A Credit Enhancement Agreement will return approximately \$5,714,987 in captured revenue to the developer (averaged at \$190,500 annually over thirty years) to off-set project operating costs, and approximately \$1,904,996 in non-captured general fund revenue retained by the City (averaged at \$63,500 annually over thirty years). The proposed project will be taxable.

Total development costs are estimated at \$14.7 million. At full build out, the development is projected to pay an average \$190,500 annually in projected new taxes captured. Non-captured general fund revenues are estimated at an average \$63,500 annually over thirty years. In addition, with the tax sheltering benefits of TIF

Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$50,229+, or \$1,506,875+ over the life of the district.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding. Final terms will be determined based on the results of the underwriting.

TIF projections are included in the backup to this memo.

VI. STAFF ANALYSIS AND BACKGROUND

Public Benefits: In reviewing this TIF request, staff notes the public benefit associated with the TIF District of 100 units of rental housing of which one hundred percent (100%) will be affordable to households at or below sixty percent (60%) of the area median income.

Additionally, the TIF will create tax sheltering benefits estimated at an average of \$50,229+ per year, or \$1,506,875+ over the life of the district.

VII. RECOMMENDATION

Staff is requesting the City Council (1) approve the establishment of the 557 Washington Avenue Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Community Housing of Maine, Inc. and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed.

VIII. LIST ATTACHMENTS

1. Order Designating Affordable Housing TIF 577 Washington for 7.13.2020
2. Attachments for City Council 7.13.20 577 Washington Ave (1)
3. 577 Washington DEV PROG clean for Council 070620
4. 577 Washington DEC OF COV clean for Council 070620

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 DESIGNATING THE 577 WASHINGTON AVENUE AFFORDABLE
HOUSING DEVELOPMENT DISTRICT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Washington Gardens, LP intends to make certain improvements within the 577 Washington Avenue Affordable Housing Development Tax Increment Financing (“TIF”) District, including 100 rental units of affordable housing; and

WHEREAS, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 577 Washington Avenue Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the 577 Washington Avenue Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 577 Washington Avenue Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 577 Washington Avenue Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “577 Washington Avenue Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “577 Washington Avenue Affordable Housing Development District” as more particularly described in said Development Program is hereby designated

as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “577 Washington Avenue Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “577 Washington Avenue Affordable Housing Development District” on behalf of the municipal legislative body.

Washington Gardens – Project Summary

PROJECT SUMMARY

Portland Housing Development Corporation (PHDC) proposes the rehabilitation of Washington Gardens, a 100-unit property in East Deering. The community contains 15 two-story, garden-style residential buildings and serves seniors and persons with disabilities. It is currently Public Housing and will convert to a Section 8 Project Based Voucher (PBV) funding platform through HUD's Section 18 Demolition & Disposition program at closing.

After nearly fifty years without a significant renovation, the property is in fair-to-poor condition and most major systems are nearing the end of their useful life. The proposed scope of work will include but is not limited to upgrading building envelopes and insulation, upgrading mechanical systems, adding new accessible units, improving sitework and ramps, renovating unit interiors and finishes, installing new energy- and water-efficient fixtures and appliances, and installing rooftop solar photovoltaic panels.

PHDC requests \$400,000 of funding at 0% interest from the City of Portland to support the rehabilitation of 100 affordable units at Washington Gardens. This request equals \$4,000 per unit. All other rehabilitation funding sources have been secured, including an allocation of competitive 9% Low Income Housing Tax Credit (LIHTC) from MaineHousing. The project is expected to close and begin construction in Fall 2020.

UNIT MIX

Washington Gardens currently contains 100 units, comprised of 60 studio units, 36 one-bedroom units and four (4) two-bedroom units. No change in unit mix or use will occur following rehabilitation.

TENANTS SERVED

Washington Gardens will continue to serve a senior (55+) and disabled population. All units will be restricted to households earning at or below 50% and 60% of AMI. All 100 units will benefit from a PBV.

Following rehabilitation, 17 units will be reconfigured to be accessible to serve persons with a physical disability. Two (2) units will be designed with audio/visual communication features to serve residents who are hearing- and/or sight-impaired.

Washington Gardens will comply with the City of Portland's 10% Homeless Set-Aside requirement, contingent upon a funding award. As a rehabilitation, a Homeless Set-Aside Agreement will need to align with certain HUD requirements, including existing residents' right-to-return, waitlist and leasing requirements, and the Section 8 Project-Based Voucher program, among others. We anticipate future discussions with the City to satisfy the requirements of all parties involved.

SPECIAL FEATURES

Washington Gardens contains a community room, central laundry facilities, an outdoor patio and gazebo, and on-site property management. The property benefits from a part-time, on-site mental health worker from Shalom House.

IMPACT ON NEIGHBORHOOD

The Washington Gardens rehabilitation will further improve East Deering and the City of Portland's stock of quality, affordable housing options for seniors and persons with disabilities. This project will guarantee the buildings' long-term physical and financial sustainability, better serve the needs of its residents, and improve accessibility.

RESPONSE TO SELECTION CRITERION AND PREFERENCE GUIDELINES

PROPOSED USE OF FUNDS TO ACHIEVE CITY OF PORTLAND'S GOALS & ADDRESS DEMONSTRATED NEEDS

- MARKET DEMAND – High demand exists for affordable studio, one-bedroom and two-bedroom rental units in Portland for seniors and persons with disabilities. **This project will meet the market's high demand for affordability with 100 vouchered units in East Deering.**
- ZONING – No zoning amendments or contract or conditional zones are required.
- ECONOMIC DIVERSITY – This project will promote economic diversity in the East Deering neighborhoods. The average family income in the East Deering census tract is \$71,898, or 77% of AMI. The average income has risen in this census tract over the past five years. The rehabilitation will maintain affordable homes for seniors and persons with disabilities earning at or below 60% AMI.
- CITY SUBSIDY – **This application requests \$4,000 of subsidy per unit.**

IMPACT ON SURROUNDING NEIGHBORHOOD, DESIGN COMPATIBILITY & ENVIRONMENTAL ISSUES

- SITE SELECTION – The project is fully appropriate for use as multifamily residential. Washington Gardens is surrounded on all sides by low-rise single- and multi-family properties.
- EXTERIOR DESIGN – Washington Gardens was built in 1973. Its designs is fully consistent with the surrounding neighborhood design characteristics. It's 15 low-rise, wooden-framed buildings blend in with adjacent low-rise properties and enhance the residential atmosphere of the community.
- AMENITIES AND UNIT DESIGN – Washington Gardens offers its residents a suite of amenities, including a community room, central laundry facilities, an outdoor patio and gazebo, and on-site property management. Residents will benefit from a part-time, on-site mental health worker from the Shalom House. The property is, and will continue to be, non-smoking. The rehabilitation will bring units up to like-new status with modern, marketable and durable features and finishes.
- ENVIRONMENTAL – No environmental issues exist at Washington Gardens. The City of Portland completed an Environmental Assessment (EA) of Washington Gardens on 8/15/19 and recommended a Finding Of No Significant Impact (FONSI). HUD approved the EA on 10/1/19.

FINANCIAL FEASIBILITY, INCLUDING COST, DEVELOPMENT BUDGET, PRO FORMA & LEVERAGED FUNDS

- DEVELOPMENT BUDGET & SOURCES AND USES – Every development budget line item complies with applicable City of Portland guidelines. Project budget, sources and uses are reasonable & customary.
- OPERATING PRO FORMA – Every operating pro forma line item complies with applicable City of Portland guidelines. Operating expenses are reasonable and customary.

APPLICANT'S ABILITY TO COMPLETE PROJECT

- READINESS TO PROCEED – **The project is anticipated to begin construction in Fall 2020 and be completed by mid-2022. Except for an award of City HOME/HTF, all other funding sources have been secured, including an allocation of 9% Low Income Housing Tax Credit (LIHTC) from MaineHousing.** All project sources are projected at terms and conditions that are consistent with PHDC's experience and deemed reasonable.
- TRACK RECORD OF DEVELOPMENT TEAM – Every development member has a long and successful track record with projects similar to the Washington Gardens rehab. PHDC (developer), CWS Architects (architect), Carroll & Associates (landscape architect), and Drummond Woodsum (attorney) have extensive experience with multifamily renovation projects in Portland.
- CURRENT CAPACITY OF DEVELOPMENT TEAM – All development team members have exceptional depth of human and financial resources to complete this project. PHDC extensively vets all partners to ensure appropriate staff availability, technical expertise and financial capacity. PHDC selects all development team members through a competitive RFQ or RFP procurement process to ensure that only the most qualified firms work on each of our multifamily projects.

Washington Gardens

577 Washington Avenue, Portland, ME 04103



BUILDING EXTERIORS



ON-SITE PROPERTY MANAGEMENT OFFICE



COMMUNITY CENTER



- 428-B-022 – includes 12 Residential Buildings and Community Center
- 428-C-009 – includes 3 Residential Buildings
- 428-B-018 – includes Property Management Office
- 428-B-019 – includes Maintenance Shed



PROJECT NAME: Valley Street Apartments
LOCATION: 200-210 Valley St, Portland, ME

Date: 04/27/20

DEVELOPMENT ASSUMPTIONS					
Total Units	60	Inflation Adjustments	Yr 1-5	Yr 6-15	Yr 16-30
# @ 30% AMI (Low HOME)	0.0%	Rent	2.00%	2.00%	2.00%
# @ 50% AMI (Low HOME)	0.0%	Operating Expense	3.00%	3.00%	3.00%
# @ 50% AMI (LIHTC)	60.0%	Other Income	2.00%	2.00%	2.00%
# @ 60% AMI (LIHTC)	20.0%	Debt Coverage Ratio	1.15		
# @ Market	20.0%	Vacancy	5.0%		

LIHTC Alloc.	945,149
Equity yield	0.66
Synd. %	99.99%
Equity Raise	8,128,281

Solar Credit FED	0
Equity yield	0.95
Synd. %	99.99%
Equity Raise	0

Total Equity: 8,128,281

PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	12,271,000	204,517		12,271,000
General Requirements	0	0		0
Solar	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.0%	613,550	10,226	613,550
Subtotal Construction Costs	12,884,550	214,743	0	12,884,550
Building Permits and Fees	377,000	6,283		377,000
Off-Site Improvements	0	0		0
On-Site Improvements	0	0		0
Survey & Engineering	36,000	600		36,000
Design & Permitting	520,000	8,667		520,000
Legal	68,000	1,133		68,000
Title & Recording	18,885	315		18,885
Accounting	10,000	167		10,000
Construction Period Tax	15,000	250		15,000
Construction Period Insurance	30,000	500		30,000
Other: FF&E, Security, Soft Contingency	80,000	1,333		80,000
Subtotal Soft Costs	1,154,885	19,248	0	1,154,885
Construction Loan Origination Fees	28,750	479		28,750
Construction Loan Interest	425,000	7,083		425,000
Equity Bridge Loan Costs	0	0		0
Lender Inspection Fees	12,000	200		12,000
Letter of Credit Fee	5,000	83		5,000
Permanent Loan Fees	10,000	167		10,000
Other: Construct Lender Legal, Construct Close Fee; P	15,000	250		15,000
Subtotal Finance Costs	495,750	8,263	0	495,750
Market Survey	5,000	83		5,000
Appraisal	6,500	108		6,500
Environmental Study	4,000	67		4,000
LIHTC Fees - prepaid monitoring	124,386	2,073		124,386
Other: Testing & Special Inspections	25,000	417		25,000
Other:	0	0		0
Subtotal Miscellaneous	164,886	2,748	0	164,886
Acquisition: Buildings	0	0		0
Acquisition: Land	629,500	10,492		629,500
Acquisition: Legal	0	0		0
Subtotal Acquisition	629,500	10,492	0	629,500
Operating Deficit Escrow	409,000	6,817		409,000
Pre-funded Replacements	122,710	2,045		122,710
Tax & Insurance Escrow	87,000	1,450		87,000
Total Syndication Expenses	0	0		0
Consultant Fee	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,418,710	23,645	0	1,418,710
Total Development Costs	16,748,281	279,138	0	16,748,281

16,214,895 237,665 QAP TDC Index

Total Dev Costs	16,748,281
Less Commercial Construction:	0
Less: Equity Bridge Interest	
Less: Prepaid Monitoring Fees	124,386
Less: ODE	409,000
Scored TDC	16,214,895
Per Unit	270,248

New TDC calculation
[(2 x TDC/unit) + (TDC/bedroom)] / 3
TDC Per Unit \$237,665

Notes	
1. Proposed funding reflects a 75% TIF for 30 years.	
2. This application contemplates \$595,000 in City HOME/HTF and/or Healthy Neighborhoods Funding. Avesta intends to respond to the Healthy Neighborhoods RFP issued in April and any funds awarded through that process could be used in lieu of an equal amount of City HOME/HTF funds for a total funding level of \$595,000.	

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS									
Sources	CLC 8/15/2021	11/13/21	During Construction 2/11/22 4/12/22 8/10/22	PLC 10/14/2022	2023	2024	Total		
Beginning Cash	0	331,106	0	0	0	0	0		
Construction Loan	0	2,404,253	3,385,359	5,024,913	726,562		11,541,087		
Capital Contribution	1,219,242	0	0	0	1,019,242	5,689,797	150,000	50,000	8,128,281
MSHA Subsidy	480,000	0			480,000				960,000
MSHA Debt	0	0			5,390,000				5,390,000
City HOME/Healthy Neighborhoods	595,000	0	0		0				595,000
FHLBBoston Loan	0	0	0		1,025,000				1,025,000
FHLBBoston Subsidy	0	650,000			0				650,000
Conventional loan	0	0			0				0
Healthy Neighborhoods	0	0			0				0
Other	0	0			0				0
Development Fee Loan	0	0			0				0
TOTAL SOURCES	2,294,242	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Acquisition	629,500								629,500
Construction		3,221,138	3,221,138	4,831,706	1,610,569				12,884,550
Soft Costs	923,000	57,971	57,971	68,957	28,988	0			1,154,885
Financing Costs	70,750	106,250	106,250	106,250	106,250				495,750
Miscellaneous	139,886					75,000			214,886
Dev Fee	200,000					350,000			750,000
Reserves						618,710			618,710
TOTAL DEV. COSTS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	1,043,710	150,000	50,000	16,748,281
Repay Equity Bridge Loan						0			0
Repay Construction Loan						11,541,087			11,541,087
Other Syndication Costs	0	0	0	0	0	0			0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	11,541,087	0	0	11,541,087
TOTAL USES OF FUNDS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Ending Cash	331,106	0	0	0	0	0	0	0	0

PROJECT FINANCING									
Source		Amount	Rate	Term	Lien	Annual D/S			
						Yr. 1-5	Yr. 6-15	Yr. 16-30	
Source 1:	MSHA Subsidy	960,000	0.00%	30	First	0	0	0	
Source 2:	MSHA Debt	5,390,000	6.00%	30	First	323,400	323,400	323,400	
Source 3:	City HOME/Healthy Neighborhoo	595,000	0.00%	0	First	0	0	0	
Source 4:	FHLBBoston Loan	1,025,000	2.50%	30	Second	48,600	48,600	48,600	
Source 5:	FHLBBoston Subsidy	650,000	0.00%	0	Second	0	0	0	
Source 6:	Conventional loan	0	5.50%	30	Second	0	0	0	
Source 7:	Healthy Neighborhoods	0			Third	0	0	0	
Source 8:	Other	0	0.00%	30	Unsecured	0	0	0	
Source 9:	Development Fee Loan	0			Unsecured	0	0	0	
Source 10:	Net Syndication	8,128,281	\$0.85						
Capitalization Gap (Surplus)		(0)							
Total Development Costs		16,748,281							

PROPOSED RENT SCHEDULE									
Type	AMI	# Units	Contract Rent	LIHTC Max Rents	Total Gross Rent*	Market Rent	Utility Allow	Total Rent	
Efficiency	50% LowHOME				0	\$1,300	33	0	
	50% - PBV				0	\$1,300	33	0	
	50% LIHTC	7	878	878	878	\$1,300	33	70,980	
	60% LIHTC	4	1,054	1,054	1,054	\$1,300	33	49,008	
	Market	0			1,100	\$1,300		0	
1BR	50% LowHOME		0	0	0	\$1,600	43	0	
	50% - PBV				0	\$1,600	43	0	
	50% LIHTC	10	941	941	941	\$1,600	43	107,760	
	60% LIHTC	3	1,129	1,129	1,129	\$1,600	43	39,086	
	Market	12			1,400	\$1,600		201,600	
2BR	50% LowHOME		0	0	0	\$1,800	56	0	
	50% - PBV				0	\$1,800	56	0	
	50% LIHTC	11	1,128	1,128	1,128	\$1,800	56	141,504	
	60% LIHTC	3	1,354	1,354	1,354	\$1,800	56	46,728	
	Market	0			1,600	\$1,800		0	
3BR	50% LowHOME				0	\$2,000	70	0	
	50% - PBV				0	\$2,000	70	0	
	50% LIHTC	8	1,304	1,209	1,304	\$2,000	70	118,464	
	60% LIHTC	2	1,565	1,451	1,565	\$2,000	70	35,880	
	Market				1,700	\$2,000		0	
4BR	50% LowHOME						0	0	
	50% - PBV						0	0	
	50% LIHTC						0	0	
	60% LIHTC						0	0	
	Market							0	
Other:								0	
Subtotals		60						811,020	
Total Bedrooms		94							
			Vacancy Rate		5.00%			(40,551)	
			Other Income		TIF			99,000	
			Other Income		Laundry			2,880	
			Effective Gross Income					872,349	

AFFORDABLE MORTGAGE CALCULATION			
Effective Gross Income		872,349	
Annual Operating Expense		445,841	
Stabilized NOI		426,508	
DSC	1.15		
\$ Avail for D/S			
Other DS		372,000	
DCR	1.15		
Affordable Mortgage			

BREAKEVEN ANALYSIS		RENT SENSITIVITY		OCCUPANCY	
		Total		Annual	
Operating Expense		445,841	Gross Revenues	912,900	
Debt Service		372,000			
Breakaven Rent		1,136	Breakaven Occupancy	90%	

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,907	848	71
Management Charges	50,907	848	71
Marketing Expenses	500	8	1
Legal Expenses	500	8	1
Auditing Expenses	7,500	125	10
Other Administrative Expenses	0	0	0
Administrative Expenses	110,313	1,839	153
Operating Expenses:			
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	10,000	167	14
Natural Gas	30,000	500	42
Electricity	15,000	250	21
Water and Sewer	12,500	208	17
Garbage and Trash Removal	6,500	108	9
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	74,000	1,233	103
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	10,000	167	14
Miscellaneous Ground Maintenance	0	0	0
Tenant Damage Charges - Grounds	0	0	0
Building Maintenance Payroll	0	0	0
Building Tools and Supplies	0	0	0
Building Contractual Services	20,000	333	28
Building Systems Maintenance	30,000	500	42
Miscellaneous Building Maintenance	0	0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	60,000	1,000	83
General Expenses:			
Property Taxes	132,000	2,200	183
Property and Liability Insurance	21,000	350	29
Investor Fees	0	0	0
Tenant Service Expenses	21,528	359	30
General Expenses	174,528	2,909	242
Replacement Reserve Funding			
Parking Lease	27,000	450	38
Commercial Expenses (if applicable)	0	0	0
Total	445,841	7,431	619

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
	3 Months	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
	9/1/2022	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/30/2028	12/31/2029	12/31/2030	12/31/2031	12/30/2032
Effective Gross Income		218,087	872,349	889,796	907,592	925,744	944,259	963,144	982,407	1,002,055	1,022,096	1,042,538
Less Operating Expense		111,460	445,841	459,217	472,993	487,183	501,798	516,852	532,358	548,329	564,779	581,722
Net Operating Income		106,627	426,508	430,579	434,599	438,561	442,460	446,291	450,049	453,726	457,317	460,816
Less RLP Repay		80,850	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400
Less Other Repay		12,150	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600
Cash Flow		13,627	54,508	58,579	62,599	66,561	70,460	74,292	78,049	81,726	85,317	88,816
Cash Flow per Unit		909	908	976	1,043	1,109	1,174	1,238	1,301	1,362	1,422	1,480
Debt Coverage Ratio(RLP)		1.15	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.22	1.23	1.24
Operating Reserve Balance	409,000	429,450	450,923	473,469	497,142	521,989	548,089	575,504	604,279	634,493	666,218	699,529

Total Cash Flow
Projected over 12 Years
922,257

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued											
	Yr 11	Yr 12	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20	
	12/31/2033	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	
Effective Gross Income	1,063,389	1,084,656	1,106,349	1,128,476	1,151,046	1,174,067	1,197,548	1,221,499	1,245,929	1,270,848	
Less Operating Expense	599,174	617,149	635,663	654,733	674,375	694,606	715,445	736,908	759,015	781,786	
Net Operating Income	464,215	467,508	470,686	473,743	476,671	479,461	482,104	484,591	486,914	489,062	
Less RLP Repay	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	
Less Other Repay	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	
Cash Flow	92,215	95,508	98,686	101,743	104,671	107,461	110,104	112,591	114,914	117,062	
Cash Flow per Unit	1,537	1,592	1,645	1,696	1,745	1,791	1,835	1,877	1,915	1,951	
Debt Coverage Ratio(RLP)	1.25	1.26	1.27	1.27	1.28	1.29	1.30	1.30	1.31	1.31	
Operating Reserve Balance	699,529	734,505	771,230	809,792	850,282	892,796	937,435	984,307	1,033,523	1,085,199	1,139,459

City of Portland - TIF Model

PHA 577 Washington Ave. Garden Affordable Housing Project

OAV as of 3/31/2019: \$0

Tax Map References:	428-B-022	428-C-009	429-B-018	428-B-019
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City of Portland- TIF Projection Table for 577 Washington Avenue Gardens									
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues
1	2020	\$7,900,000	75.00%	\$5,925,000	23.78	\$140,874	\$140,874	\$0	\$46,958
2	2021	\$7,900,000	75.00%	\$5,925,000	24.25	\$143,691	\$143,691	\$0	\$47,897
3	2022	\$7,900,000	75.00%	\$5,925,000	24.74	\$146,565	\$146,565	\$0	\$48,855
4	2023	\$7,900,000	75.00%	\$5,925,000	25.23	\$149,497	\$149,497	\$0	\$49,832
5	2024	\$7,900,000	75.00%	\$5,925,000	25.74	\$152,487	\$152,487	\$0	\$50,829
6	2025	\$7,900,000	75.00%	\$5,925,000	26.25	\$155,536	\$155,536	\$0	\$51,845
7	2026	\$7,900,000	75.00%	\$5,925,000	26.78	\$158,647	\$158,647	\$0	\$52,882
8	2027	\$7,900,000	75.00%	\$5,925,000	27.31	\$161,820	\$161,820	\$0	\$53,940
9	2028	\$7,900,000	75.00%	\$5,925,000	27.86	\$165,056	\$165,056	\$0	\$55,019
10	2029	\$7,900,000	75.00%	\$5,925,000	28.41	\$168,357	\$168,357	\$0	\$56,119
11	2030	\$7,900,000	75.00%	\$5,925,000	28.98	\$171,725	\$171,725	\$0	\$57,242
12	2031	\$7,900,000	75.00%	\$5,925,000	29.56	\$175,159	\$175,159	\$0	\$58,386
13	2032	\$7,900,000	75.00%	\$5,925,000	30.15	\$178,662	\$178,662	\$0	\$59,554
14	2033	\$7,900,000	75.00%	\$5,925,000	30.76	\$182,236	\$182,236	\$0	\$60,745
15	2034	\$7,900,000	75.00%	\$5,925,000	31.37	\$185,880	\$185,880	\$0	\$61,960
16	2035	\$7,900,000	75.00%	\$5,925,000	32.00	\$189,598	\$189,598	\$0	\$63,199
17	2036	\$7,900,000	75.00%	\$5,925,000	32.64	\$193,390	\$193,390	\$0	\$64,463
18	2037	\$7,900,000	75.00%	\$5,925,000	33.29	\$197,258	\$197,258	\$0	\$65,753
19	2038	\$7,900,000	75.00%	\$5,925,000	33.96	\$201,203	\$201,203	\$0	\$67,068
20	2039	\$7,900,000	75.00%	\$5,925,000	34.64	\$205,227	\$205,227	\$0	\$68,409
21	2040	\$7,900,000	75.00%	\$5,925,000	35.33	\$209,331	\$209,331	\$0	\$69,777
22	2041	\$7,900,000	75.00%	\$5,925,000	36.04	\$213,518	\$213,518	\$0	\$71,173
23	2042	\$7,900,000	75.00%	\$5,925,000	36.76	\$217,788	\$217,788	\$0	\$72,596
24	2043	\$7,900,000	75.00%	\$5,925,000	37.49	\$222,144	\$222,144	\$0	\$74,048
25	2044	\$7,900,000	75.00%	\$5,925,000	38.24	\$226,587	\$226,587	\$0	\$75,529
26	2045	\$7,900,000	75.00%	\$5,925,000	39.01	\$231,119	\$231,119	\$0	\$77,040
27	2046	\$7,900,000	75.00%	\$5,925,000	39.79	\$235,741	\$235,741	\$0	\$78,580
28	2047	\$7,900,000	75.00%	\$5,925,000	40.58	\$240,456	\$240,456	\$0	\$80,152
29	2048	\$7,900,000	75.00%	\$5,925,000	41.39	\$245,265	\$245,265	\$0	\$81,755
30	2049	\$7,900,000	75.00%	\$5,925,000	42.22	\$250,170	\$250,170	\$0	\$83,390
30 Year TIF Total		\$237,000,000		\$177,750,000		\$5,714,987	\$5,714,987	\$0	\$1,904,996
30 Year Average							\$190,500		\$63,500

**Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model
for 577 Washington Avenue Gardens**

75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund

TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2020	\$7,900,000	\$5,925,000	\$0	\$4,440	\$3,271	\$7,711
2	2021	\$7,900,000	\$5,925,000	\$0	\$4,440	\$3,271	\$7,711
3	2022	\$7,900,000	\$5,925,000	\$0	\$4,440	\$3,271	\$7,711
4	2023	\$7,900,000	\$5,925,000	\$16,353	\$4,440	\$3,271	\$24,064
5	2024	\$7,900,000	\$5,925,000	\$32,706	\$4,440	\$3,271	\$40,417
6	2025	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
7	2026	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
8	2027	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
9	2028	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
10	2029	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
11	2030	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
12	2031	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
13	2032	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
14	2033	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
15	2034	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
16	2035	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
17	2036	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
18	2037	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
19	2038	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
20	2039	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
21	2040	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
22	2041	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
23	2042	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
24	2043	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
25	2044	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
26	2045	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
27	2046	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
28	2047	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
29	2048	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
30	2049	\$7,900,000	\$5,925,000	\$49,059	\$4,440	\$3,271	\$56,770
30 Year TIF Total		\$237,000,000	\$177,750,000	\$1,275,534	\$133,205	\$98,136	\$1,506,875
30 Year Average		\$7,900,000	\$5,925,000	\$42,518	\$4,440	\$3,271	\$50,229



CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

TO: Mayor Snyder
Members of the City Council
FROM: Mary Davis, Division Director
Housing and Community Development Division
DATE: July 6, 2020
SUBJECT: Project Underwriting

The underwriting analysis for this project will be made available prior to the August 3rd Council Meeting where the council is expected to take action on the Affordable Housing Development and Affordable Housing TIF requests.

Work is well underway on the financial underwriting analysis. However, as a result of an earlier due date on the Low Income Housing Tax Credit application and delays due to COVID-19, city closure and working remotely, additional time is needed to complete the analysis.

CITY OF PORTLAND
577 WASHINGTON AVENUE
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Date: , 2020

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- Exhibit I Declaration of Covenants, Conditions and Restrictions
- Exhibit J District Narrative

577 Washington Avenue
Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 577 Washington Avenue in Portland Maine. The area includes approximately 3.6099 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 577 Washington Avenue Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 577 Washington Avenue involves the rehabilitation of approximately 3.6099 acres, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of one hundred (100) rental units within 15 two-story residential buildings. There are currently sixty (60) studios, thirty-six (36) one-

bedroom units, and four (4) two-bedroom units. Sixty (60) units are affordable to households that income qualify at or below 50% of the area median income, and forty (40) units are affordable to households that income qualify at or below 60% of the area median income. The zoning for the project assures that this number of units and this affordability objective will be met.

The 577 Washington Avenue project is projected to have a total local increased assessed valuation at build out of approximately \$7,900,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will generate approximately a thirty year annual average of \$190,500 in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$190,500 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay operating costs for the project at 577 Washington Avenue. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. Any Portland Housing Authority tenants who reside in covered units will be provided relocation assistance and payments sufficient to cover reasonable relocation expenses. All households will be surveyed by PHA staff to determine need related to housing, supportive services, and relocation counselling.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City’s Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately 3.6099 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 698.131 acres) is approximately 5.636% of total acreage in the City. The 698.131 acres includes 451.01 acres in two exempt districts—a transit oriented district and a downtown/transit oriented district—which, when subtracted from the 698.131 acres is 247.121, which is 1.99% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing affordable housing development districts in the City and this proposed affordable housing development district is 12.8356 acres, or 0.1036% of the total acreage of the City, which does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and this proposed affordable housing development district within the City is \$1,824,610 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least thirty (30) years for rental units,

which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 100% of the dwelling units will be affordable housing that may be designed to be compact and walkable to include common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 577 Washington Avenue Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of the end of the City's Fiscal Year 2020, which was March 31, 2020. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in

each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement, which will be the entire amount of the 75% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. § 5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be 75% of the Increased Assessed Value. Accordingly, seventy-five percent (75%) of the Tax Increment

Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement seventy-five percent (75%) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 577 Washington Avenue project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on [enter date notice was published in the paper], a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2020. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on August 3, 2020 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Jon P. Jennings City Manager,
City of Portland

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 577 Washington Avenue
Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **Washington Gardens, LP**, a Maine limited partnership with a mailing address of 14 Baxter Blvd, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the rehabilitation of one hundred (100) units of rental housing located at 577 Washington Avenue, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of one hundred (100) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the size or number of units in the Development.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years at least sixty (60) of the units will be occupied by households with incomes at or below fifty percent (50%) of the area median income, and forty (40) of the units will be occupied by households with incomes at or below sixty percent (60%) of the area median income (collectively referred to as the “Low Income Units”).
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”).
 - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household’s income may exceed the Applicable Income Limit, adjusted for family size, at the time of the

most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.
- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12th) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:
- i. For a unit without a separate bedroom, one individual.
 - ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.
- Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.
- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City,

and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or

willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns**. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law**. This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices**. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer [**simultaneously to _____**] or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor**. This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ [**construction lender and any other entities providing financing will also be parties**] dated _____, ____ to be recorded in the Cumberland County Registry of Deeds herewith.

Signature page follows.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2020.

CITY OF PORTLAND, ME

Witness

By:_____
Jon P. Jennings
Its City Manager

**State of Maine
Cumberland, ss.**

_____, 2020

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

WASHINGTON GARDENS, LP
By: Washington Gardens Development, LLC, its
General Partner

Witness

By: _____
Name: Cheryl Sessions
Its President

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Cheryl Sessions, President of Washington Gardens, Development, LLC, General Partner of Washington Gardens, LP, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said limited liability company and limited partnership.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 22-20/21 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Washington Gardens LP. - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Justin Costa, Chair of the Economic Development Committee
Jill C. Duson, Chair of the Housing Committee

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading **Final Action**

Can action be taken at a later date: Yes

PRESENTATION:

I. SUMMARY

This is a companion order to Order -19/20 above.

II. AGENDA DESCRIPTION

During a meeting held on May 27, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 21-20/21 above.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

VIII. LIST ATTACHMENTS

1. 577 Washington Avenue Affordable Housing Credit Enhancement 7.13.2020
2. 577 Washington CEA clean for Council 070620

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 AND AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE 577 WASHINGTON AVENUE AFFORDABLE HOUSING
CREDIT ENHANCEMENT AGREEMENT
WITH WASHINGTON GARDENS, LP**

ORDERED, that the credit enhancement agreement between the City of Portland and Washington Gardens, LP related to the 577 Washington Avenue Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

WASHINGTON GARDENS, LP

DATED: _____, 2020

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EXHIBITS
Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Washington Gardens, LP, a Maine limited partnership (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *577 Washington Avenue Municipal Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on August 3, 2020 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by Maine Housing] and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to Order [] 19/20 of the City Council, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Zero Dollars (\$0.0), which is the taxable assessed real property value of the District as of March 31, 2020.

“Project” means the planned one-hundred (100) unit housing project named Washington Gardens located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “577 Washington Avenue Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Project Cost Account, which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Project Cost Account is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2020 and continuing thereafter through the Tax Year beginning April 1, 2049 (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such 75% portion into the Project Cost Account. The remaining 25% portion of the payment of Property Taxes constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3).

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into Project Cost Account under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each fiscal year (ends June 30 each year), all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into the Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer or stormwater fees, ambulance fees, or assessments, remain unpaid, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real or personal property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City

demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into the Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to the Project Cost Account and its obligation to make payment out of the Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Project Cost Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge the Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Project Cost Account and will promptly pay

or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost Subaccount shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into the Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60)

days.

(h) Any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director’s unconditional approval of the City’s designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2020, and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project by June 30, 2023.

Section 6.2. Termination by City.

Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination, except that in the event that the foreclosing lienholder agrees (for itself, its successors, assigns, and transferees) to be bound by the terms of this Agreement and that the Declaration (as described in Section 8.15 hereof) shall remain in full force and effect, then this Agreement shall remain in full force and effect and City shall have no right to terminate this Agreement.

Section 6.3. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution or Maine State Housing Authority to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so

executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

Washington Gardens, LP
c/o Portland Housing Development Corporation
14 Baxter Boulevard
Portland, Maine 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Portland, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____

Name: Jon P. Jennings

Its City Manager, Duly Authorized by the City
Council at its meeting on [Enter meeting date]

[Signatures continue on next page]

WASHINGTON GARDENS, LP
By: Washington Gardens Development, LLC,
its General Partner

WITNESS:

By: _____

By:

Its:

EXHIBIT 1

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 23-20/21 Appropriating \$97,545 in Home Investment Partnership Program Funds and up to \$497,455 in Housing Trust Funds to Avesta Valley Street LP RE: 200 Valley Street - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair**

SPONSOR: Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on June 10, 2020 and voted unanimously (3 - 0) to forward this item to the City Council with a recommendation for passage.

(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

Avesta Housing Development Corporation is seeking a 9% Low Income Housing Tax Credit (LIHTC) and tax-exempt debt with MaineHousing. The submission date for Low Income Housing Tax Credit applications with the Maine State Housing Authority is August 25, 2020. MaineHousing's allocation of the LIHTC is a competitive process scored through the Qualified Allocation Plan (QAP). This funding request will impact Avesta Housing Development Corporation's final score.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Avesta Housing Development Corporation is requesting \$595,000 through the Affordable Housing Development Program to construct 60 units of mixed-income rental housing.

II. AGENDA DESCRIPTION

The Housing Committee met on June 10, 2020 and voted unanimously (3 - 0) to forward this item to the City Council with a recommendation for passage.

Avesta Housing Development Corporation (AHDC) is proposing to construct 60 apartment units on a site it owns located at 200 Valley Street. Forty-eight (48) units will have income restrictions.

AHDC has requested two forms of financial assistance including \$595,000 from the Affordable Housing Development (AHD) Program (up to \$97,545 in HOME funds and up to \$497,455 in Housing Trust Funds, HTF) at 0% interest rate loan, deferred for 30 years. A separate Affordable Housing Tax Increment Financing request is being consider under Order 17 -20/21. This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing.

Total AHD request of \$595,000/unit = \$9,916.66

Total AHD request of \$595,000/affordable unit = \$12,395.83

AHDC plans to apply for \$206,921 in City of Portland and Maine Medical Center's Healthy Neighborhoods Funding. If successful, these funds could be used in lieu of an equal amount of HOME/HTF subsidy.

The project will include 11 studios, 25 one-bedroom, 14 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate. The units will have affordability restrictions.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Avesta Housing Development Corporation is proposing to create a 5-story, 60 unit mixed-income apartment building on a site located at 200 Valley Street.

As described by the developer: "Valley Street Apartments will create 60 homes in the St. John/Valley Street Neighborhood of Portland. This neighborhood has traditionally been home to Portland's workforce, and the recent MaineMed expansion has strengthened the neighborhood's dedication to preserving its identity as a home for people of all income levels who live and work in Portland."

"There is significant, proven need for the sixty homes that would be created at Valley Street Apartments. There are 1,093 income-eligible households on the waitlist for the 778 income-restricted apartments Avesta manages in the Greater Portland area, with additional households on preference lists for these properties. Because of the average tenancy length at Avesta's properties, the current households on the waitlist would not secure an apartment through Avesta until 2028. In 2019, over 3,380 households applied for housing and only 359 were able to move in."

"100% of the parcel is suitable for residential use. 204 Valley Street is currently vacant and suitable for redevelopment. A two-story residential building with the address 210 Valley Street is located at the corner of Valley and C Streets and will be demolished prior to redevelopment. 6 C Street is vacant and used as unpaved surface parking."

Avesta Housing has submitted a Level III application with the Planning Board to construct a 5-story, 60-unit apartment building with two levels of covered parking. The Planning Board workshop is scheduled for June 23, 2020.

The site is in the B-2 zone, and is within 100' of the Western Promenade, requiring review by Historic Preservation Staff. Staff found; the development is not located in a historic district, historic landscape district or City designated landmark; the development is adjacent to a historic landscape district, but not adjacent to a historic district or a historic City designated landmark.

The 2020 Affordable Housing Development Application made available a total of \$1,571,245 from the 2020-2021 HOME fund (\$497,545) and Housing Trust Fund (\$1,073,700) for affordable housing development. The City received three applications requesting a total of \$1,495,000 in funding.

The staff recommendation to the Housing Committee was for funding \$97,545 in HOME funding at zero percent interest, terms pending underwriting conditions and \$497,455 in Housing Trust funding terms pending underwriting conditions.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To encourage and promote affordable decent, housing opportunities for all Maine citizens

According to Portland's Comprehensive Plan 2030, while Portland has welcomed much needed new housing construction in recent years, both the lack of sufficient housing supply and the affordability of that housing for a healthy socioeconomic cross-section of the population remain urgent challenges.

The City of Portland is actively engaged in efforts to encourage housing preservation and creation for all income levels and household sizes city-wide, both through policy initiatives and through public/nonprofit partnerships with agencies such as Portland Housing Authority, Community Housing of Maine, Avesta Housing, Preble Street, Shalom House, and the Maine Affordable Housing Coalition.

The Comprehensive Plan has set the following goal: Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.

V. FINANCIAL IMPACT

Recommendation for funding is for \$97,545 HOME Investment Partnership Program Funds and \$497,455 in Housing Trust funding.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Approval by the City Council of the Housing Committee's recommendation of HOME funding in the amount of up to \$97,545 and Housing Trust Funds in the amount of up to \$497,455 at zero percent interest with repayment deferred for 30 years, subject to the conditions as shown in the underwriting analysis attached.

VIII. LIST ATTACHMENTS

1. Appropriating Home and Housing Trust funds for 200 Valley Street 7.13.2020
2. Attachments for City Council 7.13.20 200 Valley

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 APPROPRIATING \$97,545 IN HOME INVESTMENT PARTNERSHIP
PROGRAM FUNDS AND UP TO \$497,455 IN HOUSING TRUST FUNDS
TO AVESTA VALLEY STREET LP
RE: 200 VALLEY STREET**

ORDERED, that the amount of \$97,545 in Home Investment Partnerships Program funds is hereby appropriated to Avesta Valley Street LP for development costs for the project at 200 Valley Street; and

BE IT FURTHER ORDERED, that the amount of up to \$497,455 in Housing Trust funds is hereby appropriated to Avesta Valley Street LP for development costs for the project at 200 Valley Street; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the funding, and otherwise carry out the intent of this order.



**City of Portland 2020 HOME Application
Valley Street Apartments | A – Project Summary
April 21, 2020**

Valley Street Apartments will create 60 homes in the St. John/Valley Street Neighborhood of Portland. This neighborhood has traditionally been home to Portland's workforce, and the recent MaineMed expansion has strengthened the neighborhood's dedication to preserving its identity as a home for people of all income levels who live and work in Portland. By granting this request of \$595,000 in HOME and/or Housing Trust Fund contributions (some of which could be replaced with funds from a successful Healthy Neighborhoods application), the City of Portland can facilitate the creation of these 60 homes for less than \$10,000 per unit.

Valley Street Apartments is located at 200 Valley Street and covers four parcels of the City's tax map: 064 F015, 064 F007, 064 F008, and 064 F009. Avesta Housing owns all four parcels. The building will be five stories on Valley Street: the first floor will feature a large community space, secure indoor bike storage, laundry, office space, and secured covered parking. The four upper floors will be comprised of 11 studio apartments, 25 one-bedroom apartments, 14 two-bedroom apartments, and 10 three-bedroom apartments. The significant grade change along C Street facilitates an additional partially below-grade parking level. All told, the redevelopment of these parcels will create 40 covered parking spots on the peninsula in the same footprint as the proposed building. Although not all residents will own cars, especially at a site that has such significant access to public transportation, the size of units and neighborhood concerns made this amount of parking a significant design priority for the building.

The sixty homes at Valley Street Apartments will have broad income targeting and promote economic diversity and integration in the neighborhood. A total of 48 apartments will have income restrictions: 36 will

be reserved for households at or below 50% AMI and 12 will be reserved for households at or below 60% AMI. The remaining 12 apartments will be unrestricted market rate units. Average household income in this census tract is 71% AMI, so these market rate units will encourage economic diversity in the neighborhood. All units will have the same design features and characteristics and the same access to building amenities, thus promoting economic integration and destigmatizing affordable housing.

	Studio	One Bedroom	Two Bedroom	Three Bedroom
50% Rent	\$878	\$941	\$1,128	\$1,304
60% Rent	\$1,054	\$1,129	\$1,354	\$1,565
Market Study	\$1,300	\$1,600	\$1,800	\$2,000

The location of these homes is unparalleled. On the crowded Portland peninsula, it is difficult to identify locations that can support a large number of new units, even though this size of development is crucial to any resolution of the city's affordable housing crisis. The workforce population that will live at Valley Street Apartments will benefit from the building's proximity to significant places of employment, including Maine Medical Center. The building is also less than ½ mile from bus stops that serve six different routes, including an intracity connector, thereby linking residents of this building to hundreds of employment, educational, economic, and recreational opportunities throughout the city and greater metro area. Finally, the building makes good use of the site characteristics, using the existing site grading to secure a creative solution to neighborhood parking concerns.

Valley Street Apartments will feature high quality, environmentally sustainable design. Avesta has building standards that ensure our baseline building envelopes and mechanical systems exceed minimum building code requirements and minimize the environmental footprint. In line with these initiatives, the building will incorporate a range of features to promote and support sustainability, energy efficiency, and indoor air quality at Valley Street Apartments. Systems and features will include, but are not limited to, energy efficient heating systems, boilers, and furnaces; water conserving fixtures; Energy Star appliances; LED or Energy Star qualified lighting; and natural ventilation through operable windows.

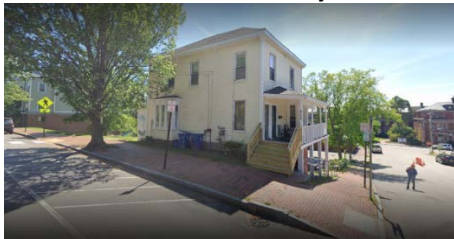
The design for Valley Street Apartments will be responsive to neighborhood characteristics. Avesta strongly believes that high quality housing that is well-integrated into the community has the best chance at achieving positive outcomes for individuals, families, and the community. Avesta's design for the Florence House property at 190 Valley Street in 2009 took special care to ensure that the design was consistent with the neighborhood context, and a similar approach informs the design for Valley Street Apartments. The architect for the project, Ryan Senatore Architects, has a proven track record of designing contextually appropriate infill developments. Ryan's residential developments include 667 Congress Street, 89 Anderson Street Apartments, and Munjoy Heights. Each design created new homes in high density neighborhoods that met the needs of residents and neighborhoods while also showing deference for existing architectural standards.

In addition to these contextual benefits, we will incorporate design features that meet the needs of residents with various mobility needs. There will be six accessible units beyond the minimum required by law, and all apartments will be on accessible routes. Other design features include levers instead of doorknobs where possible, cabinet pulls instead of knobs, lighting that promotes visibility, no-trip entryways, and accessible parking spots. High quality, safe and healthy affordable housing is Avesta's core priority and will inform every step of the design process for Valley Street Apartments.

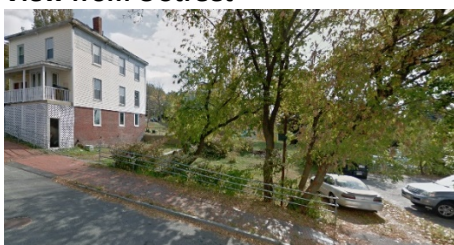
View from Valley Street



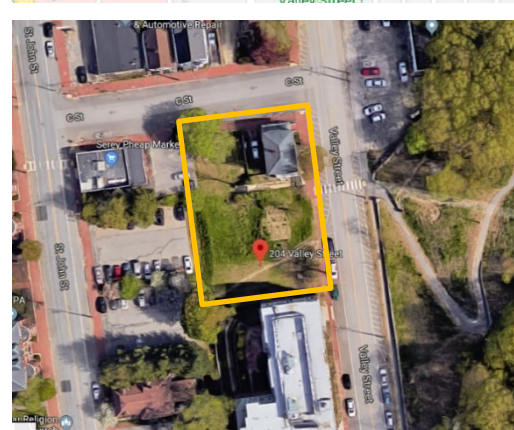
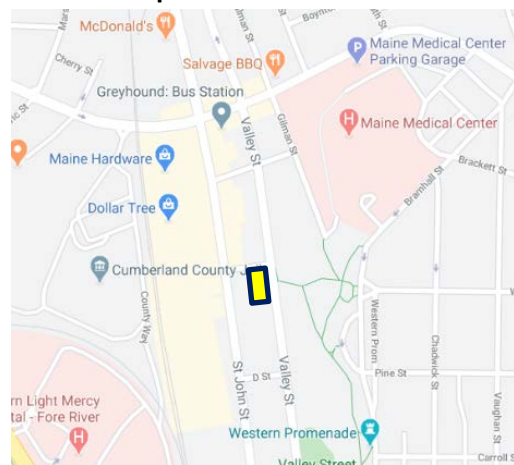
View from corner of Valley Street & C Street



View from C Street



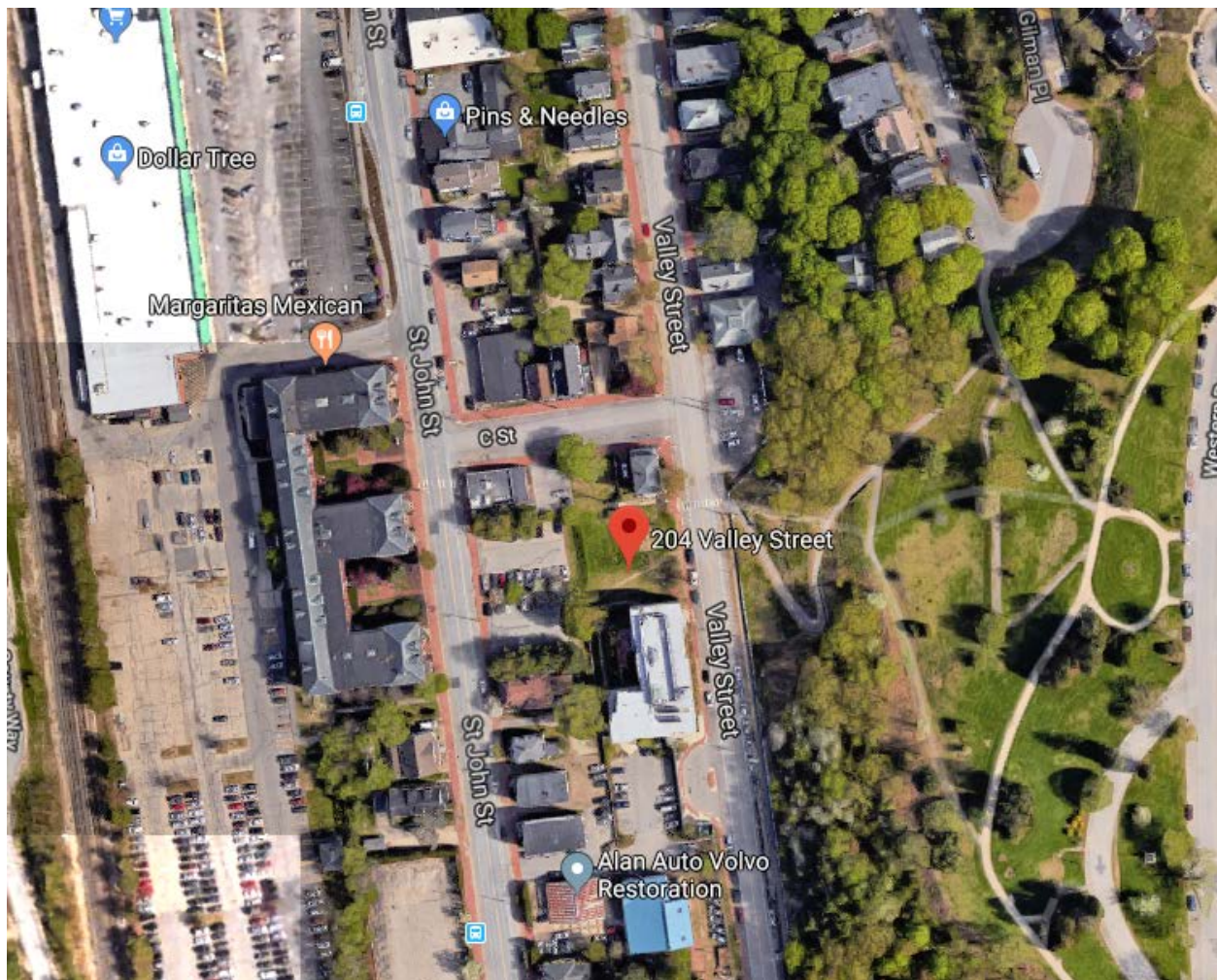
Aerial & Map view of site



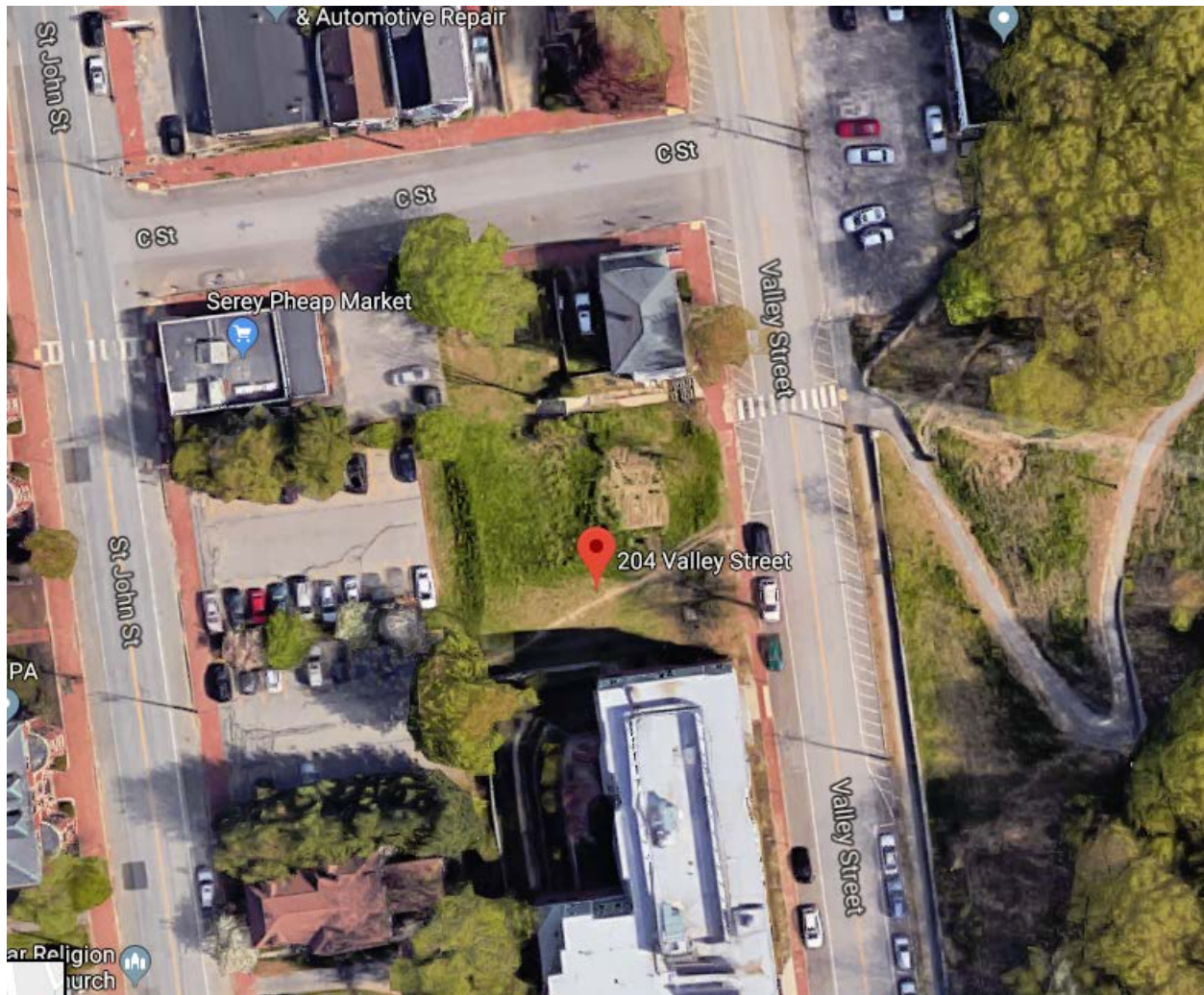


**City of Portland 2020 HOME Funds Application
Valley Street Apartments | B5 – Map Showing Site Location
March 6, 2020**

Google Maps Aerial – St. John Street/Valley Street



Google Maps Aerial – Building Site



Google Maps Street View from Valley Street



Google Maps Street View from C Street



APARTMENTS
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020



APARTMENTS
200 VALLEY STREET, PORTLAND, MAINE

JUNE 16, 2020



APARTMENTS

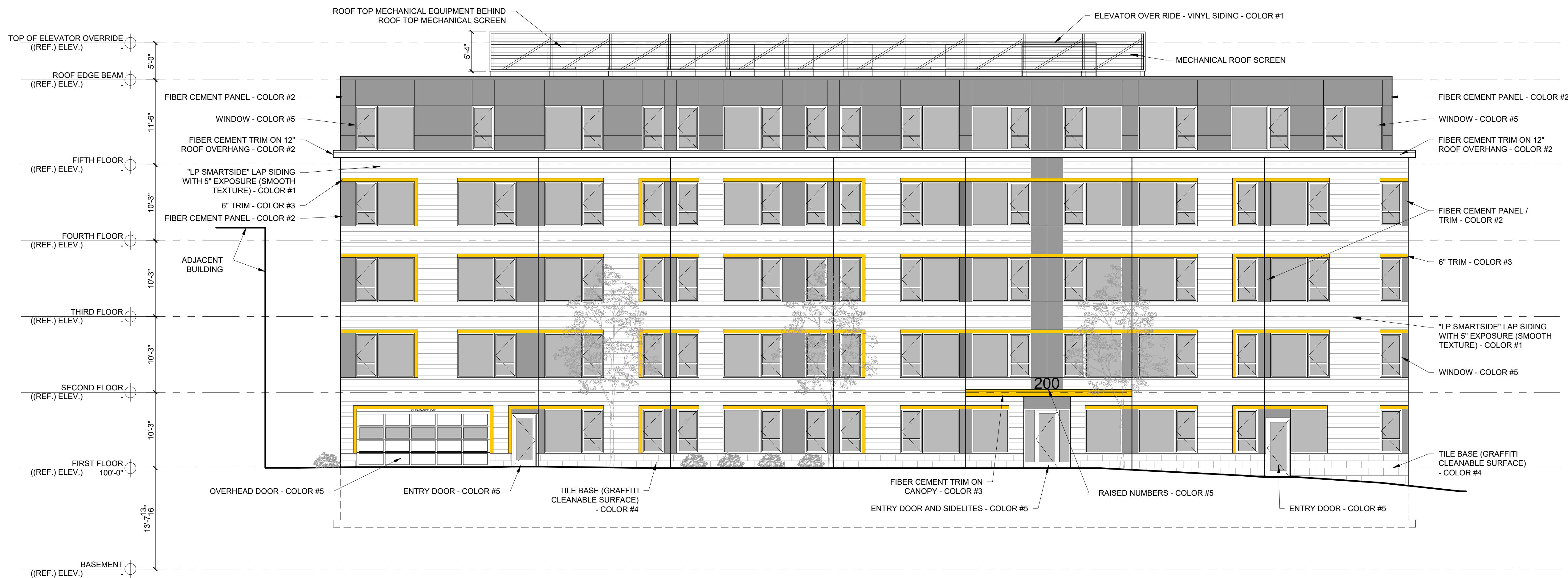
200 VALLEY STREET, PORTLAND, MAINE

MATERIAL FINISH SCHEDULE			
#	COLOR	SIDING TYPE	MANUFACTURER
1)	QUARRY GRAY	LAP SIDING - 5" EXPOSURE	LP SMARTSIDE
2)	NIGHT GRAY	FIBER CEMENT PANEL SIDING / TRIM	JAMES HARDIE
3)	PAINTED "HIGHLIGHT COLOR" T.B.D.	FIBER CEMENT TRIM	JAMES HARDIE
4)	T.B.D.	12"x24" TILE BASE	T.B.D.
5)	BLACK / BRONZE	DOORS AND WINDOWS	T.B.D.

JUNE 16, 2020



1 VALLEY STREET EAST ELEVATION
1/8" = 1'-0"



1 VALLEY STREET EAST ELEVATION
1/8" = 1'-0"

PROJECT NAME: Valley Street Apartments
LOCATION: 200-210 Valley St, Portland, ME

Date: 04/27/20

DEVELOPMENT ASSUMPTIONS					
Total Units	60	Inflation Adjustments	Yr 1-5	Yr 6-15	Yr 16-30
# @ 30% AMI (Low HOME)	0.0%	Rent	2.00%	2.00%	2.00%
# @ 50% AMI (Low HOME)	0.0%	Operating Expense	3.00%	3.00%	3.00%
# @ 50% AMI (LIHTC)	60.0%	Other Income	2.00%	2.00%	2.00%
# @ 60% AMI (LIHTC)	20.0%	Debt Coverage Ratio	1.15		
# @ Market	20.0%	Vacancy	5.0%		

LIHTC Alloc.	945,149
Equity yield	0.88
Synd. %	99.99%
Equity Raise	8,128,281

Solar Credit FED	0
Equity yield	0.95
Synd. %	99.99%
Equity Raise	0

Total Equity	8,128,281
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PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	12,271,000	204,517		12,271,000
General Requirements	0	0		0
Solar	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.0%	613,550	10,226	613,550
Subtotal Construction Costs	12,884,550	214,743	0	12,884,550
Building Permits and Fees	377,000	6,283		377,000
Off-Site Improvements	0	0		0
On-Site Improvements	0	0		0
Survey & Engineering	36,000	600		36,000
Design & Permitting	520,000	8,667		520,000
Legal	68,000	1,133		68,000
Title & Recording	18,885	315		18,885
Accounting	10,000	167		10,000
Construction Period Tax	15,000	250		15,000
Construction Period Insurance	30,000	500		30,000
Other: FF&E, Security, Soft Contingency	80,000	1,333		80,000
Subtotal Soft Costs	1,154,885	19,248	0	1,154,885
Construction Loan Origination Fees	28,750	479		28,750
Construction Loan Interest	425,000	7,083		425,000
Equity Bridge Loan Costs	0	0		0
Lender Inspection Fees	12,000	200		12,000
Letter of Credit Fee	5,000	83		5,000
Permanent Loan Fees	10,000	167		10,000
Other: Construct Lender Legal, Construct Close Fee; P	15,000	250		15,000
Subtotal Finance Costs	495,750	8,263	0	495,750
Market Survey	5,000	83		5,000
Appraisal	6,500	108		6,500
Environmental Study	4,000	67		4,000
LIHTC Fees - prepaid monitoring	124,386	2,073		124,386
Other: Testing & Special Inspections	25,000	417		25,000
Other:	0	0		0
Subtotal Miscellaneous	164,886	2,748	0	164,886
Acquisition: Buildings	0	0		0
Acquisition: Land	629,500	10,492		629,500
Acquisition: Legal	0	0		0
Subtotal Acquisition	629,500	10,492	0	629,500
Operating Deficit Escrow	409,000	6,817		409,000
Pre-funded Replacements	122,710	2,045		122,710
Tax & Insurance Escrow	87,000	1,450		87,000
Total Syndication Expenses	0	0		0
Consultant Fee	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,418,710	23,645	0	1,418,710
Total Development Costs	16,748,281	279,138	0	16,748,281

16,214,895 237,665 QAP TDC Index

Total Dev Costs	16,748,281
Less Commercial Construction:	0
Less: Equity Bridge Interest	
Less: Prepaid Monitoring Fees	124,386
Less: ODE	409,000
Scored TDC	16,214,895
Per Unit	270,248

New TDC calculation
[(2 x TDC/unit) + (TDC/bedroom)] / 3
TDC Per Unit \$237,665

Notes	
1. Proposed funding reflects a 75% TIF for 30 years.	
2. This application contemplates \$595,000 in City HOME/HTF and/or Healthy Neighborhoods Funding. Avesta intends to respond to the Healthy Neighborhoods RFP issued in April and any funds awarded through that process could be used in lieu of an equal amount of City HOME/HTF funds for a total funding level of \$595,000.	

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS									
Sources	CLC 8/15/2021	11/13/21	During Construction 2/11/22 4/12/22 8/10/22	PLC 10/14/2022	2023	2024	Total		
Beginning Cash	0	331,106	0	0	0	0	0		
Construction Loan	0	2,404,253	3,385,359	5,024,913	726,562		11,541,087		
Capital Contribution	1,219,242	0	0	0	1,019,242	5,689,797	150,000	50,000	8,128,281
MSHA Subsidy	480,000	0			480,000				960,000
MSHA Debt	0	0			5,390,000				5,390,000
City HOME/Healthy Neighborhoods	595,000	0	0		0				595,000
FHLBBoston Loan	0	0	0		1,025,000				1,025,000
FHLBBoston Subsidy		650,000			0				650,000
Conventional loan					0				0
Healthy Neighborhoods	0				0				0
Other	0	0	0		0				0
Development Fee Loan					0				0
TOTAL SOURCES	2,294,242	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Acquisition	629,500								629,500
Construction		3,221,138	3,221,138	4,831,706	1,610,569				12,884,550
Soft Costs	923,000	57,971	57,971	68,957	28,988	0			1,154,885
Financing Costs	70,750	106,250	106,250	106,250	106,250				495,750
Miscellaneous	139,886					75,000			214,886
Dev Fee	200,000					350,000			750,000
Reserves						618,710			618,710
TOTAL DEV. COSTS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	1,043,710	150,000	50,000	16,748,281
Repay Equity Bridge Loan						0			0
Repay Construction Loan						11,541,087			11,541,087
Other Syndication Costs	0					0			0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	11,541,087	0	0	11,541,087
TOTAL USES OF FUNDS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Ending Cash	331,106	0	0	0	0	0	0	0	0

PROJECT FINANCING									
Source		Amount	Rate	Term	Lien	Annual D/S			
						Yr. 1-5	Yr. 6-15	Yr. 16-30	
Source 1:	MSHA Subsidy	960,000	0.00%	30	First	0	0	0	
Source 2:	MSHA Debt	5,390,000	6.00%	30	First	323,400	323,400	323,400	
Source 3:	City HOME/Healthy Neighborhoo	595,000	0.00%	0	First	0	0	0	
Source 4:	FHLBBoston Loan	1,025,000	2.50%	30	Second	48,600	48,600	48,600	
Source 5:	FHLBBoston Subsidy	650,000	0.00%	0	Second	0	0	0	
Source 6:	Conventional loan	0	5.50%	30	Second	0	0	0	
Source 7:	Healthy Neighborhoods	0			Third	0	0	0	
Source 8:	Other	0	0.00%	30	Unsecured	0	0	0	
Source 9:	Development Fee Loan	0			Unsecured				
Source 10:	Net Syndication	8,128,281	\$0.85						
Capitalization Gap (Surplus)		(0)							
Total Development Costs		16,748,281							

PROPOSED RENT SCHEDULE									
Type	AMI	# Units	Contract Rent	LIHTC Max Rents	Total Gross Rent*	Market Rent	Utility Allow	Total Rent	
Efficiency	50% LowHOME				0	\$1,300	33	0	
	50% - PBV				0	\$1,300	33	0	
	50% LIHTC	7	878	878	878	\$1,300	33	70,980	
	60% LIHTC	4	1,054	1,054	1,054	\$1,300	33	49,008	
	Market	0			1,100	\$1,300		0	
1BR	50% LowHOME		0	0	0	\$1,600	43	0	
	50% - PBV				0	\$1,600	43	0	
	50% LIHTC	10	941	941	941	\$1,600	43	107,760	
	60% LIHTC	3	1,129	1,129	1,129	\$1,600	43	39,086	
	Market	12			1,400	\$1,600		201,600	
2BR	50% LowHOME		0	0	0	\$1,800	56	0	
	50% - PBV				0	\$1,800	56	0	
	50% LIHTC	11	1,128	1,128	1,128	\$1,800	56	141,504	
	60% LIHTC	3	1,354	1,354	1,354	\$1,800	56	46,728	
	Market	0			1,600	\$1,800		0	
3BR	50% LowHOME				0	\$2,000	70	0	
	50% - PBV				0	\$2,000	70	0	
	50% LIHTC	8	1,304	1,209	1,304	\$2,000	70	118,464	
	60% LIHTC	2	1,565	1,451	1,565	\$2,000	70	35,880	
	Market				1,700	\$2,000		0	
4BR	50% LowHOME							0	
	50% - PBV						0	0	
	50% LIHTC						0	0	
	60% LIHTC						0	0	
	Market							0	
Other:								0	
Subtotals		60						811,020	
Total Bedrooms		94							
			Vacancy Rate		5.00%			(40,551)	
			Other Income		TIF			99,000	
			Other Income		Laundry			2,880	
			Effective Gross Income					872,349	

AFFORDABLE MORTGAGE CALCULATION		
Effective Gross Income		872,349
Annual Operating Expense		445,841
Stabilized NOI		426,508
DSC	1.15	
\$ Avail for D/S		
Other DS		372,000
DCR	1.15	
Affordable Mortgage		

BREAKEVEN ANALYSIS	RENT SENSITIVITY	OCCUPANCY
	Total	Annual
Operating Expense	445,841	Gross Revenues 912,900
Debt Service	372,000	
Breakaven Rent	1,136	Breakaven Occupancy 90%

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,907	848	71
Management Charges	50,907	848	71
Marketing Expenses	500	8	1
Legal Expenses	500	8	1
Auditing Expenses	7,500	125	10
Other Administrative Expenses	0	0	0
Administrative Expenses	110,313	1,839	153
Operating Expenses:			
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	10,000	167	14
Natural Gas	30,000	500	42
Electricity	15,000	250	21
Water and Sewer	12,500	208	17
Garbage and Trash Removal	6,500	108	9
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	74,000	1,233	103
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	10,000	167	14
Miscellaneous Ground Maintenance	0	0	0
Tenant Damage Charges - Grounds	0	0	0
Building Maintenance Payroll	0	0	0
Building Tools and Supplies	0	0	0
Building Contractual Services	20,000	333	28
Building Systems Maintenance	30,000	500	42
Miscellaneous Building Maintenance	0	0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	60,000	1,000	83
General Expenses:			
Property Taxes	132,000	2,200	183
Property and Liability Insurance	21,000	350	29
Investor Fees	0	0	0
Tenant Service Expenses	21,528	359	30
General Expenses	174,528	2,909	242
Replacement Reserve Funding			
Parking Lease	27,000	450	38
Commercial Expenses (if applicable)	0	0	0
Total	445,841	7,431	619

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
	3 Months	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
	9/1/2022	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/30/2028	12/31/2029	12/31/2030	12/31/2031	12/30/2032
Effective Gross Income		218,087	872,349	889,796	907,592	925,744	944,259	963,144	982,407	1,002,055	1,022,096	1,042,538
Less Operating Expense		111,460	445,841	459,217	472,993	487,183	501,798	516,852	532,358	548,329	564,779	581,722
Net Operating Income		106,627	426,508	430,579	434,599	438,561	442,460	446,291	450,049	453,726	457,317	460,816
Less RLP Repay		80,850	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400
Less Other Repay		12,150	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600
Cash Flow		13,627	54,508	58,579	62,599	66,561	70,460	74,292	78,049	81,726	85,317	88,816
Cash Flow per Unit		909	908	976	1,043	1,109	1,174	1,238	1,301	1,362	1,422	1,480
Debt Coverage Ratio(RLP)		1.15	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.22	1.23	1.24
Operating Reserve Balance	409,000	429,450	450,923	473,469	497,142	521,989	548,089	575,504	604,279	634,493	666,218	699,529

Total Cash Flow
Projected over 12 Years
922,257

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued											
	Yr 11	Yr 12	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20	
	12/31/2033	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	
Effective Gross Income	1,063,389	1,084,656	1,106,349	1,128,476	1,151,046	1,174,067	1,197,548	1,221,499	1,245,929	1,270,848	
Less Operating Expense	599,174	617,149	635,663	654,733	674,375	694,606	715,445	736,908	759,015	781,786	
Net Operating Income	464,215	467,508	470,686	473,743	476,671	479,461	482,104	484,591	486,914	489,062	
Less RLP Repay	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	
Less Other Repay	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	
Cash Flow	92,215	95,508	98,686	101,743	104,671	107,461	110,104	112,591	114,914	117,062	
Cash Flow per Unit	1,537	1,592	1,645	1,696	1,745	1,791	1,835	1,877	1,915	1,951	
Debt Coverage Ratio(RLP)	1.25	1.26	1.27	1.27	1.28	1.29	1.30	1.30	1.31	1.31	
Operating Reserve Balance	699,529	734,505	771,230	809,792	850,282	892,796	937,435	984,307	1,033,523	1,085,199	1,139,459

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: 200 Valley Street, an Avesta project
Date: July 22, 2020

Executive Summary

Avesta requests a total capital subsidy of \$595,000 from HOME/HTF and/or Healthy Neighborhoods, and a 30 year TIF for 75% of real estate taxes to support the proposed new construction of 60 units of affordable housing adjacent to their existing Florence House property. This is a \$9,916/unit requested capital subsidy. The site consists of two vacant parcels and a single family residence which will be demolished. The new building will be 5 stories at the street level, with 2 levels of parking, built into the hillside. Units will range in size from efficiency to 3 bedroom. The housing will serve a mix of income levels with 60% of units affordable to households at 50% AMI, 20% affordable at 60% AMI, and 20% of units rented at market rates.

Sources and Uses

Sources:		Uses:	
Maine Housing 1 st Mortgage	\$6,175,000	Construction Hard Costs	\$12,832,572
Maine Housing Subsidy	\$ 960,000	Hard Cost Contingency	585,879
FHLB Loan	\$1,025,000	Financing & Soft Costs	2,027,521
FHLB Subsidy	\$650,000	Acquisition	629,500
Net Syndication Proceeds	\$8,128,281	Reserves	707,809
City capital subsidy Funds	<u>\$ 595,000</u>	Developer Fee	<u>750,000</u>
Total Sources:	\$17,533,281	Total Uses:	\$17,533,281

The FHLB AHP subsidy and loan are committed. Avesta is preparing to submit a request to Maine Housing for first mortgage, subsidy and LIHTC allocation, and requests funding from the City to support this application. Gorham Savings is the likely construction lender and has worked with FHLB for the AHP funding. Boston Capital has provided a detailed letter of interest for syndicating the tax credits, with \$.88 on dollar return to project.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

At this early stage of project development, construction costs are based on square footage estimates. Avesta has budgeted \$245/sq foot for construction. This is \$1,219,504 less than the construction cost estimate from Wright-Ryan Construction which estimated total construction cost at \$14,052,076 -- and did not include prevailing wage rates in the cost estimate. Avesta has provided a detailed line item analysis of how this level of savings can be realized through changes to finish specifications, exterior

building materials, HVAC redesign, plus reductions in price escalators for labor & materials, contingency, & construction management fee.

Construction cost per unit are up significantly compared to 2019 across all applicants which is the primary driver of the upswing in total development costs. Construction costs are rising due to tight job markets in the construction trades and the added uncertainty that these cost estimates were created in a peak of uncertainty about the impact of COVID-19 on the economy. This project, with total development cost per unit of \$292,221, leads the way with the highest per unit cost, but it is in the same range as the other new construction applicants (Cumberland at \$262,412/unit, Middle Street at \$280,207 per unit.) Avesta's revised budget figure is more consistent with current market conditions, as demonstrated by other current applicants, than is the GC's cost estimate. It is also reasonable to expect Valley cost per unit to be somewhat higher than the other applicants because the project includes more community amenities, more covered parking (and two levels of parking), and site acquisition costs (while the other applicants do not include acquisition costs in the budget).

Soft Costs:

Soft costs are typical for a project of this scale. Developer fee is on the low end, at 4.89% of total development costs (less reserves and developer fee).

Contingency:

Hard cost contingency is budgeted at 4.6%, below the industry standard 5% for new construction. Considering the early stage of development, multiple outstanding questions about site conditions, and the construction estimate already rounded down, this is too thin. Soft cost contingency at \$20,000, which is 1.11% of total soft costs, is inadequate, especially given the early stage of development. Review of a satisfactory revised development budget is a recommended condition of closing.

Acquisition and Appraisal:

The public has an interest in insuring that the property is purchased for no more than its market value. This review is especially important in cases like this one where the seller plays multiple roles in the transaction. Avesta HDC acquired the sites and will resell the sites to the newly created project entity it controls, so Avesta is both seller and buyer of the site.

The site consists of 3 parcels, one acquired in 2015, and two of which were acquired in 2019. The acquisition cost reflected in the sources and uses is \$629,500 for the three parcels. Avesta did not have an appraisal done prior to acquiring the sites. Approval of an appraisal which supports the sales price to the newly created entity is a recommended condition of closing. The \$629,500 price is substantially above the current assessed value. However, it is consistent with the estimated value generated by the 2020 revaluation process which will be implemented for FY22 tax rolls. The land cost per housing unit developed (\$10,492) is also consistent with other recent new construction projects in greater Portland, which range from a low of \$6,426 to a high of \$14,000 per unit.

Operating Budget & 20 Year Cashflow Projection

Project Income and Market Study:

Rents for LIHTC supported units are budgeted at the maximum allowable LIHTC rate for each unit type for a range of rents from \$878 for an efficiency at 50% AMI to \$1,565 for a 3 bedroom at 60% AMI. The project received a commitment for 12 Project Based Vouchers which supplement the income stream and allow a wider range of households to be served. The rent for voucher units is projected at 110% of FMR. The rent for the 12 market rate 1 bedroom unit is \$1,400, substantially above the Fair Market Rent of \$1,167, but consistent with market rate rents documented in market studies for comparable properties.

Avesta commissioned a Market Study for the project when it was envisioned as a senior housing development, so the conclusions are no longer fully applicable. A market study which supports demand for the current project configuration is a recommended condition of closing. However, Avesta's experience in the Portland market demonstrates the need, and effective demand, for this housing. Avesta has a waiting list of almost 1,300 households for their 778 Portland area units, with at least one qualified household waiting for each unit at all unit sizes.

Operating Expense

Operating expenses are budgeted at \$8,099, including \$2,454 in taxes. Adjusting out real estate taxes, operating expense per unit is a lean but adequate \$5,645.

20 Year Cashflow & Debt Service Coverage Ratio (DSCR)

Year 1 debt service coverage is satisfactory at 1.13, rising steadily to 1.290 in year 20 with standard income and expense inflators of 2% for income and 3% for expenses and a 5% vacancy rate. Given the extremely tight multi-family market, the project is likely to outperform the 5% vacancy. The relative security of income from Project Based Vouchers decreases the minimum acceptable DSCR.

Developer Financials

Avesta's 2019 consolidated audit has been delayed by COVID-19, so this analysis is based on 2018 and prior year audits. Satisfactory review of the 2019 audit is a recommended condition of closing. 2019 year end management statements, and 1st Quarter 2020 management statements have been provided. However, comparing data from audits to data from internal statements is misleading, so this analysis will focus on audited information. 2019 information should be understood as tentative at this time.

Avesta closed out 2018 in good financial condition, with current assets of \$11.6 million and current liabilities of \$10.2 million. The resulting Current Ratio (current assets divided by current liabilities) is 1.14, a bit lean but manageable for the scale of their operations. Of that current liability, \$4.4 million was current portion of long term debt, which was subsequently refinanced in 2019, per note in audit. Net assets were \$138 million, up \$2 million over 2017. There has been annual, substantial growth in net assets since 2012, with net assets more than doubling in 7 years (2012 net assets were \$66 million).

In 2018, revenues were \$35.6 million, down \$1.6 million from 2017 due to reduced developer fee and lower “other” income. Avesta’s tenant and subsidy income was up \$1.3 million in 2018, consistent with Avesta’s growing real estate portfolio. Operating expenses were also up in almost every category, with wages up over \$900,000. 2018 net operating income was \$7.1 million. Depreciation resulted in a paper loss of \$6.2 million, but this paper loss was more than outweighed by the capital contributions from tax credit investors, i.e the growth in real estate portfolio, resulting in growth in net assets. Performance in 2018 is not problematic in itself, but the trend lines which have been positive have dipped. As Avesta’s real estate portfolio grows, Avesta and its funders need to pay attention to finding the correct scale for long term sustainable operations.

Impact of pandemic: In a conversation with Avesta’s CFO and Executive Director, Avesta reports that the pandemic has not led to declines in rent revenue as of June. Analysis of Avesta’s workforce housing projects shows most properties have sufficient reserves to weather a 20% reduction in collections for 12-18 months. Only a handful of properties might struggle if a 20% rent reduction continued for 6 months. Avesta has not reduced staff size, in fact has continued hiring, and has provided hazard pay to some front line staff. The additional costs related to the pandemic and some delay in real estate development leads to their estimate for stable Net Operating Income in 2020 (adjusted downward from the 2020 budgeted growth in NOI).

This developer has the financial capacity to intervene in a development facing unexpected set backs and or cost over-runs to keep the development process moving forward. Their financial strength as an organization (unrestricted net assets of \$21 million) mitigates the risk inherent in any construction project.

Recommendations

I recommend a loan in the amount of no more than \$595,000 (as reduced by any funding provided by Healthy Neighborhoods), zero percent interest, payment deferred for 30 years, and a 75% TIF for 30 years, with the following conditions:

Prior to loan closing, satisfactory review of:

- 1) Market study for the development as family housing;
- 2) Appraised value supporting acquisition price of land;
- 3) Phase II Environmental Site Assessment;
- 4) Relocation plan and budget for the existing tenant, or evidence that the tenant is not eligible for relocation;
- 5) Revised development budget which reflects soil conditions, any needed environmental remediation, any needed relocation, satisfactory hard and soft cost contingencies, and applicable prevailing wages;
- 6) Avesta’s 2019 audit.
- 7) All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Project Operating Pro Forma

Date	July 16, 2020
Project Name	200 Valley Street
Project Address	
Developer/Sponsor	Avesta

Rental Income

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Per Unit Net Rent Per Sq Ft	Total Monthly Net Income	Total Annual Net Rent
0 BR	1		0	50%	\$1,179	\$33		\$1,146	#DIV/0!	\$1,146	\$13,752
0 BR	6		0	50%	\$878	\$33		\$845	#DIV/0!	\$5,070	\$60,840
0 BR	4		0	60%	\$1,054	\$33		\$1,021	#DIV/0!	\$4,084	\$49,008
1 BR	1		0	50%	\$1,284	\$43		\$1,241	#DIV/0!	\$1,241	\$14,892
1 BR	9		0	50%	\$941	\$43		\$898	#DIV/0!	\$8,082	\$96,984
1 BR	3		0	60%	\$1,129	\$43		\$1,086	#DIV/0!	\$3,258	\$39,096
1 BR	12		0	market	\$1,350			\$1,350	#DIV/0!	\$16,200	\$194,400
2 BR	6		0	50%	\$1,668	\$56		\$1,612	#DIV/0!	\$9,670	\$116,035
2 BR	5		0	50%	\$1,128	\$56		\$1,072	#DIV/0!	\$5,360	\$64,320
2 BR	3		0	60%	\$1,354	\$56		\$1,298	#DIV/0!	\$3,894	\$46,728
3 BR	4		0	50%	\$2,100	\$70		\$2,030	#DIV/0!	\$8,120	\$97,440
3 BR	4		0	50%	\$1,304	\$70		\$1,234	#DIV/0!	\$4,936	\$59,232
3 BR	2		0	50%	\$1,565	\$70		\$1,495	#DIV/0!	\$2,990	\$35,880
4 BR			0	60%				\$0	#DIV/0!	\$0	\$0
Other			0	50%				\$0	#DIV/0!	\$0	\$0
Other			0	60%				\$0	#DIV/0!	\$0	\$0
Total:	60		0							\$74,051	\$888,607

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

Note: Year 1 is the first full year of stabilized operations

	<u>Year 1</u>	<u>Year 1/Unit</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>
Income											
Sch. Gross Income - Residential	\$888,607	\$14,810	\$906,379	\$924,507	\$942,997	\$961,857	\$981,094	\$1,000,716	\$1,020,730	\$1,041,145	\$1,061,968
Vacancy Loss	5.0%	(\$44,430)	(\$741)	(\$45,319)	(\$46,225)	(\$47,150)	(\$48,093)	(\$49,055)	(\$50,036)	(\$51,037)	(\$52,057)
Other income (TIF)	\$110,449	\$1,841	\$112,658	\$114,911	\$117,209	\$119,553	\$121,944	\$124,383	\$126,871	\$129,408	\$131,996
Other income (laundry)	\$2,880	\$48	\$2,938	\$2,996	\$3,056	\$3,117	\$3,180	\$3,243	\$3,308	\$3,374	\$3,442
Effective Gross Income	\$957,506	\$15,958	\$976,656	\$996,189	\$1,016,113	\$1,036,435	\$1,057,164	\$1,078,307	\$1,099,873	\$1,121,870	\$1,144,308

Administrative											
Management Fee	\$45,816	\$764	\$47,190	\$48,606	\$50,064	\$51,566	\$53,113	\$54,707	\$56,348	\$58,038	\$59,779
Management Charges	\$45,816	\$764	\$47,190	\$48,606	\$50,064	\$51,566	\$53,113	\$54,707	\$56,348	\$58,038	\$59,779
Marketing Expense	\$500	\$8	\$515	\$530	\$546	\$563	\$580	\$597	\$615	\$633	\$652
Legal	\$500	\$8	\$515	\$530	\$546	\$563	\$580	\$597	\$615	\$633	\$652
Audit & Accounting	\$7,500	\$125	\$7,725	\$7,957	\$8,195	\$8,441	\$8,695	\$8,955	\$9,224	\$9,501	\$9,786
Admin Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$100,132	\$1,669	\$103,136	\$106,230	\$109,417	\$112,699	\$116,080	\$119,563	\$123,150	\$126,844	\$130,650
	\$110,314										

Supportive Services	\$21,528	\$359	\$22,174	\$22,839	\$23,524	\$24,230	\$24,957	\$25,706	\$26,477	\$27,271	\$28,089
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Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$27,500	\$458	\$28,325	\$29,175	\$30,050	\$30,951	\$31,880	\$32,836	\$33,822	\$34,836	\$35,881
Electric	\$25,000	\$417	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Water / Sewer	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$67,500	\$1,125	\$69,525	\$71,611	\$73,759	\$75,972	\$78,251	\$80,599	\$83,016	\$85,507	\$88,072

\$57,500

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Janitorial	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Trash Removal	\$6,500	\$108	\$6,695	\$6,896	\$7,103	\$7,316	\$7,535	\$7,761	\$7,994	\$8,234	\$8,481
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$5,000	\$83	\$5,150	\$5,305	\$5,464	\$5,628	\$5,796	\$5,970	\$6,149	\$6,334	\$6,524
Maintenance	\$40,000	\$667	\$41,200	\$42,436	\$43,709	\$45,020	\$46,371	\$47,762	\$49,195	\$50,671	\$52,191
Maintenance Contracts	\$30,000	\$500	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$101,500	\$1,692	\$104,545	\$107,681	\$110,912	\$114,239	\$117,666	\$121,196	\$124,832	\$128,577	\$132,434

[illegible]

Net Operating Income	\$471,581	\$7,860	\$476,153	\$480,671	\$485,129	\$489,522	\$493,843	\$498,087	\$502,246	\$506,315	\$510,286
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[illegible]

Cash Flow Debt Payments												
DHCD	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$50,481	\$841	\$55,053	\$59,571	\$64,029	\$68,422	\$72,743	\$76,987	\$81,146	\$85,215	\$89,186

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,083,207	\$1,104,871	\$1,126,969	\$1,149,508	\$1,172,498	\$1,195,948	\$1,219,867	\$1,244,265	\$1,269,150	\$1,294,533
Vacancy Loss	5.0%	(\$54,160)	(\$55,244)	(\$56,348)	(\$57,475)	(\$58,625)	(\$59,797)	(\$60,993)	(\$62,213)	(\$64,727)
Other income (TIF)	\$134,636	\$137,329	\$140,076	\$142,877	\$145,735	\$148,649	\$151,622	\$154,655	\$157,748	\$160,903
Other income (laundry)	\$3,511	\$3,581	\$3,653	\$3,726	\$3,800	\$3,876	\$3,954	\$4,033	\$4,113	\$4,196
Effective Gross Income	\$1,167,194	\$1,190,538	\$1,214,349	\$1,238,636	\$1,263,408	\$1,288,676	\$1,314,450	\$1,340,739	\$1,367,554	\$1,394,905

Administrative										
Management Fee	\$61,573	\$63,420	\$65,323	\$67,282	\$69,301	\$71,380	\$73,521	\$75,727	\$77,999	\$80,339
Management Charges	\$61,573	\$63,420	\$65,323	\$67,282	\$69,301	\$71,380	\$73,521	\$75,727	\$77,999	\$80,339
Marketing Expense	\$672	\$692	\$713	\$734	\$756	\$779	\$802	\$826	\$851	\$877
Legal	\$672	\$692	\$713	\$734	\$756	\$779	\$802	\$826	\$851	\$877
Audit & Accounting	\$10,079	\$10,382	\$10,693	\$11,014	\$11,344	\$11,685	\$12,035	\$12,396	\$12,768	\$13,151
Admin Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$134,569	\$138,606	\$142,764	\$147,047	\$151,459	\$156,002	\$160,682	\$165,503	\$170,468	\$175,582

Supportive Services	\$28,932	\$29,800	\$30,694	\$31,615	\$32,563	\$33,540	\$34,546	\$35,583	\$36,650	\$37,749
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Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$36,958	\$38,066	\$39,208	\$40,385	\$41,596	\$42,844	\$44,129	\$45,453	\$46,817	\$48,221
Gas	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838
Water / Sewer	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$90,714	\$93,436	\$96,239	\$99,126	\$102,100	\$105,163	\$108,318	\$111,567	\$114,914	\$118,362

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Grounds	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Janitorial	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Trash Removal	\$8,735	\$8,998	\$9,267	\$9,545	\$9,832	\$10,127	\$10,431	\$10,744	\$11,066	\$11,398
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$6,720	\$6,921	\$7,129	\$7,343	\$7,563	\$7,790	\$8,024	\$8,264	\$8,512	\$8,768
Maintenance	\$53,757	\$55,369	\$57,030	\$58,741	\$60,504	\$62,319	\$64,188	\$66,114	\$68,097	\$70,140
Maintenance Contracts	\$40,317	\$41,527	\$42,773	\$44,056	\$45,378	\$46,739	\$48,141	\$49,585	\$51,073	\$52,605
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$136,408	\$140,500	\$144,715	\$149,056	\$153,528	\$158,134	\$162,878	\$167,764	\$172,797	\$177,981

Development Budget with Permanent Sources

Date _____
Project Name 200 Valley Street
Project Address _____
Developer/Sponsor Avesta

Total Units 60
Total Square Feet 54,767 interior
17030 covered parking

	Initial Application Values			7/13 Application Values			Change	
	Total	Per Unit	Per Sq Ft	Total	Per Unit	Per Sq Ft	Application to Reservation	
Sources of Funds								
Permanent Financing - 1st Lien MSHA Debt	\$5,390,000	\$89,833	\$98	\$6,175,000	\$102,917	\$113	\$ 785,000	15%
Permanent Financing - City of Portland HOME/HTF/Healthy Neig	\$595,000	\$9,917	\$11	\$595,000	\$9,917	\$11	\$ -	0%
FLHB Boston Loan	\$1,025,000	\$17,083	\$19	\$1,025,000	\$17,083	\$19		
FLHB Boston Subsidy	\$650,000	\$10,833	\$12	\$650,000	\$10,833	\$12		
Equity (LIHTC/tenant contributions)	\$8,128,281	\$135,471	\$148	\$8,128,281	\$135,471	\$148	\$ -	0%
Deferred development fee	\$0	\$0	\$0		\$0	\$0		
Other MSHA Subsidy	\$960,000	\$16,000	\$18	\$960,000	\$16,000	\$18	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Sources of Funds	\$16,748,281	\$279,138	\$306	\$17,533,281	\$292,221	\$320	\$ 785,000	5%

Uses of Funds

Hard Costs								
Site Improvements		\$0	\$0	\$700,000	\$11,667	\$13	\$ 700,000	#DIV/0!
Rehabilitation		\$0	\$0		\$0	\$0		
New Construction	\$12,271,000	\$204,517	\$224	\$11,017,572	\$183,626	\$201	\$ (1,253,428)	-10%
Contractor's Profit, Overhead, & Gen. Requirements 0.0%		\$0	\$0	\$1,050,000	\$17,500	\$19	\$ 1,050,000	#DIV/0!
Hazardous Materials abatement (if contracted separately)		\$0	\$0		\$0	\$0		
Demolition Cost (if contracted separately)		\$0	\$0		\$0	\$0		
Bond Premium		\$0	\$0	\$65,000	\$1,083	\$1	\$ 65,000	#DIV/0!
Other		\$0	\$0		\$0	\$0		
Hard Cost Contingency (% of hard costs) 4.6%	\$613,550	\$10,226	\$11	\$585,879	\$9,765	\$11	\$ (27,671)	-5%
Total Hard Costs	\$12,884,550	\$214,743	\$235	\$13,418,451	\$223,641	\$245	\$ 533,901	4%

Soft Costs								
Building Permit & Fees	\$377,000	\$6,283	\$7	\$382,000	\$6,367	\$7	\$ 5,000	1%
Survey & Engineering	\$36,000	\$600	\$1	\$36,000	\$600	\$1	\$ -	0%
Design & Permitting (% of const exp) 4.5%	\$520,000	\$8,667	\$9	\$520,000	\$8,667	\$9	\$ -	0%
Borrower Legal (all closings, excluding syndication legal)	\$68,000	\$1,133	\$1	\$68,000	\$1,133	\$1	\$ -	0%
Title & Recording	\$18,885	\$315	\$0	\$18,885	\$315	\$0	\$ -	0%
Accounting	\$10,000	\$167	\$0	\$10,000	\$167	\$0	\$ -	0%
Construction Period Taxes	\$15,000	\$250	\$0	\$15,000	\$250	\$0	\$ -	0%
Construction Period Insurance	\$30,000	\$500	\$1	\$30,000	\$500	\$1	\$ -	0%
Other: FF&E, Security	\$60,000	\$1,000	\$1	\$60,000	\$1,000	\$1	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Soft Costs	\$1,134,885	\$18,915	\$21	\$1,139,885	\$18,998	\$21	\$ 5,000	0%

Financing Costs								
Construction Loan Origination Fees	\$28,750	\$479	\$1	\$28,750	\$479	\$1	\$ -	0%
Construction Period Interest	\$425,000	\$7,083	\$8	\$500,000	\$8,333	\$9	\$ 75,000	18%
Lender Inspection Fees	\$12,000	\$200	\$0	\$12,000	\$200	\$0	\$ -	0%
Letter of Credit Fee	\$5,000	\$83	\$0	\$5,000	\$83	\$0	\$ -	0%
Permanent Loan Fee	\$10,000	\$167	\$0	\$10,000	\$167	\$0	\$ -	0%
Construction Lender Legal	\$15,000	\$250	\$0	\$147,000	\$2,450	\$3	\$ 132,000	880%
Other		\$0	\$0		\$0	\$0		
Total Financing Costs	\$495,750	\$8,263	\$9	\$702,750	\$11,713	\$13	\$ 207,000	42%

Miscellaneous								
Market Survey	\$5,000	\$83	\$0	\$5,000	\$83	\$0	\$ -	0%
Appraisal	\$6,500	\$108	\$0	\$6,500	\$108	\$0	\$ -	0%
Environmental Study	\$4,000	\$67	\$0	\$4,000	\$67	\$0	\$ -	0%
LIHTC Fees -- prepaid monitoring	\$124,386	\$2,073	\$2	\$124,386	\$2,073	\$2	\$ -	0%
Other: Commissioning		\$0	\$0		\$0	\$0		
Relocation Costs		\$0	\$0		\$0	\$0		
Other "Testing & Special Inspections"	\$25,000	\$417	\$0	\$25,000	\$417	\$0	\$ -	0%
Soft Cost Contingency (% of soft costs excl Dev Fee) 1.11%	\$20,000	\$333	\$0	\$20,000	\$333	\$0	\$ -	0%
Total Miscellaneous:	\$184,886	\$3,081	\$12	\$184,886	\$3,081	\$16	\$ -	0%

Acquisition								
Acquisition: Buildings		\$0	\$0		\$0	\$0		
Acquisition: Land	\$629,500	\$10,492	\$11	\$629,500	\$10,492	\$11	\$ -	0%
Acquisition: Legal		\$0	\$0		\$0	\$0		
Other		\$0	\$0		\$0	\$0		
Total Acquisition	\$629,500	\$10,492	\$11	\$629,500	\$10,492	\$11	\$ -	0%

Reserves and Developer Fee								
Operating Deficit Escrow	\$409,000	\$6,817	\$7	\$453,000	\$7,550	\$8	\$ 44,000	11%
Prefunded Replacement Reserve	\$122,710	\$2,045	\$2	\$110,176	\$1,836	\$2	\$ (12,534)	-10%
Taxes & Insurance Escrow	\$87,000	\$1,450	\$2	\$94,633	\$1,577	\$2	\$ 7,633	9%
Developer Overhead		\$0	\$0		\$0	\$0		
Developer Profit	\$750,000	\$12,500	\$14	\$750,000	\$12,500	\$14	\$ -	0%
Rent Up Reserve & Marketing	\$50,000	\$833	\$1	\$50,000	\$833	\$1	\$ -	0%
Other		\$0	\$0		\$0	\$0		
Total Reserves and Developer Fee	\$1,418,710	\$23,645	\$26	\$1,457,809	\$24,297	\$27	\$ 39,099	3%

Total Uses of Funds	\$16,748,281	\$279,138	\$315	\$17,533,281	\$292,221	\$333	\$ 785,000	5%
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Developer Fee Analysis: Total Fees: \$750,000
(excluding reserves & developer fee) Percent TDC: 4.89%

Total Fees: \$750,000
Percent of TDC: 4.67%

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 24-20/21 Appropriating Up To \$500,000 in Housing Trust Funds to 337 Cumberland Avenue, LP RE: 337 Cumberland Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

SPONSOR: Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on June 10, 2020 and voted (2 - 0) (Councilor Ali abstained) to forward this item to the City Council with a recommendation for passage.

(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

Portland Housing Development Corporation is seeking a 9% Low Income Housing Tax Credit (LIHTC) and tax-exempt debt with MaineHousing. The submission date for Low Income Housing Tax Credit applications with the Maine State Housing Authority is August 25, 2020. MaineHousing's allocation of the LIHTC is a competitive process scored through the Qualified Allocation Plan (QAP). This funding request will impact Avesta Housing Development Corporation's final score.

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Portland Housing Development Corporation is requesting \$500,000 in Affordable Housing Development funding to construct 60 units of mixed-income rental housing.

II. AGENDA DESCRIPTION

The Housing Committee met on June 10, 2020 and voted (2 - 0) (Councilor Ali abstained) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHDC) is proposing to construct 60 apartment units on a site located at 337 Cumberland Avenue. Forty-eight (48) units will have income restrictions.

PHDC has requested two forms of financial assistance including \$500,000 from the Affordable Housing Development (AHD) Program and Affordable Housing Tax Increment Financing being considered separately under Orders 19 - 20/21. Staff is recommending the AHD request be funded from the Housing Trust Fund (HTF).

Total AHD of \$500,000/unit = \$8,333.33; Total AHD of \$500,000/affordable unit = \$10,416.66

Portland Housing Development Corporation is proposing the redevelopment of 337 Cumberland Avenue by

providing a newly constructed six-story structure containing 60 mixed-income units in a mixed-use building. The site is currently owned by Youth and Family Outreach (YFO), who will lease it for 90 years to 337 Cumberland Avenue, LP who will be the development owner. The site consists of an existing building containing a restaurant and a chapel that provides space for YFO to offer early childhood education and other supportive services for 58 children. The chapel will be updated and the building will be demolished. The first floor of the new building will provide expansion space for YFP that will allow for an increase in childcare spots from 58 to 107, floors two through five will be residential housing. Three Thirty-Seven Cumberland would attempt to secure Project Based Housing Choice Vouchers from PHA for some of the 50% AMI units.

The project will include 20 studios, 15 one-bedroom, 15 two-bedroom, and 10 three-bedroom apartments. 60% or 36 of the units will be available to households earning 50% of the area median income (AMI). 20% or 12 of the units will be available to households earning 60% AMI. The remaining 20% or 12 of the units will be market rate.

This project is seeking a 9% Low Income Housing Tax Credit and tax-exempt debt with Maine Housing contingent upon a reduction in operating costs through a tax increment financing program and subsidized development funding through the Affordable Housing Development Program.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Portland Housing Development Corporation is proposing to create a 6-story, 60 unit mixed-income apartment building on a site located at 337 Cumberland Avenue.

As described by the developer: "The existing restaurant located at 337 Cumberland Ave will be demolished, and in its place a new 6 story building will be constructed. The site is currently owned by Youth and Family Outreach, who will lease it for 90 years to 337 Cumberland Avenue, LP, who will be the development owner. On the first floor will be expansion space for YFO; the new space will allow the long-time neighborhood organization to support 49 additional children. The neighboring Chapel building, currently used by YFO for childcare, will be renovated to contain community space and childcare classrooms. 10% of the homes (6 units) will be set-aside for families residing in a Portland shelter."

"The building is located on an underdeveloped site in the urban core and will be a mixed-use building with uses that are fully appropriate for the site. This will provide apartments in a location within easy walking distance of the largest concentration of employment in the state, a transit hub with direct connections across Greater Portland, and on the edge of the residential neighborhood of West Bayside. The YFO childcare playground areas at the street level will be improved. The team is planning for the building to meet the Core Green Building and Passive House standards, in addition to meeting the City's Green Building Ordinance."

Portland Housing has submitted a Level III application with the Planning Board to construct a 6-story building connected to the chapel at the first floor and basement level. The new building will include 60 residential units on the five floors above the expanded YFO childcare space. Covered car parking and building support space will be in the basement level.

The 2020 Affordable Housing Development Application made available a total of \$1,571,245 from the 2020-

2021 HOME fund (\$497,545) and Housing Trust Fund (\$1,073,700) for affordable housing development. The City received three applications requesting a total of \$1,495,000 in funding.

The staff recommendation to the Housing Committee was for funding \$500,000 in Housing Trust funding at zero percent interest, with terms pending underwriting conditions.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To encourage and promote affordable decent, housing opportunities for all Maine citizens

According to Portland's Comprehensive Plan 2030, while Portland has welcomed much needed new housing construction in recent years, both the lack of sufficient housing supply and the affordability of that housing for a healthy socioeconomic cross-section of the population remain urgent challenges.

The City of Portland is actively engaged in efforts to encourage housing preservation and creation for all income levels and household sizes city-wide, both through policy initiatives and through public/nonprofit partnerships with agencies such as Portland Housing Authority, Community Housing of Maine, Avesta Housing, Preble Street, Shalom House, and the Maine Affordable Housing Coalition.

The Comprehensive Plan has set the following goal:

Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.

V. FINANCIAL IMPACT

Recommendation for funding is for \$500,000 in Housing Trust funding. A third party underwriting analysis of this request has been completed and has been included in the attachments. The analysis supports this request.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Approval by the City Council of the Housing Committee's recommendation of Housing Trust Funds in the amount of \$500,000 at zero percent interest with repayment deferred for 30 years and subject to the underwriting conditions.

VIII. LIST ATTACHMENTS

1. Appropriating Housing Trust funds for 337 Cumberland Avenue 7.13.2020
2. Attachments for City Council 8.3.20 337 Cumberland Ave Dev

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 APPROPRIATING
UP TO \$500,000 IN HOUSING TRUST FUNDS
TO 337 CUMBERLAND AVENUE, LP
RE: 337 CUMBERLAND AVENUE**

ORDERED, that the amount of up to \$500,000 in Housing Trust funds is hereby appropriated to 337 Cumberland Avenue, LP For development costs for the project at 337 Cumberland Avenue; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the funding, and otherwise carry out the intent of this order.



Project Summary – 337 Cumberland Ave Affordable Housing Development Application

Youth and Family Outreach creates opportunities that support learning and enhance the quality of life for children, teens, and families in Greater Portland. Together with its community partners, the Portland Housing Development Corporation provides and expands affordable housing and services that improve quality of life, build community, enhance safety and promote personal success for the people we serve and the neighborhoods in which they reside. Youth and Family Outreach and Portland Housing Development Corporation acknowledge the importance of residing in an affordable, stable home, particularly for our most vulnerable families. Combining the foundations of home and high-quality education increase the opportunity to grow with a sense of purpose, well-being, and stability. By increasing the availability of affordable homes and childcare opportunities within Portland's downtown core, YFO and PHA will provide even more opportunity for residents of Portland to engage and prosper.

The proposed redevelopment of 337 Cumberland Ave supports the common goals of the sponsor organizations and the City of Portland by providing a newly constructed structure containing 60 mixed-income apartments and space for YFO to increase the number of families they support through early childhood education and other support services. Active and lively street frontages, families living steps from job and educational opportunities, and two community partners working together to provide a community hub are just some of the benefits from building 337 Cumberland Ave, a model sustainable building designed to embrace beauty, equity, and a stable climate for now and future generations.

The existing restaurant located at 337 Cumberland Ave will be demolished, and in its place a new 6 story building will be constructed. On the first floor will be expansion space for Youth and Family Outreach; the new space will allow the long-time neighborhood organization to support 49 additional children. The neighboring Chapel building, currently used by YFO for childcare, will be renovated to contain community space and childcare classrooms. The upper five floors will contain 60 apartments with a mix of apartment types and a blend of income targets. There will be twelve market rate units, and all apartments will be comparable in size and furnishings. Market rate units, combined with a variety of lower-targeted apartments, supports the City's goal of promoting economic diversity in the neighborhood. A non-smoking policy will be building-wide and will extend to within 25 feet of entrances. In alignment with the sponsors' missions to ensure children have stability and a good foundation, 10% of the homes (6 units) will be set-aside for families residing in a Portland shelter.

The building is located on an underdeveloped site in the urban core and will be a mixed-use building with uses that are fully appropriate for the site. This will provide apartments in a location within easy walking distance of the largest concentration of employment in the state, a transit hub with direct connections across Greater Portland, and on the edge of the residential neighborhood of West Bayside. Along both Portland Street and Cumberland Street the building will have appropriately designed entries and enhancements along the sidewalk edges. The YFO childcare playground areas at the street level will be improved. The team is planning for the building to meet the Core Green Building and Passive House standards, in addition to meeting the City's Green Building Ordinance. Accessibility requirements will be



met, and careful attention will be made to compartmentalization of the apartments in order to provide optimal levels of visual, acoustical, and odor privacy. The following amenities will be available to all residents: secure entrance lobby containing a site manager's office, ADA bathroom, mailbox and package area, and gathering space for working or visiting. Additional building amenities include a laundry room, easily accessible storage for bicycles, strollers, and items that support human-powered mobility, onsite handicap parking, a community room, free wireless internet throughout the building, and access of YFO's playground spaces.

The development conforms to City of Portland and MaineHousing underwriting criteria. The developer requests \$500,000 in HOME funds, roughly \$8,333 per unit. PHDC understands and is prepared to meet all the requirements set forth by the City and HUD related to using these funds. Additionally, it is understood that the affordability period will be for at least 90 years. Below is a breakdown of the proposed unit affordability mix. The project will attempt to secure Project Based Housing Choice Vouchers from Portland Housing Authority for some of 50% AMI apartments.

Unit Size	Income Targeting (% of AMI or less)	# of Units
Studio	50% AMI	10
	60% AMI	4
	Market Rate	6
1-Bedroom	50% AMI	7
	60% AMI	3
	Market Rate	5
2-Bedroom	50% AMI	11
	60% AMI	3
	Market Rate	1
3-Bedroom	50% AMI	8
	60% AMI	2
Total		60

Portland Housing Development Corporation has a strong organizational and financial background and has organized a development team with experience and capacity to complete the project. Matthew Peters, of Elysian Enterprises LLC, will lead the development project management. Kaplan Thompson Architects and Atlantic Resource Consultants will lead the design and permitting. Portland Housing Authority will provide ongoing property management. Their background in facilities, financial compliance, and the needs of Portland residents will ensure that the building is an asset to the neighborhood and broader community.

The site is currently owned by YFO, who will lease it for 90 years to 337 Cumberland Avenue, LP, who will be the development owner. Development can be completed using current zoning and will not require a contract, conditional zone, or zoning amendment. The current timeline allows for planning board related approvals to be completed prior to City Council approval of this application. A ESA Phase I and II have been completed through Brownfields support funds through the City. Soil contamination on the site was identified that is typical for this location. A plan for containment and proper removal, as recommended by the report, is included in the project budget. The project timeline is to complete all local planning approvals by August 2020, obtain all financing commitments by the end of 2020, begin design development in January 2021, with construction starting August 2021 and lasting 16 months.

337 Cumberland Ave

Site Context Images



Looking South West from corner of Cumberland Ave and Preble St



Looking West along Portland St toward Preble St. Site is parking lot on the right.

337 Cumberland Ave

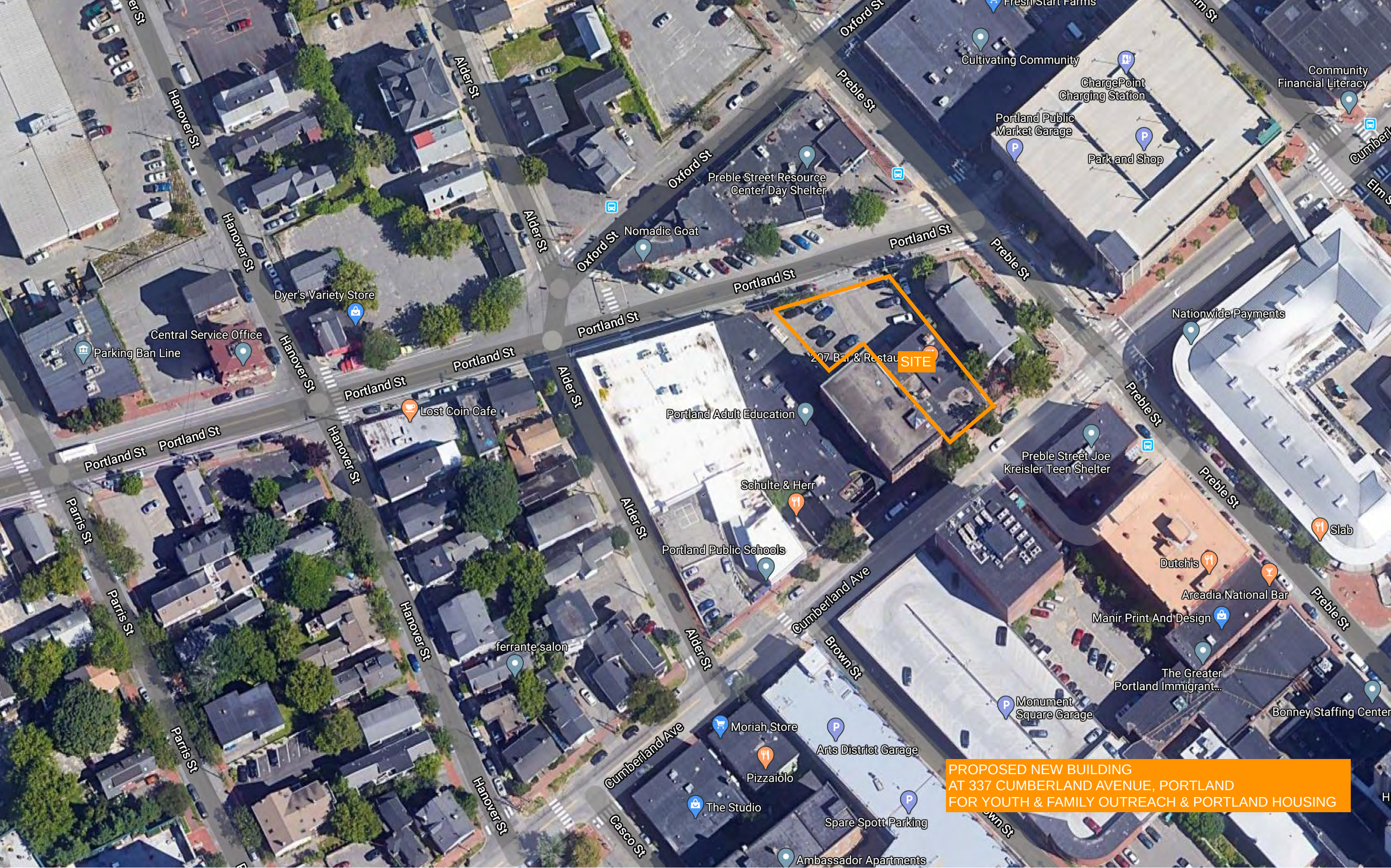
Site Context Images



Preble Chapel. New building will be located between chapel and brick building.



Parking lot behind restaurant to be redeveloped. Portland St to right of image.



PROPOSED NEW BUILDING
AT 337 CUMBERLAND AVENUE, PORTLAND
FOR YOUTH & FAMILY OUTREACH & PORTLAND HOUSING



SITE

PROPOSED NEW BUILDING
AT 337 CUMBERLAND AVENUE, PORTLAND
FOR YOUTH & FAMILY OUTREACH & PORTLAND HOUSING



VIEW FROM CUMBERLAND AVENUE

**Kaplan
Thompson
Architects**

102 Exchange Street
Portland, ME 04101
(207) 842-2888
kaplanthompson.com

PROJECT
337 CUMBERLAND

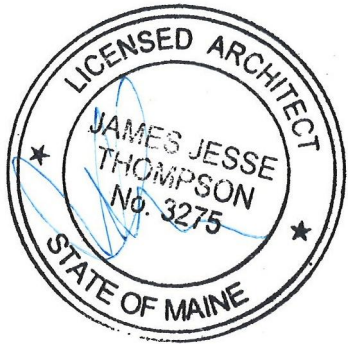
CHILDCARE, MULTI-FAMILY HOUSING,
& COMMUNITY SERVICES

337 Cumberland Avenue
Portland, ME 04101

CLIENT PARTNER
**PORTLAND HOUSING
DEVELOPMENT
CORPORATION**
14 Baxter Boulevard
Portland, ME 04101
p: (207) 221-8009

CIVIL & LANDSCAPING
**ATLANTIC RESOURCE
CONSULTANTS**
541 US-1, Suite 21
Freeport, ME 04032
p: (207) 869-9050

EARLY CHILDCARE EDUCATION
STUDIO MLA ARCHITECTS
320 Washington Street
Brookline, MA 02445
p: (617) 608-1551



NOT FOR CONSTRUCTION

PROJECT	YFP
DATE	06/01/2020
DRAWN BY	RL/CB
PHASE	SITE PLAN REVIEW

PERSPECTIVE
A-9.1



VIEW FROM PORTLAND STREET

**Kaplan
Thompson
Architects**

102 Exchange Street
Portland, ME 04101
(207) 842-2888
kaplanthompson.com

PROJECT
337 CUMBERLAND

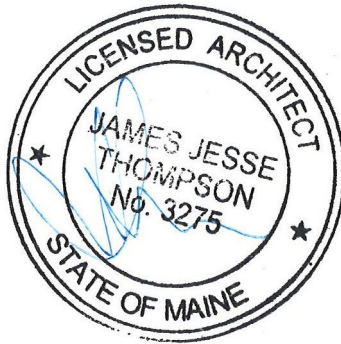
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NOT FOR CONSTRUCTION

PROJECT	YFP
DATE	06/01/2020

DRAWN BY	RL/CB
PHASE	SITE PLAN REVIEW

PERSPECTIVE
A-9.2

PROJECT NAME: 337 Cumberland
LOCATION: 337 Cumberland Ave Portland, ME 04101

Date: 4/22/2020
Proforma:

DEVELOPMENT ASSUMPTIONS					
Total Units		60	Initiation Adjustments	Yr 1-5	Yr. 6-15 Yr. 16-30
# @ 50% AMI (low HOME)	25.0%	15	Rent	2.00%	2.00% 3.00%
# @ 50% AMI (LIHTC)	35.0%	21	Operating Expense	3.00%	3.00% 3.00%
# @ 60% AMI (High HOME)	0.0%	0	Other Income	2.00%	2.50% 3.00%
# @ 60% AMI (LIHTC)	20.0%	12	Debt Coverage Ratio	1.15	
# @ Market Rate	20.0%	12	Vacancy	5%	
Appraised Market Value		3,866,041	Market Value/Unit	\$64,434	

PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	13,550,628	225,844		13,550,628
Childcare	0	0		0
Builder Overhead	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.2% 708,531	11,809		708,531
Subtotal Construction Costs	14,259,159	237,653	0	14,259,159
Building Permits and Fees	383,068	6,384		383,068
Survey & Engineering	60,500	1,008		60,500
Design & Permitting	944,649	15,744		944,649
Legal	70,000	1,167		70,000
Title & Recording	11,000	183		11,000
Accounting	10,000	167		10,000
Construction Period Tax	30,000	500		30,000
Construction Period Insurance	20,000	333		20,000
Other: FF&E, Security	145,000	2,417		145,000
Subtotal Soft Costs	1,674,217	27,904	0	1,674,217
Construction Loan Origination Fees	52,000	867		52,000
Construction Loan Interest	273,000	4,550		273,000
Lender Inspection Fees	5,400	90		5,400
Letter of Credit Fee	250	4		250
Permanent Loan Fees	50,410	840		50,410
Other: Construction Lender Legal	15,000	250		15,000
Subtotal Finance Costs	396,060	6,601	0	396,060
Market Survey	6,000	100		6,000
Appraisal	7,000	117		7,000
Environmental Study	7,200	120		7,200
LIHTC Fees - prepaid monitoring	123,375	2,056		123,375
Other: Commissioning	30,000	500		30,000
Relocation Costs	0			0
Soft Cost Contingency	50,000	833		50,000
Subtotal Miscellaneous	223,575	3,726	0	223,575
Acquisition: Buildings	0	0		0
Acquisition: Land	0	0		0
Acquisition: Legal	0	0		0
Subtotal Acquisition	0	0	0	0
Operating Deficit Escrow	447,108	7,452		447,108
Pre-funded Replacements	135,506	2,258		135,506
Tax & Insurance Escrow	69,110	1,152		69,110
Reserve for Golden Rents	0	0		0
Consultant	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,451,724	24,195	0	1,451,724
Total Development Costs	18,004,735	300,079	0	18,004,735
	\$17,434,252	\$290,571 max allowed		
		254,887 Bedroom Calculation		

LIHTC Alloc.	945,000
Equity yield	0.81
Synd. %	99.99%
Equity Raise	7,653,735

Historic Credit FED	0
Equity yield	0.88
Synd. %	99.99%
Equity Raise	0

Number of Tax-payers	1
Historic Credit STATE	0
Equity yield	0.89
Synd. %	99.99%
Equity Raise	0

Total Equity:	7,653,735
---------------	-----------

Gross Square Footage	69,170
Construction Cost/Sq ft.	\$206

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS									
Sources	CLC 7/1/2021	10/1/2021	During Construction			PLC 9/1/2022	2023	2024	Total
			1/1/2022	4/1/2022	7/1/2022				
Beginning Cash	0	0	0	0	0	0	0	0	0
Capital Contribution	382,687		50,000			6,915,048	153,000	153,000	7,653,735
Construction Loan	1,163	2,606,688	2,376,688	4,006,688	4,006,688				12,997,914
--									
MSHA Subsidy	0		480,000			480,000			960,000
MSHA Interest Only Mortgage						5,041,000			5,041,000
--						0			0
City of Portland Funds	0		450,000			50,000			500,000
AHP Loan						1,600,000			1,600,000
AHP Subsidy	0		650,000						650,000
YFO Subsidy	100,000	1,400,000				100,000			1,600,000
Reserves	0	0							0
Development Fee Loan						0			0
TOTAL SOURCES	483,850	4,006,688	4,006,688	4,006,688	4,006,688	14,186,048	153,000	153,000	31,002,649
Uses									
Acquisition	0					0			0
Construction		3,564,790	3,564,790	3,564,790	3,564,790	0			14,259,159
Soft Costs	300,000	340,554	340,554	340,554	340,554	12,000			1,674,217
Financing Costs	67,250	69,600	69,600	69,600	69,600	50,410			396,060
Miscellaneous	16,600	31,744	31,744	31,744	31,744	80,000			223,575
Dev Fee	100,000					344,000	153,000	153,000	750,000
Reserves	0					701,724			701,724
TOTAL DEV. COSTS	483,850	4,006,688	4,006,688	4,006,688	4,006,688	1,188,134	153,000	153,000	18,004,735
Repay GP Bridge Loan						0			0
Repay Construction Loan						12,997,914			12,997,914
Reserve for Golden Rents						0			0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	12,997,914	0	0	12,997,914
TOTAL USES OF FUNDS	483,850	4,006,688	4,006,688	4,006,688	4,006,688	14,186,048	153,000	153,000	31,002,649
Ending Cash	0	0	0	0	0	0	0	0	0

PROJECT FINANCING									
Source		Amount	Rate	Term	Lien	Annual D/S			Debt Constants
						Yr. 1-5	Yr. 6-15	Yr. 16-30	
Source 1:	MSHA Subsidy	960,000	0.00%	30	First	0	0	0	
Source 2:	MSHA Interest Only Mortgage	5,041,000	6.00%	40	First	302,460	302,460	302,460	\$0.06000
Source 3	--	0	5.00%	30	--	0	0	0	\$0.06442
Source 4	City of Portland Funds	500,000	0.00%	30	Second	0	0	0	
Source 5	AHP Loan	1,600,000	3.35%	30	--	84,617	84,617	84,617	\$0.05289
Source 6	AHP Subsidy	650,000	0.00%	30	Second	0	0	0	
Source 7	YFO Subsidy	1,600,000	0.00%	30	--				
Source 8	Reserves	0	0.00%	30	Third		Cash Flow		
Source 9	Development Fee Loan	0	0.00%	0	Unsecured		Cash Flow		
Source 10	Net Syndication	7,653,735	\$0.81						
	Capitalization Gap (Surplus)	0							
	Total	18,004,735							

PROPOSED RENT SCHEDULE								
Type	AMI	# Units	HAP Rents	LIHTC Max Rents	Gross Rent	Market Rent	Utility Allow.	Total Rent
Efficiency	50% HOME	0			1,017	\$1,165		0
	50% LIHTC	10		878	878	\$1,165		105,360
	60% HighHOME	0				\$1,165		0
	60% LIHTC	4		1054	1,054	\$1,165		50,592
	Market	6			1,165	\$1,165		83,880
20								
1BR	50% HOME				1,109	\$1,445	0	0
	50% LIHTC	7		941	941	\$1,445	0	79,044
	60% HighHOME				984	\$1,445	0	0
	60% LIHTC	3		1129	1,129	\$1,445	0	40,644
	Market	5			1,445	\$1,445	0	86,700
15							0	0
2BR	PBV Section 8	7			1,440	\$1,725	0	120,960
	50% LIHTC	4		1128	1,128	\$1,725	0	54,144
	60% HighHOME				1,450	\$1,725	0	0
	60% LIHTC	3		1354	1,354	\$1,725	0	48,744
	Market	1			1,725	\$1,725	0	20,700
29.2%		0					0	0
15		0					0	0
3BR	PBV Section 8	8			1,882	\$1,882		180,672
	50% LIHTC	0		1304	1,304	\$1,882	0	0
	50.0% HighHOME	0				\$1,882		0
	20.8% 60% LIHTC	2		1565	1,565	\$1,882	0	37,560
	Market	0			1,882	\$1,882		0
10								
4BR	50% HOME	0			1,882	\$2,000	0	0
	50% LIHTC	0			1,209	\$2,000	0	0
	60% HOME					\$2,000	0	0
	60% LIHTC	0			1,451	\$2,000	0	0
	Market				2,000	\$2,000		0
0								0
Other:								0
Subtotals		60						909,000
			Vacancy Rate		5%			(45,450)
			Other Income		Tax Relief	75%		85,664
			Other Income		Laundry			3,000
			Effective Gross Income					952,214

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,599	843	70
Management Charges	50,599	843	70
Marketing Expenses	0	0	0
Legal Expenses	2,000	33	3
Auditing Expenses	6,000	100	8
Other Administrative Expenses		0	0
Administrative Expenses	109,198	1,820	152
Operating Expenses:			
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	15,000	250	21
Natural Gas	6,000	100	8
Electricity	41,000	683	57
Water and Sewer	14,000	233	19
Garbage and Trash Removal	4,500	75	6
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	80,500	1,342	112
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	15,000	250	21
Miscellaneous Ground Maintenance		0	0
Tenant Damage Charges - Grounds		0	0
Building Maintenance Payroll	70,000	1,167	97
Building Tools and Supplies	10,000	167	14
Building Contractual Services	25,000	417	35
Building Systems Maintenance	15,000	250	21
Miscellaneous Building Maintenance		0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	135,000	2,250	188
General Expenses:			
Property Taxes	114,219	1,904	159
Property and Liability Insurance	24,000	400	33
		0	0
Tenant Service Expenses	17,222	287	24
General Expenses	155,441	2,591	216
Replacement Reserve Funding	27,000	450	38
		0	0
Total	507,139	8,452	704

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Yr 12
	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033
Effective Gross Income	952,214	971,259	990,684	1,010,497	1,030,707	1,051,321	1,072,348	1,115,671	1,137,984	1,160,744	1,183,959	1,207,638
Less Operating Expense	507,139	522,353	538,024	554,165	570,790	587,913	605,551	623,717	642,429	661,702	681,553	701,999
Net Operating Income	445,075	448,905	452,660	456,333	459,918	463,408	466,797	491,954	495,555	499,042	502,406	505,639
Less RLP Repay	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460
Other Loans	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617
Cash Flow	57,998	61,828	65,583	69,256	72,841	76,331	79,720	104,877	108,478	111,965	115,329	118,562
Cash Flow per Unit	967	1,030	1,093	1,154	1,214	1,272	1,329	1,748	1,808	1,866	1,922	1,976
Debt Coverage Ratio(RLP)	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.27	1.28	1.29	1.30	1.31

Total Cash Flow
Projected over 12 Years
1,042,768

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued

	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20	Yr 21	Yr 22	Yr 23
	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	12/31/2043	12/31/2044
Effective Gross Income	1,231,791	1,256,426	1,281,555	1,307,186	1,346,402	1,386,794	1,428,398	1,471,249	1,515,387	1,560,849	1,607,674
Less Operating Expense	723,059	744,751	767,094	790,106	813,810	838,224	863,371	889,272	915,950	943,428	971,731
Net Operating Income	508,731	511,675	514,461	517,080	532,592	548,570	565,027	581,978	599,437	617,420	635,943
Less RLP Repay	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460	302,460
Other Loans	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617	84,617
Cash Flow	121,654	124,598	127,384	130,003	145,515	161,493	177,950	194,901	212,360	230,343	248,866
Cash Flow per Unit	2,028	2,077	2,123	2,167	2,425	2,692	2,966	3,248	3,539	3,839	4,148
Debt Coverage Ratio(RLP)	1.31	1.32	1.33	1.34	1.38	1.42	1.46	1.50	1.55	1.60	1.64

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: 337 Cumberland Street
a partnership between Portland Housing Development Corp & Youth & Family Outreach
Date: July 20, 2020

Portland Housing Development Corporation (PHDC) requests a capital subsidy of \$500,000 and a 75% 30 year TIF to support the proposed 60 unit 337 Cumberland Street new construction project. This is a \$8,333/unit requested capital subsidy from the City. PHDC proposes to partner with Youth and Family Outreach (YFO) to construct a new mixed used building with childcare at street level, parking below, and 60 residential units in 5 upper floors. Residential units will range from studio to 3 bedroom. The YFO newly constructed space will include 9 classrooms and administrative facilities and will renovate YFO's (contiguous) current child care center. Parking will be entered at grade in the rear of the property on the sloping site.

Sources and Uses

Sources:		Uses:	
Maine State 1 st Mortgage	\$5,041,000	Residential Construction	10,113,128
Maine State Subsidy	\$960,000	YFO New Const & Rehab	\$2,260,000
City of Portland	\$500,000	Shared Facilities Construction	\$1,177,500
AHP Loan	\$1,600,000	Hard Cost Contingency	\$708,531
AHP Subsidy	\$650,000	Soft Costs:	\$2,293,800
YFO Capital Investment	\$1,600,000	Acquisition	0
Net Syndication	\$7,653,735	Reserves:	\$701,775
		Developer Fee:	<u>\$750,000</u>
Total Sources:	\$18,004,735	Total Uses:	\$18,004,734

PHDC is at the beginning of the process to line up financing for this project, with plans to submit applications to Maine Housing for mortgage, subsidy and LIHTC allocation and to FHLB for AHP loan and subsidy. Bangor Savings has issued a draft term sheet for a construction loan to convert to permanent financing, contingent upon a successful application for AHP funding and other (public) subsidy funds. PHDC has a history of successful AHP applications.

For analysis of "Uses," see Development Budget.

Development Budget

On the face of it, the total development cost per unit looks too high, at \$300,079 per unit. However, that includes the cost of the YFO space in the per residential unit cost. Removing the direct construction expense for the YFO spaces reduces the per residential unit total development cost to \$262,412. This project is in the same per unit cost range as the other applicants this round. The primary driver of this upswing in total development costs is the rising cost of construction, exacerbated by tight job market in

construction trades leading to increased labor prices and the added uncertainty that these cost estimates were created in a peak of uncertainty about the impact of COVID-19 on the economy.

Construction Costs:

Construction costs are based on a construction estimate by Zachau Construction dated 4/22/20. It is based on cost per square foot construction figures, differentiated by type of construction and ranging from \$90/sq ft for the garage to \$200/sq ft for the YFO new construction. Residential construction is estimated at \$190/sq ft. Contractor overhead, insurance and general conditions are additional to that, as is a 4% “estimating contingency” because the estimate is based on “very preliminary information.” This estimate includes provision for prevailing wage labor costs.

A Phase I and Phase II have been conducted. The Phase II found evidence of environmental hazards typical for this area, including the site of an abandoned UST, lead and arsenic in the soil, but all within the approved range of values. The Phase II suggests several voluntary steps PHDC can take to further reduce risk associated with the site, including a Soil Management Plan and a passive sub-slab ventilation system or vapor barrier. The recommendations in the Phase II are incorporated in the recommended conditions prior to closing.

The development budget and operating projections do not break out commercial development costs and commercial operating costs from the total budget. This makes it difficult to evaluate the impact of the commercial project on the total budget. A set of revised financial projections which break out the commercial expense and income, both in the development and the operating phase, is a recommended condition of closing.

Soft Costs:

Total soft costs are reasonable at \$62,426 per unit, including developer fee.

Relocation plan and budget has not yet been submitted for this project, and is likely to be required. The existing commercial building has a restaurant tenant. Satisfactory relocation plan, or determination that the commercial tenant is not eligible for relocation, is a recommended condition of closing.

Contingency:

The hard cost contingency is 5.2% of total hard costs. This is 5% of the new construction costs and 10% of the renovation. This is the minimum industry standard, which is not ideal at this early stage of project development. Some risk of cost increases has been reduced by completing the Phase II.

The soft cost total includes a soft cost contingency of 2.23%, too slender for a budget at this stage of development. This risk is mitigated by PHDC’s substantial available resources to cover unexpected costs, see Developer Financial Analysis below.

Acquisition:

The acquisition price of the site is not currently reflected in this development budget. YFO purchased the site for \$895,000, and will continue to own the site, signing a 90 year lease with the PHDC/YFO controlled partnership which will own the improvements. The property was appraised at \$955,000 in 2018 which demonstrates the sales price was consistent with market values.

Operating Budget & 20 Year Cashflow Projection

Project Income:

There will be a total of 60 residential units in this mixed income development. Twelve units will be market rate (20% of units). Twenty-one units will be affordable to residents at 50% AMI (35% of units), twelve will be affordable at 60% AMI (20% of units), and 15 will have Project Based Vouchers (25% of units). Rents for LIHTC supported units are budgeted at the maximum allowable LIHTC rate for each unit type.

A market study has not been submitted for this development; review of a satisfactory market study to justify the projected market rate rents is a recommended condition of closing. Market rents are projected at \$1,165 for efficiency, \$1,445 for 1 bedroom, \$1,725 for 2 bedroom. These are substantially higher than 2020 Fair Market Rents, which were established in December, 2019 based on a market survey (FMR: efficiency \$1,072, 1 bed \$1,167, 2 bed \$1,516), but they are lower than market rents for comparable new construction projects as evidenced by market studies for comparable projects submitted in the last year. Portland Housing Authority's experience in the Portland market amply demonstrates the need, and effective demand, for the affordable units. Portland Housing Authority has a waiting list of 1,400 households for their roughly 1,000 Portland area units, and an occupancy rate of almost 98%.

Operating Expense

The per unit operating expense of \$8,452 appears high by industry standards. However, this includes all utilities and reflects the full tax bill (\$1,904/unit). The maintenance budget of \$2,575 per unit per year is on the high end but is reasonable considering this is family housing and day care. It is reasonable to expect this property to sustain substantial wear and tear. Maintenance budget at this level will be sufficient to keep the property in good condition. Since the property will be built to Passive House standards, the utility budget of \$1,017 should be ample. Per Maine Housing requirement for supportive services funding, the project budget includes \$17,222 for tenant services.

According to PHDC, YFO will make payment to the partnership to cover its proportional share of overall property expenses. This will be fairly minimal – property insurance, real estate taxes, portion of reserves which serve full building (like roof), and will slightly improve the property's cashflow. There is not yet a written agreement between the parties defining these expenses. Satisfactory review of a written agreement for shared expenses, and a revised operating budget reflective of that agreement, is a recommended condition of closing.

20 Year Cashflow & Debt Service Coverage Ratio (DSCR)

PHCD's cashflow projections show a 1.15 debt service coverage ratio in the first full year of operations, which grows steadily over 20 years to 1.29 using industry standard inflators of 2% for operating income and 3% for operating expenses.

Developer Financials

Portland Housing Authority has submitted audits for FY2 2017, 2018 and 2019. Their fiscal year ends 6/30. From an operating perspective, 2019 was a very strong year for PHA. Their audit as of 6/30/19

shows strong financial health, with current assets of \$15.8 million and current liabilities of \$1.9 million, resulting in a very strong current ratio of 8.3. The Quick Ratio (cash and cash equivalents divided by current liabilities) is a remarkably healthy 4.8. In 2019, current year operations showed growth of \$1,858,174, substantially exceeding their already strong 2018 growth of \$1,095,622. Revenues grew by 7.63% while expenses were contained to 5.4% growth, with falling administrative expenses.

While the balance sheet (“Statement of Net Position”) is still strong, with Total Net Position over \$15.7 million, the audit reflects a one-time restatement of non-pension retirement liability which shrank the “Total Net Position” by \$7.7 million. This one-time restatement was required to comply with Governmental Accounting Standards Board Statement #75. It was implemented a year after the required date, so it is included in the audit as a correction of an error in their 2018 audit.

Quarterly financials through March 31, 2020 show another good start to FY2020 for PHA, with income above budget and expenses below budget in every category for net operating income of \$942,422.

Impact of pandemic: PHDC reports that the pandemic has not led to significant declines in rent revenue for PHA or PHDC as of June. One PHDC project in construction was slowed a few weeks due to COVID-19 related supply chain disruptions, but the impact has not been extraordinary.

Overall, PHA has very strong financial health. This developer has the financial capacity to intervene in a development facing unexpected setbacks and/or cost over-runs to keep the development process moving forward. Their financial strength as an organization mitigates the risk of the thin soft cost contingency.

This property will be owned by a partnership formed by PHDC and YFO, so YFO’s financial health is also relevant to the success of the project. YFO has submitted audits for FY 2016, 2017, 2018 and 2019. Their fiscal year ends 9/30. The scale of YFO operations is much smaller than PHA, but it also had a good in FY19, with growth in net worth of \$200,000, almost 20% over FY18. Their audit as of 9/30/19 shows current assets of \$210,486 and current liabilities of 72,905, resulting in a current ratio of 2.8. This is a significant improvement over the 1.6 Current Ratio in 2016, suggesting growth in the scale of their operations has had a positive impact on their financials. The FY19 Quick Ratio (cash and cash equivalents divided by current liabilities) was a healthy 2.17. In 2019, income was up in every major category, for a 28% growth in income. Contributions were more than 4.5 times the level of 2018, but government grant income was also up 11% and program service fees were up 19%, while operating expense increased by only 5.3%. Management’s financials for the half year ending 3/30/20 show lower income and a small operating loss.

Impact of pandemic: The pandemic has been much more disruptive to the child care industry than to subsidized affordable housing. YFO was closed for months. It has reopened, but its operations are severely limited by the precautions necessary to prevent the spread of COVID-19. Class sizes are cut in half and before and after care eliminated, severely reducing income. In the absence of significant governmental support, FY2020 will be a challenging year for YFO financially. YFO has more margin than many child care providers, but still must find a sustainable business plan for radically altered circumstances. This is a systemic problem, not in any way a reflection of YFO’s management. YFO’s pandemic response reflects best practices for the industry and the level of care reflected in their revised protocols demonstrate their operation is an important resource for the community.

Recommendations :

This is an appropriate urban in-fill development by a developer with the development experience and financial resources to make the project successful.

I recommend a loan in the amount of no more than \$500,000, zero percent interest, payment deferred for 30 years, and a 75% TIF for 30 years, with the following conditions:

Prior to loan closing, satisfactory review of:

1. relocation plan and budget, or evidence that relocation is not required;
2. A set of revised financial projections which break out the commercial expense and income, both in the development and the operating phase, and which includes relocation as needed.
3. Market study supporting projected demand consistent with projected rents;
4. Scope of work which includes satisfactory site environmental risk mitigation;
5. written agreement between PHDC & YFO for shared building expenses, and a revised operating budget reflective of that agreement;
6. current audit and quarterly management financial statements for PHA and YFO;
7. All standard construction loan conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Development Budget with Permanent Sources

Date 6/22/2020
 Project Name _____
 Project Address 337 Cumberland
 Developer/Sponsor PHDC, in partnership with Youth & Family Outreach

Total Residential Units 60
 Total Residential Square Feet 43,850
 Total Garage/Basement 10,950 (shared space)
 Total Educational Sq Feet 14400
 Total New Construction: 69,200

	Initial Application Values		
	Total	Per Unit	Per Sq Ft
Sources of Funds			
Permanent Financing - Maine Housing 1st Lien	\$5,041,000	\$84,017	\$115
Permanent Financing - Maine Housing Subsidy	\$960,000	\$16,000	\$22
Permanent Financing - City of Portland	\$500,000	\$8,333	\$11
LIHTC net syndication proceeds	\$7,653,735	\$127,562	\$175
AHP Loan	\$1,600,000	\$26,667	\$36
AHP Subsidy	\$650,000	\$10,833	\$15
YFO Capital Contribution	\$1,600,000	\$26,667	\$36
Total Sources of Funds	\$18,004,735	\$300,079	\$411

Uses of Funds

Hard Costs			
Site Improvements		\$0	\$0
Rehabilitation (YFO existing facility)		\$620,000	\$10,333
New Construction (YFO)		\$1,640,000	\$27,333
New Construction (residential, shared)		\$10,069,887	\$167,831
Contractor's Profit, Overhead, & Gen. Requirements	11.4%	\$1,220,741	\$20,346
Hazardous Materials abatement (if contracted separately)		\$0	\$0
Demolition Cost (if contracted separately)		\$0	\$0
Bond Premium		\$0	\$0
Other		\$0	\$0
Hard Cost Contingency (% of hard costs)	5.2%	\$708,531	\$11,809
Total Hard Costs		\$14,259,159	\$237,653

Soft Costs			
Building Permit & Fees		\$383,068	\$6,384
Survey & Engineering		\$60,500	\$1,008
Design & Permitting (% of const exp)	7.4%	\$944,597	\$15,743
Borrower Legal (all closings, excluding syndication legal)		\$70,000	\$1,167
Title & Recording		\$11,000	\$183
Accounting		\$10,000	\$167
Construction Period Taxes		\$30,000	\$500
Construction Period Insurance		\$20,000	\$333
Other: FF&E, Security		\$145,000	\$2,417
Other		\$0	\$0
Total Soft Costs		\$1,674,165	\$27,903

Financing Costs			
Construction Loan Origination Fees		\$52,000	\$867
Construction Period Interest		\$273,000	\$4,550
Lender Inspection Fees		\$5,400	\$90

Letter of Credit Fee	\$250	\$4	\$0
Permanent Loan Fee	\$50,410	\$840	\$1
Construction Lender Legal	\$15,000	\$250	\$0
Other		\$0	\$0
Total Financing Costs	\$396,060	\$6,601	\$9

Miscellaneous			
Market Survey	\$6,000	\$100	\$0
Appraisal	\$7,000	\$117	\$0
Environmental Study	\$7,200	\$120	\$0
LIHTC Fees -- prepaid monitoring	\$123,375	\$2,056	\$3
Other: Commissioning	\$30,000	\$500	\$1
Relocation Costs		\$0	\$0
Other		\$0	\$0
Soft Cost Contingency (% of soft costs excl Dev Fee)	2.23%	\$50,000	\$833
Total Miscellaneous:	\$223,575	\$3,726	\$14

Acquisition			
Acquisition: Buildings		\$0	\$0
Acquisition: Land		\$0	\$0
Acquisition: Legal		\$0	\$0
Other		\$0	\$0
Total Acquisition	\$0	\$0	\$0

Reserves and Developer Fee			
Operating Deficit Escrow	\$447,159	\$7,453	\$10
Prefunded Replacement Reserve	\$135,506	\$2,258	\$3
Taxes & Insurance Escrow	\$69,110	\$1,152	\$2
Developer Overhead	\$750,000	\$12,500	\$17
Developer Profit		\$0	\$0
Rent Up Reserve & Marketing	\$50,000	\$833	\$1
Other		\$0	\$0
Total Reserves and Developer Fee	\$1,451,775	\$24,196	\$33

Total Uses of Funds	\$18,004,734	\$300,079	\$382
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per unit TDC excluding YFO construction: **\$262,412**
 Developer Fee Analysis: Total Fees: **\$750,000**
 (excluding reserves & developer fee) Percent TDC: **4.53%**

Project Operating Pro Forma

Date	June 25, 2020
Project Name	337 Cumberland
Project Address	
Developer/Sponsor	PHDC/YFO

Rental Income

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Per Unit Net Rent Per Sq Ft	Total Monthly Net Income	Total Annual Net Rent
0 BR	10		0	50%	\$878	\$0		\$878	#DIV/0!	\$8,780	\$105,360
0 BR	4		0	60%	\$1,054			\$1,054	#DIV/0!	\$4,216	\$50,592
0 BR	5		0	market	\$1,165			\$1,165	#DIV/0!	\$5,825	\$69,900
1 BR	7		0	50%	\$941			\$941	#DIV/0!	\$6,587	\$79,044
1 BR	3		0	60%	\$1,129			\$1,129	#DIV/0!	\$3,387	\$40,644
1 BR	6		0	market	\$1,445			\$1,445	#DIV/0!	\$8,670	\$104,040
2 BR	8		0	PBV	\$1,440			\$1,440	#DIV/0!	\$11,520	\$138,240
2 BR	3		0	50%	\$1,128			\$1,128	#DIV/0!	\$3,384	\$40,608
2 BR	3		0	60%	\$1,354			\$1,354	#DIV/0!	\$4,062	\$48,744
2 BR	1		0	market	\$1,725			\$1,725	#DIV/0!	\$1,725	\$20,700
3 BR	7		0	PBV	\$1,882			\$1,882	#DIV/0!	\$13,174	\$158,088
3 BR	1		0	50%	\$1,304			\$1,304	#DIV/0!	\$1,304	\$15,648
3 BR	2		0	60%	\$1,565			\$1,565	#DIV/0!	\$3,130	\$37,560
Total:	60		0							\$75,764	\$909,168

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%
TIF Rate	2.0%

Note: Year 1 is the first full year of stabilized operations

	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Sch. Gross Income - Residential	\$909,168	\$15,153	\$927,351	\$945,898	\$964,816	\$984,113	\$1,003,795	\$1,023,871	\$1,044,348	\$1,065,235	\$1,086,540
Vacancy Loss	5.0%	(\$45,458)	(\$758)	(\$46,368)	(\$47,295)	(\$48,241)	(\$49,206)	(\$50,190)	(\$51,194)	(\$52,217)	(\$53,262)
Other income (laundry)	\$3,000	\$50	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585
TIF (75%, 30 yrs)	\$85,664	\$1,428	\$87,377	\$89,125	\$90,907	\$92,725	\$94,580	\$96,472	\$98,401	\$100,369	\$102,376
Effective Gross Income	\$952,374	\$15,873	\$971,421	\$990,849	\$1,010,666	\$1,030,880	\$1,051,497	\$1,072,527	\$1,093,978	\$1,115,857	\$1,138,175

Administrative											
Management Fee	\$50,650	\$844	\$52,170	\$53,735	\$55,347	\$57,007	\$58,717	\$60,479	\$62,293	\$64,162	\$66,087
Management Charges	\$50,650	\$844	\$52,170	\$53,735	\$55,347	\$57,007	\$58,717	\$60,479	\$62,293	\$64,162	\$66,087
Marketing Expense	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Legal	\$2,000	\$33	\$2,060	\$2,122	\$2,185	\$2,251	\$2,319	\$2,388	\$2,460	\$2,534	\$2,610
Audit & Accounting	\$6,000	\$100	\$6,180	\$6,365	\$6,556	\$6,753	\$6,956	\$7,164	\$7,379	\$7,601	\$7,829
Admin Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$109,300	\$1,822	\$112,579	\$115,956	\$119,435	\$123,018	\$126,709	\$130,510	\$134,425	\$138,458	\$142,612

Supportive Services	\$17,222	\$287	\$17,739	\$18,271	\$18,819	\$19,384	\$19,965	\$20,564	\$21,181	\$21,816	\$22,471
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Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$6,000	\$100	\$6,180	\$6,365	\$6,556	\$6,753	\$6,956	\$7,164	\$7,379	\$7,601	\$7,829
Electric	\$41,000	\$683	\$42,230	\$43,497	\$44,802	\$46,146	\$47,530	\$48,956	\$50,425	\$51,938	\$53,496
Water / Sewer	\$14,000	\$233	\$14,420	\$14,853	\$15,298	\$15,757	\$16,230	\$16,717	\$17,218	\$17,735	\$18,267
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$61,000	\$1,017	\$62,830	\$64,715	\$66,656	\$68,656	\$70,716	\$72,837	\$75,022	\$77,273	\$79,591

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Janitorial	\$15,000	\$250	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572
Trash Removal	\$4,500	\$75	\$4,635	\$4,774	\$4,917	\$5,065	\$5,217	\$5,373	\$5,534	\$5,700	\$5,871
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Maintenance	\$85,000	\$1,417	\$87,550	\$90,177	\$92,882	\$95,668	\$98,538	\$101,494	\$104,539	\$107,675	\$110,906
Maintenance Contracts	\$25,000	\$417	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$154,500	\$2,575	\$159,135	\$163,909	\$168,826	\$173,891	\$179,108	\$184,481	\$190,016	\$195,716	\$201,587

Taxes & Insurance											
Real Estate Taxes or PILOT	\$114,219	\$1,904	\$117,646	\$121,175	\$124,810	\$128,554	\$132,411	\$136,383	\$140,475	\$144,689	\$149,030
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$24,000	\$400	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$138,219	\$2,304	\$142,366	\$146,637	\$151,036	\$155,567	\$160,234	\$165,041	\$169,992	\$175,092	\$180,344

Replacement Reserves	\$27,000	\$450	\$27,810	\$28,644	\$29,504	\$30,389	\$31,300	\$32,239	\$33,207	\$34,203	\$35,229
Operating Reserves		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$507,241	\$8,454	\$522,458	\$538,132	\$554,276	\$570,904	\$588,031	\$605,672	\$623,842	\$642,558	\$661,834
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Net Operating Income	\$445,133	\$7,419	\$448,963	\$452,718	\$456,391	\$459,976	\$463,466	\$466,855	\$470,135	\$473,300	\$476,340
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Debt Service											
First Lien -- MSHA	\$302,460	\$5,041	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460
Second Lien -- AHP	\$84,617	\$1,410	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$387,077	\$6,451	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077

Cash Flow (after Must Pay Debt)	\$58,056	\$968	\$61,886	\$65,641	\$69,314	\$72,899	\$76,389	\$79,778	\$83,058	\$86,223	\$89,263
Debt Service Coverage Ratio	1.15		1.16	1.17	1.18	1.19	1.20	1.21	1.21	1.22	1.23

Cash Flow Debt Payments											
City of Portland	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$58,056	\$968	\$61,886	\$65,641	\$69,314	\$72,899	\$76,389	\$79,778	\$83,058	\$86,223

Retained Cash Flow % 11%

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,108,271	\$1,130,436	\$1,153,045	\$1,176,106	\$1,199,628	\$1,223,620	\$1,248,093	\$1,273,055	\$1,298,516	\$1,324,486
Vacancy Loss	5.0%	(\$55,414)	(\$56,522)	(\$57,652)	(\$58,805)	(\$59,981)	(\$61,181)	(\$62,405)	(\$63,653)	(\$64,926)
Other income (laundry)	\$3,657	\$3,730	\$3,805	\$3,881	\$3,958	\$4,038	\$4,118	\$4,201	\$4,285	\$4,370
TIF (75%, 30 yrs)	\$104,424	\$106,512	\$108,643	\$110,816	\$113,032	\$115,292	\$117,598	\$119,950	\$122,349	\$124,796
Effective Gross Income	\$1,160,938	\$1,184,157	\$1,207,840	\$1,231,997	\$1,256,637	\$1,281,769	\$1,307,405	\$1,333,553	\$1,360,224	\$1,387,429

Administrative										
Advertising	\$68,069	\$70,111	\$72,215	\$74,381	\$76,613	\$78,911	\$81,278	\$83,717	\$86,228	\$88,815
Office Payroll & Benefits	\$68,069	\$70,111	\$72,215	\$74,381	\$76,613	\$78,911	\$81,278	\$83,717	\$86,228	\$88,815
Office Supplies, Phone, Misc.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Mngr or Super Rent Free Unit	\$2,688	\$2,768	\$2,852	\$2,937	\$3,025	\$3,116	\$3,209	\$3,306	\$3,405	\$3,507
Audit & Accounting	\$8,063	\$8,305	\$8,555	\$8,811	\$9,076	\$9,348	\$9,628	\$9,917	\$10,215	\$10,521
Admin Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Administrative	\$146,890	\$151,297	\$155,836	\$160,511	\$165,326	\$170,286	\$175,394	\$180,656	\$186,076	\$191,658

Supportive Services	\$23,145	\$23,839	\$24,554	\$25,291	\$26,050	\$26,831	\$27,636	\$28,465	\$29,319	\$30,199
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Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$8,063	\$8,305	\$8,555	\$8,811	\$9,076	\$9,348	\$9,628	\$9,917	\$10,215	\$10,521
Gas	\$55,101	\$56,754	\$58,456	\$60,210	\$62,016	\$63,877	\$65,793	\$67,767	\$69,800	\$71,894
Water / Sewer	\$18,815	\$19,379	\$19,961	\$20,559	\$21,176	\$21,812	\$22,466	\$23,140	\$23,834	\$24,549
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$81,979	\$84,438	\$86,971	\$89,581	\$92,268	\$95,036	\$97,887	\$100,824	\$103,848	\$106,964

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Janitorial	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Exterminating	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370	\$24,071	\$24,793	\$25,536	\$26,303
Trash Removal	\$6,048	\$6,229	\$6,416	\$6,608	\$6,807	\$7,011	\$7,221	\$7,438	\$7,661	\$7,891
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Maintenance	\$114,233	\$117,660	\$121,190	\$124,825	\$128,570	\$132,427	\$136,400	\$140,492	\$144,707	\$149,048
Elevator, HVAC, pool contracts	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$207,635	\$213,864	\$220,280	\$226,888	\$233,695	\$240,706	\$247,927	\$255,365	\$263,026	\$270,917

Taxes & Insurance										
Real Estate Taxes or PILOT	\$153,501	\$158,106	\$162,849	\$167,734	\$172,766	\$177,949	\$183,288	\$188,787	\$194,450	\$200,284
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$32,254	\$33,222	\$34,218	\$35,245	\$36,302	\$37,391	\$38,513	\$39,668	\$40,858	\$42,084
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$185,755	\$191,327	\$197,067	\$202,979	\$209,069	\$215,341	\$221,801	\$228,455	\$235,309	\$242,368

Replacement Reserves	\$36,286	\$37,374	\$38,496	\$39,650	\$40,840	\$42,065	\$43,327	\$44,627	\$45,966	\$47,345
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$681,689	\$702,140	\$723,204	\$744,901	\$767,248	\$790,265	\$813,973	\$838,392	\$863,544	\$889,450
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Net Operating Income	\$479,249	\$482,017	\$484,636	\$487,096	\$489,389	\$491,505	\$493,432	\$495,161	\$496,680	\$497,978
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Debt Service										
First Lien	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460	\$302,460
Second Lien	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617	\$84,617
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077	\$387,077

Cash Flow (after Must Pay Debt)	\$92,172	\$94,940	\$97,559	\$100,019	\$102,312	\$104,428	\$106,355	\$108,084	\$109,603	\$110,901
Debt Service Coverage Ratio	1.24	1.25	1.25	1.26	1.26	1.27	1.27	1.28	1.28	1.29

Cash Flow Debt Payments										
DHCD	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$92,172	\$94,940	\$97,559	\$100,019	\$102,312	\$104,428	\$106,355	\$108,084	\$109,603

Retained Cash Flow % 11%

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 20, 2020

SUBJECT: **Order 25-20/21 Appropriating \$400,000 in HOME Investment Partnership Program Funds to Washington Gardens, LP RE: 577 Washington Avenue - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.**

SPONSOR: Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on June 10, 2020 and voted (3 - 0) to forward this item to the City Council with a recommendation for passage.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: Yes

PRESENTATION: Mary Davis, Housing & Community Development Division Director will be available for questions.

I. SUMMARY

Portland Housing Development Corporation is requesting \$400,000 from the Affordable Housing Development Program to rehabilitate 100 units of public housing.

II. AGENDA DESCRIPTION

The Housing Committee met on June 10, 2020 and voted unanimously (3 - 0) to forward this item to the City Council with a recommendation for passage.

Portland Housing Development Corporation (PHDC) is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at 577 Washington Avenue (Washington Gardens).

PHDC has requested three forms of financial assistance including \$400,000 from the Affordable Housing Development Program, \$184,150 from the CDBG Program (approved by the City Council in May, 2020) and an Affordable Housing Tax Increment Financing request being considered separately under Orders 21 - 20/21.

Total HOME request of \$400,000/unit = \$4,000

Total HOME request of \$400,000/affordable unit = \$4,000

There are currently 60 studios, 36 one-bedroom, and 4 two-bedroom units. 60% or 60 of the units will be available to households earning 50% of the area median income (AMI). 40% or 40 of the units will be available to households earning 60% AMI.

This project has received 9% Low Income Housing Tax Credit and tax-exempt debt from Maine Housing.

This item must be read on two separate days. It received its first reading on July 13, 2020. Staff is

recommending that this item be postponed to August 31, 2020 to allow for the review of recent changes to the project proforma.

III. BACKGROUND

Portland Housing Development Corporation is proposing to rehabilitate 100 units of public housing serving seniors and persons with disabilities at 577 Washington Avenue (Washington Gardens).

As described by the developer: "The property is in fair-to-poor condition and most major systems are nearing the end of their useful life. The proposed scope of work will include, but is not limited to: upgrading building envelopes and insulation, upgrading mechanical systems, adding new accessible unit, improving sitework and ramps, renovating unit interiors and finishes, and installing new energy- and water-efficient fixtures and appliances."

"Following rehabilitation, five (5) units will be fully accessible to serve persons with a physical disability. An additional twelve (12) accessible units will meet the requirements for a Type A unit. Two (2) units will be designed with audio/visual communication features to serve residents who are hearing- and/or sight-impaired."

"Washington Gardens has a community room, central laundry facilities, an outdoor patio and gazebo, and on-site property management. The property benefits from a part-time, on-site mental health worker from the Shalom House."

The 2020 Affordable Housing Development Application made available a total of \$1,571,245 from the 2020-2021 HOME fund (\$497,545) and Housing Trust Fund (\$1,073,700) for affordable housing development. The City received three applications requesting a total of \$1,495,000 in funding.

The staff recommendation to the Housing Committee was for funding \$400,000 in HOME funding at zero percent interest, with payment deferred for 30 years following underwriting conditions prior to the loan closing.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To encourage and promote affordable decent, housing opportunities for all Maine citizens

According to Portland's Comprehensive Plan 2030, while Portland has welcomed much needed new housing construction in recent years, both the lack of sufficient housing supply and the affordability of that housing for a healthy socioeconomic cross-section of the population remain urgent challenges.

The City of Portland is actively engaged in efforts to encourage housing preservation and creation for all income levels and household sizes city-wide, both through policy initiatives and through public/nonprofit partnerships with agencies such as Portland Housing Authority, Community Housing of Maine, Avesta Housing, Preble Street, Shalom House, and the Maine Affordable Housing Coalition.

Over time, the population of seniors will continue to grow as the cohort of Baby Boomers, who began to turn 65 in 2011, age into seniors. As of 2014, there were an estimated 8,095 people in Portland aged 65 and over, who comprise 12.2% of the city's population. The vast majority of the city's seniors, 92%, live in households, while 8% live in nursing or assisted living facilities. 59% of the city's seniors own a home, while 41% rent. 60% of seniors, whether renters or owners, live alone. In the future, this growing number of seniors living alone may demand more housing that is smaller and more accessible. Underscoring this demand in Portland is

the fact that a large share of the current Shared Section 8 Housing Voucher Program wait list applicants (3,133) who qualify for Portland Housing Authority's program are seniors or disabled

The Comprehensive Plan supports modernization of existing affordable housing sites.

The Comprehensive Plan has set the following goal: Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.

V. FINANCIAL IMPACT

Recommendation for funding is for \$400,000 in HOME funding. The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding. Final loan terms will be determined based on the results of the City's financial underwriting.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Approval by the City Council of the Housing Committee's recommendation of HOME Funds in the amount of \$400,000 at zero percent interest with repayment deferred for 30 years pending underwriting conditions.

VIII. LIST ATTACHMENTS

1. Appropriating Home funds for 577 Washington Avenue 7.13.2020
2. Attachments for City Council 7.13.20 577 Washington Ave

Prepared by:

Mary Davis, Division Director

Date: 7/20/2020

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 APPROPRIATING \$400,000 IN
HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS
TO WASHINGTON GARDENS, LP
RE: 577 WASHINGTON AVENUE**

ORDERED, that the amount of \$400,000 in Home Investment Partnerships Program funds is hereby appropriated to Washington Gardens, LP for development costs for the project at 577 Washington Avenue; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the funding, and otherwise carry out the intent of this order.

Washington Gardens – Project Summary

PROJECT SUMMARY

Portland Housing Development Corporation (PHDC) proposes the rehabilitation of Washington Gardens, a 100-unit property in East Deering. The community contains 15 two-story, garden-style residential buildings and serves seniors and persons with disabilities. It is currently Public Housing and will convert to a Section 8 Project Based Voucher (PBV) funding platform through HUD's Section 18 Demolition & Disposition program at closing.

After nearly fifty years without a significant renovation, the property is in fair-to-poor condition and most major systems are nearing the end of their useful life. The proposed scope of work will include but is not limited to upgrading building envelopes and insulation, upgrading mechanical systems, adding new accessible units, improving sitework and ramps, renovating unit interiors and finishes, installing new energy- and water-efficient fixtures and appliances, and installing rooftop solar photovoltaic panels.

PHDC requests \$400,000 of funding at 0% interest from the City of Portland to support the rehabilitation of 100 affordable units at Washington Gardens. This request equals \$4,000 per unit. All other rehabilitation funding sources have been secured, including an allocation of competitive 9% Low Income Housing Tax Credit (LIHTC) from MaineHousing. The project is expected to close and begin construction in Fall 2020.

UNIT MIX

Washington Gardens currently contains 100 units, comprised of 60 studio units, 36 one-bedroom units and four (4) two-bedroom units. No change in unit mix or use will occur following rehabilitation.

TENANTS SERVED

Washington Gardens will continue to serve a senior (55+) and disabled population. All units will be restricted to households earning at or below 50% and 60% of AMI. All 100 units will benefit from a PBV.

Following rehabilitation, 17 units will be reconfigured to be accessible to serve persons with a physical disability. Two (2) units will be designed with audio/visual communication features to serve residents who are hearing- and/or sight-impaired.

Washington Gardens will comply with the City of Portland's 10% Homeless Set-Aside requirement, contingent upon a funding award. As a rehabilitation, a Homeless Set-Aside Agreement will need to align with certain HUD requirements, including existing residents' right-to-return, waitlist and leasing requirements, and the Section 8 Project-Based Voucher program, among others. We anticipate future discussions with the City to satisfy the requirements of all parties involved.

SPECIAL FEATURES

Washington Gardens contains a community room, central laundry facilities, an outdoor patio and gazebo, and on-site property management. The property benefits from a part-time, on-site mental health worker from Shalom House.

IMPACT ON NEIGHBORHOOD

The Washington Gardens rehabilitation will further improve East Deering and the City of Portland's stock of quality, affordable housing options for seniors and persons with disabilities. This project will guarantee the buildings' long-term physical and financial sustainability, better serve the needs of its residents, and improve accessibility.

RESPONSE TO SELECTION CRITERION AND PREFERENCE GUIDELINES

PROPOSED USE OF FUNDS TO ACHIEVE CITY OF PORTLAND'S GOALS & ADDRESS DEMONSTRATED NEEDS

- MARKET DEMAND – High demand exists for affordable studio, one-bedroom and two-bedroom rental units in Portland for seniors and persons with disabilities. **This project will meet the market's high demand for affordability with 100 vouchered units in East Deering.**
- ZONING – No zoning amendments or contract or conditional zones are required.
- ECONOMIC DIVERSITY – This project will promote economic diversity in the East Deering neighborhoods. The average family income in the East Deering census tract is \$71,898, or 77% of AMI. The average income has risen in this census tract over the past five years. The rehabilitation will maintain affordable homes for seniors and persons with disabilities earning at or below 60% AMI.
- CITY SUBSIDY – **This application requests \$4,000 of subsidy per unit.**

IMPACT ON SURROUNDING NEIGHBORHOOD, DESIGN COMPATIBILITY & ENVIRONMENTAL ISSUES

- SITE SELECTION – The project is fully appropriate for use as multifamily residential. Washington Gardens is surrounded on all sides by low-rise single- and multi-family properties.
- EXTERIOR DESIGN – Washington Gardens was built in 1973. Its designs is fully consistent with the surrounding neighborhood design characteristics. It's 15 low-rise, wooden-framed buildings blend in with adjacent low-rise properties and enhance the residential atmosphere of the community.
- AMENITIES AND UNIT DESIGN – Washington Gardens offers its residents a suite of amenities, including a community room, central laundry facilities, an outdoor patio and gazebo, and on-site property management. Residents will benefit from a part-time, on-site mental health worker from the Shalom House. The property is, and will continue to be, non-smoking. The rehabilitation will bring units up to like-new status with modern, marketable and durable features and finishes.
- ENVIRONMENTAL – No environmental issues exist at Washington Gardens. The City of Portland completed an Environmental Assessment (EA) of Washington Gardens on 8/15/19 and recommended a Finding Of No Significant Impact (FONSI). HUD approved the EA on 10/1/19.

FINANCIAL FEASIBILITY, INCLUDING COST, DEVELOPMENT BUDGET, PRO FORMA & LEVERAGED FUNDS

- DEVELOPMENT BUDGET & SOURCES AND USES – Every development budget line item complies with applicable City of Portland guidelines. Project budget, sources and uses are reasonable & customary.
- OPERATING PRO FORMA – Every operating pro forma line item complies with applicable City of Portland guidelines. Operating expenses are reasonable and customary.

APPLICANT'S ABILITY TO COMPLETE PROJECT

- READINESS TO PROCEED – **The project is anticipated to begin construction in Fall 2020 and be completed by mid-2022. Except for an award of City HOME/HTF, all other funding sources have been secured, including an allocation of 9% Low Income Housing Tax Credit (LIHTC) from MaineHousing.** All project sources are projected at terms and conditions that are consistent with PHDC's experience and deemed reasonable.
- TRACK RECORD OF DEVELOPMENT TEAM – Every development member has a long and successful track record with projects similar to the Washington Gardens rehab. PHDC (developer), CWS Architects (architect), Carroll & Associates (landscape architect), and Drummond Woodsum (attorney) have extensive experience with multifamily renovation projects in Portland.
- CURRENT CAPACITY OF DEVELOPMENT TEAM – All development team members have exceptional depth of human and financial resources to complete this project. PHDC extensively vets all partners to ensure appropriate staff availability, technical expertise and financial capacity. PHDC selects all development team members through a competitive RFQ or RFP procurement process to ensure that only the most qualified firms work on each of our multifamily projects.

BUILDING EXTERIORS



ON-SITE PROPERTY MANAGEMENT OFFICE



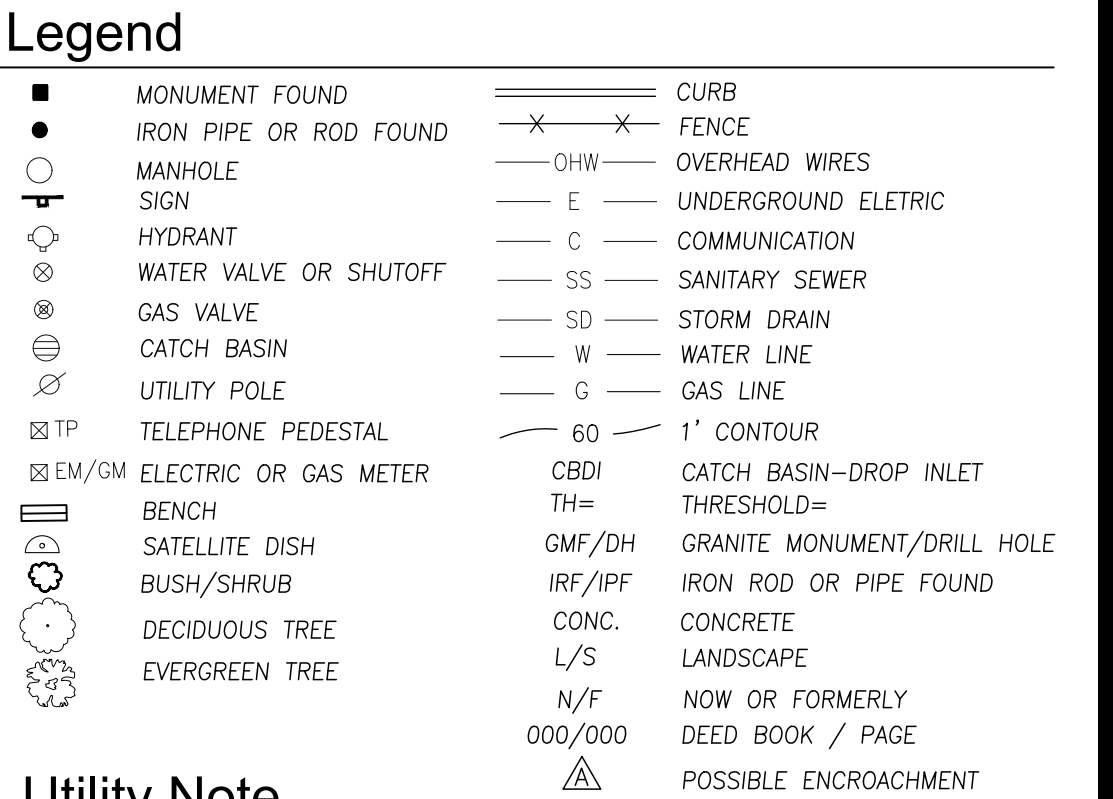
COMMUNITY CENTER



Washington Gardens

577 Washington Avenue, Portland, ME 04103





THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED AND SHOULD BE CONSIDERED APPROXIMATE. THE SURVEYOR HAS NOT OBTAINED ANY INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-DIGSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS LOCATED IN ZONE X, AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN, ON THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 230051-0007C, WHICH BEARS AN EFFECTIVE DATE OF DECEMBER 8, 1998.

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	20.00'	18.55'	S81°13'34"E	17.89'
C2	55.00'	274.80'	S35°20'18"W	65.99'
C3	20.00'	18.55'	N28°05'50"W	17.89'

TITLE REPORT FOR PORTLAND HOUSING AUTHORITY, DW #10296-151

WASHINGTON GARDENS 14 CHURCHILL STREET, PORTLAND, MAINE
PARCEL ONE: CBL 428 B-22; 2.4564 ACRES
PARCEL TWO: CBL C-9; 0.742 ACRE
PARCEL THREE: CBL 428-B-18; 0.1079 ACRE
PARCEL FOUR: CBL 428-B-19; 0.1125 ACRE
PROJECT ME 3-9

TITLE IS VESTED IN PORTLAND HOUSING AUTHORITY BY VIRTUE OF A WARRANTY FROM F. D. RICH HOUSING CORP. DATED SEPTEMBER 17, 1973 AND RECORDED IN BOOK 3459, PAGE 186 (WITH RESPECT TO PARCEL ONE AND PARCEL TWO) AND A WARRANTY DEED FROM PORTLAND HOUSING DEVELOPMENT CORPORATION DATED JUNE 22, 2007 AND RECORDED IN BOOK 25235, PAGE 339 (WITH RESPECT TO PARCELS THREE AND FOUR).

SUBJECT TO:

1. SUCH STATE OF FACTS AS APPEAR ON A CERTAIN PLAN OF LAND LOCATED IN EAST DEERING ME SURVEY MAY 1903 AND RECORDED IN PLAN BOOK 10, PAGE 91. - SEE REFERENCED PLAN.
2. A 6-FOOT DRAINAGE EASEMENT GIVEN TO THE CITY OF PORTLAND BY CARL A. SWANHOLM BY DEED DATED 1954, RECORDED IN PLAN BOOK 3474, PAGE 175. - AS SHOWN.
3. A 30-FOOT RIGHT OF WAY ALONG THE EASTERLY SIDE OF PARCEL TWO FOR THE PURPOSE OF MAINTAINING, REPAIRING AND REPLACING A 15-INCH STORM DRAIN RESERVED BY THE CITY OF PORTLAND IN ITS DEED TO CARLO A. AND ANTONIO BRUNI DATED JULY 12, 1967 AND RECORDED IN BOOK 3003, PAGE 286. THE 6-FOOT SEWER EASEMENT LISTED IN ITEM 1 ABOVE IS INCLUDED WITHIN THE BOUNDARY OF THE 30-FOOT RIGHT OF WAY. - AS SHOWN.
4. A 30-FOOT SEWER EASEMENT GIVEN BY CARL F. A. SWANHOLM TO THE CITY OF PORTLAND DATED JULY 31, 1905 AND RECORDED IN SAID REGISTRY OF DEEDS IN BOOK 1465, PAGE 497. SAID 30-FOOT EASEMENT RUNS FROM WASHINGTON AVENUE, TO PEMBORKE STREET BENEFIT A FREET, THEN STRAIGHT TO PEMBORKE STREET, THENCE NORTHERLY TO SHERWOOD STREET. - AS SHOWN.
5. TWO EASEMENTS RESERVED BY THE CITY OF PORTLAND IN ITS DEED TO CARLO A. AND ANTONIO BRUNI DATED JULY 12, 1967 AND RECORDED IN BOOK 3003, PAGE 286, WHICH RESERVED A 25-FOOT WIDE EASEMENT THROUGH PARCEL TWO AND A 40 FOOT RIGHT OF WAY THROUGH PARCEL TWO OF THE INSURED LAND. THIS EASEMENT ENLARGES THE GRANT OF THE EASEMENT BY CARL A. SWANHOLM TO THE CITY OF PORTLAND.
6. SUCH STATE OF FACTS, INCLUDING, INTER ALIA, ANY RIGHTS OF OTHERS WHO OWN LAND PURSUANT TO THE RECORDED PLANS OF PROPERTY OF MARY S. LUNT IN THAT PORTION OF THE PREMISES SHOWN AS A STREET ON SAID PLANS AND THE SAID PLAN PREPARED FOR F. D. RICH COMPANY BY OWEN HASKELL, INC. DATED JANUARY 28, 1972 AS RECORDED IN THE CUMBERLAND COUNTY RECORDS IN BOOK 3003, PAGE 286.
7. DECLARATION OF TRUST DATED OCTOBER 18, 1973 AND RECORDED IN BOOK 3474, PAGE 175 (AFFECTS PARCEL ONE AND PARCEL TWO). - NON SURVEY ITEM
8. AN EASEMENT AGREEMENT AND CONVEYANCE BETWEEN PORTLAND HOUSING AUTHORITY AND SCOTT W. HOW. DATED JULY 16, 1991 AND RECORDED IN BOOK 9686, PAGE 223. - AS SHOWN
9. A DECLARATION OF TRUST (MODERNIZATION GRANT PROJECTS) BETWEEN THE PORTLAND HOUSING AUTHORITY AND THE UNITED STATES OF AMERICA, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, DATED MARCH 11, 1992 AND RECORDED IN BOOK 10432, PAGE 93 (AFFECTS PARCEL ONE AND PARCEL TWO). - NON SURVEY ITEM
10. AN EASEMENT FROM THE PORTLAND HOUSING AUTHORITY TO CENTRAL MAINE POWER COMPANY AND NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY DATED JULY 22, 1994 AND RECORDED IN BOOK 11553, PAGE 132. - NO SPECIFIC POLES #'S REFERENCED, POLES AND OVERHEAD LINES ARE SHOWN HEREON
11. DECLARATION OF TRUST BETWEEN PORTLAND HOUSING AUTHORITY AND THE UNITED STATES OF AMERICA, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, DATED SEPTEMBER 11, 2007 AND RECORDED IN BOOK 25647, PAGE 314. (AFFECTS PARCEL THREE AND PARCEL FOUR, ONLY) - NON SURVEY ITEM

NONE PROVIDED

LOCUS IS SHOWN ON CITY OF PORTLAND'S ASSESSORS MAP

428-B-18	428-B-22
575-577 WASHINGTON AVE	14-20 CHURCHILL ST
2-8 CHURCHILL ST	

1. OWNER OF RECORD: PORTLAND HOUSING AUTHORITY
14 BAXTER BOULEVARD, PORTLAND, MAINE
C.C.R.D. BOOK 3459, PAGE 186
C.C.R.D. BOOK 25235, PAGE 339
2. BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM MAINE WEST NAD83. CITY COORDINATES FOR 3 FOOT OFFSET MONUMENTS ON VERANDA STREET AT DALTON STREET AND SHERWOOD STREET PER PLAN REFERENCE 3.
3. ELEVATIONS ARE BASED ON NGVD 1929. BENCHMARK: CITY POINT MDOOT-PO-295 ELEVATION 12.00'.
4. NO EVIDENCE OF RECENT EARTH MOVING WORK, BUILDING CONSTRUCTION, BUILDING ADDITIONS, OR RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS WAS OBSERVED.
5. NO PROPOSED CHANGES IN STREET LINES IS KNOWN BY THIS SURVEYOR.
6. NO WETLANDS DELINEATED BY THE APPROPRIATE AUTHORITY OBSERVED AT THE TIME OF THE SURVEY.

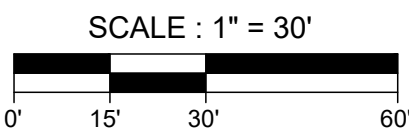
1. "PLAN OF LAND IN PORTLAND, MAINE FOR R.D. RICH COMPANY JAN. 28, 1972" BY OWEN HASKELL, INC. RECORDED IN PLAN BOOK 91, PAGE 1.
2. "BOUNDARY SURVEY ON WASHINGTON AVENUE, PORTLAND, MAINE MADE FOR RECORD OWNER & DOW PROPERTIES LLC MAY 5, 2017" BY OWEN HASKELL, INC.
3. "BOUNDARY SURVEY AT 116 SHERWOOD STREET, PORTLAND, MAINE MADE FOR SYDNEY HARRISON DATED MAY 4, 2017 REVISED THROUGH 2-16-18" BY OWEN HASKELL, INC.
4. "CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT ENGINEERING SECTION VERANDA STREET MONUMENT LAYOUT PLAN WASHINGTON AVENUE TO RICHMOND STREET JANUARY 1996"

A	GARDEN ONTO ABUTTER 28'±
B	FENCE ONTO LOCUS 3'-6"±
C	PAVEMENT & CHAIN LINK FENCE ONTO LOCUS 20'±
D	SHED AND CHAIN LINK FENCE ONTO LOCUS 1.5' ±
E	SATELLITE DISH ONTO STREET RIGHT OF WAY 1'±
F	CHAIN LINK FENCE ONTO ABUTTERS 2'-7"±

TM 428-B-18, 19 & 22
AREA=
33,073± S.F.
3.05± ACRES

TM 428-C-9
AREA=
24,178± S.F.
0.56 ACRES

SEE SHEET 2
FOR LEGAL DESCRIPTION

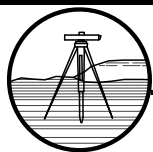


Washington Gardens
14 Churchill Street
Portland, Cumberland County, Maine
Made For
Portland Housing Authority
14 Baxter Boulevard, Portland, Maine

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 5, 6(A), 6(B), 7(A), 7(B), 7(C), 8, 9, 13, 14, 16, 17, 18, AND 19 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON JUNE 12, 2019.

RANDY L. LOUBIER
PROFESSIONAL LAND SURVEYOR NO. 2407

DATE OF PLAT OR MAP: JUNE 21, 2019
DATE OF LAST REVISION: JANUARY 9, 2020



OWEN HASKELL, INC.

PROFESSIONAL LAND SURVEYORS

DRAWN BY: RS / JLW	FIELD BOOK: FILE	JOB NO. 2019-043 P
CHECKED BY: RRL	SCALE: 1" = 30'	DRWG. NO. 1

PROJECT NAME: Valley Street Apartments
LOCATION: 200-210 Valley St, Portland, ME

Date: 04/27/20

DEVELOPMENT ASSUMPTIONS					
Total Units	60	Inflation Adjustments	Yr 1-5	Yr 6-15	Yr 16-30
# @ 30% AMI (Low HOME)	0.0%	Rent	2.00%	2.00%	2.00%
# @ 50% AMI (Low HOME)	0.0%	Operating Expense	3.00%	3.00%	3.00%
# @ 50% AMI (LIHTC)	60.0%	Other Income	2.00%	2.00%	2.00%
# @ 60% AMI (LIHTC)	20.0%	Debt Coverage Ratio	1.15		
# @ Market	20.0%	Vacancy	5.0%		

LIHTC Alloc.	945,149
Equity yield	0.66
Synd. %	99.99%
Equity Raise	8,128,281

Solar Credit FED	0
Equity yield	0.95
Synd. %	99.99%
Equity Raise	0

Total Equity	8,128,281
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PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	0	0		0
Construction	12,271,000	204,517		12,271,000
General Requirements	0	0		0
Solar	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.0%	613,550	10,226	613,550
Subtotal Construction Costs	12,884,550	214,743	0	12,884,550
Building Permits and Fees	377,000	6,283		377,000
Off-Site Improvements	0	0		0
On-Site Improvements	0	0		0
Survey & Engineering	36,000	600		36,000
Design & Permitting	520,000	8,667		520,000
Legal	68,000	1,133		68,000
Title & Recording	18,885	315		18,885
Accounting	10,000	167		10,000
Construction Period Tax	15,000	250		15,000
Construction Period Insurance	30,000	500		30,000
Other: FF&E, Security, Soft Contingency	80,000	1,333		80,000
Subtotal Soft Costs	1,154,885	19,248	0	1,154,885
Construction Loan Origination Fees	28,750	479		28,750
Construction Loan Interest	425,000	7,083		425,000
Equity Bridge Loan Costs	0	0		0
Lender Inspection Fees	12,000	200		12,000
Letter of Credit Fee	5,000	83		5,000
Permanent Loan Fees	10,000	167		10,000
Other: Construct Lender Legal, Construct Close Fee; P	15,000	250		15,000
Subtotal Finance Costs	495,750	8,263	0	495,750
Market Survey	5,000	83		5,000
Appraisal	6,500	108		6,500
Environmental Study	4,000	67		4,000
LIHTC Fees - prepaid monitoring	124,386	2,073		124,386
Other: Testing & Special Inspections	25,000	417		25,000
Other:	0	0		0
Subtotal Miscellaneous	164,886	2,748	0	164,886
Acquisition: Buildings	0	0		0
Acquisition: Land	629,500	10,492		629,500
Acquisition: Legal	0	0		0
Subtotal Acquisition	629,500	10,492	0	629,500
Operating Deficit Escrow	409,000	6,817		409,000
Pre-funded Replacements	122,710	2,045		122,710
Tax & Insurance Escrow	87,000	1,450		87,000
Total Syndication Expenses	0	0		0
Consultant Fee	0	0		0
Developer Overhead	750,000	12,500		750,000
Developer Profit	0	0		0
Rent-Up Reserve & Marketing	50,000	833		50,000
Subtotal Fee and Reserves	1,418,710	23,645	0	1,418,710
Total Development Costs	16,748,281	279,138	0	16,748,281

16,214,895 237,665 QAP TDC Index

Total Dev Costs	16,748,281
Less Commercial Construction:	0
Less: Equity Bridge Interest	
Less: Prepaid Monitoring Fees	124,386
Less: ODE	409,000
Scored TDC	16,214,895
Per Unit	270,248

New TDC calculation
[(2 x TDC/unit) + (TDC/bedroom)] / 3
TDC Per Unit \$237,665

Notes	
1.	Proposed funding reflects a 75% TIF for 30 years.
2.	This application contemplates \$595,000 in City HOME/HTF and/or Healthy Neighborhoods Funding. Avesta intends to respond to the Healthy Neighborhoods RFP issued in April and any funds awarded through that process could be used in lieu of an equal amount of City HOME/HTF funds for a total funding level of \$595,000.

MAXIMUM DEVELOPER FEE AVAILABLE	750,000
ACTUAL DEVELOPER FEE	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%
NET DEVELOPER FEE COLLECTED	750,000
% OF MAXIMUM DEVELOPER FEE	100.0%

FLOW OF FUNDS									
Sources	CLC 8/15/2021	11/13/21	During Construction 2/11/22 4/12/22 8/10/22	PLC 10/14/2022	2023	2024	Total		
Beginning Cash	0	331,106	0	0	0	0	0		
Construction Loan	0	2,404,253	3,385,359	5,024,913	726,562		11,541,087		
Capital Contribution	1,219,242	0	0	0	1,019,242	5,689,797	150,000	50,000	8,128,281
MSHA Subsidy	480,000	0			480,000				960,000
MSHA Debt	0	0			5,390,000				5,390,000
City HOME/Healthy Neighborhoods	595,000	0	0		0				595,000
FHLBBoston Loan	0	0	0		1,025,000				1,025,000
FHLBBoston Subsidy		650,000			0				650,000
Conventional loan					0				0
Healthy Neighborhoods	0				0				0
Other	0	0	0		0				0
Development Fee Loan					0				0
TOTAL SOURCES	2,294,242	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Acquisition	629,500								629,500
Construction		3,221,138	3,221,138	4,831,706	1,610,569				12,884,550
Soft Costs	923,000	57,971	57,971	68,957	28,988	0			1,154,885
Financing Costs	70,750	106,250	106,250	106,250	106,250				495,750
Miscellaneous	139,886					75,000			214,886
Dev Fee	200,000					350,000			750,000
Reserves						618,710			618,710
TOTAL DEV. COSTS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	1,043,710	150,000	50,000	16,748,281
Repay Equity Bridge Loan						0			0
Repay Construction Loan						11,541,087			11,541,087
Other Syndication Costs	0					0			0
SUBTOTAL OTHER ITEMS	0	0	0	0	0	11,541,087	0	0	11,541,087
TOTAL USES OF FUNDS	1,963,136	3,385,359	3,385,359	5,024,913	1,745,804	12,584,797	150,000	50,000	28,289,368
Ending Cash	331,106	0	0	0	0	0	0	0	0

PROJECT FINANCING									
Source		Amount	Rate	Term	Lien	Annual D/S			
						Yr. 1-5	Yr. 6-15	Yr. 16-30	
Source 1:	MSHA Subsidy	960,000	0.00%	30	First	0	0	0	
Source 2:	MSHA Debt	5,390,000	6.00%	30	First	323,400	323,400	323,400	
Source 3:	City HOME/Healthy Neighborhood	595,000	0.00%	0	First	0	0	0	
Source 4:	FHLBBoston Loan	1,025,000	2.50%	30	Second	48,600	48,600	48,600	
Source 5:	FHLBBoston Subsidy	650,000	0.00%	0	Second	0	0	0	
Source 6:	Conventional loan	0	5.50%	30	Second	0	0	0	
Source 7:	Healthy Neighborhoods	0			Third	0	0	0	
Source 8:	Other	0	0.00%	30	Unsecured	0	0	0	
Source 9:	Development Fee Loan	0			Unsecured	0	0	0	
Source 10:	Net Syndication	8,128,281	\$0.85						
Capitalization Gap (Surplus)		(0)							
Total Development Costs		16,748,281							

PROPOSED RENT SCHEDULE									
Type	AMI	# Units	Contract Rent	LIHTC Max Rents	Total Gross Rent*	Market Rent	Utility Allow	Total Rent	
Efficiency	50% LowHOME				0	\$1,300	33	0	
	50% - PBV				0	\$1,300	33	0	
	50% LIHTC	7	878	878	878	\$1,300	33	70,980	
	60% LIHTC	4	1,054	1,054	1,054	\$1,300	33	49,008	
	Market	0			1,100	\$1,300		0	
1BR	50% LowHOME		0	0	0	\$1,600	43	0	
	50% - PBV				0	\$1,600	43	0	
	50% LIHTC	10	941	941	941	\$1,600	43	107,760	
	60% LIHTC	3	1,129	1,129	1,129	\$1,600	43	39,086	
	Market	12			1,400	\$1,600		201,600	
2BR	50% LowHOME		0	0	0	\$1,800	56	0	
	50% - PBV				0	\$1,800	56	0	
	50% LIHTC	11	1,128	1,128	1,128	\$1,800	56	141,504	
	60% LIHTC	3	1,354	1,354	1,354	\$1,800	56	46,728	
	Market	0			1,600	\$1,800		0	
3BR	50% LowHOME				0	\$2,000	70	0	
	50% - PBV				0	\$2,000	70	0	
	50% LIHTC	8	1,304	1,209	1,304	\$2,000	70	118,464	
	60% LIHTC	2	1,565	1,451	1,565	\$2,000	70	35,880	
	Market				1,700	\$2,000		0	
4BR	50% LowHOME						0	0	
	50% - PBV						0	0	
	50% LIHTC						0	0	
	60% LIHTC						0	0	
	Market							0	
Other:								0	
Subtotals		60						811,020	
Total Bedrooms		94							
			Vacancy Rate		5.00%			(40,551)	
			Other Income		TIF			99,000	
			Other Income		Laundry			2,880	
			Effective Gross Income					872,349	

AFFORDABLE MORTGAGE CALCULATION		
Effective Gross Income		872,349
Annual Operating Expense		445,841
Stabilized NOI		426,508
DSC	1.15	
\$ Avail for D/S		
Other DS		372,000
DCR	1.15	
Affordable Mortgage		

BREAKEVEN ANALYSIS	RENT SENSITIVITY	OCCUPANCY
	Total	Annual
Operating Expense	445,841	Gross Revenues 912,900
Debt Service	372,000	
Breakaven Rent	1,136	Breakaven Occupancy 90%

OPERATING EXPENSES			
Expense	Annual	Annual Per Unit	Monthly Per Unit
Administrative Expenses:			
Management Fees	50,907	848	71
Management Charges	50,907	848	71
Marketing Expenses	500	8	1
Legal Expenses	500	8	1
Auditing Expenses	7,500	125	10
Other Administrative Expenses	0	0	0
Administrative Expenses	110,313	1,839	153
Operating Expenses:			
Janitorial Payroll	0	0	0
Janitorial Supplies and Equipment	0	0	0
Janitorial Contractual Services	10,000	167	14
Natural Gas	30,000	500	42
Electricity	15,000	250	21
Water and Sewer	12,500	208	17
Garbage and Trash Removal	6,500	108	9
Vehicle and Equipment Expenses	0	0	0
Other Operating Expenses	0	0	0
Operating Expenses	74,000	1,233	103
Maintenance Expenses:			
Grounds Maintenance Payroll	0	0	0
Grounds Tools and Supplies	0	0	0
Grounds Contractual Services	10,000	167	14
Miscellaneous Ground Maintenance	0	0	0
Tenant Damage Charges - Grounds	0	0	0
Building Maintenance Payroll	0	0	0
Building Tools and Supplies	0	0	0
Building Contractual Services	20,000	333	28
Building Systems Maintenance	30,000	500	42
Miscellaneous Building Maintenance	0	0	0
Tenant Damage Charges - Building	0	0	0
Maintenance Expenses	60,000	1,000	83
General Expenses:			
Property Taxes	132,000	2,200	183
Property and Liability Insurance	21,000	350	29
Investor Fees	0	0	0
Tenant Service Expenses	21,528	359	30
General Expenses	174,528	2,909	242
Replacement Reserve Funding			
Parking Lease	27,000	450	38
Commercial Expenses (if applicable)	0	0	0
Total	445,841	7,431	619

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
	3 Months	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
	9/1/2022	12/31/2022	12/31/2023	12/30/2024	12/31/2025	12/31/2026	12/31/2027	12/30/2028	12/31/2029	12/31/2030	12/31/2031	12/30/2032
Effective Gross Income		218,087	872,349	889,796	907,592	925,744	944,259	963,144	982,407	1,002,055	1,022,096	1,042,538
Less Operating Expense		111,460	445,841	459,217	472,993	487,183	501,798	516,852	532,358	548,329	564,779	581,722
Net Operating Income		106,627	426,508	430,579	434,599	438,561	442,460	446,291	450,049	453,726	457,317	460,816
Less RLP Repay		80,850	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400
Less Other Repay		12,150	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600
Cash Flow		13,627	54,508	58,579	62,599	66,561	70,460	74,292	78,049	81,726	85,317	88,816
Cash Flow per Unit		909	908	976	1,043	1,109	1,174	1,238	1,301	1,362	1,422	1,480
Debt Coverage Ratio(RLP)		1.15	1.15	1.16	1.17	1.18	1.19	1.20	1.21	1.22	1.23	1.24
Operating Reserve Balance	409,000	429,450	450,923	473,469	497,142	521,989	548,089	575,504	604,279	634,493	666,218	699,529

Total Cash Flow
Projected over 12 Years
922,257

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued											
	Yr 11	Yr 12	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20	
	12/31/2033	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	
Effective Gross Income	1,063,389	1,084,656	1,106,349	1,128,476	1,151,046	1,174,067	1,197,548	1,221,499	1,245,929	1,270,848	
Less Operating Expense	599,174	617,149	635,663	654,733	674,375	694,606	715,445	736,908	759,015	781,786	
Net Operating Income	464,215	467,508	470,686	473,743	476,671	479,461	482,104	484,591	486,914	489,062	
Less RLP Repay	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	323,400	
Less Other Repay	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	48,600	
Cash Flow	92,215	95,508	98,686	101,743	104,671	107,461	110,104	112,591	114,914	117,062	
Cash Flow per Unit	1,537	1,592	1,645	1,696	1,745	1,791	1,835	1,877	1,915	1,951	
Debt Coverage Ratio(RLP)	1.25	1.26	1.27	1.27	1.28	1.29	1.30	1.30	1.31	1.31	
Operating Reserve Balance	699,529	734,505	771,230	809,792	850,282	892,796	937,435	984,307	1,033,523	1,085,199	1,139,459



CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

TO: Mayor Snyder
Members of the City Council
FROM: Mary Davis, Division Director
Housing and Community Development Division
DATE: July 6, 2020
SUBJECT: Project Underwriting

The underwriting analysis for this project will be made available prior to the August 3rd Council Meeting where the council is expected to take action on the Affordable Housing Development and Affordable Housing TIF requests.

Work is well underway on the financial underwriting analysis. However, as a result of an earlier due date on the Low Income Housing Tax Credit application and delays due to COVID-19, city closure and working remotely, additional time is needed to complete the analysis.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 20, 2020

SUBJECT: **Order 26-20/21 Amendment to the Portland City Code Chapter 29 Vegetation
Re: Heritage Tree Protection Ordinance and Tree Trust - Sponsored by the
Sustainability and Transportation Committee, Councilor Spencer Thibodeau,
Chair**

SPONSOR: Sustainability and Transportation Committee, Spencer Thibodeau, Chair
(The committee voted 3-0 on May 20, 2020 to recommend passage of this amendment.)

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: Yes Yes.

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

I. SUMMARY

The amendment designates certain trees located within designated Historic Districts as Heritage Trees and establishes a permit process to preserve the ecological services they provide the residents of Portland.

II. AGENDA DESCRIPTION

The proposed amendment designates certain large trees located on private property as heritage trees because of the important ecological services they provide the residents of the City of Portland. In order to preserve these benefits, the amendment requires property owners who wish to remove such a tree to receive a permit and comply with the required conditions before proceeding.

This item must be read on two separate days. It was given a first reading on July 13, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Sustainability and Transportation Committee began discussing the preservation of significant trees located on private property in the Fall of 2019. Committee members noted that large trees provide valuable ecological services including absorbing storm water runoff, sequestering carbon, mitigating urban heat island effects, muffling noise, and providing valuable habitat for animals, insects, and birds.

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and storm water runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the City; and to acknowledge the intrinsic value of the mature trees within our community.

Staff from the Sustainability Office, Parks, Recreation & Facilities, and Corporation Counsel developed a draft ordinance for discussion during the February, 2020 meeting of the Sustainability and Transportation Committee. They looked at a number of tree protection ordinances from around the country to serve as examples. These included Somerville, MA, Newton, MA, Concord, MA and Kirkland, WA.

In keeping with the recommendation of the committee to limit the scope of the ordinance, staff focused on creating an ordinance to protect important large trees in designated Historic Districts. Upon the recommendation of the City Arborist, staff suggested that important native shade trees with a diameter of 24" or more at breast height and large ornamental trees with a diameter of 12" or more at breast height be designated Heritage Trees and be given special protection from cutting and topping.

The proposed ordinance discourages the cutting of heritage trees and encourages property owners to consider the value of the existing trees. If a property owner believes they need to remove heritage trees they must submit a permit to the City Arborist who will review it. The permit will be granted with conditions requiring the property owner to replace any heritage trees removed with a number of replacement trees of the same species. The cumulative trunk diameter of the replacement trees will need to equal the trunk diameter(s) of the tree(s) removed. A permit recipient would have the option to make a contribution to a tree trust equal to the cost for the City to purchase, plant, and maintain the replacement trees. This cost would be determined by the City Arborist. The City Arborist would be able to use funds contributed to this tree trust to plant trees on any publicly owned property as described in an annual plan submitted by the City Manager to the Sustainability and Transportation Committee and approved by the City Council. The plan shall outlined locations that would most greatly benefit from tree planting to reduce the amount of impervious surface, reduce urban heat islands, and manage stormwater.

The ordinance allows for the removal of Heritage Trees if a qualified professional certifies that they are damaged or unhealthy. Heritage trees may be removed with verbal permission from the City Arborist if a tree poses an imminent threat.

Under the ordinance, only trees within existing historic districts may be designated as Heritage Trees.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Science indicates that large trees provide several important benefits to communities. Trees:

Clean the air. By absorbing carbon dioxide, sulfur dioxide, nitrous oxides and other pollutants. Mature trees absorb 120-240 lbs of particulate pollution each year. By filtering airborne pollutants, trees reduce the conditions that cause asthma and other respiratory problems.

Reduce annual storm water runoff. A mature tree can store 50 to 100 gallons of water during large storms and capture rainwater in the soil, where bacteria and other microorganisms filter out impurities. This reduces urban runoff and the amount of sediment, pollutants, and organic matter that reach streams.

Capture carbon from the atmosphere. Urban trees sequester more carbon than individual trees in non-urban forests because the more open structure of the urban environmental allows individual trees to intercept more light and grow faster.

Provide cooling. Mature tree canopy reduces air temperatures by about 5-10° F.

These benefits align with the City Council's goal to reduce the amount and toxicity of storm water runoff, reduce CO2 emissions, and improve the air quality in the City.

V. FINANCIAL IMPACT

The Heritage Tree Ordinance places a significant amount of responsibility on the City Arborist to review permit applications, inspect trees, and administer the Heritage Tree program. Even though the current language only affects trees in designated historic district the Parks, Recreation, and Facilities team anticipates the need for additional resources to support the City Arborist. This would include the following expenses:

Tree Inspector (Half-time): \$23,000 plus benefits

Vehicle (used): \$15,000)

Administrative (computer, supplies, phone) \$3,000

Contributions to the tree fund established by the ordinance would provide new funds to plant trees at specific locations where shade trees could mitigate the urban heat island effect or improve stormwater management.

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

Staff share the Sustainability and Transportation Committee's desire to preserve the many large trees on private property and the valuable ecological services they provide. However, adding additional responsibilities to the City Arborist and Forestry Section will require additional resources. We would recommend that the Council consider the need for a half time position and associated equipment during budget deliberations.

VIII. LIST ATTACHMENTS

1. Ch. 29 Vegetation Re Heritage Trees 7.13.2020
2. Amendment 1 to Ch. 29 Vegetation Re Heritage Trees 7.13.2020

Prepared by:

Date: 7/20/2020

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
CHAPTER 29 VEGETATION
RE: HERITAGE TREE PROTECTION ORDINANCE AND TREE TRUST**

WHEREAS, the City of Portland wishes to protect Heritage Trees from damage or removal; and

WHEREAS, the City of Portland recognizes that Heritage Trees provide extensive ecosystem services such as filtering stormwater, sequestering carbon, and mitigating urban heat; and

WHEREAS, the City of Portland also recognizes that Heritage Trees enhance the neighborhoods in which they are located by adding beauty, softening the urban environment, and offering shade from summer sunlight; and

WHEREAS, the City of Portland has long been recognized as "the Forest City" because of its commitment to its Heritage Trees; and

WHEREAS, development threatens Heritage Trees with harm or removal; and

WHEREAS, many citizens desire that Heritage Trees be protected from unnecessary cutting; and

WHEREAS, a growing number of communities and municipalities including the City of Portland embrace the need to protect Heritage Trees; and

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

1. *That the Portland City Code is hereby amended by adding Sections 29-1 to 29-14, which said Sections read as follows:*

Art. I. ~~In General~~Heritage Tree Protection Ordinance, §§ 29-1--29-15

Div. 1. In General, §§ 29-1--29-13

Div. 2. Tree Trust, §§ 29-14--29-15

Art. II. Trees, §§ 29-16--29-24

ARTICLE 1. ~~IN GENERAL~~ HERITAGE TREE PROTECTION ORDINANCE

DIVISION 1. IN GENERAL

Sec. 29-1. ~~Reserved~~Title.

This article shall be known as the Heritage Tree Protection Ordinance (hereinafter, the "Ordinance").

Sec. 29-2. ~~Reserved~~Intent and purpose.

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and stormwater runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the City; and to acknowledge the intrinsic value of the mature trees within our community.

The purpose of this Ordinance is to discourage the removal or extensive pruning of Heritage Trees located in historic districts of the City of Portland on private property and to replace the valuable ecological services such trees provide should they be removed.

Sec. 29-3. ~~Reserved~~Definitions.

Caliper: A measurement of the tree trunk diameter used when purchasing tree plantings measured at 12 inches above the ground.

City Tree: A tree located on property owned by the City of Portland, including Public Shade Trees, trees in City parks, trees on the grounds of City buildings, and trees in the public right of way.

DBH (Diameter at Breast Height): The diameter of a tree trunk measured in inches at a height of four and a half (4.5) feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.

Heritage Tree: A Heritage Tree is a tree located on privately owned property and located in a designated historic district that meets at least one of the following criteria:

1. Any tree that is on the Register of Big Trees promulgated by the Maine Department of Agriculture, Conservation & Forestry (the "Big Tree List"); and
2. Certain trees 24 inches in diameter or greater (diameter at breast height or DBH): Oak species including White Oak, Red Oak, Pin Oak, Swamp White Oak, and Burr Oak; Sugar Maple and Red Maple; Shagbark Hickory; Ginkgo; Tulip Poplar; Cucumber Magnolia; Elm; Birch species; Hemlock; Pine; Spruce; Horse Chestnut; Walnut; Catalpa; Black Cherry; Linden; Sweetgum; European Beech; Honey Locust; and Sycamore; and
3. Ornamental trees 12 inches in diameter or greater (DBH) including Dogwood, Magnolia, Dawn Redwood, Japanese Maple, Hawthorn, Apple, Chameacyparis, Cherry, Hornbeam, Amelanchier, Sassafras, and Mulberry; and
4. Stands of native trees that are rare or threatened including Shagbark Hickory, Pitch Pine, American Mountain Ash, Red Spruce, and Atlantic White Cedar.

Qualified Tree Professional: A Qualified Tree Professional is an individual with relevant education and training in arboriculture or urban forestry who has at least one of the following credentials:

- International Society of Arboriculture (ISA) Certified Arborist
- Tree Risk Assessor Qualification (TRAW)
- American Society of Consulting Arborists (ASCA) registered Consulting Arborist
- Society of American Foresters (SAF) Certified Forester for Forest Management Plans

Removal: The intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect actions that result in the death of the tree. This includes, but is not limited to, excessive pruning and tree topping.

Replacement Caliper: The replacement caliper for Heritage trees shall be at least equal to the DBH of the tree removed.

Tree Topping: Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree Trust: Fund established by the City to plant trees and to maintain street trees and trees in City-owned open space, rights of way, or parks.

Sec. 29-4. ApplicabilityReserved.

The terms and provisions of this ordinance shall apply to all trees within the City of Portland that are located on private property that meet the definition of a Heritage Tree.

Sec. 29-5. Permit Required for Removal of healthy Heritage Trees on Private PropertyReserved.

No person, directly or indirectly, shall remove any Heritage Tree on any private property within a Historic District without first obtaining a tree removal permit as provided in this article, unless specifically exempted by this ordinance.

Sec. 29-6. Tree Removal Permit Application FormReserved.

(a) The Parks, Recreation, and Facilities Department shall establish and maintain a tree removal permit application to allow property owners to request City review of a proposed removal of Heritage Tree for compliance with the Heritage Tree Ordinance. The Heritage Tree Removal Permit application form shall include at a minimum the following: a site plan, drawing, or screen shot showing the approximate location of Heritage Trees, their size (DBH) and their species, along with the location of structures, driveways, access ways, and easements.

(b) If replacement trees are to be planted, the plan shall indicate the planned location, species, and size of any

replacement trees to be planted. In order to qualify as replacements, trees must conform to species and planting standards as defined by the City Arborist. Trees planted in the adjacent right-of-way or otherwise located on public property shall not be considered suitable for consideration as replacement trees.

Sec. 29-7. Conditions for Granting a Heritage Tree Removal Permit~~Reserved.~~

(a) Removal of Significant Trees: If any Heritage Trees are to be removed, the plan must show planting of new trees equal to the total Replacement Caliper of those trees. Replacement trees shall be planted on the property where the Heritage Tree is removed unless another location is identified and the City Arborist determines in his or her sole discretion that off-site replacement will satisfy the purposes of this Ordinance.

(b) Payment instead of Replacement: Payment to the Tree Trust may be made in lieu of planting some or all of the replacement trees, according to a cost schedule established by the City Arborist. Such fees shall be based on the actual costs associated with purchasing, planting, and maintaining the replacement trees of comparable size and value. Payment must be made prior to issuance of the permit.

(c) Request for Waiver: The application for a Heritage Tree Removal Permit shall allow the applicant to request a waiver of the requirement for replanting or payment.

(d) Hearing of Request for Waiver: The City Arborist, or his or her designee, shall hear requests for such waivers within 10 days of the date the application was received. Examples of reasons supporting a waiver include but are not limited to: financial hardship associated with the care and upkeep of the trees; unreasonably high requirements for replacement or repayment, ongoing or reasonably foreseen damage or risk from the trees, and desire to create a benefit to the public. The City Arborist shall consider such recommendation in considering whether or not to grant the waiver.

Sec. 29-8. Standards for Replacement Trees~~Reserved.~~

(a) Replacement trees must be of the same or similar species and size as described in the application for the Heritage Tree Removal Permit, and must be planted according to standards

established by the City Arborist.

(b) In the event that trees of the size and species that were described in the application for the Tree Permit cannot be obtained at the time of planting, multiple smaller replacement trees may be planted with the authorization of the City Arborist.

(c) The City Arborist shall determine the number of trees required to be planted to mitigate the loss of the Heritage Tree using the replacement caliper as it relates to the DBH of the tree that is to be removed.

Sec. 29-9. Exceptions to the Heritage Tree Removal Permit RequirementReserved.

(a) Emergencies: If any tree shall be determined by the City Arborist to be in a hazardous condition so as to immediately endanger the public health, safety, or welfare or cause an immediate disruption of public services and require immediate removal without delay, verbal authorization may be given by the City Arborist to remove such tree, and the tree may be removed without obtaining a written permit as otherwise required by this ordinance. The City Arborist shall record in writing each such verbal authorization and maintain them in accordance with applicable law.

(b) Waiver: The requirements of this article may be waived by the City Arborist during the period of an emergency such as a hurricane, tornado, windstorm, flood, or similar threat to life and property.

Sec. 29-10. Heritage Tree Removal Permit Application Procedure and AppealsReserved.

Applicants requesting a Heritage Tree Removal Permit must submit a completed permit application to the City Arborist on a form provided by the City.

(a) The City Arborist or designee shall review the application within 21 calendar days and either approve, approve with conditions or modifications, or deny the application, or request additional information. The City Arborist will also note any requirements for replacement trees as indicated in Section 29-8 above or calculate the cost of replacement trees, depending on the preference of the applicant. The City Arborist's decisions shall be in writing along with the process for calculating the

number of replacement trees required or the amount of the financial contribution required to the Tree Trust.

(b) An applicant for a Heritage Tree Removal Permit may appeal the decision of the City Arborist to the Director of Parks, Recreation, and Facilities, whose decision will be final.

(c) Time Limit. If granted a permit, the applicant shall complete the removal and necessary tree replacement within one (1) year from the date the permit is issued or prior to transfer of property ownership, whichever comes first.

(d) If any trees required by the permit issued by the City Arborist remain unplanted after the one (1) year period, the applicant shall instead make a contribution to the Tree Trust as outlined in Section 29-8 above.

(e) If a replacement tree dies within 18 months from the date of planting, it must be replaced. The person planting the tree shall provide documentation as to the date of the planting and file the same with the City Arborist within 15 days of the planting of said replacement tree.

Sec. 29-11. EnforcementReserved.

(a) If a Heritage Tree is removed without a Heritage Tree Removal Permit as required herein, the property owner must apply for a Tree Permit within 30 days of the removal. Each business day thereafter, until an application is filed, shall constitute a separate violation of this ordinance and shall be subject to the penalties outlined in Section 1-15 of the Portland City Code.

(b) Stop work order: Upon notice that trees are being removed without a Heritage Tree Removal Permit, such work shall be immediately stopped by the Director of Parks, Recreation, and Facilities or designee. The stop work order shall be in writing and shall be mailed to the owner of record of the property and posted at the front of the property in a conspicuous location, and if possible, given to the owner of the lot involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.

(c) Injunctive relief: Whenever there exists reasonable cause to believe that a person is violating any applicable provision of

this article, the city may institute a civil action for an injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition or to cease the unlawful use of the property.

Sec. 29-12. Conflicts with Other Ordinances~~Reserved~~.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive chapter, article or ordinance of the Portland City Code shall control.

Sec. 29-13. ~~Reserved~~Effective date.

This ordinance shall become effective thirty (30) days following passage by the City Council. During the time between passage and the effective date, the City Arborist shall post a notice on the City Web Page and mail a notice about the ordinance to all licensed arborists in Cumberland County.

DIVISION 2. TREE TRUST

Sec. 29-14. ~~Reserved~~Tree Trust.

(a) Purpose. The purpose of enacting this section is to establish a tree trust fund to facilitate compliance with tree replacement requirements set forth in Chapter 29 of this Code

(b) Establishment of the tree trust fund. The city council hereby establishes a special revenue account under the name "City of Portland Tree Trust Fund." Deposits into the fund shall include:

1. Contributions made by anyone removing heritage trees and choosing to make a contribution in lieu of planting trees as specified in Chapter 29 of this code;
2. Funds appropriated to be deposited into the fund by vote of the city council;
3. Voluntary contributions of money or other liquid assets to the fund;

4. Any federal, state or private grant or loan funds provided for tree trust fund purposes; and/or

5. Interest from fund deposits and investments.

(c) Management of the trust fund. The city manager, or his or her designee, shall serve as the manager of the tree trust fund. The responsibilities of the manager, subject to the orders of the city council, shall include:

1. Maintaining the financial and other records of the tree trust fund;

2. Disbursing and collecting tree trust fund monies in accordance with the tree trust fund annual plan; and

3. Monitoring the use of monies expended and assuring compliance with the purposes of the fund and the conditions under which any portions of the fund were granted or loaned.

(d) Tree trust fund annual plan. Each fiscal year, the city council shall adopt a tree trust fund annual plan. The city manager shall submit to the city council a recommended tree trust fund annual plan, utilizing the revenues of the tree trust fund as well as any other funds the manager may propose as appropriate. The Sustainability and Transportation Committee of the city council, or such other committee as the council shall designate, shall conduct public hearings on the recommended plan and refer the matter to the council for action.

The tree trust fund annual plan shall include:

1. A description of all tree planting programs to be funded in part or in full by the tree trust fund;

2. Identification of the locations trees were planted in the prior year;

3. Identification of locations that would most greatly benefit from tree planting to reduce the amount of impervious surface, reduce urban heat islands, and manage stormwater;

4. The amount of funds used for tree planting in the prior year.

(f) *Distribution and use of the tree trust fund's assets.*

1. All distribution of principal, interest or other assets of the tree trust fund shall be made in furtherance of the public purposes set out in this article (Heritage Tree Protection Ordinance).

2. Funds shall not be used for city administrative expenses.

Sec. 29-15. Reserved.

**AMENDMENT 1 TO ORDER 26-20/21
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: QUALIFICATIONS FOR TREE WORK**

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

1. *That the Portland City Code is hereby amended by adding Sections 29-1 to 29-14, which said Sections read as follows:*

**Art. I. Heritage Tree Protection Ordinance , §§ 29-1--29-15
Div. 1. In General, §§ 29-1--29-13
Div. 2. Tree Trust, §§ 29-14--29-15
Art. II. Trees, §§ 29-16--29-24**

ARTICLE 1. HERITAGE TREE PROTECTION ORDINANCE

DIVISION 1. IN GENERAL

Sec. 29-1. Title.

This article shall be known as the Heritage Tree Protection Ordinance (hereinafter, the "Ordinance").

Sec. 29-2. Intent and purpose.

...

Sec. 29-3. Definitions.

...

Qualified Tree Professional: A Qualified Tree Professional is an arborist licensed by the State of Maine.

~~is an individual with relevant education and training in arboriculture or urban forestry who has at least one of the following credentials:~~

~~International Society of Arboriculture (ISA) Certified Arborist~~

~~Tree Risk Assessor Qualification (TRAW)~~

~~American Society of Consulting Arborists (ASCA) registered
Consulting Arborist~~

~~Society of American Foresters (SAF) Certified Forester for
Forest Management Plans~~

Removal: The intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect actions that result in the death of the tree. This includes, but is not limited to, excessive pruning and tree topping.

Replacement Caliper: The replacement caliper for Heritage trees shall be at least equal to the DBH of the tree removed.

Tree Topping: Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree Trust: Fund established by the City to plant trees and to maintain street trees and trees in City-owned open space, rights of way, or parks.

Sec. 29-4. Applicability.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 30-20/21 Setting Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 33 Re: An Act to Increase the Minimum Wage in Portland - Sponsored by Katherine Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order sets the public hearing on Citizen Initiative Amendment Chapter 33 of the Portland City Code, called An Act to Increase Minimum Wage in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Public Hearing Ballot Question re Minimum Wage Amendment 8.3.2020
2. An Act to Increase Minimum Wage

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 33
RE: AN ACT TO INCREASE THE MINIMUM WAGE

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 33 called An Act To Increase the Minimum Wage in Portland shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting with information to come in the August 31, 2020 City Council agenda.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to PSA the following address:

P.O. Box 11345 Portland ME 04104

Dated at Portland, this 14 day of May 2020.

✓ Steven Biel
(Print) Name

43 Spruce St.
Address

[Signature]
Signature

✓ Bree LaCasse
(Print) Name

296 Spring St #
Address

[Signature]
Signature

✓ Emily Egdor
(Print) Name

31 Cushman St #2
Address

[Signature]
Signature

✓ Jann-Marie Keene
(Print) Name

108 Sherman #8
Address

[Signature]
Signature

✓ Kathy Amato
(Print) Name

96 Lincoln #2
Address

[Signature]
Signature

✓ Samira Fdal
(Print) Name

1326 Forest Ave #16
Address

[Signature]
Signature

✓ Wayne Sherman
(Print) Name

655 Congress St. Apt 224
Address

[Signature]
Signature

✓ Tom Hamill
(Print) Name

655 Congress St. #624
Address

[Signature]
Signature

✓ Barbara P. Sherman
(Print) Name

655 Congress St. Apt 224
Address

[Signature]
Signature

✓ Kennedy Johnson
(Print) Name

655 Congress St. Apt. 624
Address

[Signature]
Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

JULY, 2020
Date Commission Expires/Date Entered the Bar

Ethan Smiling
Printed Name

An Act To Increase the Minimum Wage in Portland

An Act to Increase the Minimum Wage in Portland will increase the minimum wage in Portland to \$15 an hour over three years. It increases the minimum that tipped employees must be paid by their employer to \$7.50 an hour. It moves the effective date of annual cost-of-living increases to the minimum wage from July 1 to Jan 1 to maintain consistency with state law. It also requires a higher minimum wage for work performed during declared states of emergency.

1. That Chapter 33, Section 33.7 of the Portland City Code is hereby amended to read as follows:

Section 33.7. Minimum Wage.

...

(b) *Minimum Wage rate:*

(i) Beginning on January 1, ~~2022~~2016, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to ~~\$13.00~~~~10.10~~ per hour;

(ii) Beginning on January 1, ~~2023~~2017, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to ~~\$14.00~~~~10.68~~ per hour; and

(iii) Beginning on January 1, 2024, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$15.00 per hour; and Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be increased according to the Consumer Price Index—All Urban Consumers (CPI-U) percentage increase from the prior year, unless the Minimum Wage equals the State Minimum Wage as set forth below. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.

(iv) On January 1, 2025 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the

increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for All Urban Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage in effect under this ordinance, the minimum wage under this ordinance is increased to the same amount, effective on the same date as the increase in the state minimum wage, and must be increased in accordance with this ordinance thereafter. If the State Minimum Wage established by 26 M.R.S. § 664 is equal to or greater than the Minimum Wage established herein, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to equal the State Minimum Wage.

...

(c) Tip Credit:

(i) An Employer may consider tips as part of the wages of a Service Employee toward satisfaction of the Minimum Wage established by this ordinance, in accordance with 26 M.R.S. §664(2) and until such time as the tip credit is eliminated under state law. Such a tip credit shall be no greater than half the Minimum Wage rate established by this ordinance ~~the amount necessary to reduce the direct wages paid to a Service Employee to an amount equal to the minimum direct wages required to be paid to Service Employees pursuant to 26 M.R.S. §664(2). Minimum direct wages pursuant to 26 M.R.S. §664(2) is the amount required by state law to be paid to a Service Employee after an Employer reduces the state minimum wage by the maximum allowable tip credit as provided in 26 M.R.S. §664(2).~~

...

(g) Effect of Emergency Proclamation. For work performed during a declared emergency, the effective Minimum Wage rate established by this ordinance shall be calculated as 1.5 times the regular minimum wage rate under subsection (b) above. A declared emergency under this ordinance shall include the period of time during which:

(i) A proclamation issued pursuant to Chapter 2, Sec. 2-406, of this code declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace; or

(ii) A proclamation issued pursuant to 37-B M.R.S. § 742 declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace.

A declared emergency under this ordinance shall not apply to work performed under a teleworking arrangement, as defined under 5. U.S.C. § 6501, allowing the Employee to work from home.

...

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 31-20/21 Setting Public Hearing on a Citizen Initiative Amendment to Chapter 17 of the Portland City Code Re: An Act to Ban Facial Surveillance by Public Officials in Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order sets the public hearing on a Citizen Initiative Amendment to Chapter 17 of the Portland City Code, An Act to Ban Facial Surveillance by Public Officials in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Public Hearing Ballot Question re Ban on Facial Surveillance 8.3.2020
2. Ban Facial Recognition

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 17
RE: AN ACT TO BAN FACIAL SURVEILLANCE
BY PUBLIC OFFICIALS IN PORTLAND**

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 17 called An Act To Ban Facial Surveillance by Public Officials in Portland shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting, with information to come in the August 31, 2020 City Council agenda.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345, Portland, ME 04104

Dated at Portland, this 15 day of May 20 20.

✓ <u>Brendan McQuade</u> (Print) Name	<u>4 Candlewick Ter</u> Address	<u>Brendan McQuade</u> Signature
✓ <u>Sydney Avitia-Jacques</u> (Print) Name	<u>180 State St #301</u> <u>Portland 04101</u> Address	<u>Sydney Avitia-Jacques</u> Signature
✓ <u>Jacob Kargisz</u> (Print) Name	<u>123 Sherman St #13</u> Address	<u>Jacob Kargisz</u> Signature
✓ <u>Jessica Fabre</u> (Print) Name	<u>9 C St #2</u> Address	<u>Jessica Fabre</u> Signature
✓ <u>Alexandria Cleveland</u> (Print) Name	<u>439 Congress St</u> Address	<u>Alexandria Cleveland</u> Signature
✓ <u>MARCELLA MARINO</u> (Print) Name	<u>226 SHERIDAN ST</u> Address	<u>Marcella Marino</u> Signature
✓ <u>Jonathan Distalari</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Jonathan Distalari</u> Signature
✓ <u>Elisabeth Ames</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Elisabeth Ames</u> Signature
✓ <u>Glen Galtik</u> (Print) Name	<u>63 Danforth St.</u> Address	<u>Glen Galtik</u> Signature
✓ <u>Kathryn Wilton</u> (Print) Name	<u>814 Congress St #2</u> Address	<u>Kathryn Wilton</u> Signature

Subscribed and sworn to before me this 14 day of May, 2020.

Jonathan Distalari
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN DISTALARI
Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345, Portland, ME 04104

Dated at Portland, this _____ day of _____ 20____.

<u>Brendan McQuade</u> (Print) Name	<u>4 Cordwryck Ter</u> Address	<u>Bolan Bolan</u> Signature
<u>Sydney Avitia-Jacques</u> (Print) Name	<u>180 State St #301</u> Address	<u>Sydney-Jacques</u> Signature
<u>Jacob Kyrusisz</u> (Print) Name	<u>123 Sherman St #13</u> Address	<u>Jacob Kyrusisz</u> Signature
<u>Jessica Faber</u> (Print) Name	<u>9 C St #2</u> Address	<u>Jessica Faber</u> Signature
<u>Alexandria Cleveland</u> (Print) Name	<u>439 Congress St</u> Address	<u>Alexandria Cleveland</u> Signature
<u>MARCELLA MARINO</u> (Print) Name	<u>226 SHERIDAN ST</u> Address	<u>Marcella Marino</u> Signature
<u>Jonathan DiStefano</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Jonathan DiStefano</u> Signature
<u>Elisabeth Ames</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Elisabeth Ames</u> Signature
<u>Glen Galtik</u> (Print) Name	<u>63 Danforth St.</u> Address	<u>Glen Galtik</u> Signature
<u>Kathryn Wilson</u> (Print) Name	<u>814 Congress St #2</u> Address	<u>Kathryn Wilson</u> Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN P TORSCH
Printed Name

An Act To Ban Facial Surveillance by Public Officials in Portland

An Act to Ban Facial Surveillance by Public Officials in Portland will ban the city of Portland and its departments and officials from using or authorizing the use of any facial surveillance software on any groups or members of the public, and provides a right to members of the public to sue if facial surveillance data is illegally gathered and/or used.

1. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 17, Article XI, which said article reads as follows:

ARTICLE XI. FACIAL SURVEILLANCE TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article is to protect the privacy and civil liberties of the residents of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

Face surveillance means an automated or semi-automated process that assists in identifying or verifying an individual, or captures information about them, based on the physical characteristics of their face.

Face surveillance system means any computer software or application that performs face surveillance.

City of Portland means any department, agency, bureau, and/or subordinate division of the City of Portland.

City of Portland official means any person or entity acting on behalf of the City of Portland, including any officer, employee, agent, contractor, subcontractor, or vendor.

Sec. 17-131. Facial Surveillance Technology Prohibition.

It shall be unlawful for the City of Portland or any City of Portland official to:

- (a) Obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance;

(b) Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Portland or any City of Portland official:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance; or

(c) Issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance.

Sec. 17-132. Enforcement.

(a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.

(b) Private cause of action.

1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of

Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the city of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.

2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the greater of:

a. \$100 for each violation of this article; or

b. \$1,000.

3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.

(c) Violation of this ordinance by any official or employee of the city of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining.

Sec. 17-132. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

(a) limit any individual's rights under state or federal law;

(b) prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording;

(c) prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or

(d) prohibit the use of facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:

1. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed, used, or

collected with the knowledge and consent of any person authorized for such entry or access; and

2. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 32-20/21 Setting Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 2 Re: An Act to Implement a Green New Deal for Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR: Katherine L. Jones, City Clerk

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This orders set the public hearing on Citizen Initiative Amendment to Chapter 2 of the Portland City Code, An Act to Implement a Green New Deal for Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Public Hearing Ballot Question re Green New Deal 8.3.2020
2. An Act to a Green New Deal

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 2
RE: AN ACT TO IMPLEMENT A GREEN NEW DEAL IN PORTLAND**

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 2 called An Act To Implement a Green New Deal in Portland shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting, with information to come in the August 31, 2020 City Council agenda.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

Green New Deal

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P O Box 11345 Portland ME 04104

Dated at Portland, this 15 day of May 20 20

✓ Daniel Muller
(Print) Name

48 Fall Brook Street
Portland, ME 04103
Address

✓ Daniel Muller
Signature

✓ Christopher Teret
(Print) Name

73 Anderson St
Portland, ME 04101
Address

✓ Christopher Teret
Signature

✓ Kimberly Teret
(Print) Name

73 Anderson St
Portland, ME 04101
Address

✓ Kimberly Teret
Signature

✓ Charles Shattuck Herdorn
(Print) Name

123 Mabel St
Portland ME 04103
Address

✓ Charles Shattuck Herdorn
Signature

✓ Justin Beth
(Print) Name

26 Congress St. Apt. 6
Address

✓ Justin Beth
Signature

✓ Jonathan Diotallevi
(Print) Name

29 Fessenden St #2
Address

✓ Jonathan Diotallevi
Signature

✓ Elisabeth Ames
(Print) Name

29 Fessenden St #2
Address

✓ Elisabeth Ames
Signature

✓ Kelly Merrill
(Print) Name

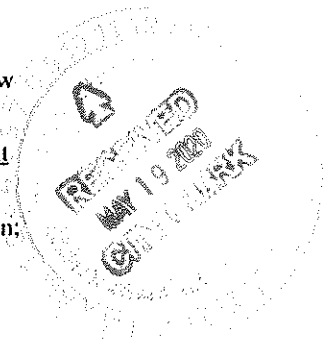
363 St John St #1
Address

✓ Kelly Merrill
Signature

✓ Grayson Lookner
(Print) Name

1235 West Broadway St. #2
Address

✓ Grayson Lookner
Signature



(Print) Name Carlo Macomber Address 41 Eastfield Rd. Signature Carlo Macomber

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]

Signature of Notary Public/Attorney-at-law

8/19/2026

Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH

Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

RECEIVED
MAY 18 2010
CITY CLERK

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to PSA the following address:

P O Box 11345 Portland ME 04104

Dated at Portland, this	day of	20	
<i>Daniel Moller</i>	<i>48 Fall Brook Street</i>	<i>Portland, ME 04103</i>	<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Christopher Teret</i>	<i>73 Anderson St</i>	<i>Portland, ME 04101</i>	<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Kimberly Teret</i>	<i>73 Anderson St</i>	<i>Portland, ME 04101</i>	<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Charles Shattuck Heidom</i>	<i>123 Mabel St</i>	<i>Portland ME 04103</i>	<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Justin Beth</i>	<i>26 Congress St. Apt. 6</i>		<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Jonathan Diotallevi</i>	<i>29 Fessenden St #2</i>		<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Elisabeth Ames</i>	<i>29 Fessenden St #2</i>		<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Kelly Merrill</i>	<i>383 St. John St #1</i>		<i>[Signature]</i>
(Print) Name	Address		Signature
<i>Grayson Lookner</i>	<i>1235 West St Brook St. #2</i>		<i>[Signature]</i>
(Print) Name	Address		Signature

An Act To Implement a Green New Deal for Portland

An Act to Implement a Green New Deal for Portland promotes sustainability and sustainable communities by: ensuring that all building projects receiving \$50,000 or more in public funds are built using up-to-date environmental standards, with solar-ready or living roofs, and additional worker pay and training; increasing the numbers of affordable units built in developments of 10 units or more, and the affordability of those units; and asking the Council to annually monitor use of fossil fuel infrastructure in the city and to come up with plans to reduce this infrastructure to meet stated emissions targets.

1. That Chapter 2, Section 2-302 of the Portland City Code is hereby amended to read as follows:

Sec. 2-302. Contracts; purchases.

...

(b) Supplies, materials and/or services procurement. The City Manager shall have the authority to award any bid and to execute any contract or approve any purchase for and in behalf of the City for supplies and/or materials to be furnished and/or services to be performed for the city, including without limitation professional consulting services, provided that:

(1) The Finance Director certifies that funds are available for such procurement; ~~and~~

(2) The bid is awarded and the contract or purchase executed as the result of a competitive process, which shall mean either by competitive bidding or request for proposals; and

(3) Any firm awarded a city funded contract or contracts aggregating \$50,000 or more, for the construction of any buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports, public schools, or any other structures upon which construction may be let to contract by the City, the awardee, including all sub-contractors, must:

a. compensate all employees on the project at no less than the wage rates and benefits determined pursuant to 26 M.R.S.A. §1306 or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater;

b. require all workers employed on the project in construction work to complete, at a minimum, a time-paid 10-hour training

course for safety established and/or approved by the United States Department of Labor, Occupational Safety and Health Administration prior to work on the project, where "construction work" has the same meaning as in 29 C.F.R. § 1926.32(g); and

c. employ on the project the following minimum number of apprentices, to the extent qualified apprentices are determined to be available in accordance with applicable rules adopted by the Maine Department of Labor as provided by Apprenticeship in Energy Facility Construction, 26 M.R.S. § 3501, where "apprentice" has the same meaning as in 26 M.R.S. § 3501, subsection 1:

i. for any contract awarded on or after January 1, 2021 and before January 1, 2023, a number equal to at least 10% of all persons employed on the project;

ii. for any contract awarded on or after January 1, 2023 and before January 1, 2025, a number equal to at least 17.5% of all persons employed on the project;

iii. for any contract awarded on or after January 1, 2025, a number equal to at least 25% of all persons employed on the project.

...

(e) Exceptions to required competitive process. The requirement of a competitive process set forth in subsection (b) above may be waived by the City Manager, in his or her discretion, if one (1) or more of the following conditions are met, provided that all other provisions set forth in subsection (b) above are met, and the Finance Director has certified that funds are available for such procurement:

...

2. That Chapter 6, Sections 6-98, 6-165, 6-166, 6-167, 6-168, 6-169, 6-170, 6-173, 6-174, 6-175, 6-176 and 6-177 of the Portland City Code are hereby amended to read as follows:

Sec. 6-98. Adoption of standardized codes.

(a) The City hereby adopts the following codes by reference, pursuant to 30-A M.R.S. § 3003:

1. The Maine Uniform Building and Energy Code ("MUBEC"), as required by 10 M.R.S. § 9724;~~and~~

2. The appendix to the Maine Uniform Building and Energy Code ("MUBEC") containing optional energy conservation and efficiency requirements, as provided by 10 M.R.S. §9722, sub-§6, ¶0; and

23. The National Electric Code (2014) ("NEC").

(b) MUBEC and the appendix to MUBEC containing optional energy conservation and efficiency requirements shall be enforced by the building authority, which shall be accomplished through inspections performed by the City building official and code enforcement officers, pursuant to 25 M.R.S. § 2373.

(c) To the extent that any standard or provision of MUBEC conflicts with any standard or provisions from the appendix to MUBEC containing optional energy conservation and efficiency requirements, the standard or provision contained in the appendix shall control and be enforced by the building authority, as provided above.

(ed) The NEC shall be enforced by the building authority.

...

Sec. 6-165. Purpose.

The purpose of this article is to establish the energy performance and roofing requirements for constructing and renovating city buildings and certain publicly-funded building projects with the goal of planning, designing, constructing, and managing to maximize energy performance, minimize adverse environmental impacts, provide healthy work places, conserve natural resources, and promote sustainable development in Portland.

...

Sec. 6-166. Definitions.

...

Funded in whole or in part: (a) Receipt of tax increment financing in an amount greater than ~~two hundred~~ fifty thousand dollars (~~\$200,000~~\$50,000); or (b) receipt of grants by the City, HOME loans, Community Development Block Grant loans or Neighborhood Stabilization Program loans, the sum of which is greater than ~~two hundred~~ fifty thousand dollars (~~\$200,000.00~~\$50,000); or receipt of other funds, gifts, resources, property, or other thing or things of value from or by the city of Portland, to promote, allow for, contribute to, or

otherwise facilitate the new construction or renovation project, the aggregate dollar value of which, net remuneration to the city of Portland, is greater than fifty thousand dollars (\$50,000).

Hardship: Some verifiable level of difficulty or adversity arising from factors identified in Sec. 6-170 ~~or other circumstances beyond the control of the applicant~~, by which the applicant cannot reasonably comply with the requirements of this ordinance.

Infeasible: The existence of verifiable obstacles arising from the factors identified in Sec. 6-170 ~~or other circumstances beyond the control of the applicant~~ which render the applicant incapable of complying with the requirements of this ordinance.

Leadership in Energy and Environmental Design (LEED) Standards: A third-party rating system developed by the United States Green Building Council (USGBC) where credits are earned for satisfying specified green building criteria.

Living roof: The media for growing plants, as well as the set of related components installed exterior to a facility's roofing membrane for the purpose of increasing renewable energy resources, aiding stormwater management, and promoting biodiversity. Living roofs may include roof gardens, green roofs, landscaped roofs, and other rooftop areas designed to achieve such purposes.

Qualified professional: A person (a) engaged or employed in fields of architecture, building design, construction, energy efficiency, engineering, or related specialty or consultancy; and (b) holding relevant professional licensure or "green building" professional certification, including but not limited to Professional Engineer licensure, LEED Accredited Professional (AP), Well AP, Certified Passive House Consultant (CPHC) or Certified Passive House Designer (CPHD), Green Globes Professional, or similar credential.

Renovation:

(a) At the time of the application, the total construction cost is greater than or equal to the market value of the property as determined by the city's tax assessor; or

(b) A conversion from non-conditioned to conditioned space; or

(c) An addition of building gross square footage greater than or equal to the gross square footage of the existing building; or

(d) Any change to the use category of a structure or property, as defined in chapter 14 of this code.

Solar zone: An allocated space on a new construction or renovation project that is unshaded and free of obstructions, serving as a suitable place where solar panels can be installed at a future date. The solar zone can be located at any of the following locations:

(a) Roof of the building.

(b) Overhang of the building.

(c) Roof of another structure located within 250 feet of the primary building.

(d) Overhang of another structure within 250 feet of the primary building.

(e) Covered parking installed with the building project.

(f) Other structures including, but not limited to, trellises, arbors, patio covers, carports, gazebos, and similar accessory structures.

...

Sec. 6-167. Standards for new buildings and renovation projects.

All new construction and renovation projects to be owned, or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 2,000 square feet in floor area or greater shall be certified ~~teat~~ at or above the most recently published and applicable LEED Silver Standard using appropriate LEED Rating System, and shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below, ~~particularly those listed below thereof and whole thereof.~~

~~(a) LEED 2009 for Commercial Interiors.~~

~~(b) LEED 2009 for Existing Buildings, Operations, and Maintenance.~~

~~(c) LEED 2009 for Healthcare.~~

~~(d) LEED 2009 for New Construction and Major Renovations.~~

~~(e) LEED 2009 for Schools.~~

All new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of ~~105,000~~ 5,000 square feet in floor area or greater shall demonstrate, under any third-party certification and quality assurance system (e.g. LEED, Passive House, Living Building, or Green Globes) or energy model signed by a licensed engineer or qualified professional, a certain percentage improvement in the proposed energy performance of the building compared to the minimum baseline performance rating per ASHRAE Standard 90.1, being particularly the 2010- most recently published version thereof and the whole thereof, or equivalent standard if the ASHRAE Standard 90.1 is not applicable to the project. Such percentage improvement shall be or exceed thirty percent (30%) for new construction, twenty-five percent (25%) for existing buildings, and twenty percent (20%) for historic buildings. All such new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 5,000 square feet in floor area or greater shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below.

Copies of the most recently published LEED Rating Systems and ASHRAE Standard 90.1 shall be maintained by and kept on file with the City Clerk.

...

Sec. 6-168. Submissions.

Upon submission of an application for a building permit for new construction or renovation projects that are required to meet the standards set forth in section 6-167, the applicant shall also submit the following, as applicable:

(a) One of the following:

_____ 1. A LEED checklist, and a LEED application number (or other proof of LEED applications status); or

_____ 2. ~~(b)~~ A third-party certification system document of verification from a qualified professional; or

_____ 3. ~~(c)~~ A preliminary energy model, along with a statement of certification from a licensed engineer or qualified professional that the project meets the standard(s); and

(bd) A written explanation of how the building will obtain the applicable standards using design plans to demonstrate compliance where applicable (example: LEED submittal templates or Passive House Pre-Certification report); and

(c) Plans and documentation prepared by a qualified professional demonstrating compliance with the Better Roof Requirements contained in Section 6-175 below, including:

1. Documentation of the as-designed structural loads and plans for interconnecting a photovoltaic (PV) system to the electrical system of the building; or

2. Documentation of the as-designed structural loads and layout plans for the Living Roof system of the building.

...

Sec. 6-169. Certificate of Occupancy.

A copy of the final submission of LEED documentation to the USGBC or final LEED certification decision, or a statement of final certification from a licensed engineer or qualified professional indicating that the project meets the standards along with any amendment to the preliminary energy model shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy for new construction or renovation projects that are required to meet the standards set forth in section 6-167. A temporary certificate of occupancy may be issued by the city if necessary prior to the submission of final LEED documentation to the USGBC. Equivalent documentation from a licensed engineer or qualified professional is required if compliance is met with other third-party certification and quality assurance systems.

...

Sec. 6-170. Partial exemption and exceptions.

1. If it is a hardship or infeasible for an applicant to meet the standards set forth in section 6-167, the applicant may request a partial exemption from regulation. The burden is on the applicant to show hardship or infeasibility. Factors to consider in determining whether hardship or infeasibility exists ~~include, but are not~~ shall be limited to:

~~(a) Availability of green building materials and technologies; or~~

(ab) ~~Compatibility~~ A conflict of green building requirements with other government requirements and building standards; or

(be) Required alterations to an historic building that would compromise its historic character as determined by the Historic Preservation Board; or

(cd) Specific circumstances that would defeat the purpose of the standards.

2. Any request for a partial exemption must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. In order for a partial exemption to be granted, the applicant must demonstrate all possible effort to maximize building performance according to the standards set forth in section 6-167 and shall indicate the maximum level of standards which are reasonably achievable for the building as follows:

(a) In the case of a LEED standard requirement, the applicant will list the number of credits reasonably achievable and verified by each applicable licensed professionals or qualified professional.

(b) In the case of ASHRAE 90.1 or equivalent standard requirement, the applicant will document the percentage above the standard that is reasonably achievable with a statement of certification from a licensed engineer.

(c) In the case of other third-party "green building" certification and quality assurance systems (example: Passive House), the applicant will submit project performance documentation meeting or exceeding the standards of the certification system prepared by a qualified professional.

If the partial exemption is granted, the applicant shall be required to comply with this ordinance in all other respects. A copy of the final submission of LEED documentation to the USGBC or a statement of final certification from each applicable licensed professionals or licensed engineer indicating that the project meets the level of standard presented at the time of application along with any amendment shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

3. Any request for an exception to the LEED Certification requirement must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. If an applicant submits standardized third-party certification or

documentation signed by a qualified professional, an exception to the LEED Certification requirement may be granted provided that such third-party certification or documentation demonstrates that it meets or exceeds at least one of the following:

- (a) LEED Platinum Certification by the USGBC; or
- (b) Passive House Certification or EnerPHIT Certification by International Passive House Institute (PHI) or PHIUS+ Certification by the Passive House Institute US (PHIUS); or
- (c) Living Building Challenge or Living Community Challenge, Petal Recognition or Net Zero Energy Certification from International Living Future Institute (IFLI); or
- (d) Well v2 or current most stringent standard by International WELL Being Institute; or
- (e) Green Globes Certification by Green Building Initiative; or
- (f) Other equivalent "green building" standards that include published verification and quality assurance procedures when approved on a case-by-case basis by planning director and sustainability director.

Any applicant granted an exception to the LEED Certification requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to the third-party certifying body (example: DOE, PHIUS, IFLI, or PHI) or qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional, licensed engineer, or third-party certifying body shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

4. Any request for an exception to the Better Roof Requirement under Section 6-175 below must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. An exception to the Better Roof Requirement may be granted provided that an applicant submits certification or documentation signed by a qualified professional demonstrating all possible effort to comply with the Better Roof Requirements contained in Section 6-175, and the applicability of at least one of the following specific reasons for an exception:

(a) A new construction or renovation project other than single-family residential buildings may be granted an exception to the Better Roof Requirement if a solar PV system with a power rating of no less than 1 watt per square foot of roof area is permanently installed at the time of construction.

(b) A single-family residential building may be granted an exception to the Better Roof Requirement if a solar PV system rated at 1000 watts or greater is permanently installed at the time of construction.

(c) A new construction or renovation project may be granted an exception to the Better Roof Requirement if the roof is designed as a helicopter landing zone.

(d) A renovation project may be granted an exception to the Better Roof Requirement unless the total roof area is increased by at least 2,000 square feet over the total roof area of the existing building.

(e) A new construction or renovation project may be granted an exception to the Better Roof Requirement reducing the required total area of solar zone by up to 50 percent if the roof is shaded by objects that are not part of the building and are permanent. These objects shall only be adjacent buildings or trees evaluated as healthy by an arborist and documentation must be submitted by a qualified professional.

(f) If the building has a gross floor area of 2,000 square feet or more, and has 10 or fewer occupied floors, a new construction or renovation project may be granted an exception to the Better Roof Requirement to substitute some or all of the required total area of solar zone with area of living roof, such that each square foot of living roof shall count as 0.5 square foot towards the required total area of solar zone, provided that applicants submit such a living roof design for review and approval upon submission of an application for a building permit.

Any applicant granted an exception to the Better Roof Requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to each applicable qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

5. The director of planning and urban development shall annually, on or before July 1, submit a report to the City Council, containing at a minimum a list of each applicant and project granted a partial exemption or exception under this section during the previous twelve

months, and for each partial exemption or exception granted the reason(s) why it was so was granted.

...

Sec. 6-173. ReservedConditional Expansion of Applicability.

Under the following limited circumstances, Sec. 6-167 and Sec. 6-168 shall apply to all new construction and renovation projects in the City of Portland, regardless of ownership, occupation, or sources of funding:

(a) The Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., is repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding those adopted by the Technical Building Codes and Standards Board pursuant to the Maine Uniform Building and Energy Code; or

(b) The rules, codes, and standards adopted by the Technical Building Codes and Standards Board pursuant the Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., as the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, are repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding such rules, codes, or standards; or

(c) This ordinance, or substantially similar rules, codes, or standards are approved by the Technical Building Codes and Standards Board as amendments to the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, or as amendments to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, after submission of such proposed amendments under Sec. 174 below; or

(d) The application of this ordinance to all new construction and renovation projects in the city of Portland, through the city's home rule authority is otherwise not prohibited or subject to preemption under state law.

Sec. 6-174. ReservedSubmission of Amendments to the MUBEC.

The Sustainability Office, Permitting and Inspections Department, or other appropriate Office or Department of the city of Portland, on behalf of the city of Portland and to address the health, safety, and welfare needs of the inhabitants of the city of Portland, until such amendments are approved and adopted must annually by May 30 submit

proposed amendments to the Maine Uniform Building and Energy Code, or to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, as provided for under 16-642 C.M.R. ch. 1, § 13, and the amendment process created pursuant to that section, that would apply, or allow to be applied, the standards and requirements of this ordinance, or substantially similar rules, codes, or standards, to all new construction and renovation projects in the city of Portland.

Sec. 6-175. ReservedBetter Roof Requirements.

Except as provided under Sec. 6-170 above, to be certified by a qualified professional as compliant with the Better Roof Requirements of this section, a new construction or renovation project must demonstrate all of the following:

(a) The project contains a total area of solar zone that is no less than 15 percent of the total roof area after subtracting any area of the roof that is covered by a skylight; and

(b) The total area of solar zone shall be free from any shading or obstruction such as vents, chimneys, architectural features, or roof-mounted equipment, not including any obstructions located north of all points of the solar zone; and

(c) If the solar zone is located on a roof that has ratio of rise to run of greater than 2:12, then the roof must be oriented between 110 degrees and 270 degrees of true north (not magnetic north), in order to ensure a reasonable solar exposure if a solar energy system is installed in the future; and

(d) The main electrical service shall be provided such that capacity is adequate for future solar electric and such reserved space shall be permanently marked in main electrical service panel "For Future Solar Electric".

The total area of the solar zone may be composed of multiple subareas. No dimension of a subarea can be less than 5 feet. If the total roof area is equal to or less than 10,000 square feet, each subarea must be at least 80 square feet. If the total roof area is greater than 10,000 square feet, each subarea must be at least 160 square feet. The solar zone design must comply with other applicable codes and regulations.

Sec. 6-176. ReservedReporting on Fossil Fuel Infrastructure.

The policy of the city of Portland shall be to endeavor by all reasonable and permissible means to reduce reliance upon fossil fuels, and to reduce and discourage the use of natural gas, heating oil, or other fossil fuel based infrastructure both in new construction and renovation projects, and in existing buildings, including but not limited to such projects and buildings to be owned, occupied, or

funded in whole or in part by the city of Portland. In furtherance of this policy, the city manager, or their designee, shall annually, on or before July 1st, publish and present to the city council a report concerning benefits of such policy, and such annual report will, at a minimum, include:

(a) The total number of new buildings built in Portland without fossil fuel-based infrastructure;

(b) A survey of the green building technologies that have been implemented as alternatives to oil or natural gas power, such as solar roofs, green roofs, or sustainable building design and construction consistent with certifications and guidelines such as LEED, PassiveHouse, Living Building or others;

(c) Assessment of the benefits to the City of Portland of the adoption of this policy, including the impact on carbon emissions and increased energy efficiency of public buildings;

(d) A survey of legislation enacted at the municipal and state level to develop a coordinated regional plan to stop the use of fossil fuels to power buildings;

(e) Proposals for any changes to the city code that might further achieve reduction in use of fossil fuels or fossil fuel-based infrastructure in the city of Portland.

Sec. 6-177. ReservedSeverability.

If any provision of this Article shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

...

3. That Chapter 14, Sections 14-485 and 14-487 of the Portland City Code are hereby amended to read as follows:

Sec. 14-485. Definitions

...

Workforce housing unit for rent means a dwelling unit for which:

- (a) The rent is affordable to a household earning ~~100%~~ 80% or less ~~than~~ of AMI; and*
- (b) The unit is rented to a household earning ~~100%~~ 80% or less of AMI; and*

- (c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale means a dwelling unit for which:

- (a) The purchase price is affordable to a household earning ~~120%~~ 80% or less of AMI; and
- (b) The unit is sold to a household earning ~~120%~~ 80% or less of AMI; and
- (c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

...

Sec. 14-487. Ensuring Workforce Housing.

...

(d) Workforce Housing Minimum. At least ~~ten percent (10%)~~ twenty five percent (25%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The project shall have the option of paying a partial fee-in-lieu as per (e)4 below for any fractional value or providing an additional unit on site.

(e) Standards

...

2. Workforce units must ~~are encouraged to be~~ integrated with the rest of the development, must ~~should~~ use a common entrance and must ~~should~~ provide no indications from common areas that these units are workforce housing units.

...

4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be ~~\$106,000~~ \$150,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.

...

7. The term of affordability for the required ~~10-25~~ percent workforce units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability for Required Workforce Units
--	--

10%	Longest term permitted under federal, state and local laws and ordinances
25%	30 years
50%	20 years
100%	10 years

...

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 33-20/21 Setting a Public Hearing on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Protect Tenants - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 6 of the Portland City Code, An Act to Protect Tenants, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Public Hearing Ballot Question re Protect Tenants 8.3.2020
2. An Act to Protect Tenants

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 6
RE: AN ACT TO PROTECT TENANTS

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 6 called An Act To Protect Tenants shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting, with information to come in the August 31, 2020 City Council agenda.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

PO Box 11345 Portland Maine 04104

Dated at Portland, this 15 day of May 20 20.

✓ Crow Norlander

(Print) Name

64 Mabel St. #2 Portland ME 04103

Address

Signature

✓ Nicholas Pellenz

(Print) Name

215 St John St

Address

Signature

✓ Jai Kang

(Print) Name

45 Rustic Ln.

Address

Signature

✓ Jeanne Heil

(Print) Name

45 Rustic Ln

Address

Signature

✓ Jessica Falero

(Print) Name

9 C st

Address

Signature

✓ Arnon Berger

(Print) Name

11 Grant st #6

Address

Signature

✓ Sydney Avitia-Jacques

(Print) Name

180 State St. #301 Portland 04101

Address

Signature

✓ Grayson Lookner

(Print) Name

1275 Westbrook St. #2

Address

Signature

✓ KRYSTIAN BIGOSINSKI

(Print) Name

73 ALBA ST

Address

Signature

✓ Ann Laguerre

(Print) Name

139 Park St.

Address

Signature

Subscribed and sworn to before me this 14 day of May, 20 20.

Jonathan D Torsch

Signature of Notary Public/Attorney-at-law

8/19/2026

Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH

Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
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- (4) All notices to the Committee are to be sent to DSA the following address:

PO Box 11345 Portland Maine 04104

Dated at Portland, this _____ day of _____ 20____.

Crow Norlander
(Print) Name

64 Mabel St. #2 Portland ME 04103
Address

[Signature]
Signature

Nicholas Pellenz
(Print) Name

215 St John St
Address

[Signature]
Signature

Jai Keng
(Print) Name

45 Rustic Ln.
Address

[Signature]
Signature

Jeanne Heil
(Print) Name

45 Rustic Ln
Address

[Signature]
Signature

Jessica Falero
(Print) Name

9 C st
Address

[Signature]
Signature

Aaron Berger
(Print) Name

11 Grant st #6
Address

[Signature]
Signature

Sydney Avitia-Jacques
(Print) Name

180 State St. #301 Portland ME 04101
Address

[Signature]
Signature

Grayson Lookner
(Print) Name

1275 Westbrook St. #2
Address

[Signature]
Signature

KRYSZIAN BIGOSINSKI
(Print) Name

73 ALGA ST
Address

[Signature]
Signature

Ann Laguerz
(Print) Name

139 Park St.
Address

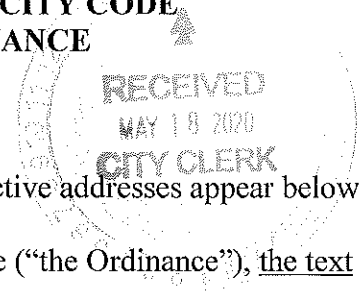
[Signature]
Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH
Printed Name



An Act To Protect Tenants

An Act to Protect Tenants will cap most annual rent increases to the rate of inflation, ban discrimination against tenants with public vouchers, incentivize landlords to provide 90-day notice to tenants they are asking to vacate, and create a tenant/landlord board to permit additional rent increases when individual building circumstances warrant, such as major capital improvements.

1. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 6, Article XII, which said article reads as follows:

ARTICLE XII. RENT CONTROL AND TENANT PROTECTIONS

Sec. 6-230. Purpose.

The purpose of this Article is to address increasing rental costs within the City of Portland; to promote neighborhood and community stability; to protect the City's tenant population; to limit arbitrary evictions; and to stabilize and make more predictable future rent increases, all while remaining in conformance with Maine law, and ensuring that Landlords within the City receive a fair return on investment.

Sec. 6-231. Applicability.

This Article shall apply to Rental Units in the City limits of Portland, exempting the following:

- (a) Rental Units owned, operated, or otherwise managed by municipal housing authorities, as defined in 30-A M.R.S. §4721(1), as amended;
- (b) Accommodations provided in a hospital, convent, church, religious facility, or extended care facility;
- (c) Dormitories owned and operated by an institution of higher education, or by Portland Public Schools;
- (d) Rental Units within a building containing only two (2), three (3) or four (4) dwelling units, one of which the Landlord currently occupies as his or her principal residence;
- (e) Accommodations where the amount of rent charged is either controlled or subsidized by a federal, state, or local governmental agency; and
- (f) Accessory dwelling units, as defined and understood in Chapter 14 of this Portland City Code.

Sec. 6-232. Definitions.

Allowable increase percentage means the amount that the rent of a Covered Unit may be raised within a Rental Year, unless a Landlord is entitled to additional increases as laid out in Section 6-233 below. The allowable increase percentage shall be determined on September 1 of each year beginning on September 1, 2021, and shall be equal to 100 percent of the change in the Consumer Price Index for Greater Boston Metro Area, as published by the United States Bureau of Labor Statistics or its designee.

Base rent means the initial amount of rent that a Landlord charges for a Covered Unit, as more specifically defined in Section 6-233 of this Article.

Banked rent means the Base Rent for a Covered Unit, plus any increase in rent to which the Landlord was entitled under Sections 6-233 and 6-234 below, but that was not charged to a Tenant during a particular Rental Year.

Constructed means a Rental Unit that has received its final certificate of occupancy from the City's Permitting and Inspections Department, or its designee.

Covered unit means a Rental Unit within the City of Portland that does not fall within a category exempted from this Article by Section 6-231.

Current covered unit means a Covered Unit that is occupied by a Tenant on January 1, 2021.

Discontinued covered unit means a Covered Unit that is not occupied on January 1, 2021 and has not been registered with the City of Portland under Section 6-151 of this Chapter.

Landlord means an owner, manager, managing agent, sublessor, or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

Qualified family member means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage, or adoption.

Rent means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in consideration with, the use or occupancy of rental units and housing services. Such consideration includes, but is not limited to, monies and fair value of goods and services rendered to or for the benefit of the

Landlord under the Rental Agreement, or in exchange for a Rental Unit, or housing services of any kind.

Rent board means the set of appointed individuals responsible for the administration of this Article, in accordance with the terms set forth below.

Rent stabilization allowances means collectively the Allowable Increase Percentage, the Tax Rate Rent Adjustment, and any additional rent increase exemptions approved by the Rent Board under Section 6-234 of this Article.

Rent stabilization ordinance means Chapter 6, Article XII of the Code of Ordinances, City of Portland, Maine, as amended.

Rental agreement means a written legal contract between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

Rental unit means any dwelling unit that is rented or otherwise made available for rent for residential use or occupancy, together with all additional rights, privileges, or services connected with use or occupancy of such a unit, including but not limited to vehicle parking spaces, storage, and commons areas and/or recreational facilities held out for use by the Tenant.

Rental year means a period of twelve (12) consecutive months beginning on January 1, 2021, or the date on which a Covered Unit enters the rental housing market, whichever is earlier.

Tax rate rent adjustment means the additional amount by which a Landlord may increase the rent of a Covered Unit within a given year. The Tax Rate Rent Adjustment may be added to the Allowable Increase Percentage if and only if the City changes the mil rate as compared to the previous Rental Year. In this case, the tax rate rental adjustment is equal to the actual increase in property taxes attributable to the individual Covered Unit.

Tenancy means the right or entitlement of a Tenant to use or occupy a rental unit.

Tenant-Based Rental Assistance means any and all forms of tenant-based rental assistance and vouchers, including but not limited to:

- (a) Tenant-based rental assistance through the Section 8 Housing Choice Voucher Program, 42 U.S.C § 1437f (o)
- (b) Tenant-based rental assistance through the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez

- National Affordable Housing Act, as amended, 42 U.S.C § 12701 et seq.;
- (c) Tenant-based rental assistance under the HOD-Veterans Affairs Supportive Housing (HUD-VASH), authorized by § 8 (o) (19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (o) (19);
 - (d) Tenant-based rental assistance through the Shelter Plus Care Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11403-11407b, as amended;
 - (e) Tenant-based rental assistance through the Supportive Housing Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11381-11389, as amended;
 - (f) Tenant-based rental assistance through the Section 8 Disaster Voucher Program (DVP);
 - (g) Tenant-based rental assistance through the Housing Opportunities for Persons with AIDS (HOPWA) Program, 42 U.S.C. § 12901 -12912 as amended;
 - (h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;
 - (i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389;
 - (j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule);
 - (k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011;
 - (l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771;
 - (m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771;
 - (n) Tenant-based rental assistance through the City of Portland's Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;
 - (o) Tenant-based rental assistance through the City of Portland's General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and
 - (p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

Sec. 6-233. Establishment of base rent.

(a) Base Rent for Current Covered Units. Beginning on January 1, 2021, each Covered Unit shall be registered with the City in accordance with Section 6-151(c). Such registration must include proof of the rent charged by the Landlord for each Covered Unit as of June 1, 2020 (i.e., through presentation of a valid Rental Agreement, rent payment receipt, or other acceptable means within the opinion of the City). This amount shall be the Base Rent for purposes of the Rent Stabilization Ordinance.

(b) Base rent for Discontinued Covered Units.

- (i) If a Covered Unit is not registered with the City as of January 1, 2021, but is registered with the City after such date, the Base Rent shall be set by the Landlord.
- (ii) If a Covered Unit is registered with the City as of January 1, 2021, but is removed from the rental housing market, the Base Rent for such a Covered Unit upon reentry to the rental housing market shall be the Banked Rent, as measured from the Rental Year in which the Covered Unit was removed from the rental housing market.
- (iii) If a Covered Unit is registered with the City as of January 1, 2021, but is subsequently removed from the rental housing market for a period of five (5) or more Rental Years, the Base Rent for such a Covered Unit upon reentry into the rental housing market shall be set by the Landlord.

(c) Base rent following renovation or reconfiguration of Covered Units. Upon the renovation or reconfiguration of a Covered Unit, the Landlord may charge no more than the Banked Rent for that unit, or may apply to the Rent Board for determination of the appropriate increase in rent. When determining the appropriate increase in rent, the Rent Board may consider factors including the increase in floor area, the addition or upgrade of amenities, and any other factor determined relevant in the opinion of the Rent Board.

(d) Base rent following consolidation of Covered Units. When two (2) or more Covered Units are consolidated to create a single Covered Unit, the Base Rent for the resulting Covered Unit shall be equal to the Banked Rent of the larger of the two previously-existing Covered Units, increased by a percentage equal to the increase in square footage of the new Covered Unit.

Sec. 6-234. Rent increase limitations.

(a) Beginning on September 1, 2021, and occurring no later than September 1 of each subsequent year, the Housing Safety Office shall establish and publish the Allowable Increase Percentage and the Tax Rate Rent Adjustment for the following calendar year.

(b) A Landlord may only increase the rent charged for a Covered Unit once within a Rental Year, by an amount that conforms to the following specifications:

- (i) Annual Increase Percentage. Unless a Landlord qualifies for an additional increase as further described below, rent for a Covered Unit may not be increased by more than the Allowable Increase Percentage.
- (ii) Tax Rate Rent Adjustment. If the mil rate within the City of Portland is altered for the subsequent fiscal year a Landlord may, in addition to the Allowable Increase Percentage, increase rent by the Tax Rate Rent Adjustment for the subsequent Rental Year.
- (iii) New Tenancy. A landlord may increase the rent on a Covered Unit by five percent (5%) of the base rent in addition to any other allowable increases when a new tenant occupies a unit. This increase may be applied at most once per year, regardless of the number of new tenancies.
- (iv) Banked Rent. If the Landlord has banked additional rent increases, in accordance with Section 6-235 below, this banked amount, in whole or in part, may be added to the increases permitted by subsections (i) and (ii) above.
- (v) Additional Rent Board Approved Increases. In addition to the above rent adjustments, the Rent Board may approve additional rent increases properly demonstrated by the Landlord, attributable to:
 - i. Capital improvement costs, including financing costs;
 - ii. Uninsured repair costs;
 - iii. Increased housing service costs; and
 - iv. Any additional increase, within the opinion of the Rent Board, required to allow the Landlord to receive a fair rate of return.

(c) Under no circumstances may a Landlord raise the rent of a Covered Unit by more than ten (10) percent within a Rental Year. Any rent increases available to a Landlord in excess of ten (10) percent must be banked for use in a subsequent Rental Year.

(d) Before increasing the rent of a Covered Unit, a Landlord must send a signed document to the Tenant(s) no fewer than seventy-five (75) days before the effective date of the rent increase. This document must include the date on which the Tenancy began, the date on which the rent will be increased, and the appropriate justifications for such a rent increase as defined in Section 6-234(b) above. Failure to provide such documentation shall be considered a violation of this Article.

(e) A Tenant who receives notice of a rent increase that they believe does not conform with this Section may file an appeal of said rent increase with the Rent Board. Upon receipt of the appeal, the Rent Board shall schedule a public hearing to be held no more than twenty-one (21) days after the filing of the completed appeal application. At the public hearing, the Board will consider the rent charged under the existing Rental Agreement, the amount of the proposed new rent, and the factors which may or may not allow such an increase in accordance with this Article. Upon consideration of such evidence, the Board will render a decision as to whether the increased rent is allowable. If such an increase is more than is allowed by this Article, the Board may impose such fines as are allowed by this Article.

Sec. 6-235. Process of banking rent increases.

If a Landlord chooses to not impose any rent increases to which they are entitled pursuant to Section 6-234 above, these increases may be banked, in whole or in part. Banked increases may be used to raise the rent of Covered Units in subsequent Rental Years in addition to the Rent Stabilization Allowances established for that year by the Rent Board, provided that the total increase of such rent shall not exceed ten (10) percent within a single Rental Year.

Sec. 6-236. Termination of Tenancies-At-Will

- (1) In order to be terminated by a Landlord, tenancies-at-will must be terminated by providing a minimum of 90 days' written notice to Tenant except as provided below:
 - a. "For Cause" tenancies terminable on 7 days' notice pursuant to 14 M.R.S. § 6002(1) may be terminated in accordance with Section 6002(1);
 - b. Short-term rentals with a term of fewer than 30 days' are exempt from the 90-day notice period outlined herein;
 - c. Holdover tenancies are exempt from the 90 day notice period outlined herein;
 - d. Where a Landlord provides \$500.00 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will

- may be terminated by notice to the Tenant of sixty (60) to eighty-nine (89) days;
- e. Where a Landlord provides \$1000 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of thirty (30) to fifty-nine (59) days.
- (2) Reimbursement amounts outlined in subsections (c) and (d) above are lump-sum amounts payable in a single installment for the collective benefit of all tenants of a unit. Tenants are responsible for allocating the reimbursement amount among themselves.

Sec. 6-237. Discrimination prohibited in sale or rental of housing units.

- (a) A tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.
- (b) A landlord shall not refuse to rent or impose terms of tenancy on any tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.
- (c) It shall be prohibited for a landlord to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any tenant because of the tenant's source of income or because of the requirements of any program providing the source of income;
- (d) It shall be prohibited for or a landlord to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:
1. Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;
 2. Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction.

3. Refusing to complete any necessary paperwork, including but not limited to such documents as the Request for Tenancy Approval form, the Housing Assistance Payments Contract, and the Tenancy Addendum or applicable General Assistance forms; and,
4. Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program.

Sec. 6-238. Notice of ordinance to tenants.

(a) The Planning Department or its designee shall create and make available on the City's publicly accessible web site a plain language document that explains the rights, responsibilities, and protections created by this Ordinance.

(b) The document referenced above shall be provided by Landlords to all Tenants in Covered Units at the commencement of the rental of the Covered Unit and shall be provided again upon any update to the document made by the City.

(c) An acknowledgement of receipt of the document described above must be signed by all Tenants, and a copy of the acknowledgement kept on file by the Landlord for at least three (3) years and made available for inspection at the request of the City of Portland.

(d) Landlords of buildings shall post a copy of the document referenced above in at least one (1) conspicuous common area within the building housing the Covered Units.

Sec. 6-239. Non-waiver of rights.

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage, or induce a Tenant to waive any provision hereof, or right hereby, shall be a violation of this Article. Nothing herein shall be construed to void any term of a Rental Agreement that offers greater rights than those conferred hereby.

Sec. 6-240. Enforcement and remedies.

Any violation of this Article is considered a civil infraction and shall be enforced pursuant to the Portland City Code Chapter 1, §1-15.

Sec. 6-241. Limitation of Liabilities

(a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and

(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

Sec. 6-242. Severability.

The provisions of this Article are severable. If any of its provisions are held invalid by act of a court of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

Sec. 6-243. - Sec. 6-249. Reserved.

2. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 6, Article XIII, which said Article reads as follows:

ARTICLE XIII. RENT BOARD

Sec. 6-250. Creation; composition.

There shall be a Rent Board of seven (7) members. Members of the Rent Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments.

Two (2) members shall be appointed to fill at-large seats, and may reside in any part of the city. The remaining five (5) members shall be comprised of one member from each of the five (5) city council wards. Should the number or location of said city council wards be changed, the districts and number of Rent Board members shall change to mirror such changes.

The City shall take reasonable steps, but is not required, to appoint to the Rent Board with no more than three (3) landlords and at least three (3) tenants.

Sec. 6-251. Appointment; terms.

The members of the Rent Board shall be appointed by the City Council for terms of three (3) years. Such members shall serve until their successors are duly appointed and qualified. Such terms

shall be staggered so that the terms of not more than three (3) members shall expire in any calendar year.

Sec. 6-252. Vacancies.

Permanent vacancies on the Rent Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

Sec. 6-253. Removal of members.

Any member of the Rent Board may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

Sec. 6-254. Compensation.

Members of the Rent Board shall serve without compensation.

Sec. 6-255. Chair and vice-chair.

(a) The members of the Rent Board shall annually elect one (1) of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their number as vice-chair. The chair may administer oaths. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross-examination at hearings.

(b) In the absence of the chair, the vice-chair shall act as chair and shall have all the powers of the chair. The vice-chair shall have such other powers and duties as may from time to time be provided by the rules of the Rent Board.

Sec. 6-256. Staff secretary; minutes, public records.

The Housing Safety Office shall designate a member of its staff to serve as staff secretary of the Rent Board and attend all its proceedings. The staff secretary shall keep the minutes of the proceedings of the Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

Sec. 6-257. Quorum and necessary vote.

As to any matter requiring a hearing, no business shall be transacted by the Rent Board without a quorum, consisting of four (4) members being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned from time to time for a period not exceeding three (3) weeks at any one time. The staff secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

Sec. 6-258. Meetings, hearings, and procedures.

(a) Regular meetings of the Rent Board shall be held at the call of the chair or as provided by the rules of the board. Special meetings shall be called by the chair at the request of any three (3) members of the Board or at the request of the city council. All meetings and hearings of the board shall be open to the public.

(b) The Rent Board shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the staff secretary and with the city clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the board upon good cause being shown.

Sec. 6-259. Public hearings.

Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Rent Board and shall be conducted in accordance with relevant state law, this code, and the rules of the board.

Sec. 6-260. Record and decisions.

(a) The minutes of the staff secretary, and the transcript if one (1) is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Rent Board, and the decision of the Board shall constitute the records.

(b) Every final decision of the Rent Board shall include written findings of fact, and shall specify the reason or reasons for such decision.

(c) The staff secretary shall mail notice of any decision of the Rent Board to the applicant and any designated interested parties within five (5) days of such decision.

Sec. 6-261. Conflicts.

No member of the Rent Board shall participate in the hearing or disposition of any matter in which they have an interest, as defined by 30-A M.R.S.A. § 2604(4), as amended.

Sec. 6-262. Appeals to Superior Court.

An appeal from any final decision of the Rent Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Sec. 6-263. Jurisdiction and authority.

In addition to the jurisdiction conferred on it by other ordinances of the City and in accordance therewith, the Rent Board shall have the following jurisdiction and authority:

(a) To hear, review, and approve or deny Landlord applications for rent increases greater than those allowed by the Rent Stabilization Ordinance;

(b) To hear, review, and approve or deny Landlord applications for increases in Base Rent due to the renovation or reconfiguration of existing Covered Units, as provided for in Section 6-234 above.

(c) To hear, review, and grant or deny appeals from Tenants regarding allegations violations of Maine statute regarding the habitability of residential units.

(d) To hear, review, and approve or deny any requests from Landlords for an extension of time in which to reinstate Tenants temporarily displaced due to the Landlord's performance of necessary capital improvements to the Covered Unit and/or the building in which said unit is housed.

(e) To hear, review, and decide the appropriate outcome of all disputes arising between Landlords and Tenants on matters falling within the scope of Article XII of this Chapter, if both parties consent to such mediation and resolution by submitting the landlord/tenant dispute form, as maintained and edited by the Housing Safety Office, signed by both Landlord and Tenant no later than fourteen (14) days before the date on which such a hearing shall be scheduled.

(f) To impose such fines as are necessary and allowed for violations of the provisions of the Rent Stabilization Ordinance.

(g) To prepare and recommend to the City Council changes and amendments to the City's Rent Stabilization Ordinance.

(h) To prepare an annual report on the state of the City's rental unit availability, which shall be presented to the City Council as part of a regularly-scheduled public hearing. This report shall include a summary of rents within each of the five (5) council wards. Such reporting may or may not be done in conjunction with similar reporting required of the City's Rental Housing Advisory Committee, as established by this Chapter.

(i) To initiate changes and amendments to this Article, as well as to the city's Rent Stabilization Ordinance.

3. That Chapter 6, Section 151, of the Code of Ordinances, City of Portland, Maine, is hereby amended as follows:

Sec. 6-151. Registration required.

...

(c) Additional Information Required for Covered Units. A Covered Unit, as defined by Section 6-232 of this Chapter, shall not be considered registered unless and until the registrant has submitted the following additional information:

1. The current rent charged at the time of registration;
2. The increase in rent (if any) when compared to the previous Rental Year's rent;
3. Whether the increase (if any) is attributable to: (1) the Allowable Increase Percentage and Tax Rate Rent Adjustment, as defined in Section 6-232; or (2) also includes Banked Rent, as defined in Section 6-232;
4. The amount of Banked Rent, if any, accumulated in the previous Rental Year;
5. The amount of security deposits or other payments demanded in addition to rent for each Covered Unit; and
6. The number of bedrooms, number of bathrooms, and the presence or absence of a kitchen from each Covered Unit.

(d) Registration data made available. The City's Permitting and Inspections Department or its designee is required to make anonymized data from the registration of Covered Units available to the Rent Board at the Board's request. Such data shall not include the names, or street and unit numbers of any reported units.

4. That Chapter 6, Section 152, of the Code of Ordinances City of Portland, Maine, is hereby amended as follows:

Sec. 6-152. Registration Fees.

...

(b) Long Term Rental Registration Fee. The registrant of a long term rental shall pay fifty dollars (\$50.00) to the City by January 1st of each year. Regardless of any discount a Landlord may be entitled to under subsection (d) below, thirty dollars (\$30) from each registration fee shall be appropriated to Housing Safety Office to cover the administrative expenses of the Rent Board, including the hiring of additional administrative staff if necessary.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 34-20/21 Setting a Public Hearing on Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Restrict Short Term Rentals in Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 6 of the Portland City Code, An Act to Restrict Short Term Rentals in Portland, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. An act to restrict short term rental
2. Setting Public Hearing Ballot Question re Restrict Short Term Rentals 8.3.2020

Prepared by:

Date: 7/17/2020

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345 Portland, ME 04104

Dated at Portland, this 24th day of May 2020.

✓ Cathleen Cassie
(Print) Name

72 Waterville St Apt 2
Address

Cathleen Cassie
Signature

✓ Clare LaVergne
(Print) Name

42 Vesper St. Apt. 2
Address

Clare LaVergne
Signature

✓ Andrew Cooper
(Print) Name

39 Waterville St
Address

Andrew Cooper
Signature

✓ Sandra Flanagan
(Print) Name

13 Waterville St
Address

Sandra Flanagan
Signature

✓ Denver Whisman
(Print) Name

62 Waterville St #6
Address

Denver Whisman
Signature

✓ KEITH LANE
(Print) Name

73 Waterville St #2
Address

Keith Lane
Signature

✓ Kathryn H Sykes
(Print) Name

73 Alba St.
Address

K.H. Sykes
Signature

✓ KRYSZTIAN BLODINSKI
(Print) Name

73 ALBA ST
Address

Krzysztof Blodinski
Signature

✓ NANCY J. GUIMOND
(Print) Name

13 WATERVILLE ST
Address

Nancy J. Guimond
Signature

✓ Mary K Westcott-Casale
(Print) Name

35 Waterville St
Address

Mary K Westcott-Casale
Signature

Subscribed and sworn to before me this 24th day of May, 2020.

Karen L. Snyder
Signature of Notary Public/Attorney-at-law

7/01/2026
Date Commission Expires/Date Entered the Bar

Karen L. Snyder
Printed Name

An Act To Restrict Short Term Rentals in Portland

An Act to Restrict Short Term Rentals (STRs) in Portland will restrict all mainland STRs to only those that are owner-occupied. It increases the annual fee for all STRs to \$1,000 for mainland and \$400 for island rentals. The initiative also increases penalties for and strengthens enforcement of violations, requires the logging of complaints against STRs, and allows the city to revoke STR licenses for repeated violations.

1. That Chapter 6, Sections 6-150.1, 6-151, 6-152, 6-153, 6-154, 6-156, 6-157 and 6-158 of the Portland City Code are hereby amended to read as follows:

Sec. 6-150.1. Definitions.

...

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island. For the purposes of this ordinance, any short term rental located on any of these islands shall be considered an Island Short Term Rental, and not an Owner-Occupied Short Term Rental.

...

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as all or part of the registrant's ~~his or her~~ primary residence. Accessory dwelling units as defined in Chapter 14 of this Code, are not considered owner-occupied units for purposes of short term rental registration and regulation.

...

~~Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.~~ shall have the same meaning as "Permanent residence" as defined in the Maine Resident Homestead Property Tax Exemption, 36 M.R.S. § 681 et seq.

Registrant shall mean the owner of a rental unit, ~~or a tenant, with permission from the owner,~~ seeking to register a rental unit.

...

~~Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.~~

...

Sec. 6-151. Registration required.

...

(c) *Additional Information Required for Short Term Rentals.* A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec. 6-152, and a registration number has been issued.

In addition to all of the information required in Section 6-151 subsection (b) above, a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee:

1. A short term rental application;

2. Whether the rental unit is owner-occupied or is an island short term rental, ~~tenant-occupied, or non-owner-occupied;~~

...

~~b. For Short Term Rental units that are tenant-occupied, the tenant must provide a notarized primary residence affidavit, and a notarized statement of permission by his/her landlord, both on forms supplied by the City. The tenant must also produce for review one of the following demonstrating residency at the tenant-occupied unit:~~

~~i. Valid driver's license or other state-issued identification;~~

~~ii. Valid motor vehicle registration; or~~

~~iii. Other documentation proving primary residence to the satisfaction of the City's Permitting and Inspections Department.~~

...

Sec. 6-152. Registration Fees.

...

(c) *Short Term Rental Registration Fee Structure.* ~~The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any owner-occupied, tenant-occupied, first, and then fees will be attributed at the higher rate for any non-owner-occupied mainland units.~~

~~Owners and tenants may register more than one owner occupied or tenant occupied unit (bedrooms, separate spaces, etc.) within their primary residence.~~

Owner-Occupied Units, Tenant Occupied Units, Island Short Term Rentals	1st Unit -- \$100 2nd Unit -- \$250 3rd Unit -- \$500 4th Unit -- \$1,000 5th Unit -- \$2,000
Non-Owner-Occupied Mainland Units	1st Unit -- \$200 2nd Unit -- \$500 3rd Unit -- \$1,000 4th Unit -- \$2,000 5th Unit -- \$4,000

1. For any Island Short Term Rental, the registrant shall pay a fee of four hundred dollars (\$400) to the city each year at the time of registration or renewal. Subject to the limitations in Sec. 6-153, below, the registrant may register more than one Island Short Term Rental, but for each additional Island Short Term Rental, the registrant must pay an additional fee of four hundred dollars (\$400).

2. For any Owner-Occupied Mainland Short Term Rental, the registrant shall pay a fee of one thousand dollars (\$1,000) to the city each year at the time of registration or renewal. Subject to the limitations in Sec. 6-153, below, the registrant may register more than one Owner-Occupied Mainland Short Term Rental within their primary residence, including but not limited to additional bedrooms and separate spaces, but for each additional Owner-Occupied Mainland Short Term Rental, the registrant must pay an additional fee of one thousand dollars (\$1,000).

...

Sec. 6-153. Limitations on Short Term Rental Units.

(a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(b) *Limitation on Total Number of Short Term Rentals.* No more than 400 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

Any mainland ~~short-term~~ rental unit in an owner-occupied multi-unit, where the unit is not the primary residence of the owner, shall not be counted considered as an ~~owner-occupied unit~~ for the purposes of this ordinance, nor shall such unit be eligible for short term rental.

(c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* ~~An~~ No individual or entity may ~~only~~ register up to more than five (5) short term rental units in the City, including ~~owner-occupied, non-owner-occupied,~~ and island short term rental units, in any one (1) calendar year. For purposes of this section, short term rental units registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(d) No individual or entity may register a short term rental in ~~any single family home unless it is owner-occupied; tenant-occupied with permission of the owner;~~ or located on an Island.

(e) ~~The number of short term rental units that may be operated in a multi-unit building are as follows:~~

Total # of Units in a Building	# of Short Term Rental Units Allowed in a Building	
	Owner-Occupied	Non-Owner-Occupied
2	1	1
3	2	2
4	3	2
5	4	2
6-9	5	4
10+	5	5

~~1. Tenant-occupied units, where the tenant is the registrant, shall be counted towards these limits.~~

~~2. Owner-occupied units shall be counted towards these limits.~~

~~(f) Notwithstanding the requirements of subsections (c) and (e)~~ Subject to the limitations contained in this section, owners may register up to five (5) owner-occupied units (bedrooms, separate spaces, etc.) within their primary residence, provided that the number of rental units does not exceed the number of bedrooms.

...

Sec. 6-154. Allocation of Short Term Rentals.

(a) ~~Non-owner-occupied mainland short-term rental units, which are limited by section 6-153(b), shall be allocated on a first come, first registered basis. Once the total number of units identified in~~

~~section 6-153(b) has been reached, a waitlist will be formed to help gauge market demand.~~

~~— (b) Notwithstanding~~ Subject to the limitations in section 6-153, current registrations of short term rentals may be renewed each year upon application and payment of the registration fee, so long as the renewal is complete by January 1 of that year.

~~1-~~ (b) Failure to renew by January 1 shall result in the forfeiture of the right to renew the registration, and any subsequent application shall be treated as a new application for registration.

~~— 2. — The renewal date for 2019 only shall be February 1, 2019.~~

(c) No registration under this Article shall be transferrable or assignable.

...

Sec. 6-156. Short Term Rental Violations and Penalties.

Notwithstanding the provisions of sections 6-1, 6-155, or 6-157, short term rentals operating in violation of this article shall also be subject to fines set forth below. For the purposes of this section, each day of operating a short term rental in violation of this article shall constitute a separate violation.

(a) For the violation of operating a short term rental without a valid registration, the violator shall be penalized with a fine of \$1,000 per day for the first offense and an additional fine of \$1,500 per day for each additional offense, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City.

(b) For any other violation of this Article pertaining to a short term rental, notwithstanding an otherwise valid short term rental registration, the violator shall be penalized with a fine of \$1,000 per day for each such violation, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City.

Any such fines may be in addition to any suspension or revocation imposed in accordance with the provisions of section 6-157 of this Article. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees.

Sec. 6-156⁷. Enforcement.

(a) The building authority as defined in section 6-1 or his or her designee is authorized to institute or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) The Permitting and Inspections Department shall decline to grant registration or renewal to any dwelling unit upon failure of the registrant to meet all of the requirements of this chapter.

(d) Complaints.

1. Any member of the public, including persons and organizations, may file complaints regarding any short term rentals operating in violation of this Article with the Permitting and Inspections Department. Public complaints, or copies thereof, regarding any such violation received by any City Department shall immediately be transmitted to and received as filed properly by the Permitting and Inspections Department.

2. The Permitting and Inspections Department shall establish and maintain a log of all complaints received under this subsection for each short-term rental, and shall annually, on or before July 1, publish and present to the City Council a report containing the entire log of complaints from the previous 12 months.

3. The Permitting and Inspections Department shall investigate all complaints as appropriate, and request voluntary correction by the owner and/or registrant responsible for the cause of any substantiated complaint.

4. If the owner and/or registrant fails to remedy the cause for any substantiated complaint within seven days after such a request, the Permitting and Inspections Department shall pursue appropriate enforcement action under this section, including referral to the building authority for enforcement under subsection (a) above.

5. Nothing in this subsection shall be construed to alter, apply to, or restrict the activities, policies, or procedures of the Portland Police Department, nor to prohibit or restrict any otherwise appropriate response by the Portland Police Department or any of its Officers, provided that copies of all complaints received by the Portland Police Department regarding any short term rentals operating in violation of this Article shall be transmitted to the Permitting and Inspections Department as provided in paragraph 1, above.

(e) Any registration under this article may be revoked or suspended for violation of any of the provisions of this Chapter. If a violation is found to exist by the Permitting and Inspections

Department, in addition to the suspension or revocation of the then-current registration, the Permitting and Inspections Department may also prohibit the Owner not only from registering that unit under this Article, but also from registering any other dwelling unit under this Article, for 12 months following the current registration expiration date.

(ef) Any short term rental at a property that is designated by the City as a disorderly house and fails to remedy the disorderly house as required by section 6-202, shall, ~~at the discretion of the City Manager or his or her designee,~~ have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal. Upon the second designation of the short term rental property as a disorderly house, the City shall, ~~at the discretion of the City Manager or his or her designee,~~ prohibit the registered owner from operating the property as a short term rental or post the property against occupancy pursuant to section 6-201.

(eg) Fines ~~may~~ shall be attributed to Property Management firms found operating short term rental units in violation of this article. These fines ~~may~~ shall be in addition to fines levied against owners of property.

(fh) Violations of the provisions of this article shall be grounds to deny an application or renewal application for a short term rental registration.

...

Sec. 6-1578. Revenue Allocation.

...

~~Sec. 6-158. Reserved.~~

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 6
RE: AN ACT TO RESTRICT SHORT TERM RENTALS IN PORTLAND**

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 6 called An Act To Restrict Short Term Rentals in Portland shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting, with information to come in the August 31, 2020 City Council agenda.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 35-20/21 Setting Public Hearing on Citizen Initiative Amendment to the Portland City Code Chapter 35 Re: No Cannabis Cap Campaign - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This orders set the public hearing on a Citizen Initiative Amendment to Chapter 35 of the Portland City Code, called No Cannabis Cap Campaign, during the August 31, 2020 Special Remote City Council Zoom meeting, at 5:30 p.m., or as soon as possible after that time, with the hyperlink to come in that City Council agenda.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Public Hearing Ballot Question re No Cannabis Cap Campaign 8.3.2020
2. Cannabis Campaign

Prepared by:

Date: 7/17/2020

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

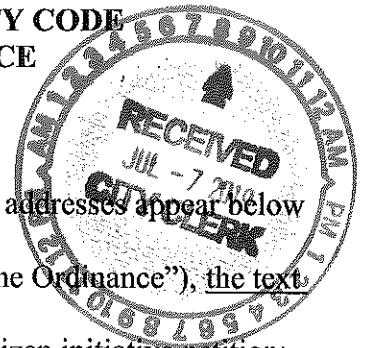
CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SETTING A PUBLIC HEARING ON A CITIZEN INITIATIVE
AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 35
RE: NO CANNIBIS CAP CAMPAIGN

ORDERED, that a public hearing regarding an amendment to the Portland City Code Chapter 35 called No Cannabis Cap Campaign in Portland shall be held by the City Council on August 31, 2020, at 5:30 p.m., or as soon as possible after said time, during its remote Zoom meeting, with information to come in the August 31, 2020 City Council agenda.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**



The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to David Boyer the following address:

476 Saint John St Portland ME 04103

Dated at Portland, this 7 day of July 2020.

✓ David Boyer
(Print) Name

476 Saint John St
Address

[Signature]
Signature

✓ Sara M McKee
(Print) Name

476 Saint John Street
Address

[Signature]
Signature

✓ Mark N Dion
(Print) Name

45 Ellison Ave
Address

[Signature]
Signature

✓ Diane Russell
(Print) Name

32 Grant ST
Address

[Signature]
Signature

✓ Bob Montzinger
(Print) Name

23 Cypress St.
Address

[Signature]
Signature

✓ Shaun Bowen
(Print) Name

250 Burnside Ave
Address

[Signature]
Signature

✓ Elizabeth Boyson
(Print) Name

27 Clifton St.
Address

[Signature]
Signature

✓ Raige Clifton
(Print) Name

228 Brighton Ave.
Address

[Signature]
Signature

✓ Garin Baner
(Print) Name

22 Fleetwood St.
Address

[Signature]
Signature

✓ IAN MARQUIS
(Print) Name

480 SAINT JOHN ST.
Address

[Signature]
Signature

Subscribed and sworn to before me this 7th day of JULY, 20 20.

[Signature]
Signature of Notary Public/Attorney-at-law

07-23-2021
Date Commission Expires/Date Entered the Bar

DEBRA L. RANCOURT
Notary Public, Maine

My Commission Expires:

Printed Name

EXHIBIT A:

City of Portland
Citizen Initiative to Chapter 35 the Portland City Code
re: No Cannabis Cap Campaign

1. That Section 35-14(f) of Chapter 35 of the Portland City Code is amended to read as follows:

35-14. Licensing Procedure.

Retail licenses shall be considered as follows:

...

(f)(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' 100' dispersal requirement, ~~the cap imposed by~~ ~~Sec. 35-43~~, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

2. That Section 35-43(h) of Chapter 35 of the Portland City Code is amended to read as follows:

35-43. Additional Retail Store and Dispensary Requirements.

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

...

h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' 100' 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 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. that qualifies pursuant to Sec. 35-43(i)(1).

3. That Section 35-43(i) of Chapter 35 of the Portland City Code is hereby repealed.

SUMMARY

This initiative proposes to modify Chapter 35 of the Portland City Code, Governing the Regulation of Marijuana Businesses, in two ways: (1) a reduction from 250' to 100' in the required distance between marijuana retail facilities and dispensaries; and (2) removing the cap on the number of marijuana retail stores and dispensaries in the City.

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: July 23, 2020

SUBJECT: **Order 36-20/21 Approving the Ninth Amendment to the 52 Hanover Street Purchase and Sale Agreement - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair; meeting held July 21, 2020, and the vote was unanimous (4-0) for approval.

(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 8/3/2020

Final Action 8/3/2020

Can action be taken at a later date: Yes If action needs to be taken at a later date, it is requested that it be no later than the August 31, 2020, meeting.

PRESENTATION: Greg Mitchell/5 Minutes

I. SUMMARY

Amendments to the 44/52 Hanover Street Purchase and Sale Agreement post-closing obligations are proposed to substitute construction of upwards of 171 residential rental units, with 8,000 square feet of commercial retail space, in place of redeveloping 18,000 square feet of warehouse space into maker units.

II. AGENDA DESCRIPTION

On July 21, 2020, the Council's Economic Development Committee reviewed this proposed Ninth Amendment, held a public hearing, and voted unanimously (4-0) to forward this to the City Council with a recommendation of approval.

Thomas E. Watson, now manager of 52 Hanover LLC, was selected through a public bid process to redevelop two properties located at 44/52 and 82 Hanover Street properties, the latter of which is complete and fully leased.

44/52 Hanover Street Purchase and Sale Agreement. A condition of the 44/52 Hanover Street Purchase and Sale Agreement included the requirement to redevelop the existing 18,000 square foot former Public Works Fleet Services Metal Building into maker space. See the attached Purchase and Sale Agreement.

Mr. Watson's Proposal is to demolish the existing Fleet Services Building to construct upwards of 171 residential apartments with 8,000 square feet of commercial retail space with courtyards. This proposal does not require a rezoning nor requests any City financial investment through the City Housing Trust Fund or TIF CEA financial assistance. Attached is Mr. Watson's Proposal entitled "52 Hanover, LLC, Port Property Management, Executive Summary".

Please find the attached proposed Ninth Amendment to the 44/52 Hanover Street Purchase and Sale Agreement to support the proposed Purchase and Sale Agreement Amendments, which includes a condition to construct the required number of Inclusionary Zoning units in the proposed project, rather than pay the fee in lieu.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Mr. Watson was selected through a public bid process to redevelop two properties located at 44/52 and 82 Hanover Street properties.

82 Hanover Street Purchase and Sale Agreement. Redevelopment of 82 Hanover Street is complete and fully leased.

Redevelopment of 104 Grant Street, a condition of 82 Hanover Street Purchase and Sale Agreement, requires redevelopment into 23 residential units. This Project has received Planning Board approval, and, on July 13, 2020, the City Council approved establishing an Affordable Housing Tax Increment Financing (TIF) District and accompanying Credit Enhancement Agreement (CEA) to support the 104 Grant Street Housing Project.

44/52 Hanover Street Purchase and Sale Agreement. A condition of the 44/52 Hanover Street Purchase and Sale Agreement included the requirement to redevelop the existing 18,000 square foot former Public Works Fleet Services Metal Building into maker space. See attached Purchase and Sale Agreement.

Mr. Watson's Proposal is to demolish the existing Fleet Services Building to construct upwards of 171 residential apartments with 8,000 square feet of commercial retail space with courtyards. I note that Mr. Watson's proposal does not require a rezoning nor requests any City financial investment through the City Housing Trust Fund or TIF CEA financial assistance. Attached is Mr. Watson's Proposal entitled "52 Hanover, LLC, Port Property Management, Executive Summary".

The EDC reviewed this proposal at their June 16, 2020 meeting and directed staff to seek Housing Committee input. The Housing Committee reviewed this proposal at their July 8, 2020 meeting. The Housing Committee supports moving ahead with this proposal, provided the required number of Inclusionary Zoning units are included in the proposed project. The Economic Development Committee then reviewed the Ninth Amendment at its July 23, 2020, meeting and voted unanimously (4-0) it be forwarded to the City Council for approval.

Eight amendments, following the City Council approval of the original Purchase and Sale Agreement, were needed to address a pedestrian public access easement requirement, along with extending project due diligence and financing timeframes. Mr. Watson acquired this property on December 13, 2018. Also, an Escrow Agreement, in the amount of \$50,000, has been maintained since the property closing to ensure developer project performance.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

City Council Goal is to "Increase access to rental and home ownership that is safe, affordable and accessible."

V. FINANCIAL IMPACT

There is no direct financial impact associated with City Council action on Proposed Amendments to the 44/52 Hanover Street Purchase and Sale Agreement. The Proposed Project will contribute one hundred percent of the site municipal property taxes currently captured in the Bayside TIF District.

VI. STAFF ANALYSIS AND BACKGROUND

City staff reviewed Mr. Watson's proposal and are in agreement with the residential density analysis. It is noted that the proposed mixed-use project will require Planning Board site plan approval.

VII. RECOMMENDATION

At its July 23, 2020, meeting, the Economic Development Committee reviewed this proposed Ninth Amendment, held a public hearing, and voted unanimously (4-0) to forward this to the City Council for approval.

VIII. LIST ATTACHMENTS

1. Ninth Amend P&S 52 Hanover Street 8.3.2020
2. Fully Executed PSA 44 Hanover St ao 5-14-2018
3. Ninth Amendment to PSA - 52 Hanover clean for EDC 071620 (1)
4. 1st thru 8th PSA Executed Amendments
5. 52 Hanover LLC 5-22-20 Summary

Prepared by:

Greg Mitchell, Director

Date: 7/23/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING THE NINTH AMENDMENT TO THE 52 HANOVER STREET
PURCHASE AND SALE AGREEMENT**

ORDERED, that the attached Ninth Amendment to the Purchase and Sale Agreement for 52 Hanover Street between the City of Portland and 52 Hanover, LLC, is hereby approved, substantially in the form attached hereto; and

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

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 14th day of May, 2018 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter, collectively, referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of certain land and buildings located at or near 44 Hanover Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 44 Hanover Street, Portland, Maine. This Agreement shall become effective after the City Council of the City approves it and after both Buyer and Seller have signed this Agreement. The date that the last of Buyer or City sign this Agreement shall be the effective date (the "Effective Date"), and the last signor shall insert that date in the first paragraph of this Agreement as the Effective Date. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date (all as defined hereafter) shall be computed from the Effective Date.
2. **CONSIDERATION.** The purchase price for the Premises shall be One Million Two Hundred Seventy-Five Thousand Dollars (\$1,275,00.00) (the "Purchase Price"), subject to the following cost adjustments and conditions:
 - a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

- b. The parties agree that the City will continue to occupy and lease the Premises from Buyer after Closing (as defined herein) until at least March 31, 2019 by entering into a lease agreement with Buyer or Buyer's successor or assigns, as Buyer shall elect, in substantially the form attached hereto as Exhibit C (the "Lease"); provided, however, that the City shall have the right to continue to occupy the Premises until September 30, 2019. The City hereby agrees to notify Buyer in writing on or before the date that is sixty (60) days after the Effective Date if it intends to occupy the Premises beyond March 31, 2019 or the City shall be limited to a lease ending on March 31, 2019 unless Buyer and City shall otherwise agree.

At Closing, Buyer shall receive a credit against (that is, a reduction of) the Purchase Price in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per month for the number of months remaining between the Closing Date and the end of the term of the Lease, which shall be no earlier than March 31, 2019 (the "Rent Credit"). If the first month which the City will occupy the Premises after Closing is less than a full month, the Rent Credit for that month shall be prorated. The Rent Credit shall serve as City's nonrefundable advance payment of rent for the Lease of the Premises to the City by the Buyer or the Buyer's successor or assigns, as Buyer shall elect. At Closing, the parties shall execute a Lease in substantially the form attached hereto as Exhibit C. Regardless of the length of the term of the Lease or the date that the City vacates the Premises, in no event shall the Rent Credit be less than \$75,000.00.

- c. The Buyer shall pay the remainder of the Purchase Price to the City after the Purchase Price is reduced by the full amount of the Rent Credit. Such payment shall be made by wire transfer (or as otherwise reasonably requested by the City) at Closing.

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the later of July 23, 2018 or the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at

least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close using a description to which the City will agree.

- c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is fifteen (15) days after the expiration of the Due Diligence Period (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the date which is thirty (30) days after the expiration date of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.
- d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or the cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing, or utility easements discovered by Buyer, after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period,

the Due Diligence Period will be extended (without the need for further action by the parties hereto) to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts

the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

- f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

3.1 TITLE DOCUMENTATION:

The City agrees to reasonably cooperate with Buyer's requests for documentation related to the title of the Premises or any tax taking of the Premises.

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments as Buyer shall deem appropriate or desirable, and (iii) do such other things as Buyer determines, in its sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections and other due diligence be acceptable to Buyer in its sole discretion. If the results of such Inspections or other due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects

to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

- 5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter except as provided in this Agreement and in the Lease. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. In the event that the Parties agree to not execute the Lease and the City does not continue to occupy the Property after the Closing Date, any utilities for the Property shall be prorated as of the Closing Date. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
- 6. DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as liquidated damages as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like. Buyer at all times may elect in substitution for any other remedies available under this Agreement, as its sole remedy, the right to a return of its deposit.
- 7. RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.
- 8. PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and

obligation contained herein except as set forth in the Lease, if executed by the parties, and except as otherwise expressly set forth herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

Notwithstanding the foregoing, during the longer of the Lease term or the period in which the City occupies the Premises, the City shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations.

10. CONDITIONS PRECEDENT TO CLOSING. It is a condition precedent to Closing that:

- a. The City shall obtain subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree in writing, such subdivision approval is not required (hereinafter the "Subdivision Approval").
- b. In the event the City is unable to obtain the Subdivision Approval prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the approvals to be obtained or (2) elect to terminate this Agreement prior to the later of the scheduled Closing Date or the expiration date of any extension period based on an extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to make reasonable efforts to pursue the Subdivision Approval.
- c. If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to

extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:

- a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, insurable title to the Premises at standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the balance of the Purchase Price, subject to any adjustments set forth in section 2 of this Agreement, including, without limitation, reduction by the Rent Credit, to the City by wire transfer (or as otherwise reasonably requested by the City); and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance at standard rates in form reasonably acceptable to Buyer and to Buyer's lender.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.
- e. City shall deliver to Buyer a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute this Agreement, the deed, the Lease, and any other documents necessary to effectuate the intent and purpose of this Agreement.
- f. Except as otherwise provided in section 2(b), the parties shall execute the Lease.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

- a. Buyer agrees at Closing (and only upon Closing) to deposit \$50,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.
- b. Buyer agrees to commence development of a project at the Premises in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on or about July 19, 2017 (the "Project"), within one (1) year after the later of the end of the term of the Lease or the last date of the City's occupancy of the Premises (the later of the two such dates hereinafter is referred to as the "City's End Date"). The Project shall be deemed to be "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" if it proposes to include (or is constructed to include): (i) multiple separate spaces, which may have separate or shared access to the street; (ii) one large central space of a size and for a use to be determined; and (iii) an emphasis on rental affordability. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval, and the Project, if otherwise "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City's approval of such changes.
- c. Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Project within one (1) year after the City's End Date.
- d. If Buyer does not submit an Application for the Project (which Application may include modifications as described above) within one (1) year of the City's End Date, then \$10,000.00 shall be released from escrow to the City's Housing Trust Fund, and until an Application has been filed, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.
- e. Within thirty (30) days after the submission of an Application for the Project, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall

not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that a Closing on the sale of the Premises to Buyer under this Agreement takes place and Buyer fails to submit any Application for the Project within the later of 5 years from the Closing Date or 4 years after the City's End Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

- f. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Project, that the Project will be undertaken by a different Limited Liability Company ("LLC") to be formed, or corporation to be formed, which will be an assignee of Buyer, and the City hereby consents to the same and consents to Buyer's assignment of its rights and obligations under this Agreement to any such LLC or corporation, provided that Thomas Watson will be a manager or co-manager of any such LLC and President or Vice President of any such corporation.
- g. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

17. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be

invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City Manager
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Mr. Thomas Watson
Tom Watson & Co., LLC
104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, if applicable, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above

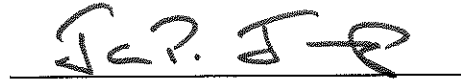
are incorporated herein by reference and made a part of this Agreement.

23. EXTENSIONS: Wherever this Agreement provides that a deadline will be extended, including without limitation any extension(s) which may be elected by Buyer or City as well as any extensions based upon the occurrence or non-occurrence of any event (such as, for example, the delivery of a survey or Phase II environmental report), then any such extension will be deemed to have automatically occurred, without the need for any additional action by Buyer or City.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

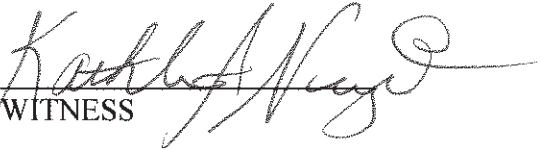

WITNESS


Jon P. Jennings
Its City Manager
Dated: May 14, 2018

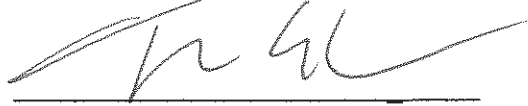
Approved as to Form:


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

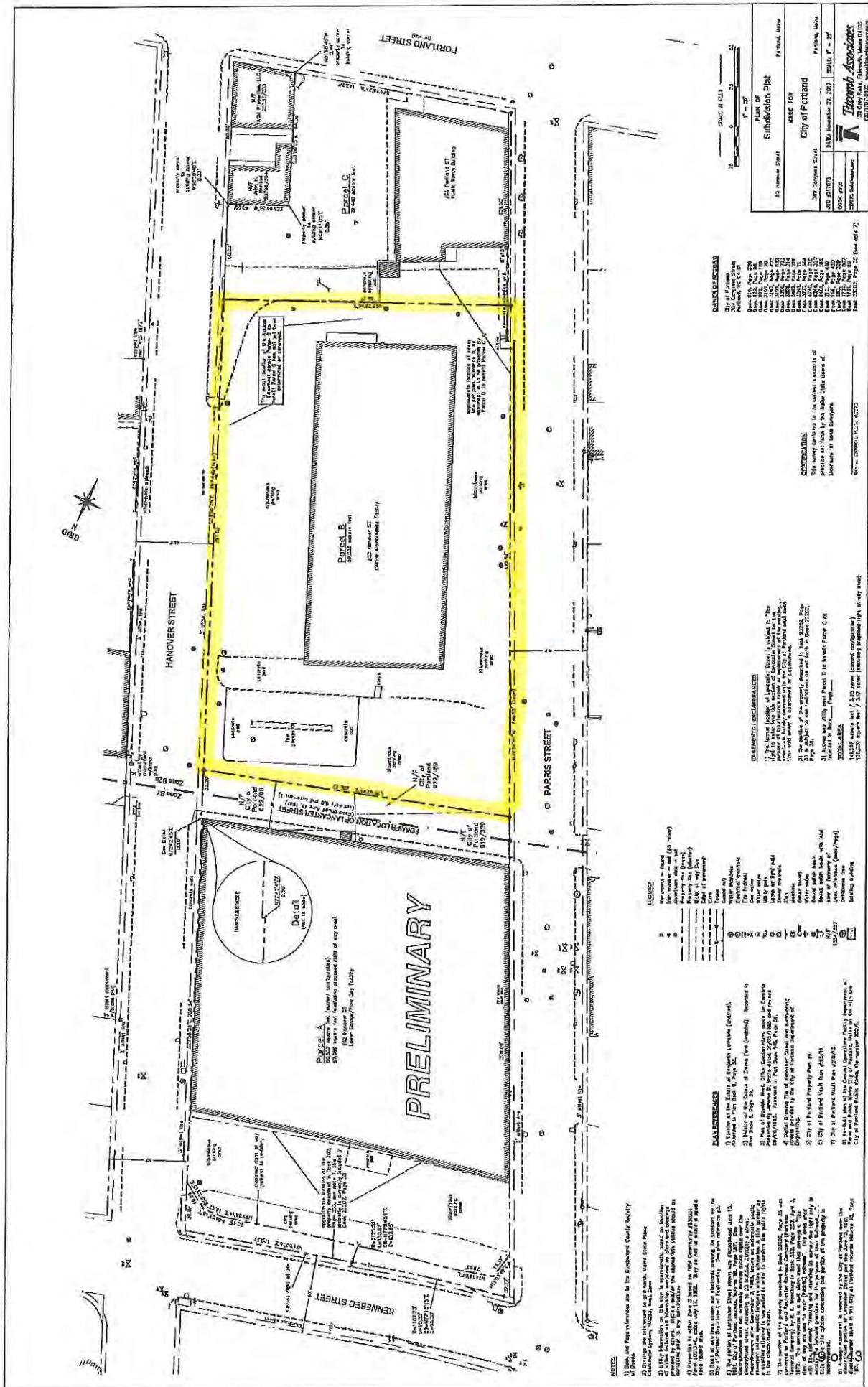
TOM WATSON & CO., LLC



Thomas E. Watson

Its Manager

Dated: 5.14.2018



DESCRIPTION OF INTENDED USE

EXHIBIT B TO PSA

82 Hanover

- o Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- o Bring in retailers/partners who will contribute to the community as well as the economy
- o Open spaces/commons available for public use
- o Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- o Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- o 16 separate spaces all with autonomous access to the street.
- o One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- o Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- o Affordable/accessible to the creative community at under \$1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- o Commons/courtyard space open to public for public use
- o Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
 - Display and value public art and communal aesthetic enhancements
 - Cobble stone street
 - Trees/landscaping
 - Fountain/water wall

56 Parris Street

- o 23 2 BR 2 Bath units
 - Unique product to Portland
 - Create product for families (2 bathrooms) or multiple roommates (making it affordable)
 - At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

EXHIBIT B

BAYSIDE RFP - 44 HANOVER ST. -Rendering
PORTLAND, MAINE

MAY 15, 2017



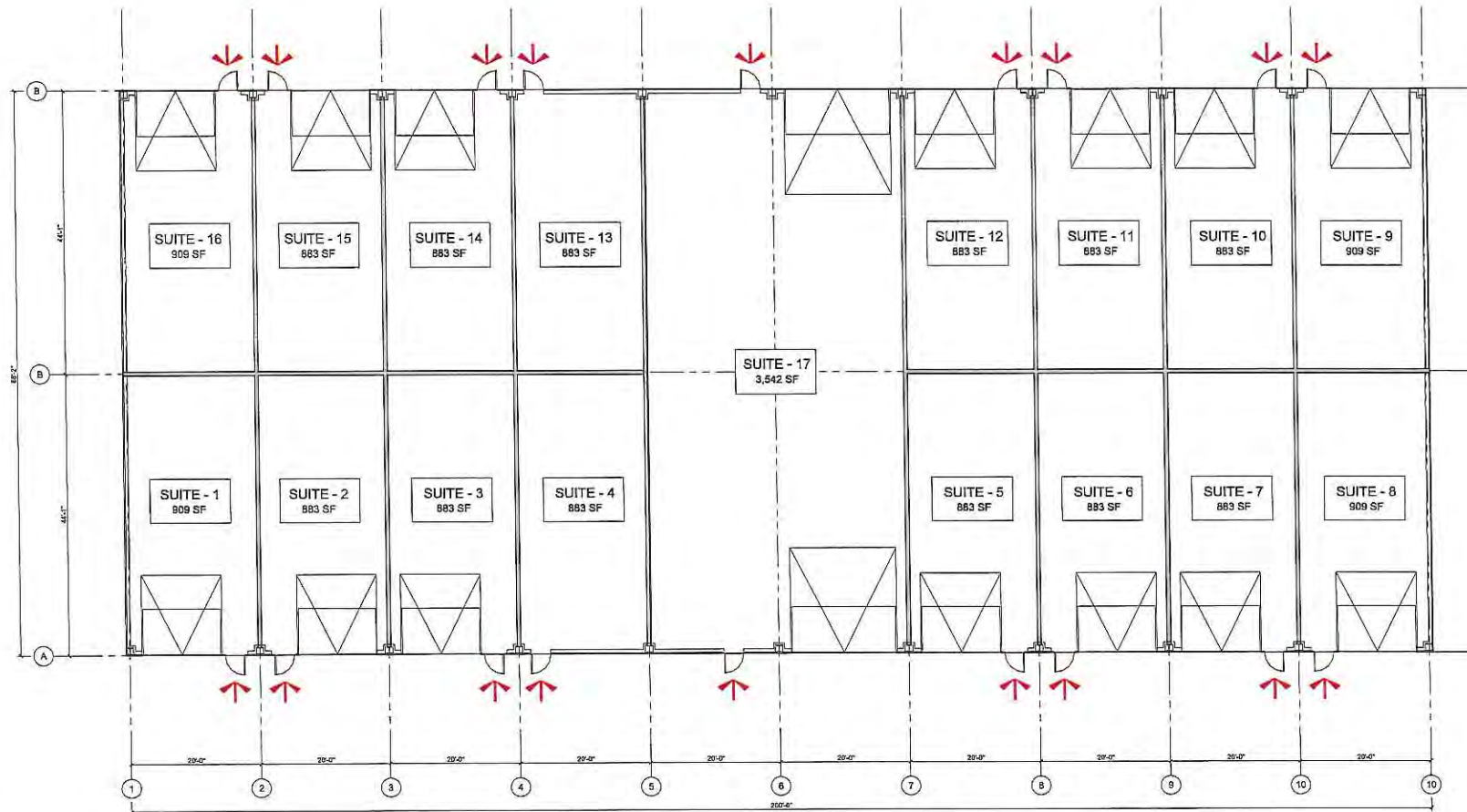
1 VIEW LOOKING SOUTH-EAST ON PARRIS STREET
R/S

PortProperty
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

PROCESS PRINT ONLY
Not for Construction

MAY 15, 2017



BUILDING AREA	
FIRST FLOOR AREA	
SUITE - 1	809 SF
SUITE - 2	883 SF
SUITE - 3	883 SF
SUITE - 4	801 SF
SUITE - 5	861 SF
SUITE - 6	863 SF
SUITE - 7	863 SF
SUITE - 8	909 SF
SUITE - 9	1229 SF
SUITE - 10	863 SF
SUITE - 11	1663 SF
SUITE - 12	883 SF
SUITE - 13	883 SF
SUITE - 14	863 SF
SUITE - 15	883 SF
SUITE - 16	909 SF
SUITE - 17	3,542 SF
BUILDING TOTAL = 37,774 SF	
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	

1 FIRST FLOOR CONCEPT PLAN
1/8" = 1'-0"



0 4' 8' 16' 32'

PROGRESS PRINT ONLY
Not for Construction

Port Property

MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

EXHIBIT C
LEASE AGREEMENT

This Lease Agreement, is made as of the _____ day of _____, 2018, by and between _____ with a mailing address of 104 Grant Street, Portland, Maine 04101 (hereinafter referred to as "Landlord") and the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as "Tenant").

WHEREAS, Tenant has recently conveyed to Landlord certain property located at or about 44 Hanover Portland Street in Portland, Maine and wishes to continue to occupy and use such property; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property and has full power and authority to enter into this Agreement in respect thereto, and is willing to have Tenant occupy and use the 44 Hanover Street property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby mutually agree as follows:

1. Premises.

Tenant, as of the date of this Lease, exclusively occupies certain land and a building or buildings located at or about 44 Hanover Street, Portland, Maine (hereinafter the "Building") (the land and Building are referred to herein as the "Premises") as generally depicted on the plan attached hereto as Exhibit A. Landlord does hereby agree to lease, demise, and let the Premises unto Tenant, subject to the access and parking easement benefitting the owner of the property located at 55 Portland Street (the "Access Easement"), which easement is depicted on Exhibit A. Tenant shall have no authority to modify or make any substantial changes (whether cosmetic, structural or otherwise) to the Premises without the prior written consent of Landlord.

2. Term.

The initial term of this Lease shall commence _____, 2018 (the "Effective Date") and terminate _____, 2019 (the "Initial Term"), unless earlier terminated as provided herein, or extended as provided herein. The Initial Term together with any Renewal Term (as defined herein) are referred to collectively hereinafter as the "Term."

In the event Tenant shall continue in occupancy of the Premises after the expiration of the Initial Term or any Renewal Term (as defined herein), such occupancy shall not be deemed to extend or renew the terms of this Lease, but occupancy shall, at the option of the Landlord, continue as a tenancy at will from month to month upon covenants, provisions, and conditions herein contained, and at the rent in effect prior to the expiration of the Initial Term or Renewal Term (as

defined herein) whichever last occurred, increased by twenty five (25%) percent, prorated and payable month to month on the first day of each month for the period of such hold-over occupancy. This paragraph shall not be deemed or construed as giving the Tenant any right to hold over after the expiration of the Initial Term or any Renewal Term thereof.

2.1. Renewal.

Upon expiration of the Initial Term, at the request of the Tenant, the Term of this Lease may be renewed for one (1) three (3) month extension (which such extension hereinafter will be referred to as the "Renewal Term") subject to and conditioned upon Landlord's written consent, and provided that the Tenant is not in default of the terms of this Lease prior to the expiration of the Initial Term and provided that Tenant gives Landlord at least three (3) months' notice in writing of its request for a Renewal Term. Landlord's consent shall not be unreasonably withheld, delayed, or conditioned.

The Renewal Term shall commence the day following the expiration of the Initial Term of the Lease. If the Tenant exercises its option to renew Tenant agrees to pay to Landlord, or its designee, rent on the terms described in Paragraph 4 below at the new rental rate for the Renewal Term as set forth in Paragraph 4.

Tenant shall be responsible for all costs and expenses relating to the Premises during the entire period in which the Tenant occupies any part of the Premises (hereinafter the "Occupancy Period") including, without limitation, for the entire Term of this Lease (and any Renewal Term if applicable), all costs and expenses with respect to utilities as set forth in this Lease Agreement.

3. Permitted Uses.

The Premises may be used by Tenant for the current use of the Premises and for any other similar, lawful purposes. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any applicable laws, ordinances or regulations of any municipal, State or other governmental authority.

4. Rent.

a. Rent Paid in Advance at Closing. The rent for the lease to the Tenant for the Initial Term shall be in the amount of _____ Dollars (\$_____.00). As stated in the related Purchase and Sale Agreement dated on or about _____, 2018 between the City of Portland, Maine and Landlord (the "Purchase and Sale Agreement") with respect to the Premises, the full Rent Credit (as that term is defined in the Purchase and Sale Agreement) for the Initial Term is to be paid at the closing by the City of Portland, Maine as seller upon Landlord's purchase of the Premises (the "Closing"), granting a credit to Buyer in the full amount of said Rent Credit against and reducing the purchase price for the Premises by that amount. Landlord, by its initials here: _____ acknowledges receipt of the Rent Credit in the amount of \$_____. Tenant agrees that the agreement to pay rent in advance is a substantial inducement for Landlord to purchase the Premises at the purchase price set forth in the Purchase and Sale Agreement, and

accordingly, all of the rent paid and credited at Closing, including, without limitation, the Rent Credit, shall be non-refundable.

b. Rent During Renewal Term. If there is a Renewal Term of this Lease, the rent during the Renewal Term of this Lease shall be in the amount of the greater of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) per month or the then market rate of rent for the Premises, as determined by an independent commercial real estate agent or appraiser chosen by the Landlord, from three qualified agents or appraisers with at least ten (10) years' experience in the profession proposed by the Tenant, at least two months prior to the date when this Lease would terminate if not renewed. If none of the agents or appraisers proposed by Tenant are acceptable to Landlord, Landlord may request an appraisal from Landlord's agent which shall be averaged with one from an agent or appraiser selected by Tenant from the three proposed by Tenant to determine the then market rental rate.

c. Renewal Term Rent Payments; When Due. Rent during the Renewal Term (and rent for any time period for which rent is not fully paid in advance at the Closing on the sale of the Premises) shall be payable in advance the first day of each and every calendar month during such Renewal Term (and any other applicable period during which rent is due) and rent payments shall be made to the Landlord's manager, Port Property Management, 104 Grant Street, Portland, ME 04101 or such other address as Landlord shall in writing direct. Any rent payment received by the Landlord after the 7th of the applicable month shall be subject to a 5% late fee.

d. Additional Rent. Tenant shall also pay as additional rent all expenses and costs relating to the Premises, including, without limitation, all taxes, utilities and insurance, and including, without limitation, those set forth in Paragraphs 5, 6, 7, 8, 10 and 10.1 of this Lease.

5. Taxes and Utilities.

a. Taxes. The Tenant shall be responsible for timely payment of all taxes of any kind due to the City of Portland, Maine as well as any other fees due to the City of Portland, Maine, including, without limitation, all municipal real property taxes on or assessed against the Premises during the Term of the Lease. Tenant shall also be responsible for timely payment of all personal property taxes with respect to all personal property on or about the Premises. In the event the Premises are determined to be tax exempt, either wholly or partially, Tenant shall be required to pay any and all amounts due to the City of Portland, Maine in lieu of or as a replacement for real and personal property tax payments, including, without limitation, all amounts specified in Paragraph 3(f) of the Purchase and Sale Agreement. Upon receipt of a tax bill from the City of Portland, Landlord shall notify Tenant of the amount due and Tenant shall pay said amount within 30 days of receipt of such notice. In the event that the Term of the Lease is due to expire prior to the end of the six month tax period that is the subject of such a tax bill, the amount Tenant is required to pay shall be prorated accordingly.

b. Utilities. Tenant shall also be responsible for paying all the costs of all utilities servicing the Premises during the Initial Term of this Lease and any Renewal Term, including but not limited to electrical, gas, water, sewer, heat and air conditioning (together with all other HVAC expenses), internet, cable and telephone. Tenant shall also be responsible for payment of all

stormwater fees and stormwater service charges due to the Portland Water District or City of Portland, as well as any other assessments or fees against the Premises by the City of Portland, Maine or the Portland Water District. Landlord is not responsible for payment of any such assessments or fees, nor for providing heat nor any other utilities to the Premises, nor for paying the costs of any such utilities, all of which are Tenant's sole responsibility.

6. Tenant to Plow and Remove Snow.

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow and ice from the Premises in accordance with applicable City ordinances. Landlord shall have no obligation to remove snow or ice from the Premises.

7. Tenant to Remove Trash and Debris; Maintenance.

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises in the same condition and repair as it is in as of the Effective Date, except only for reasonable wear and tear, and shall remove from the Premises all trash and debris which it shall create, which is located upon the Premises or which is otherwise attributable to Tenant. Tenant shall not do anything to cause nor permit the Premises nor the activities therein or thereon to violate any municipal, county, state or federal law, ordinance or requirement, and shall promptly act upon direction of any officer of competent authority.

8. Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

a. Maintenance and Repair. Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present "AS IS" condition as of the Effective Date. During the Term of the Lease, Tenant shall, at its sole expense, maintain and make any reasonably necessary repairs to the Premises at its sole expense.

b. Capital Repairs. Tenant hereby warrants and represents that it has inspected the Premises and that it knows of no capital repairs that are presently necessary. The term "Capital Repair" is agreed to mean the repair or replacement of a major component or structural part of the Premises and shall also include the rebuilding of a major component or structural part of the Premises after the end of its useful life. Based on the information acquired in its inspection, together with its historic use of the Premises, Tenant represents that it has no actual knowledge that any Capital Repairs will be required during the Initial Term or if the Lease is renewed, during any Renewal Term. In the event any Capital Repairs to the Premises are reasonably necessary during the Term and Tenant does not wish to make such Capital Repair at Tenant's sole expense, Tenant shall so advise Landlord in writing and Landlord may, in its sole discretion, elect to make, or not to make, such Capital Repair. Notwithstanding the foregoing, Tenant agrees that whenever it determines that it is reasonably possible to make a temporary repair or patch and defer the need for a Capital Repair, it shall make such temporary patch or replacement. In the event Landlord elects not to make any Capital Repairs, Tenant shall have the right, but not the obligation to make such repairs at its own expense. Tenant acknowledges and agrees that even if Tenant determines it is unable to occupy the Premises due to the condition of the Building or the

Premises, all of its rent payments shall continue to be non-refundable even if Tenant determines that it could occupy the Building or the Premises if a Capital Repair was made.

Notwithstanding the foregoing, Landlord and Tenant agree that in the event of a casualty loss or event (hereinafter "Casualty") causing material physical damage to the Premises or Building for which there is insurance coverage as determined by the insurer issuing the applicable policy of insurance, that subject to and conditioned upon any requirements or conditions imposed by Landlord's lender (including, without limitation, any restrictions or conditions on disbursement of insurance payments or proceeds), funds paid by an insurer with respect to such Casualty shall be released to fund the cost of a Capital Repair resulting from such Casualty, upon such terms as shall be reasonably acceptable to Landlord and provided that Landlord shall not be required to make any payment of any kind toward such Capital Repair.

8.1 Improvements/Alterations. No improvements or alterations to the Premises which materially change or alter the Premises shall be made without Landlord's written approval, which shall not be unreasonably withheld, delayed, or conditioned. Any request by Tenant for such approval shall be submitted with written specifications and drawings reasonably satisfactory to Landlord. All improvements made to the Premises by Tenant must be done in accordance with all local Building codes and ordinances and all applicable State and Federal statutes and regulations, and Tenant must obtain all necessary permits prior to commencing improvements. Tenant shall promptly pay for any and all trades furnishing services and/or alterations to the Leased Premises. With the exception of any of Tenant's removable property, including without limitation, all of its personal property and trade fixtures, any and all property left by Tenant in the Leased Premises shall become property of the Landlord at the expiration or termination of Tenant's tenancy. A list of trade fixtures which are owned and controlled exclusively by Tenant and which Tenant shall remove at the end of the Term or when Tenant vacates the Premises, whichever shall be earlier, is attached as Exhibit B.

9. Compliance with Laws.

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county and city government.

10. Insurance.

Prior to the execution of this Lease and continuing during the Term of the Lease or for such longer period during which Tenant shall occupy the Premises, Tenant shall obtain, maintain and pay for all the costs of the insurance listed in the following subsections:

- a. Tenant shall maintain occurrence based General Liability Insurance, which shall include liability insurance with respect to automobiles, trucks and other motor vehicles, in the amount of \$400,000 per occurrence for causes of action pursuant to the Maine Tort Claims Act, and the policy for such insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a certificate evidencing such General Liability Insurance coverage prior to execution of this Lease. Tenant

shall be responsible for covering its personal property with such property and casualty insurance as it deems reasonably necessary and shall provide Landlord with documentation of such policies of insurance or self-insurance prior to execution of this Lease. Landlord shall not be responsible for any damage to Tenant's personal property except for damage caused by Landlord. Claims brought by Landlord against Tenant for damage to the Premises, that are not covered by an insurance policy, and are the result of Tenant's use and/or negligence, and not resulting from the Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street, shall be Tenant's responsibility to repair or reimburse Landlord in an amount equal to that reasonably necessary to return the Premises, to substantially the same condition in which they were at the start of this Lease. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages, available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant. For the purposes of this Lease, an insurance claim will be deemed to be "not covered by an insurance policy insuring Tenant" if such claim is denied by the insurer issuing the policy against which the claim is made.

- b. Glass. Tenant shall be solely responsible for the cleaning, maintenance and replacement of plate glass and other windows located within the Leased Premises and is advised to obtain insurance coverage with respect to damage thereto. Tenant agrees to repair promptly any damage to such glass and windows at its sole expense. Tenant shall not be responsible for damage to glass or windows caused by Landlord, its employees or subcontractors, or others using the Access Easement to access 55 Portland Street. Any such cleaning, maintenance and/or repairs shall be to return all glass and windows to substantially the same condition in which they were at the start of this Lease.
- c. Workers Compensation. Tenant self-insures for workers compensation coverage and shall provide Landlord with evidence of its self-insured status.
- d. Property and Casualty Insurance. Landlord shall procure and maintain such Property and Casualty insurance as it deems reasonably necessary in regard to the Premises, and Tenant shall pay Landlord upon execution of this Lease for annual premiums in an amount up to and including ten thousand dollars (\$10,000). Such coverage shall be in form and amount to coverage as commonly written for comparable buildings. In the event that the Term of this Lease exceeds the term of Landlord's Property and Casualty insurance policy, Tenant shall pay landlord for applicable premiums within 10 days of Landlord's request for such payment. Any deductibles and/or retentions in an amount higher than ten thousand dollars (\$10,000) shall be subject to approval by Tenant. Tenant shall be named an additional insured on such policy for coverage only in those areas where government immunity has been expressly waived by 14

M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant.

- e. Pollution Liability Insurance. Tenant shall procure and maintain premises pollution liability insurance in form and content reasonably acceptable to Landlord considering Tenant's use of the Premises as a vehicle maintenance garage and fueling station in an amount not less than one million dollars (\$1,000,000) per occurrence, for the Term of this Lease, or if the Occupancy Period ends later than the end of the Term, then, for the entire Occupancy Period, naming Landlord as an additional insured thereon. The pollution liability insurance policy (hereinafter in this sub-paragraph referred to as the "Policy") shall provide at least such coverage as is commonly written for buildings comparable to the building(s) located on the Premises and uses comparable to Tenant's use of the Premises. The Policy shall provide liability coverage on a claims-made and reported basis which covers claims first made against or by an insured and reported to the Insurer, during the policy period. The Policy shall also provide coverage for remediation costs which covers pollution conditions first discovered and reported to the insurer during the policy period. Tenant shall include in the pollution coverage of the Policy, conditions emanating from storage tanks (including gas and oil tanks) on the Premises. Tenant additionally agrees to purchase a so-called "tail" or extended reporting period coverage (hereinafter "Tail Coverage") for at least a one-year term in form reasonably acceptable to Landlord that provides coverage for claims pursuant to said Policy. The Tail Coverage shall, at minimum, extend the period for reporting claims under the Policy for at least a year after the expiration of the Occupancy Period.

Tenant agrees to procure and submit for Landlord's review a certificate of insurance and binder for the Policy and Tail Coverage at least ten (10) days prior to the commencement of this Lease Agreement as well as such other documents detailing the proposed terms of coverage as Landlord shall reasonably request. Tenant further agrees that the Policy shall be in full force and effect upon commencement of the Term.

- f. Self-Insurance, Large Deductibles and/or Retentions. Tenant is solely responsible for all deductibles and or retentions on any insurance policies required by this Lease, and agrees to pay all deductibles and retentions with respect to any such policies. Any coverage required by this Lease for which Tenant chooses to self-insure shall be the responsibility of the Tenant, and Tenant agrees to pay any covered claims for which it chooses to self insure.
- g. Waiver of Subrogation. Tenant shall procure waiver of subrogation on any insurance policies required under this Lease in which it is able to do so. Tenant agrees that it shall waive subrogation with respect to any matters for which it self-insures,

including, without limitation, worker's compensation insurance. Landlord acknowledges and agrees that Tenant's general liability insurance coverage shall not include a waiver of subrogation. Landlord may choose to either waive subrogation or list the Tenant as a named insured in lieu of waiving subrogation under its property and casualty insurance policy.

- h. Notice. All of the insurance policies in which the Tenant or Landlord are an additional or named insured under the terms of this Lease shall, contain a clause that the insurer shall not cancel or reduce the coverage of the insurance without first giving Tenant, Landlord and any mortgagees of Landlord thirty (30) days' prior written notice.

10.1 Tenant's Responsibilities.

- a. To the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (any such injury, harm or damage hereinafter is referred to as a "Liability Event"), including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers and invitees (all of whom hereinafter are referred to as "Tenant's Affiliates" in the plural or as a "Tenant Affiliate" in the singular) or to any of their property, arising out of, during, or in connection with Tenant's lease of the Premises from Landlord, Tenant's occupancy of the Premises or any other use by Tenant of the Premises (all such risks are hereinafter collectively referred to as the "Assumed Risks"), but only to the extent (i) any such Liability Event is a result of actions or omissions by Tenant, one of Tenant's Affiliates or any other person or entity for whom Tenant may be liable and (ii) is a negligent act or omission, an intentional act which is not a discretionary function, or an act or omission for which Tenant is liable under the Maine Tort Claims Act. Such Assumed Risks do not include injury, harm, or damage caused by (1) any act or omission of Landlord, its officers, agents, employees, contractors or anyone else for whom Landlord may be liable except Tenant or a Tenant Affiliate, or (2) any act or omission of any third party who is not a Tenant Affiliate utilizing the Access Easement. Tenant's obligations hereunder are subject to and limited by the defenses, immunities and limitations of liability available to the Tenant under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq, and other applicable law.
- b. Tenant and Landlord agree that, subject to Landlord's right to enforce the terms of this Lease and to terminate this Lease as provided herein, and except to the extent that the Access Easement is used by others, Tenant shall have during the Term until the later of the expiration of the Lease, the earlier termination of the Lease, or when Tenant vacates the Premises, full control over the Premises (including, without limitation, all buildings or structures located on the Premises, including, without limitation, the Building and any parking lot, or walkways or other grounds located on the Premises) and shall be solely responsible for all maintenance and repairs to the Building and Premises except as expressly set forth in this Lease.

- c. Covenant against liens: Tenant shall not cause nor permit any lien against the Landlord's property or the Premises or any improvements thereto to arise out of or accrue from any action, omission or use thereof by Tenant; provided, however, that Tenant may in good faith contest the validity of any alleged lien. In the event Tenant contests such lien, upon the request of the Landlord, Tenant shall post a bond approved by the court in which such lien claim is pending or if not yet pending, a court with jurisdiction over such lien, warranting payment of any such lien. If Tenant does not contest a lien, it shall pay off and cause the discharge of any such lien within twenty (20) days of its recording. If a court or other proceeding is commenced, Tenant shall cause such lien to be "bonded off" to Landlord's satisfaction within forty-five (45) days of commencement of such proceeding. Should Landlord be subjected to any claim(s), suit(s) or lien(s), including, without limitation, any claim(s), suit(s) or lien(s) relating to any mechanic's lien claim for any services or materials associated with Tenant's improvements or alterations to the Leased Premises, Tenant shall indemnify and hold harmless Landlord from all damages and costs (including any attorneys' fees incurred by Landlord) arising out of or relating to any such claim(s), suit(s) or lien(s), and shall pay any and all costs (including attorneys' fees) incurred by Landlord in defense or prosecution of such actions within ten (10) days of demand by Landlord. Tenant's failure to comply with the foregoing requirements regarding liens shall constitute a default under the terms of this Lease.

10.2 Environmental Compliance.

During the longer of the Term or the Occupancy Period, the Tenant shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations (hereinafter collectively "Environmental Laws") and taking all necessary steps to prevent any violation of any such Environmental Laws. In addition, Tenant shall be responsible for payment of the costs and expenses relating to any violation of Environmental Law regarding any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period (including, without limitation payment of all fines, penalties or the like, as well as the costs of removal and remediation) including, any and all losses, damages, suits, penalties, costs, liability and expenses (including but not limited to reasonable investigation, laboratory fees, environmental audit and legal expenses) arising out of any claim for loss or damage to any real or personal property or to person(s) including the Premises, injuries to or death of person(s), contamination of or adverse effects on the environment or any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period. Tenant's obligations under this paragraph do not apply to any violation of Environmental Laws or claims resulting from the actions or omission of Landlord, its employees, subcontractors, or others using the Access Easement to access the

property at 55 Portland Street. This paragraph is only intended to govern Tenant's actions during the longer of the Term or the Occupancy Period of the Lease and does not apply to Tenant's ownership of the Premises.

The term "Hazardous Materials" or "Hazardous Material" as used in this Lease Agreement includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future State, Federal or municipal environmental law, regulation or ordinance including but not limited to any such law, regulation or ordinance relating to petroleum or petroleum products, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables or explosives.

Landlord acknowledges and agrees that nothing in section 10 of this Lease is intended to alter or does alter the rights and obligations of the parties under sections 8 and 9 of the Purchase and Sale Agreement.

11. Assignment/Subletting.

Tenant shall not sublet all or any portion of the Premises, nor sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder, all of which shall remain in full force and effect, including, without limitation, with respect to payment and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefore in the same manner as Tenant.

12. Casualty Damage.

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case: (i) if such fire or unavoidable casualty occurs during the Initial Term, then Tenant shall have the right to terminate this Lease; or (ii) if such fire or unavoidable casualty shall occur following the expiration of the Initial Term and during the Renewal Term or any other term, either Landlord or Tenant shall have the right to terminate this Lease. Such right of termination, if available, shall be exercised by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the Term of this Agreement shall cease and come to an end as of the earlier of the date Tenant fully moves out of the Premises or the expiration or earlier termination of the then application term of the Lease. Upon the date Tenant fully moves out of the Premises, Tenant's obligation to pay utilities shall end, except for such charges for utilities as shall have accrued prior to the date of move-out. Notwithstanding anything else contained in this Lease Agreement, Tenant shall not receive any rent refund or credit for such early termination of the Lease or for any early move out, but Tenant shall not be obligated to continue to pay rent due if the Lease is so terminated during any Renewal Term. For avoidance of doubt, Landlord and Tenant hereby agree no rent shall be

refunded to Tenant upon such termination (or under any other circumstance) and that the Rent Credit shall be permanently retained by Landlord.

b. Tenant shall be responsible for covering its equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, whether it is owned or leased by Tenant.

12.1 Condemnation. If the Premises or any part thereof are taken or condemned by a duly constituted public authority, this Lease shall, as to the part taken, terminate and all proceeds and awards shall be paid to the Landlord. Tenant shall have no claim against Landlord with respect to any such taking or condemnation. In the event that a substantial portion of the Premises itself is taken or condemned, both Landlord and Tenant shall have the right to terminate this Lease upon giving notice in writing ten (10) days in advance of proposed termination date. Notwithstanding any such condemnation, taking or termination, no rent shall be refunded to Tenant, and all rent shall be permanently retained by Landlord.

13. Default; Termination.

a. This Lease is made on the condition that if the Tenant shall fail to pay any rent or any other monetary obligation to Landlord within five (5) days of its due date, or fail to perform any other obligation to Landlord within thirty (30) days after written notice thereof, or in case of an obligation that cannot with due diligence be cured within said thirty (30) day period, fail to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the performance of such obligation with due diligence and within a period of time that under all prevailing circumstances shall be reasonable or if Tenant shall violate or fail to comply with any of the terms or provisions of this Lease and such failure to comply or violation of this Lease shall reoccur or continue after written notice of such violation from Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall be declared bankrupt or insolvent according to law, or if Tenant shall file bankruptcy, or if an involuntary bankruptcy shall be filed against Tenant which shall not be dismissed within thirty (30) days, or if the Tenant shall hold over at the termination of the Lease as herein provided, then and in any of said cases, notwithstanding any license or any former breach of covenants or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for breach of covenant, immediately or at any time thereafter, without prior demand or prior notice whatsoever, (a) terminate this Lease by notice in writing which termination shall be effective immediately or at Landlord's election on a date stated in said notice; (b) with or without process of law, enter into and upon the leased Premises or any part thereof and repossess the same; and (c) expel the Tenant and those claiming through or under the Tenant and remove its effects (together with any third parties' property) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preventing a breach of covenant, and upon entry as aforesaid, all rights of Tenant hereunder shall terminate; and Tenant covenants that in case of such termination, Tenant will during the remainder of the then-current term or any Renewal Term pay to Landlord on the last day of each calendar month the difference, if any, between the rental, and other monetary obligations of Tenant, which would have been due for such month had there been no such termination and the sum of the amounts being received by the Landlord from occupants of the leased Premises, if

any. In addition, Tenant agrees to pay the Landlord, as damages for any above-described breach, all costs of reletting the Leased Premises including, without limitation, real estate commissions, costs of advertising, costs of damage repair, cleaning, costs of renovation of the Premises to suit a new tenant, and costs of moving and storing Tenant's personal and trade fixtures.

b. Legal Fees and Expenses.

- (i) Tenant further agrees to pay and indemnify the Landlord against all reasonable legal costs and charges, including, without limitation, all reasonable attorney's fees and expenses (hereinafter collectively referred to as "Legal Expenses") incurred by Landlord if Landlord prevails in a civil action to obtain possession of the leased Premises (including, without limitation, in any forcible entry and detainer or eviction action).
- (ii) Tenant shall pay to Landlord all such Legal Expenses within ten (10) days following the entry of a final judgment and the passing of any applicable appeals period in such civil action.

c. Surrender. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of this Lease. If this Lease is terminated, Tenant shall remain liable to Landlord for all Rent due under this Lease Agreement which has not yet been paid to Landlord. The Rent Credit shall remain nonrefundable and shall be permanently retained by Landlord. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

d. Termination for Convenience. Tenant may terminate this Lease for its convenience upon no less than thirty (30) calendar days' prior written notice to Landlord. If Tenant so terminates this Lease for its convenience, no rent shall be refunded to Tenant, and the Rent Credit shall be permanently retained by Landlord.

14. Access.

Landlord shall provide at least 24 hours advance notice of its intention to enter the Premises, except in the case of an emergency. Upon such notice, the Landlord and its representatives, agents, or employees, may enter the Premises.

15. Signs.

Tenant shall not erect, install or place any signage upon the interior or exterior of the Premises except with the written approval of Landlord, which approval Landlord agrees not to withhold unreasonably. Tenant shall pay any and all costs associated with any such signage approved by Landlord.

16. Zoning.

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals of its proposed use of the subject Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject Premises for Tenant's intended use.

17. Self-Help.

In the event of a dispute between Tenant and Landlord, Tenant shall not be permitted to withhold all or any part of the rental payment then due unless and until a forum of appropriate jurisdiction has so ruled. The acceptance of a check by the Landlord for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

18. Miscellaneous Provisions.

Subject to the foregoing, the covenants and agreements of the Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding individually upon any LLC manager or member nor any fiduciary nor any trustee or beneficiary under any trust.

19. Subordination.

Tenant shall, from time to time, upon request of the Landlord, subordinate this Lease to any mortgage deed, and/or other security indenture hereafter placed upon the leased Premises, and to any renewal, modification, replacement or extension of such mortgage or security indenture, if, and only if, any mortgagee of Landlord and Landlord (if required by lender) execute (either before or after) such subordination agreement or subordination, non-disturbance and attornment agreement ("SNDA"). Landlord agrees to make reasonable efforts to negotiate with its lender with respect to the terms of any such SNDA, and shall advise such lender of any Tenant objections to such SNDA. Tenant hereby agrees it shall execute and deliver to Landlord within five (5) days of Landlord's request such subordination agreement or SNDA submitted to Tenant by Landlord or Landlord's lender.

20. Estoppel Certificates.

Tenant shall, within five (5) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing including any or all of the following as determined by Landlord: (a) certifying that the Lease is unmodified and in full force or effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), (b) specifying dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best of the knowledge of the Tenant, any event has occurred which, with giving of notice or passage of time, or both, would constitute a default by Landlord under Lease, and, if so, specifying each such event, and (e)

certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or mortgagee of the Leased Premises or any interest therein.

21. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Lease Agreement shall peaceably yield up to Landlord the Premises in broom clean condition, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by the acts or omissions of Tenant, its officers, employees, agents, invitees or contractors excepted. At such time, Tenant shall also remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises, including, without limitation, those listed on Exhibit B. Should Tenant fail to remove its trade fixtures, equipment or other personal property within Thirty (30) days of a notice to do so from Landlord, ownership of such fixtures, equipment and property shall automatically be vested in Landlord and Landlord have the right to dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom.

22. Covenants.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the Initial Term of this Agreement, or if applicable, any Renewal Term. Each party covenants that the Agreement is signed by a duly authorized individual.

23. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery at the addresses below shall be effective as personal delivery to the party specified on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

To Tenant: City of Portland
 ATTN: City MANAGER
 389 Congress Street
 Portland, ME 04101

With a copy to: The Office of the Corporation Counsel
 at the same address

To Landlord: Mr. Thomas Watson

104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

24. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

25. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

26. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and a suspension of performance shall only be permitted if the party prevented from performance has given written notice thereof to the other party.

27. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

28. Limitations of Liability. Tenant agrees to look solely to the Landlord's interest in 44 Hanover Street, for recovery of any judgment from Landlord, it being agreed that Landlord is not personally liable for any such judgment beyond its interest in 44 Hanover Street (except to the extent that insurance proceeds may be available to satisfy any such judgment).

29. Brokers.

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement, other than the related purchase transaction for the Premises between Landlord and Tenant, and Tenant hereby warrants and represents that its broker [CBRE | The Boulos Company] has been paid in full for its services rendered in connection with that transaction and is not entitled to any compensation with respect to this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim or whose statement contained in this Paragraph 29 shall be untrue.

30. Tenant agrees that its obligations to Landlord under this Lease Agreement are contractual and are not subject to any defenses available under the Maine Tort Claims Act and Tenant further agrees not to seek to invoke any such defenses.

31. Memorandum of Lease.

Landlord and Tenant agree that this Lease shall not be recorded but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

WITNESS:

LANDLORD

By: _____
Thomas E. Watson
Its Manager

WITNESS

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

Approved as to Form:

Corporation Counsel's Office

EXHIBIT A
(Plan of Premises to be inserted closing)

EXHIBIT B
Tenant's Property To Be Removed At End Of Term

Lifts –

- 2 Post Forward model DP15SN000M, 15,000 lb, 230 volt – Pickup Bay
- 2 Post Forward model DP10A2, 10,000 lb, 230 volt – Police Bay 2
- 2 Post Forward model 110N000M, 10,000 lb, 230 volt – Police Bay 1
- 4 post Rotary model SM18N000, 18,000 lb, 230 volt – Medcu Bay
- (4) sets of 4 Steril Koni mobile column lifts, 18,000 lb each post, 230 volt, 3 phase

Tire Machines –

- Atlas tire changer – 110 volt
- Accuturn tire balancer – 110 volt
- Brunick tire spreader – 110 volt
- Old tire changer

Crane

- Demag 10 ton.

Air Compressor – Replace with new

- Champion 3 phase, 230 volt compressor, circa 1992, with air drier 110 volt

Misc Shop Equipment 110 volt

- 2 ac machines, 110 volt
- 1 transmission service machine – 110 volt
- 110 welders for mechanics (2)
- Diesel transfer tank 110 volt
- Multiple waste oil transfer tanks 110 volt

Machine Shop

- Shop press, 110 volt
- Fume extraction – 110 – 220 volt depending on size.
- Millermatic 252 mig welder, 220 volt (work bay)
- Older mig welder, 220 volt (work bay)
- Tig welder – 220 volt (work bay)
- Plasma cutter, 220 volt (work bay)
- Jet bandsaw – 110 volt (in machine shop)
- Vertical bandsaw, 220 volt, 3 phase (machine shop)
- Ironworker, Scotchman, 110 volt (machine shop)
- Lathe, 220 volt, 3 phase (machine shop)
- Milling machine, 220 volt, 3 phase (machine shop)
- Large drill press, 220 volt, 3 phase (machine shop)
- Small drill press, 110 volt (machine shop)

Other/Misc Equipment

- (2) Generators (Admin and Fleet)
- Misc hose / cord / wiring reels
- Tire bay water tank
- Spring compressor – wall mounted in Fire bay
- Bulk fluid tanks
- Paint mix room
- Newer floor body shop lights
- 2 new Fleet building dumpsters
- Misc shelving

NINTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS NINTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Ninth Amendment") is made and entered into as of _____, 2020, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller"), and 52 HANOVER, LLC, a Maine limited liability company ("Buyer").

WITNESSETH:

WHEREAS, reference is made to that certain Purchase and Sale Agreement dated May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018, that certain Third Amendment dated August 20, 2018, that certain Fourth Amendment dated September 10, 2018, that certain Fifth Amendment dated October 3, 2018, that certain Sixth Amendment dated October 18, 2018, that certain Seventh Amendment dated November 2, 2018, and that certain Eighth Amendment dated November 15, 2018 (collectively, the "Agreement") by and between the CITY OF PORTLAND, as Seller, and TOM WATSON & CO., LLC, predecessor-in-interest to 52 HANOVER, LLC, as Buyer, for the purchase and sale of that certain lot or parcel of land, together with the buildings and improvements thereon, located at or near 44 Hanover Street a/k/a 52 Hanover Street in City of Portland, County of Cumberland, State of Maine and more particularly described in the Agreement (the "Premises"); and

WHEREAS, Seller transferred the Premises to Buyer by deed dated December 12, 2018 and recorded in the Cumberland County Registry of Deeds in Book 35353, Page 234;

WHEREAS, the Agreement contained certain post-closing obligations respecting Buyer's use and development of the Premises; and

WHEREAS, Buyer and Seller wish to modify and amend certain of such post-closing obligations, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

AGREEMENT:

1. NINTH AMENDMENT. This Ninth Amendment is hereby incorporated into the Agreement by reference. In the event of a conflict between the terms and conditions of the Agreement and this Ninth Amendment, the terms and conditions of this Ninth Amendment shall control.

2. BUYER'S POST CLOSING OBLIGATIONS.

(a) Section 12 b. of the Agreement is hereby deleted in its entirety and the following substituted in place thereof:

On or before February 28, 2021, Buyer agrees to commence development of a project at the Premises consisting of a multipurpose building with commercial retail space and rental housing units in substantially the form described in the description of the proposed project at the Premises that is attached hereto as Exhibit B and incorporated herein by reference (the "Project"). Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application

(an “Application”) for the Project. The Project shall be deemed to be “in substantially the form described in Exhibit B” if it proposes to include (or is constructed to include): (i) multiple retail spaces; and (ii) an emphasis on rental housing. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning Board, City Council or any other municipal or other necessary approvals, which modifications may include, but not be limited to, reductions in the number of units for the Project or changes to the Project to account for setback requirements, height restrictions and/or agreements with any abutters, and the Project, if otherwise “in substantially the form shown in Exhibit B” shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change or there are amendments to the Portland City Code such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City’s approval of such changes. Buyer further agrees that the Project shall include no less than the minimum number of workforce housing units required by Portland City Code Section 14-487 and that Buyer shall not elect to pay the fee in lieu of providing any of the workforce housing units set forth in Section 14-487(e)(4). Nothing in this Agreement shall or is intended to relieve the Buyer of any of its obligations under Section 14-487 or any other applicable provisions of the City Code or applicable laws, rules, or regulations.

(b) Sections 12(c), 12(d), and 12(e) of the Agreement are hereby deleted in their entirety. Buyer and Seller hereby agree and acknowledge that the terms and conditions of that certain escrow agreement by and between Buyer and Seller and dated December 13, 2018 (the “Escrow Agreement”) shall replace and shall govern the Buyer and Seller’s rights and obligations as previously described in said deleted Sections 12(c), (d) and (e).

3. USE AND DEVELOPMENT PLANS. Exhibit B to the Agreement is hereby deleted and, substituted for it for all purposes for which Exhibit B was used, referenced or included in the Agreement is the attached Substitute Exhibit B, which Substitute Exhibit B is hereby made a part of the Agreement.

4. MISCELLANEOUS. Buyer and Seller each reaffirm the Agreement as amended by this Ninth Amendment, and all terms and conditions of the Agreement, including all defined terms, except as specifically amended by this Ninth Amendment, shall have the same meaning and remain in full force and effect. This Ninth Amendment may be executed and delivered in any number of counterparts, whether delivered by electronic mail or portable document format (PDF), each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first above written.

CITY OF PORTLAND:

By: _____
Jon P. Jennings
Its: City Manager
Dated: _____

Approved as to form:

Corporation Counsel's Office

52 HANOVER, LLC:

By: _____
Thomas E. Watson
Its: Manager
Dated: _____

Exhibit B

**FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 20th day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated May 14, 2018 (the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the Agreement in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement as approved by the City of Portland Planning Board on May 23, 2018 (the "Public Pedestrian Easement") along the entire length of the common boundary between the Premises and 82 Hanover Street, which is also the northwesterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the "Public Pedestrian Easement Area"). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing

conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or ice removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

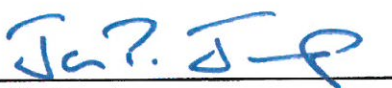
2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

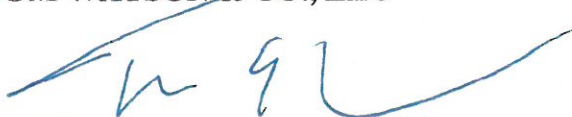


WITNESS


Jon P. Jennings
Its City Manager


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

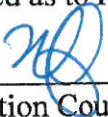
Corporation Counsel's Office

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:



Corporation Counsel's Office

PARRIS ST.

1. A SHER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187.
2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY AORN ENGINEERING, INC. DATED MAY 11, 2018.

N:301035.29
E:2926718.26

LANCASTER ST.
(DISCONTINUED)

PROPOSED 10'-WIDE PEDESTRIAN/BICYCLE
EASEMENT TO THE CITY OF PORTLAND
FROM TOM WATSON CO. LLC.
APPROX. 2,007 SF

44 HANOVER ST.

15 0 15 30
SCALE: 1" = 30'

FOR REVIEW
NOT FOR
CONSTRUCTION

Detail
(not to scale)

N72°42'45"E

HANOVER STREET

HANOVER ST.

See Detail
N72°42'45"
0.50'

EX-107

DRAWING NO

DRAWING NAME:
LANCASTER PEDESTRIAN EASEMENT

PROJECT NAME:
82 HANOVER REDEVELOPMENT

CLIENT: TOM WATSON & CO. LLC

ISSUED FOR	BY
CITY REVIEW	DATE
	05/05
	15722710

ACORN
ENGINEERING, INC.

ACORN ENGINEERING, INC. P.O. BOX 3372
PORTLAND, MAINE 04104 (207) 775-2855

**SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 20th day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the Due Diligence period, as that term is defined in the Agreement, was to expire on the later of July 23, 2018 or the day that is sixty (60) days after the Effective Date of the Agreement (the "Due Diligence Expiration Date");

WHEREAS, the Financing Period, as that term is defined in the Agreement, was to expire on the day that is fifteen (15) days after the expiration of the Due Diligence Period, namely August 7, 2018 (the "Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence Period Expiration Date and the Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to July 23, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "August 22 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on August 22, 2018.

2. The Agreement is hereby further amended by deleting the reference to "the day that is fifteen (15) days after the expiration of the Due Diligence Period" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "August 22, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on August 22, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to August 22, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than August 22, 2018 and it is the parties' intent that both such periods be extended to the later of August 22, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. Except as specifically amended hereby and by the First Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Second Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

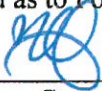


WITNESS



Jon P. Jennings
Its City Manager

Approved as to Form:



Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

**THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 20th day of August, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018 and that certain Second Amendment also dated July 20, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to August 22, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to August 22, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "September 14, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on September 14, 2018.

2. The Agreement is hereby further amended by deleting the reference to "August 22, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "September 14, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on September 14, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due

Diligence Period they also intend, and hereby agree to (and hereby do) extend to September 14, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than September 14, 2018 and it is the parties' intent that both such periods be extended to the later of September 14, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. Except as specifically amended hereby and by the First Amendment and the Second Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Third Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

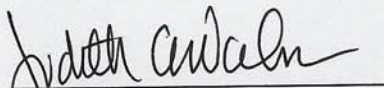

WITNESS


Jon P. Jennings
Its City Manager

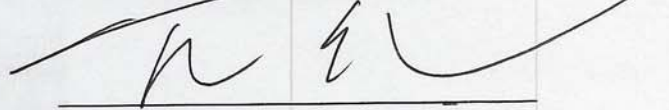
Approved as to Form:


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC



Printed Name: Thomas E. Watson
Its Manager

**FOURTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 10th day of September, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018 and that certain Third Amendment dated August 20, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to September 14, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to September 14, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "October 5, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on October 5, 2018.

2. The Agreement is hereby further amended by deleting the reference to "September 14, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "October 5, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on October 5, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due

Diligence Period they also intend, and hereby agree to (and hereby do) extend to October 5, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than October 5, 2018 and it is the parties' intent that both such periods be extended to the later of October 5, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

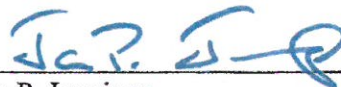
6. Except as specifically amended hereby and by the First Amendment, the Second Amendment, and the Third Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Fourth Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND



WITNESS



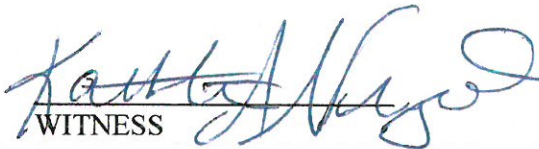
Jon P. Jennings
Its City Manager

Approved as to Form:

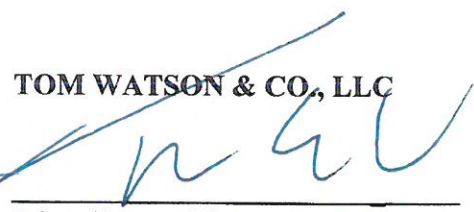


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

**FIFTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 3rd day of October, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018, that certain Third Amendment dated August 20, 2018, and that certain Fourth Amendment dated September 10, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to October 5, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to October 5, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "October 19, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on October 19, 2018.

2. The Agreement is hereby further amended by deleting the reference to "October 5, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "October 19, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on October 19, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to October 19, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than October 19, 2018 and it is the parties' intent that both such periods be extended to the later of October 19, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that the reference to "thirty (30) days" in the first section of paragraph 11 of the Agreement following "after the Effective Date of this Agreement or" is deleted and replaced with "eighteen (18) days."

6. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

7. Except as specifically amended hereby and by the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Fifth Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND



Jon P. Jennings
Its City Manager

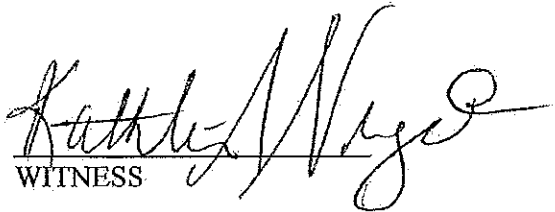
WITNESS

Approved as to Form:

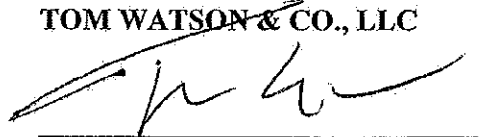


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

**SIXTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS SIXTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 19th day of October, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018, that certain Third Amendment dated August 20, 2018, that certain Fourth Amendment dated September 10, 2018, and that certain Fifth Amendment dated October 3, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to October 19, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to "October 19, 2018" as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "November 2, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on November 2, 2018.

2. The Agreement is hereby further amended by deleting the reference to "October 19, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "November 2, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on November 2, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to November 2, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than November 2, 2018 and it is the parties' intent that both such periods be extended to the later of November 2, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that the reference to "thirty (30) days" in the first section of paragraph 11 of the Agreement following "after the Effective Date of this Agreement or" is deleted and replaced with "four (4) days."

6. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

7. Except as specifically amended hereby and by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Sixth Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND



WITNESS



Jon P. Jennings
Its City Manager

Approved as to Form:



Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

**SEVENTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 2nd day of November, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018, that certain Third Amendment dated August 20, 2018, that certain Fourth Amendment dated September 10, 2018, that certain Fifth Amendment dated October 3, 2018, and that certain Sixth Amendment dated October 18, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to November 2, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date and amend the Closing Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to "November 2, 2018" as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "November 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on November 15, 2018.

2. The Agreement is hereby further amended by deleting the reference to "November 2, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "November 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on November 15, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to November 15, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than November 15, 2018 and it is the parties' intent that both such periods be extended to the later of November 15, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that the first paragraph of section 11 of the Agreement is deleted and replaced with the following:

"CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of (i) November 15, 2018, or (ii) thirty (30) days after the deadline for the City to resolve any title, Survey or environmental objections or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:"

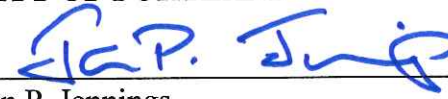
6. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

7. Except as specifically amended hereby and by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Seventh Amendment has been executed and delivered as of the day and year first above written.


WITNESS

CITY OF PORTLAND


Jon P. Jennings
Its City Manager

Approved as to Form:

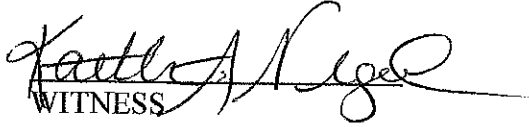

Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.

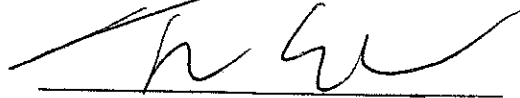
TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager


WITNESS

TOM WATSON & CO., LLC



Printed Name: Thomas E. Watson
Its Manager

**EIGHTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS EIGHTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 15th day of November, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about May 14, 2018, as amended by that certain First Amendment dated July 20, 2018, that certain Second Amendment also dated July 20, 2018, that certain Third Amendment dated August 20, 2018, that certain Fourth Amendment dated September 10, 2018, that certain Fifth Amendment dated October 3, 2018, that certain Sixth Amendment dated October 18, 2018, and that certain Seventh Amendment dated November 2, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement (the 44 Hanover Street property is also known as 52 Hanover Street, Portland, Maine and that address may also be used to refer to the real property which is the subject of the Agreement);

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to November 15, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence and Financing Period Expiration Date and amend the Closing Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to "November 15, 2018" as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "December 14, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on December 14, 2018.

2. The Agreement is hereby further amended by deleting the reference to "November 15, 2018" as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "December 14, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on December 14, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to December 14, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than December 14, 2018 and it is the parties' intent that both such periods be extended to the later of December 14, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that the first paragraph of section 11 of the Agreement is deleted and replaced with the following:

"CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of (i) December 14, 2018, or (ii) thirty (30) days after the deadline for the City to resolve any title, Survey or environmental objections or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:"

6. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

7. Except as specifically amended hereby and by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Eighth Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND



WITNESS



Jon P. Jennings
Its City Manager

Approved as to Form:



Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

Executive Summary

52 Hanover, LLC in partnership with Port Property Management and Tom Watson & Company (the “Sponsors”), propose to redevelop the property located at 52 Hanover Street, previously owned by the City of Portland. We are looking to create a new multipurpose building including four (4) 2,000 SF commercial retail spaces and one hundred and seventy-one (171) apartment units. Included in the 171 units would be seventeen (17) or 10% workforce rental units restricted at or below 100% of the Area Median Income (AMI) level and regulated under the City of Portland’s Inclusionary Zoning. The remaining one hundred and fifty-four (154) or 90% will be traditional market rate rental units.

The Sponsors’ goal for the project and new development is to create a truly unique mixed-use rental property in the City of Portland that provides a significant increase in the number of available rental units. In addition, this project continues the momentum and builds on the goals of redeveloping the Bayside neighborhood into an improved, vibrant environment for Portland citizens.



Financial Plan

The Sponsors will raise \$10 million in private investment funds along with an additional \$40 million in bank financing through the Department of Housing and Urban Development.

Public Benefits

Our mixed-use concept will provide a number of public benefits.

The Portland City Council cited housing as the #1 goal in their 2020 Goal Setting Summary.

“#1. Increase access to rental and home ownership that is safe, affordable, and accessible.”

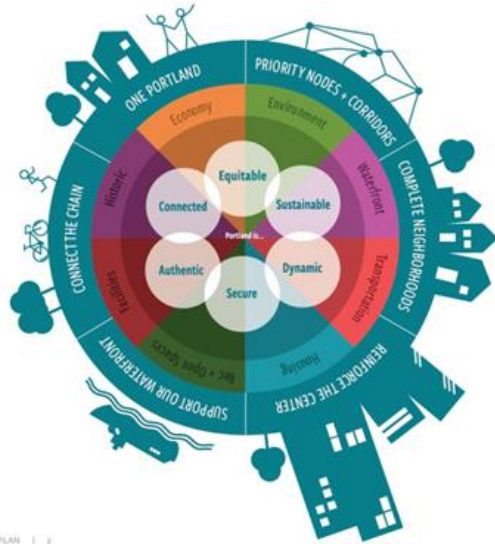
Public Benefits (con't)

Portland's Comprehensive Plan has many policy statements that support exactly this type of development. Specifically, the Plan calls for City action to produce housing and "Reinforce the Center".

Two specific goals apply:

"Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents."

Encourage additional contextually appropriate housing density in and approximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods."



More specific to the Bayside neighborhood, the 2000 "New Vision for Bayside" called for additional density and housing in West Bayside:

"The Bayside Plan will fill in, extend and enhance the existing residential fabric with a substantial amount of new housing units."

The following themes illustrate how this project is positioned to achieve community objectives and goals.

- **First major residential housing project since 2017**

The City has set a goal of constructing 256 new rental units per year. There are very few residential market rate and/or workforce apartment buildings being built in the City of Portland due to the high costs of construction. The last large apartment building project built in the City of Portland – the Hiawatha – was completed over three years ago. There are currently over 13,000 market rate rental apartments in the City of Portland, with a vacancy rate of an estimated 2%. In order to create market equilibrium, where tenants and landlords equally share in negotiating rates, the City of Portland would need its vacancy rate to reach 6% (per historic standard). To make that happen today, an additional 540 apartments would need to be built. This project is a huge step towards that equilibrium.

Public Benefits (con't)

- ***Wide-ranging mix of new apartments including 17 affordable units***

The property will have broad appeal to tenants of various demographic and economic backgrounds. It will contain a diverse mix of apartment sizes and styles ranging from 400 square foot micro-units to 1,400 square foot townhouses. Thirty-seven (37) studios, ninety-seven (97) one-bedrooms and thirty-six (36) two-bedrooms are included in the plan. In addition to the rental units, we will be creating two (2) levels of parking with one hundred and sixty-six (166) parking spaces.

The project will provide much-needed affordable housing in the City of Portland with its broad range of unit types and the corresponding variation in rental prices. Additionally, by adding 17 new workforce rental units this project adheres to the intent of the Inclusionary Zoning Ordinance– which was to add units, not fees in lieu. It will also be the single largest aggregation of workforce units within a market rate project in history of the City of Portland.

- ***Development of a residential presence in a commercial-heavy neighborhood***

The Property currently sits as a large, vacant steel framed warehouse with significant updates needing to be made. The neighborhood consists of various small businesses and larger companies including Bayside Bowl and the United States Post Office.

Housing creates a 24/7 presence in the neighborhood.

The proposed new building will create a unique residential opportunity in this neighborhood, create a vibrant community in West Bayside, and serve as a catalyst for change in the neighborhood from primarily commercial tenants to residential living. Additionally, we anticipate a number of the 52 Hanover courtyard commercial tenants to be daytime venues (ex. Coffee shop, café, lunch spot).

- ***Development of a new “destination” in Portland with the creation of new courtyard***

This project will create a welcoming and new courtyard space in the Bayside community between 82 Hanover and 52 Hanover. Currently 82 Hanover is 100% leased with 3 pub/eateries located on “Lancaster Court”, each with substantial outdoor patio space abutting a 10’ wide bike/ped running from Hanover to Parris Street. The shops at 52 Hanover will have similar sized patio spaces running from the building façade to the bike/ped path creating a vibrant walkable courtyard.

The new commercial spaces, along with their outdoor patios, will create an inviting and exciting open community space which will spur an essential dynamic shift in the neighborhood.

Public Benefits (con't)

- ***Design for future density***

This is a unique location in the City of Portland to develop density and increase housing. The site is 1.3 acres and is located within the Bayside Height Overlay District, allowing for increased density. In terms of accessibility, the property's location lends itself to reducing downtown traffic. Those living in this neighborhood can easily walk, bike and car share to downtown Portland for work or leisure. The property is also ideal given its proximity to 295 Northbound and Southbound.

- ***Road map of successful public/private partnership as a model for future housing development***

This project has a strong history of partnership between the private Sponsors and the City of Portland.

- The property was sold by the City of Portland in a public bidding process to the Sponsors for their winning bid
- The City of Portland received over \$1.2 million in market rate proceeds from the Sponsors.
- The property was leased back to the City of Portland's DPW until its Canco Road facility was finished.
- The Sponsors extended the lease for an additional two months at no cost to the City in order for the Portland Fire Department to host their new-recruit physical ability testing.
- The Sponsors have devoted substantial financial resources towards the environmental clean-up of the contaminated site. Completed activities include the removal of underground gas tanks and above ground pump stations.

Next Steps

The 52 Hanover Street project represents an opportunity to take a creative and collaborative approach to a challenge we all acknowledge – housing availability.

This site is an ideal location to bring a large volume of apartments to the rental market in an expedited time frame. Excluding the renter household incomes of those in Portland already receiving housing assistance, the median renter household income is \$57,022 to \$61,000– often referred to as “the missing middle”. The new units being proposed for 52 Hanover would serve this population. Increasing the volume of apartments in this segment of the market will have countless positive impacts including more choice for tenants and more incentives for landlords to improve the quality of their properties and services. We look forward to working with the City of Portland to continue our partnership and leverage this opportunity, and our experience, to create housing for Portland's renters.

APPENDIX A - 52 Hanover: Continuing the Evolution of West Bayside



Century Tire Plaza	—	Bayside Bowl	—
Kennebec Street	—	65 Hanover	—
Fork Food Lab	—	Schlotterbeck & Foss	—
55 Parris	—	195 Lancaster	—
82 Hanover	—	52 Hanover	★

In large part because of the City of Portland’s efforts to capitalize on Bayside as an area of potential growth, including the sale of City-owned property, the Bayside neighborhood has seen significant improvements in many of its area buildings. For example:

- Schlotterbeck & Foss – This property was converted from a food production plant to 56 residential units.
- 195 Lancaster Street – A vacant, unused brick building will now be the home of Two Fat Cats bakery.
- Bayside Bowl – Previously a city works building has become a vibrant and busy bowling center and restaurant.
- Century Tire Plaza – A former auto repair show has now become home to several small business including Orange Theory and Chipotle.
- 82 Hanover – Another city works building that is fully leased to 12 commercial tenants including restaurants, breweries and office users.
- 55 Parris – A vacant parking lot is now 23 owner occupied condominiums.
- Kennebec Street – Another dirt parking lot currently being converted into 55+ housing.
- 65 Hanover – A public works building converted into shared office space and event space.
- Fork Food Labs – A vacant brick building that was made into a shared kitchen space.

APPENDIX B – Sponsor Information

Managers & Key Principals

Tom Watson is the Key Principal and Manager of 52 Hanover, LLC. and co-owner of Port Property Management.

Port Property Management

Port Property Management will manage the new development at 52 Hanover Street. Port Property is the market leader in multifamily property management. Founded in 1993, PPM is the largest market rate residential landlord in Portland and South Portland with over 1,450 apartments, 30 retail storefronts and two office buildings. For over two decades the PPM staff has engrossed itself in studying market opportunities and tenant benefits, understanding and defining unit features, finishes and building amenities that appeal to the Portland demographic.

Port Property has a long and successful history of redeveloping properties including two within Bayside, 82 Hanover Street (12 commercial/retail spaces) and 117 Preble Street (56 apartments). Its success is due to its horizontal structure. Since its founding, the company has woven together the acquisition and development team, the property management group and the construction group on every project. All have an active seat at the table during the feasibility stage, due diligence period, closing and program implementations phase. The distinct perspective and workload of each team is vital in each project.

Our Approach

Port Property Management has been part of the Portland community for over 26 years. Our goal is to purchase and develop properties in the city of Portland that are safe and well maintained, with a strong focus on quality units and exceptional management for the benefit of our tenants. Additionally, our goal is to manage and own properties for the long term. Many of the employees at Port Property Management live and work in Portland. The Port Property Management offices are located at 82 Hanover Street.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 37-20/21 Setting an Election Date on Citizen Initiative Amendment to the Portland City Code Chapter 33 Re: An Act to Increase Minimum Wage in Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative that increases the Portland minimum wage. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date An Act to Increase the Minimum Wage 8.3.2020
2. An Act to Increase Minimum Wage
3. Minimum Wage Certification

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT TO THE PORTLAND CITY CODE
CHAPTER 33
RE: AN ACT TO INCREASE THE MINIMUM WAGE**

ORDERED, that the amendment to the Portland City Code called An Act to Increase the Minimum Wage shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

An Act to Increase the Minimum Wage in Portland will increase the minimum wage in Portland to \$15 an hour over three years. It increases the minimum that tipped employees must be paid by their employer to \$7.50 an hour. It moves the effective date of annual cost-of-living increases to the minimum wage from July 1 to Jan 1 to maintain consistency with state law. It also requires a higher minimum wage for work performed during declared states of emergency.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to PSA the following address:

P.O. Box 11345 Portland ME 04104

Dated at Portland, this 14 day of May 2020.

✓ Steven Biel
(Print) Name

43 Spruce St.
Address

[Signature]
Signature

✓ Bree LaCasse
(Print) Name

296 Spring St #
Address

[Signature]
Signature

✓ Emily Egdor
(Print) Name

31 Cushman St #2
Address

[Signature]
Signature

✓ Jann-Marie Keene
(Print) Name

108 Sherman #8
Address

[Signature]
Signature

✓ Kathy Amato
(Print) Name

96 Lincoln #2
Address

[Signature]
Signature

✓ Samira Fdal
(Print) Name

1326 Forest Ave #16
Address

[Signature]
Signature

✓ Wayne Sherman
(Print) Name

655 Congress St. Apt 224
Address

[Signature]
Signature

✓ Tom Hamill
(Print) Name

655 Congress St. #624
Address

[Signature]
Signature

✓ Barbara P. Sherman
(Print) Name

655 Congress St. Apt 224
Address

[Signature]
Signature

✓ Kennedy Johnson
(Print) Name

655 Congress St. Apt. 624
Address

[Signature]
Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

JULY, 2020
Date Commission Expires/Date Entered the Bar

Ethan Smaling
Printed Name

An Act To Increase the Minimum Wage in Portland

An Act to Increase the Minimum Wage in Portland will increase the minimum wage in Portland to \$15 an hour over three years. It increases the minimum that tipped employees must be paid by their employer to \$7.50 an hour. It moves the effective date of annual cost-of-living increases to the minimum wage from July 1 to Jan 1 to maintain consistency with state law. It also requires a higher minimum wage for work performed during declared states of emergency.

1. That Chapter 33, Section 33.7 of the Portland City Code is hereby amended to read as follows:

Section 33.7. Minimum Wage.

...

(b) *Minimum Wage rate:*

(i) Beginning on January 1, ~~2022~~2016, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to ~~\$13.00~~~~10.10~~ per hour;

(ii) Beginning on January 1, ~~2023~~2017, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to ~~\$14.00~~~~10.68~~ per hour; and

(iii) Beginning on January 1, 2024, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$15.00 per hour; and Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be increased according to the Consumer Price Index—All Urban Consumers (CPI-U) percentage increase from the prior year, unless the Minimum Wage equals the State Minimum Wage as set forth below. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.

(iv) On January 1, 2025 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the

increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for All Urban Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage in effect under this ordinance, the minimum wage under this ordinance is increased to the same amount, effective on the same date as the increase in the state minimum wage, and must be increased in accordance with this ordinance thereafter. If the State Minimum Wage established by 26 M.R.S. § 664 is equal to or greater than the Minimum Wage established herein, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to equal the State Minimum Wage.

...

(c) Tip Credit:

(i) An Employer may consider tips as part of the wages of a Service Employee toward satisfaction of the Minimum Wage established by this ordinance, in accordance with 26 M.R.S. §664(2) and until such time as the tip credit is eliminated under state law. Such a tip credit shall be no greater than half the Minimum Wage rate established by this ordinance ~~the amount necessary to reduce the direct wages paid to a Service Employee to an amount equal to the minimum direct wages required to be paid to Service Employees pursuant to 26 M.R.S. §664(2). Minimum direct wages pursuant to 26 M.R.S. §664(2) is the amount required by state law to be paid to a Service Employee after an Employer reduces the state minimum wage by the maximum allowable tip credit as provided in 26 M.R.S. §664(2).~~

...

(g) Effect of Emergency Proclamation. For work performed during a declared emergency, the effective Minimum Wage rate established by this ordinance shall be calculated as 1.5 times the regular minimum wage rate under subsection (b) above. A declared emergency under this ordinance shall include the period of time during which:

(i) A proclamation issued pursuant to Chapter 2, Sec. 2-406, of this code declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace; or

(ii) A proclamation issued pursuant to 37-B M.R.S. § 742 declares an emergency to exist, if such emergency proclamation is geographically applicable to the Employee's workplace.

A declared emergency under this ordinance shall not apply to work performed under a teleworking arrangement, as defined under 5. U.S.C. § 6501, allowing the Employee to work from home.

...

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 33, Section 33.7: Minimum Wage

An Act to Increase the Minimum Wage in Portland:

I **HEREBY CERTIFY** that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 33 Section 33.7, Minimum Wage regarding An Act to Increase the Minimum Wage in Portland contains the signatures of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-17-2020

Signed: Katherine L. Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 38-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 17 Re: An Act to Ban Facial Surveillance by Public Officials in Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative called An Act to Ban Facial Surveillance in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date An Act to Ban Facial Surveillance 8.3.2020
2. Ban Facial Recognition
3. Certification for Ban Facial Surveillance Technology

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT
TO THE PORTLAND CITY CODE CHAPTER 17
RE: AN ACT TO BAN FACIAL SURVEILLANCE BY PUBLIC OFFICIALS IN
PORTLAND**

ORDERED, that the amendment to the Portland City Code called An Act to Ban Facial Surveillance by Public Officials in Portland shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

An Act to Ban Facial Surveillance by Public Officials in Portland will ban the city of Portland and its departments and officials from using or authorizing the use of any facial surveillance software on any groups or members of the public, and provides a right to members of the public to sue if facial surveillance data is illegally gathered and/or used.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345, Portland, ME 04104

Dated at Portland, this 15 day of May 20 20.

✓ <u>Brendan McQuade</u> (Print) Name	<u>4 Candlewyck Ter</u> Address	<u>Brendan McQuade</u> Signature
✓ <u>Sydney Avitia-Jacques</u> (Print) Name	<u>180 State St #301</u> <u>Portland 04101</u> Address	<u>Sydney Avitia-Jacques</u> Signature
✓ <u>Jacob Kargisz</u> (Print) Name	<u>123 Sherman St #13</u> Address	<u>Jacob Kargisz</u> Signature
✓ <u>Jessica Faber</u> (Print) Name	<u>9 C St #2</u> Address	<u>Jessica Faber</u> Signature
✓ <u>Alexandria Cleveland</u> (Print) Name	<u>439 Congress St</u> Address	<u>Alexandria Cleveland</u> Signature
✓ <u>MARCELLA MARINO</u> (Print) Name	<u>226 SHERIDAN ST</u> Address	<u>Marcella Marino</u> Signature
✓ <u>Jonathan Distaleri</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Jonathan Distaleri</u> Signature
✓ <u>Elisabeth Ames</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Elisabeth Ames</u> Signature
✓ <u>Glen Galtik</u> (Print) Name	<u>63 Danforth St.</u> Address	<u>Glen Galtik</u> Signature
✓ <u>Kathryn Wilton</u> (Print) Name	<u>814 Congress St #2</u> Address	<u>Kathryn Wilton</u> Signature

Subscribed and sworn to before me this 14 day of May, 2020.

Jonathan D. Torsch
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH
Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345, Portland, ME 04104

Dated at Portland, this _____ day of _____ 20____.

<u>Brendan McQuade</u> (Print) Name	<u>4 Cordwryck Ter</u> Address	<u>Brian Melick</u> Signature
<u>Sydney Avitia-Jacques</u> (Print) Name	<u>180 State St #301</u> Address	<u>Sydney-Jacques</u> Signature
<u>Jacob Kyrusisz</u> (Print) Name	<u>123 Sherman St #13</u> Address	<u>Jacob Kyrusisz</u> Signature
<u>Jessica Faber</u> (Print) Name	<u>9 C St #2</u> Address	<u>Jessica Faber</u> Signature
<u>Alexandria Cleveland</u> (Print) Name	<u>439 Congress St</u> Address	<u>Alexandria Cleveland</u> Signature
<u>MARCELLA MARINO</u> (Print) Name	<u>226 SHERIDAN ST</u> Address	<u>Marcella Marino</u> Signature
<u>Jonathan DiStefano</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Jonathan DiStefano</u> Signature
<u>Elisabeth Ames</u> (Print) Name	<u>29 Fessenden St #2</u> Address	<u>Elisabeth Ames</u> Signature
<u>Glen Galtik</u> (Print) Name	<u>63 Danforth St.</u> Address	<u>Glen Galtik</u> Signature
<u>Kathryn Wilson</u> (Print) Name	<u>814 Congress St #2</u> Address	<u>Kathryn Wilson</u> Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN P TORSCH
Printed Name

An Act To Ban Facial Surveillance by Public Officials in Portland

An Act to Ban Facial Surveillance by Public Officials in Portland will ban the city of Portland and its departments and officials from using or authorizing the use of any facial surveillance software on any groups or members of the public, and provides a right to members of the public to sue if facial surveillance data is illegally gathered and/or used.

1. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 17, Article XI, which said article reads as follows:

ARTICLE XI. FACIAL SURVEILLANCE TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article is to protect the privacy and civil liberties of the residents of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

Face surveillance means an automated or semi-automated process that assists in identifying or verifying an individual, or captures information about them, based on the physical characteristics of their face.

Face surveillance system means any computer software or application that performs face surveillance.

City of Portland means any department, agency, bureau, and/or subordinate division of the City of Portland.

City of Portland official means any person or entity acting on behalf of the City of Portland, including any officer, employee, agent, contractor, subcontractor, or vendor.

Sec. 17-131. Facial Surveillance Technology Prohibition.

It shall be unlawful for the City of Portland or any City of Portland official to:

- (a) Obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance;

(b) Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Portland or any City of Portland official:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance; or

(c) Issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance.

Sec. 17-132. Enforcement.

(a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.

(b) Private cause of action.

1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of

Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the city of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.

2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the greater of:

a. \$100 for each violation of this article; or

b. \$1,000.

3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.

(c) Violation of this ordinance by any official or employee of the city of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining.

Sec. 17-132. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

(a) limit any individual's rights under state or federal law;

(b) prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording;

(c) prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or

(d) prohibit the use of facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:

1. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed, used, or

collected with the knowledge and consent of any person authorized for such entry or access; and

2. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

**CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO
CHAPTER 17, Article XI: Facial Surveillance Technology**

An Act to Ban Facial Surveillance by Public Officials in Portland

I **HEREBY CERTIFY** that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 17 Article XI, Facial Surveillance Technology Re: An Act to Ban Facial Surveillance by Public Officials in Portland contains the signatures of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-20-2020

Signed: Katherine L. Jones

Katherine L. Jones, City Clerk

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

**CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO
CHAPTER 33, Section 33.7: Minimum Wage**

An Act to Increase the Minimum Wage in Portland:

I **HEREBY CERTIFY** that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 33 Section 33.7, Minimum Wage regarding An Act to Increase the Minimum Wage in Portland contains the signatures of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated:

7-17-2020

Signed:

Katherine L. Jones

Katherine L. Jones, City Clerk

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 6, Article XII of the Portland City Code Re:

An Act to Protect Tenants

I HEREBY CERTIFY that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 6 Article XII, of the Portland City Code Re: "An Act to Protect Tenants", of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-22-2020

Signed: Katherine L. Jones

Katherine L. Jones, City Clerk

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 2, Section 2-302: Contracts; purchases of the Portland City Code Re:

An Act to Implement a Green New Deal for Portland

I HEREBY CERTIFY that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 2 Section 2-302, of the Portland City Code Re: "An Act to Implement a Green New Deal for Portland", of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-22-2020

Signed: Katherine L Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 39-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 2 Re: An Act to Implement a Green New Deal for Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR: Katherine L. Jones, City Clerk

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative called An Act to Implement a Green New Deal in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date An Act to Implement a Green New Deal 8.3.2020
2. An Act to a Green New Deal
3. Certification of An Act to Implement a Green New Deal for Portland

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT
TO THE PORTLAND CITY CODE CHAPTER 17
RE: AN ACT TO IMPLEMENT A GREEN NEW DEAL IN PORTLAND**

ORDERED, that the amendment to the Portland City Code called An Act to Implement A Green New Deal in Portland shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

An Act to Implement a Green New Deal for Portland promotes sustainability and sustainable communities by: ensuring that all building projects receiving \$50,000 or more in public funds are built using up-to-date environmental standards, with solar-ready or living roofs, and additional worker pay and training; increasing the numbers of affordable units built in developments of 10 units or more, and the affordability of those units; and asking the Council to annually monitor use of fossil fuel infrastructure in the city and to come up with plans to reduce this infrastructure to meet stated emissions targets.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

Green New Deal

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P O Box 11345 Portland ME 04104

Dated at Portland, this 15 day of May 20 20

✓ Daniel Muller
(Print) Name

48 Fall Brook Street
Portland, ME 04103
Address

✓ Daniel Muller
Signature

✓ Christopher Teret
(Print) Name

73 Anderson St
Portland, ME 04101
Address

✓ Christopher Teret
Signature

✓ Kimberly Teret
(Print) Name

73 Anderson St
Portland, ME 04101
Address

✓ Kimberly Teret
Signature

✓ Charles Shattuck Herdorn
(Print) Name

123 Mabel St
Portland ME 04103
Address

✓ Charles Shattuck Herdorn
Signature

✓ Justin Beth
(Print) Name

26 Congress St. Apt. 6
Address

✓ Justin Beth
Signature

✓ Jonathan Diotallevi
(Print) Name

29 Fessenden St #2
Address

✓ Jonathan Diotallevi
Signature

✓ Elisabeth Ames
(Print) Name

29 Fessenden St #2
Address

✓ Elisabeth Ames
Signature

✓ Kelly Merrill
(Print) Name

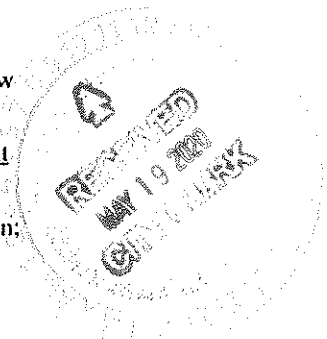
363 St John St #1
Address

✓ Kelly Merrill
Signature

✓ Grayson Lookner
(Print) Name

1235 West Broadway St. #2
Address

✓ Grayson Lookner
Signature



(Print) Name Carlo Macomber Address 41 Eastfield Rd. Signature Carlo Macomber

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]

Signature of Notary Public/Attorney-at-law

8/19/2026

Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH

Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

RECEIVED
MAY 18 2010
CITY CLERK

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to PSA the following address:

P O Box 11345 Portland ME 04104

Dated at Portland, this	day of	20	
<i>Daniel Moller</i>	<i>48 Fall Brook Street</i>	<i>Portland, ME 04103</i>	<i>Daniel Moller</i>
(Print) Name	Address		Signature
<i>Christopher Teret</i>	<i>73 Anderson St</i>	<i>Portland, ME 04101</i>	<i>Chris Teret</i>
(Print) Name	Address		Signature
<i>Kimberly Teret</i>	<i>73 Anderson St</i>	<i>Portland, ME 04101</i>	<i>Kimberly Teret</i>
(Print) Name	Address		Signature
<i>Charles Shattuck Heidom</i>	<i>123 Mabel St</i>	<i>Portland ME 04103</i>	<i>Charles Shattuck Heidom</i>
(Print) Name	Address		Signature
<i>Justin Beth</i>	<i>26 Congress St. Apt. 6</i>		<i>Justin Beth</i>
(Print) Name	Address		Signature
<i>Jonathan Diotallevi</i>	<i>29 Fessenden St #2</i>		<i>Jonathan Diotallevi</i>
(Print) Name	Address		Signature
<i>Elisabeth Ames</i>	<i>29 Fessenden St #2</i>		<i>Elisabeth Ames</i>
(Print) Name	Address		Signature
<i>Kelly Merrill</i>	<i>383 St. John St #1</i>		<i>Kelly Merrill</i>
(Print) Name	Address		Signature
<i>Grayson Lookner</i>	<i>1235 West St Brook St. #2</i>		<i>Grayson Lookner</i>
(Print) Name	Address		Signature

An Act To Implement a Green New Deal for Portland

An Act to Implement a Green New Deal for Portland promotes sustainability and sustainable communities by: ensuring that all building projects receiving \$50,000 or more in public funds are built using up-to-date environmental standards, with solar-ready or living roofs, and additional worker pay and training; increasing the numbers of affordable units built in developments of 10 units or more, and the affordability of those units; and asking the Council to annually monitor use of fossil fuel infrastructure in the city and to come up with plans to reduce this infrastructure to meet stated emissions targets.

1. That Chapter 2, Section 2-302 of the Portland City Code is hereby amended to read as follows:

Sec. 2-302. Contracts; purchases.

...

(b) Supplies, materials and/or services procurement. The City Manager shall have the authority to award any bid and to execute any contract or approve any purchase for and in behalf of the City for supplies and/or materials to be furnished and/or services to be performed for the city, including without limitation professional consulting services, provided that:

(1) The Finance Director certifies that funds are available for such procurement; ~~and~~

(2) The bid is awarded and the contract or purchase executed as the result of a competitive process, which shall mean either by competitive bidding or request for proposals; and

(3) Any firm awarded a city funded contract or contracts aggregating \$50,000 or more, for the construction of any buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports, public schools, or any other structures upon which construction may be let to contract by the City, the awardee, including all sub-contractors, must:

a. compensate all employees on the project at no less than the wage rates and benefits determined pursuant to 26 M.R.S.A. §1306 or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater;

b. require all workers employed on the project in construction work to complete, at a minimum, a time-paid 10-hour training

course for safety established and/or approved by the United States Department of Labor, Occupational Safety and Health Administration prior to work on the project, where "construction work" has the same meaning as in 29 C.F.R. § 1926.32(g); and

c. employ on the project the following minimum number of apprentices, to the extent qualified apprentices are determined to be available in accordance with applicable rules adopted by the Maine Department of Labor as provided by Apprenticeship in Energy Facility Construction, 26 M.R.S. § 3501, where "apprentice" has the same meaning as in 26 M.R.S. § 3501, subsection 1:

i. for any contract awarded on or after January 1, 2021 and before January 1, 2023, a number equal to at least 10% of all persons employed on the project;

ii. for any contract awarded on or after January 1, 2023 and before January 1, 2025, a number equal to at least 17.5% of all persons employed on the project;

iii. for any contract awarded on or after January 1, 2025, a number equal to at least 25% of all persons employed on the project.

...

(e) Exceptions to required competitive process. The requirement of a competitive process set forth in subsection (b) above may be waived by the City Manager, in his or her discretion, if one (1) or more of the following conditions are met, provided that all other provisions set forth in subsection (b) above are met, and the Finance Director has certified that funds are available for such procurement:

...

2. That Chapter 6, Sections 6-98, 6-165, 6-166, 6-167, 6-168, 6-169, 6-170, 6-173, 6-174, 6-175, 6-176 and 6-177 of the Portland City Code are hereby amended to read as follows:

Sec. 6-98. Adoption of standardized codes.

(a) The City hereby adopts the following codes by reference, pursuant to 30-A M.R.S. § 3003:

1. The Maine Uniform Building and Energy Code ("MUBEC"), as required by 10 M.R.S. § 9724;~~and~~

2. The appendix to the Maine Uniform Building and Energy Code ("MUBEC") containing optional energy conservation and efficiency requirements, as provided by 10 M.R.S. §9722, sub-§6, ¶0; and

23. The National Electric Code (2014) ("NEC").

(b) MUBEC and the appendix to MUBEC containing optional energy conservation and efficiency requirements shall be enforced by the building authority, which shall be accomplished through inspections performed by the City building official and code enforcement officers, pursuant to 25 M.R.S. § 2373.

(c) To the extent that any standard or provision of MUBEC conflicts with any standard or provisions from the appendix to MUBEC containing optional energy conservation and efficiency requirements, the standard or provision contained in the appendix shall control and be enforced by the building authority, as provided above.

(ed) The NEC shall be enforced by the building authority.

...

Sec. 6-165. Purpose.

The purpose of this article is to establish the energy performance and roofing requirements for constructing and renovating city buildings and certain publicly-funded building projects with the goal of planning, designing, constructing, and managing to maximize energy performance, minimize adverse environmental impacts, provide healthy work places, conserve natural resources, and promote sustainable development in Portland.

...

Sec. 6-166. Definitions.

...

Funded in whole or in part: (a) Receipt of tax increment financing in an amount greater than ~~two hundred~~ fifty thousand dollars (~~\$200,000~~\$50,000); or (b) receipt of grants by the City, HOME loans, Community Development Block Grant loans or Neighborhood Stabilization Program loans, the sum of which is greater than ~~two hundred~~ fifty thousand dollars (~~\$200,000.00~~\$50,000); or receipt of other funds, gifts, resources, property, or other thing or things of value from or by the city of Portland, to promote, allow for, contribute to, or

otherwise facilitate the new construction or renovation project, the aggregate dollar value of which, net remuneration to the city of Portland, is greater than fifty thousand dollars (\$50,000).

Hardship: Some verifiable level of difficulty or adversity arising from factors identified in Sec. 6-170 ~~or other circumstances beyond the control of the applicant~~, by which the applicant cannot reasonably comply with the requirements of this ordinance.

Infeasible: The existence of verifiable obstacles arising from the factors identified in Sec. 6-170 ~~or other circumstances beyond the control of the applicant~~ which render the applicant incapable of complying with the requirements of this ordinance.

Leadership in Energy and Environmental Design (LEED) Standards: A third-party rating system developed by the United States Green Building Council (USGBC) where credits are earned for satisfying specified green building criteria.

Living roof: The media for growing plants, as well as the set of related components installed exterior to a facility's roofing membrane for the purpose of increasing renewable energy resources, aiding stormwater management, and promoting biodiversity. Living roofs may include roof gardens, green roofs, landscaped roofs, and other rooftop areas designed to achieve such purposes.

Qualified professional: A person (a) engaged or employed in fields of architecture, building design, construction, energy efficiency, engineering, or related specialty or consultancy; and (b) holding relevant professional licensure or "green building" professional certification, including but not limited to Professional Engineer licensure, LEED Accredited Professional (AP), Well AP, Certified Passive House Consultant (CPHC) or Certified Passive House Designer (CPHD), Green Globes Professional, or similar credential.

Renovation:

(a) At the time of the application, the total construction cost is greater than or equal to the market value of the property as determined by the city's tax assessor; or

(b) A conversion from non-conditioned to conditioned space; or

(c) An addition of building gross square footage greater than or equal to the gross square footage of the existing building; or

(d) Any change to the use category of a structure or property, as defined in chapter 14 of this code.

Solar zone: An allocated space on a new construction or renovation project that is unshaded and free of obstructions, serving as a suitable place where solar panels can be installed at a future date. The solar zone can be located at any of the following locations:

(a) Roof of the building.

(b) Overhang of the building.

(c) Roof of another structure located within 250 feet of the primary building.

(d) Overhang of another structure within 250 feet of the primary building.

(e) Covered parking installed with the building project.

(f) Other structures including, but not limited to, trellises, arbors, patio covers, carports, gazebos, and similar accessory structures.

...

Sec. 6-167. Standards for new buildings and renovation projects.

All new construction and renovation projects to be owned, or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 2,000 square feet in floor area or greater shall be certified ~~teat~~ at or above the most recently published and applicable LEED Silver Standard using appropriate LEED Rating System, and shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below, ~~particularly those listed below thereof and whole thereof.~~

~~(a) LEED 2009 for Commercial Interiors.~~

~~(b) LEED 2009 for Existing Buildings, Operations, and Maintenance.~~

~~(c) LEED 2009 for Healthcare.~~

~~(d) LEED 2009 for New Construction and Major Renovations.~~

~~(e) LEED 2009 for Schools.~~

All new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of ~~105,000~~ 5,000 square feet in floor area or greater shall demonstrate, under any third-party certification and quality assurance system (e.g. LEED, Passive House, Living Building, or Green Globes) or energy model signed by a licensed engineer or qualified professional, a certain percentage improvement in the proposed energy performance of the building compared to the minimum baseline performance rating per ASHRAE Standard 90.1, being particularly the 2010- most recently published version thereof and the whole thereof, or equivalent standard if the ASHRAE Standard 90.1 is not applicable to the project. Such percentage improvement shall be or exceed thirty percent (30%) for new construction, twenty-five percent (25%) for existing buildings, and twenty percent (20%) for historic buildings. All such new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 5,000 square feet in floor area or greater shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below.

Copies of the most recently published LEED Rating Systems and ASHRAE Standard 90.1 shall be maintained by and kept on file with the City Clerk.

...

Sec. 6-168. Submissions.

Upon submission of an application for a building permit for new construction or renovation projects that are required to meet the standards set forth in section 6-167, the applicant shall also submit the following, as applicable:

(a) One of the following:

_____ 1. A LEED checklist, and a LEED application number (or other proof of LEED applications status); or

_____ 2. ~~(b)~~ A third-party certification system document of verification from a qualified professional; or

_____ 3. ~~(c)~~ A preliminary energy model, along with a statement of certification from a licensed engineer or qualified professional that the project meets the standard(s); and

(bd) A written explanation of how the building will obtain the applicable standards using design plans to demonstrate compliance where applicable (example: LEED submittal templates or Passive House Pre-Certification report); and

(c) Plans and documentation prepared by a qualified professional demonstrating compliance with the Better Roof Requirements contained in Section 6-175 below, including:

1. Documentation of the as-designed structural loads and plans for interconnecting a photovoltaic (PV) system to the electrical system of the building; or

2. Documentation of the as-designed structural loads and layout plans for the Living Roof system of the building.

...

Sec. 6-169. Certificate of Occupancy.

A copy of the final submission of LEED documentation to the USGBC or final LEED certification decision, or a statement of final certification from a licensed engineer or qualified professional indicating that the project meets the standards along with any amendment to the preliminary energy model shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy for new construction or renovation projects that are required to meet the standards set forth in section 6-167. A temporary certificate of occupancy may be issued by the city if necessary prior to the submission of final LEED documentation to the USGBC. Equivalent documentation from a licensed engineer or qualified professional is required if compliance is met with other third-party certification and quality assurance systems.

...

Sec. 6-170. Partial exemption and exceptions.

1. If it is a hardship or infeasible for an applicant to meet the standards set forth in section 6-167, the applicant may request a partial exemption from regulation. The burden is on the applicant to show hardship or infeasibility. Factors to consider in determining whether hardship or infeasibility exists ~~include, but are not~~ shall be limited to:

~~(a) Availability of green building materials and technologies; or~~

(ab) ~~Compatibility~~ A conflict of green building requirements with other government requirements and building standards; or

(be) Required alterations to an historic building that would compromise its historic character as determined by the Historic Preservation Board; or

(cd) Specific circumstances that would defeat the purpose of the standards.

2. Any request for a partial exemption must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. In order for a partial exemption to be granted, the applicant must demonstrate all possible effort to maximize building performance according to the standards set forth in section 6-167 and shall indicate the maximum level of standards which are reasonably achievable for the building as follows:

(a) In the case of a LEED standard requirement, the applicant will list the number of credits reasonably achievable and verified by each applicable licensed professionals or qualified professional.

(b) In the case of ASHRAE 90.1 or equivalent standard requirement, the applicant will document the percentage above the standard that is reasonably achievable with a statement of certification from a licensed engineer.

(c) In the case of other third-party "green building" certification and quality assurance systems (example: Passive House), the applicant will submit project performance documentation meeting or exceeding the standards of the certification system prepared by a qualified professional.

If the partial exemption is granted, the applicant shall be required to comply with this ordinance in all other respects. A copy of the final submission of LEED documentation to the USGBC or a statement of final certification from each applicable licensed professionals or licensed engineer indicating that the project meets the level of standard presented at the time of application along with any amendment shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

3. Any request for an exception to the LEED Certification requirement must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. If an applicant submits standardized third-party certification or

documentation signed by a qualified professional, an exception to the LEED Certification requirement may be granted provided that such third-party certification or documentation demonstrates that it meets or exceeds at least one of the following:

- (a) LEED Platinum Certification by the USGBC; or
- (b) Passive House Certification or EnerPHIT Certification by International Passive House Institute (PHI) or PHIUS+ Certification by the Passive House Institute US (PHIUS); or
- (c) Living Building Challenge or Living Community Challenge, Petal Recognition or Net Zero Energy Certification from International Living Future Institute (ILFI); or
- (d) Well v2 or current most stringent standard by International WELL Being Institute; or
- (e) Green Globes Certification by Green Building Initiative; or
- (f) Other equivalent "green building" standards that include published verification and quality assurance procedures when approved on a case-by-case basis by planning director and sustainability director.

Any applicant granted an exception to the LEED Certification requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to the third-party certifying body (example: DOE, PHIUS, ILFI, or PHI) or qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional, licensed engineer, or third-party certifying body shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

4. Any request for an exception to the Better Roof Requirement under Section 6-175 below must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. An exception to the Better Roof Requirement may be granted provided that an applicant submits certification or documentation signed by a qualified professional demonstrating all possible effort to comply with the Better Roof Requirements contained in Section 6-175, and the applicability of at least one of the following specific reasons for an exception:

(a) A new construction or renovation project other than single-family residential buildings may be granted an exception to the Better Roof Requirement if a solar PV system with a power rating of no less than 1 watt per square foot of roof area is permanently installed at the time of construction.

(b) A single-family residential building may be granted an exception to the Better Roof Requirement if a solar PV system rated at 1000 watts or greater is permanently installed at the time of construction.

(c) A new construction or renovation project may be granted an exception to the Better Roof Requirement if the roof is designed as a helicopter landing zone.

(d) A renovation project may be granted an exception to the Better Roof Requirement unless the total roof area is increased by at least 2,000 square feet over the total roof area of the existing building.

(e) A new construction or renovation project may be granted an exception to the Better Roof Requirement reducing the required total area of solar zone by up to 50 percent if the roof is shaded by objects that are not part of the building and are permanent. These objects shall only be adjacent buildings or trees evaluated as healthy by an arborist and documentation must be submitted by a qualified professional.

(f) If the building has a gross floor area of 2,000 square feet or more, and has 10 or fewer occupied floors, a new construction or renovation project may be granted an exception to the Better Roof Requirement to substitute some or all of the required total area of solar zone with area of living roof, such that each square foot of living roof shall count as 0.5 square foot towards the required total area of solar zone, provided that applicants submit such a living roof design for review and approval upon submission of an application for a building permit.

Any applicant granted an exception to the Better Roof Requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to each applicable qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

5. The director of planning and urban development shall annually, on or before July 1, submit a report to the City Council, containing at a minimum a list of each applicant and project granted a partial exemption or exception under this section during the previous twelve

months, and for each partial exemption or exception granted the reason(s) why it was so was granted.

...

Sec. 6-173. ReservedConditional Expansion of Applicability.

Under the following limited circumstances, Sec. 6-167 and Sec. 6-168 shall apply to all new construction and renovation projects in the City of Portland, regardless of ownership, occupation, or sources of funding:

(a) The Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., is repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding those adopted by the Technical Building Codes and Standards Board pursuant to the Maine Uniform Building and Energy Code; or

(b) The rules, codes, and standards adopted by the Technical Building Codes and Standards Board pursuant the Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., as the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, are repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding such rules, codes, or standards; or

(c) This ordinance, or substantially similar rules, codes, or standards are approved by the Technical Building Codes and Standards Board as amendments to the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, or as amendments to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, after submission of such proposed amendments under Sec. 174 below; or

(d) The application of this ordinance to all new construction and renovation projects in the city of Portland, through the city's home rule authority is otherwise not prohibited or subject to preemption under state law.

Sec. 6-174. ReservedSubmission of Amendments to the MUBEC.

The Sustainability Office, Permitting and Inspections Department, or other appropriate Office or Department of the city of Portland, on behalf of the city of Portland and to address the health, safety, and welfare needs of the inhabitants of the city of Portland, until such amendments are approved and adopted must annually by May 30 submit

proposed amendments to the Maine Uniform Building and Energy Code, or to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, as provided for under 16-642 C.M.R. ch. 1, § 13, and the amendment process created pursuant to that section, that would apply, or allow to be applied, the standards and requirements of this ordinance, or substantially similar rules, codes, or standards, to all new construction and renovation projects in the city of Portland.

Sec. 6-175. ReservedBetter Roof Requirements.

Except as provided under Sec. 6-170 above, to be certified by a qualified professional as compliant with the Better Roof Requirements of this section, a new construction or renovation project must demonstrate all of the following:

(a) The project contains a total area of solar zone that is no less than 15 percent of the total roof area after subtracting any area of the roof that is covered by a skylight; and

(b) The total area of solar zone shall be free from any shading or obstruction such as vents, chimneys, architectural features, or roof-mounted equipment, not including any obstructions located north of all points of the solar zone; and

(c) If the solar zone is located on a roof that has ratio of rise to run of greater than 2:12, then the roof must be oriented between 110 degrees and 270 degrees of true north (not magnetic north), in order to ensure a reasonable solar exposure if a solar energy system is installed in the future; and

(d) The main electrical service shall be provided such that capacity is adequate for future solar electric and such reserved space shall be permanently marked in main electrical service panel "For Future Solar Electric".

The total area of the solar zone may be composed of multiple subareas. No dimension of a subarea can be less than 5 feet. If the total roof area is equal to or less than 10,000 square feet, each subarea must be at least 80 square feet. If the total roof area is greater than 10,000 square feet, each subarea must be at least 160 square feet. The solar zone design must comply with other applicable codes and regulations.

Sec. 6-176. ReservedReporting on Fossil Fuel Infrastructure.

The policy of the city of Portland shall be to endeavor by all reasonable and permissible means to reduce reliance upon fossil fuels, and to reduce and discourage the use of natural gas, heating oil, or other fossil fuel based infrastructure both in new construction and renovation projects, and in existing buildings, including but not limited to such projects and buildings to be owned, occupied, or

funded in whole or in part by the city of Portland. In furtherance of this policy, the city manager, or their designee, shall annually, on or before July 1st, publish and present to the city council a report concerning benefits of such policy, and such annual report will, at a minimum, include:

(a) The total number of new buildings built in Portland without fossil fuel-based infrastructure;

(b) A survey of the green building technologies that have been implemented as alternatives to oil or natural gas power, such as solar roofs, green roofs, or sustainable building design and construction consistent with certifications and guidelines such as LEED, PassiveHouse, Living Building or others;

(c) Assessment of the benefits to the City of Portland of the adoption of this policy, including the impact on carbon emissions and increased energy efficiency of public buildings;

(d) A survey of legislation enacted at the municipal and state level to develop a coordinated regional plan to stop the use of fossil fuels to power buildings;

(e) Proposals for any changes to the city code that might further achieve reduction in use of fossil fuels or fossil fuel-based infrastructure in the city of Portland.

Sec. 6-177. ReservedSeverability.

If any provision of this Article shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

...

3. That Chapter 14, Sections 14-485 and 14-487 of the Portland City Code are hereby amended to read as follows:

Sec. 14-485. Definitions

...

Workforce housing unit for rent means a dwelling unit for which:

- (a) The rent is affordable to a household earning ~~100%~~ 80% or less ~~than~~ of AMI; and*
- (b) The unit is rented to a household earning ~~100%~~ 80% or less of AMI; and*

- (c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale means a dwelling unit for which:

- (a) The purchase price is affordable to a household earning ~~120%~~ 80% or less of AMI; and
- (b) The unit is sold to a household earning ~~120%~~ 80% or less of AMI; and
- (c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

...

Sec. 14-487. Ensuring Workforce Housing.

...

(d) Workforce Housing Minimum. At least ~~ten percent (10%)~~ twenty five percent (25%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The project shall have the option of paying a partial fee-in-lieu as per (e)4 below for any fractional value or providing an additional unit on site.

(e) Standards

...

2. Workforce units must ~~are encouraged to be~~ integrated with the rest of the development, must ~~should~~ use a common entrance and must ~~should~~ provide no indications from common areas that these units are workforce housing units.

...

4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be ~~\$106,000~~ \$150,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.

...

7. The term of affordability for the required ~~10-25~~ percent workforce units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability for Required Workforce Units
--	--

10%	Longest term permitted under federal, state and local laws and ordinances
25%	30 years
50%	20 years
100%	10 years

...

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 2, Section 2-302: Contracts; purchases of the Portland City Code Re:

An Act to Implement a Green New Deal for Portland

I **HEREBY CERTIFY** that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 2 Section 2-302, of the Portland City Code Re: "An Act to Implement a Green New Deal for Portland", of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-22-2020

Signed: Katherine L Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 40-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Protect Tenants - Sponsored by Katherine L. Jones, City Clerk

SPONSOR: Katherine L. Jones, City Clerk

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative called An Act to Protect Tenants. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date An Act to Protect Tenants 8.3.2020
2. An Act to Protect Tenants
3. Certification for An Act to Protect Tenants

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT
TO THE PORTLAND CITY CODE CHAPTER 6
RE: AN ACT TO PROTECT TENANTS**

ORDERED, that the amendment to the Portland City Code called An Act to Protect Tenants in Portland shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

An Act to Protect Tenants will cap most annual rent increases to the rate of inflation, ban discrimination against tenants with public vouchers, incentivize landlords to provide 90-day notice to tenants they are asking to vacate, and create a tenant/landlord board to permit additional rent increases when individual building circumstances warrant, such as major capital improvements.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

PO Box 11345 Portland Maine 04104

Dated at Portland, this 15 day of May 20 20.

✓ Crow Norlander

(Print) Name

64 Mabel St. #2 Portland ME 04103

Address

Signature

✓ Nicholas Pellenz

(Print) Name

215 St John St

Address

Signature

✓ Jai Kang

(Print) Name

45 Rustic Ln.

Address

Signature

✓ Jeanne Heil

(Print) Name

45 Rustic Ln

Address

Signature

✓ Jessica Falero

(Print) Name

9 C st

Address

Signature

✓ Arnon Berger

(Print) Name

11 Grant st #6

Address

Signature

✓ Sydney Avitia-Jacques

(Print) Name

180 State St. #301 Portland 04101

Address

Signature

✓ Grayson Lookner

(Print) Name

1275 Westbrook St. #2

Address

Signature

✓ KRYSTIAN BIGOSINSKI

(Print) Name

73 ALBA ST

Address

Signature

✓ Ann Laguerre

(Print) Name

139 Park St.

Address

Signature

Subscribed and sworn to before me this 14 day of May, 20 20.

Jonathan D Torsch

Signature of Notary Public/Attorney-at-law

8/19/2026

Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH

Printed Name

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
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- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

PO Box 11345 Portland Maine 04104

Dated at Portland, this _____ day of _____ 20____.

Crow Norlander
(Print) Name

64 Mabel St. #2 Portland ME 04103
Address

[Signature]
Signature

Nicholas Pellenz
(Print) Name

215 St John St
Address

[Signature]
Signature

Jai Keng
(Print) Name

45 Rustic Ln.
Address

[Signature]
Signature

Jeanne Heil
(Print) Name

45 Rustic Ln
Address

[Signature]
Signature

Jessica Falero
(Print) Name

9 C st
Address

[Signature]
Signature

Aaron Berger
(Print) Name

11 Grant st #6
Address

[Signature]
Signature

Sydney Avitia-Jacques
(Print) Name

180 State St. #301 Portland ME 04101
Address

[Signature]
Signature

Grayson Lookner
(Print) Name

1275 Westbrook St. #2
Address

[Signature]
Signature

KRYSZIAN BIGOSINSKI
(Print) Name

73 ALGA ST
Address

[Signature]
Signature

Ann Laguerz
(Print) Name

139 Park St.
Address

[Signature]
Signature

Subscribed and sworn to before me this 14 day of May, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

8/19/2026
Date Commission Expires/Date Entered the Bar

JONATHAN D TORSCH
Printed Name

An Act To Protect Tenants

An Act to Protect Tenants will cap most annual rent increases to the rate of inflation, ban discrimination against tenants with public vouchers, incentivize landlords to provide 90-day notice to tenants they are asking to vacate, and create a tenant/landlord board to permit additional rent increases when individual building circumstances warrant, such as major capital improvements.

1. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 6, Article XII, which said article reads as follows:

ARTICLE XII. RENT CONTROL AND TENANT PROTECTIONS

Sec. 6-230. Purpose.

The purpose of this Article is to address increasing rental costs within the City of Portland; to promote neighborhood and community stability; to protect the City's tenant population; to limit arbitrary evictions; and to stabilize and make more predictable future rent increases, all while remaining in conformance with Maine law, and ensuring that Landlords within the City receive a fair return on investment.

Sec. 6-231. Applicability.

This Article shall apply to Rental Units in the City limits of Portland, exempting the following:

- (a) Rental Units owned, operated, or otherwise managed by municipal housing authorities, as defined in 30-A M.R.S. §4721(1), as amended;
- (b) Accommodations provided in a hospital, convent, church, religious facility, or extended care facility;
- (c) Dormitories owned and operated by an institution of higher education, or by Portland Public Schools;
- (d) Rental Units within a building containing only two (2), three (3) or four (4) dwelling units, one of which the Landlord currently occupies as his or her principal residence;
- (e) Accommodations where the amount of rent charged is either controlled or subsidized by a federal, state, or local governmental agency; and
- (f) Accessory dwelling units, as defined and understood in Chapter 14 of this Portland City Code.

Sec. 6-232. Definitions.

Allowable increase percentage means the amount that the rent of a Covered Unit may be raised within a Rental Year, unless a Landlord is entitled to additional increases as laid out in Section 6-233 below. The allowable increase percentage shall be determined on September 1 of each year beginning on September 1, 2021, and shall be equal to 100 percent of the change in the Consumer Price Index for Greater Boston Metro Area, as published by the United States Bureau of Labor Statistics or its designee.

Base rent means the initial amount of rent that a Landlord charges for a Covered Unit, as more specifically defined in Section 6-233 of this Article.

Banked rent means the Base Rent for a Covered Unit, plus any increase in rent to which the Landlord was entitled under Sections 6-233 and 6-234 below, but that was not charged to a Tenant during a particular Rental Year.

Constructed means a Rental Unit that has received its final certificate of occupancy from the City's Permitting and Inspections Department, or its designee.

Covered unit means a Rental Unit within the City of Portland that does not fall within a category exempted from this Article by Section 6-231.

Current covered unit means a Covered Unit that is occupied by a Tenant on January 1, 2021.

Discontinued covered unit means a Covered Unit that is not occupied on January 1, 2021 and has not been registered with the City of Portland under Section 6-151 of this Chapter.

Landlord means an owner, manager, managing agent, sublessor, or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

Qualified family member means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage, or adoption.

Rent means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in consideration with, the use or occupancy of rental units and housing services. Such consideration includes, but is not limited to, monies and fair value of goods and services rendered to or for the benefit of the

Landlord under the Rental Agreement, or in exchange for a Rental Unit, or housing services of any kind.

Rent board means the set of appointed individuals responsible for the administration of this Article, in accordance with the terms set forth below.

Rent stabilization allowances means collectively the Allowable Increase Percentage, the Tax Rate Rent Adjustment, and any additional rent increase exemptions approved by the Rent Board under Section 6-234 of this Article.

Rent stabilization ordinance means Chapter 6, Article XII of the Code of Ordinances, City of Portland, Maine, as amended.

Rental agreement means a written legal contract between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

Rental unit means any dwelling unit that is rented or otherwise made available for rent for residential use or occupancy, together with all additional rights, privileges, or services connected with use or occupancy of such a unit, including but not limited to vehicle parking spaces, storage, and commons areas and/or recreational facilities held out for use by the Tenant.

Rental year means a period of twelve (12) consecutive months beginning on January 1, 2021, or the date on which a Covered Unit enters the rental housing market, whichever is earlier.

Tax rate rent adjustment means the additional amount by which a Landlord may increase the rent of a Covered Unit within a given year. The Tax Rate Rent Adjustment may be added to the Allowable Increase Percentage if and only if the City changes the mil rate as compared to the previous Rental Year. In this case, the tax rate rental adjustment is equal to the actual increase in property taxes attributable to the individual Covered Unit.

Tenancy means the right or entitlement of a Tenant to use or occupy a rental unit.

Tenant-Based Rental Assistance means any and all forms of tenant-based rental assistance and vouchers, including but not limited to:

- (a) Tenant-based rental assistance through the Section 8 Housing Choice Voucher Program, 42 U.S.C § 1437f (o)
- (b) Tenant-based rental assistance through the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez

- National Affordable Housing Act, as amended, 42 U.S.C § 12701 et seq.;
- (c) Tenant-based rental assistance under the HOD-Veterans Affairs Supportive Housing (HUD-VASH), authorized by § 8 (o) (19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (o) (19);
 - (d) Tenant-based rental assistance through the Shelter Plus Care Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11403-11407b, as amended;
 - (e) Tenant-based rental assistance through the Supportive Housing Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11381-11389, as amended;
 - (f) Tenant-based rental assistance through the Section 8 Disaster Voucher Program (DVP);
 - (g) Tenant-based rental assistance through the Housing Opportunities for Persons with AIDS (HOPWA) Program, 42 U.S.C. § 12901 -12912 as amended;
 - (h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;
 - (i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389;
 - (j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule);
 - (k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011;
 - (l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771;
 - (m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771;
 - (n) Tenant-based rental assistance through the City of Portland's Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;
 - (o) Tenant-based rental assistance through the City of Portland's General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and
 - (p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

Sec. 6-233. Establishment of base rent.

(a) Base Rent for Current Covered Units. Beginning on January 1, 2021, each Covered Unit shall be registered with the City in accordance with Section 6-151(c). Such registration must include proof of the rent charged by the Landlord for each Covered Unit as of June 1, 2020 (i.e., through presentation of a valid Rental Agreement, rent payment receipt, or other acceptable means within the opinion of the City). This amount shall be the Base Rent for purposes of the Rent Stabilization Ordinance.

(b) Base rent for Discontinued Covered Units.

- (i) If a Covered Unit is not registered with the City as of January 1, 2021, but is registered with the City after such date, the Base Rent shall be set by the Landlord.
- (ii) If a Covered Unit is registered with the City as of January 1, 2021, but is removed from the rental housing market, the Base Rent for such a Covered Unit upon reentry to the rental housing market shall be the Banked Rent, as measured from the Rental Year in which the Covered Unit was removed from the rental housing market.
- (iii) If a Covered Unit is registered with the City as of January 1, 2021, but is subsequently removed from the rental housing market for a period of five (5) or more Rental Years, the Base Rent for such a Covered Unit upon reentry into the rental housing market shall be set by the Landlord.

(c) Base rent following renovation or reconfiguration of Covered Units. Upon the renovation or reconfiguration of a Covered Unit, the Landlord may charge no more than the Banked Rent for that unit, or may apply to the Rent Board for determination of the appropriate increase in rent. When determining the appropriate increase in rent, the Rent Board may consider factors including the increase in floor area, the addition or upgrade of amenities, and any other factor determined relevant in the opinion of the Rent Board.

(d) Base rent following consolidation of Covered Units. When two (2) or more Covered Units are consolidated to create a single Covered Unit, the Base Rent for the resulting Covered Unit shall be equal to the Banked Rent of the larger of the two previously-existing Covered Units, increased by a percentage equal to the increase in square footage of the new Covered Unit.

Sec. 6-234. Rent increase limitations.

(a) Beginning on September 1, 2021, and occurring no later than September 1 of each subsequent year, the Housing Safety Office shall establish and publish the Allowable Increase Percentage and the Tax Rate Rent Adjustment for the following calendar year.

(b) A Landlord may only increase the rent charged for a Covered Unit once within a Rental Year, by an amount that conforms to the following specifications:

- (i) Annual Increase Percentage. Unless a Landlord qualifies for an additional increase as further described below, rent for a Covered Unit may not be increased by more than the Allowable Increase Percentage.
- (ii) Tax Rate Rent Adjustment. If the mil rate within the City of Portland is altered for the subsequent fiscal year a Landlord may, in addition to the Allowable Increase Percentage, increase rent by the Tax Rate Rent Adjustment for the subsequent Rental Year.
- (iii) New Tenancy. A landlord may increase the rent on a Covered Unit by five percent (5%) of the base rent in addition to any other allowable increases when a new tenant occupies a unit. This increase may be applied at most once per year, regardless of the number of new tenancies.
- (iv) Banked Rent. If the Landlord has banked additional rent increases, in accordance with Section 6-235 below, this banked amount, in whole or in part, may be added to the increases permitted by subsections (i) and (ii) above.
- (v) Additional Rent Board Approved Increases. In addition to the above rent adjustments, the Rent Board may approve additional rent increases properly demonstrated by the Landlord, attributable to:
 - i. Capital improvement costs, including financing costs;
 - ii. Uninsured repair costs;
 - iii. Increased housing service costs; and
 - iv. Any additional increase, within the opinion of the Rent Board, required to allow the Landlord to receive a fair rate of return.

(c) Under no circumstances may a Landlord raise the rent of a Covered Unit by more than ten (10) percent within a Rental Year. Any rent increases available to a Landlord in excess of ten (10) percent must be banked for use in a subsequent Rental Year.

(d) Before increasing the rent of a Covered Unit, a Landlord must send a signed document to the Tenant(s) no fewer than seventy-five (75) days before the effective date of the rent increase. This document must include the date on which the Tenancy began, the date on which the rent will be increased, and the appropriate justifications for such a rent increase as defined in Section 6-234(b) above. Failure to provide such documentation shall be considered a violation of this Article.

(e) A Tenant who receives notice of a rent increase that they believe does not conform with this Section may file an appeal of said rent increase with the Rent Board. Upon receipt of the appeal, the Rent Board shall schedule a public hearing to be held no more than twenty-one (21) days after the filing of the completed appeal application. At the public hearing, the Board will consider the rent charged under the existing Rental Agreement, the amount of the proposed new rent, and the factors which may or may not allow such an increase in accordance with this Article. Upon consideration of such evidence, the Board will render a decision as to whether the increased rent is allowable. If such an increase is more than is allowed by this Article, the Board may impose such fines as are allowed by this Article.

Sec. 6-235. Process of banking rent increases.

If a Landlord chooses to not impose any rent increases to which they are entitled pursuant to Section 6-234 above, these increases may be banked, in whole or in part. Banked increases may be used to raise the rent of Covered Units in subsequent Rental Years in addition to the Rent Stabilization Allowances established for that year by the Rent Board, provided that the total increase of such rent shall not exceed ten (10) percent within a single Rental Year.

Sec. 6-236. Termination of Tenancies-At-Will

- (1) In order to be terminated by a Landlord, tenancies-at-will must be terminated by providing a minimum of 90 days' written notice to Tenant except as provided below:
 - a. "For Cause" tenancies terminable on 7 days' notice pursuant to 14 M.R.S. § 6002(1) may be terminated in accordance with Section 6002(1);
 - b. Short-term rentals with a term of fewer than 30 days' are exempt from the 90-day notice period outlined herein;
 - c. Holdover tenancies are exempt from the 90 day notice period outlined herein;
 - d. Where a Landlord provides \$500.00 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will

- may be terminated by notice to the Tenant of sixty (60) to eighty-nine (89) days;
- e. Where a Landlord provides \$1000 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of thirty (30) to fifty-nine (59) days.
- (2) Reimbursement amounts outlined in subsections (c) and (d) above are lump-sum amounts payable in a single installment for the collective benefit of all tenants of a unit. Tenants are responsible for allocating the reimbursement amount among themselves.

Sec. 6-237. Discrimination prohibited in sale or rental of housing units.

- (a) A tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.
- (b) A landlord shall not refuse to rent or impose terms of tenancy on any tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.
- (c) It shall be prohibited for a landlord to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any tenant because of the tenant's source of income or because of the requirements of any program providing the source of income;
- (d) It shall be prohibited for or a landlord to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:
1. Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;
 2. Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction.

3. Refusing to complete any necessary paperwork, including but not limited to such documents as the Request for Tenancy Approval form, the Housing Assistance Payments Contract, and the Tenancy Addendum or applicable General Assistance forms; and,
4. Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program.

Sec. 6-238. Notice of ordinance to tenants.

(a) The Planning Department or its designee shall create and make available on the City's publicly accessible web site a plain language document that explains the rights, responsibilities, and protections created by this Ordinance.

(b) The document referenced above shall be provided by Landlords to all Tenants in Covered Units at the commencement of the rental of the Covered Unit and shall be provided again upon any update to the document made by the City.

(c) An acknowledgement of receipt of the document described above must be signed by all Tenants, and a copy of the acknowledgement kept on file by the Landlord for at least three (3) years and made available for inspection at the request of the City of Portland.

(d) Landlords of buildings shall post a copy of the document referenced above in at least one (1) conspicuous common area within the building housing the Covered Units.

Sec. 6-239. Non-waiver of rights.

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage, or induce a Tenant to waive any provision hereof, or right hereby, shall be a violation of this Article. Nothing herein shall be construed to void any term of a Rental Agreement that offers greater rights than those conferred hereby.

Sec. 6-240. Enforcement and remedies.

Any violation of this Article is considered a civil infraction and shall be enforced pursuant to the Portland City Code Chapter 1, §1-15.

Sec. 6-241. Limitation of Liabilities

(a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and

(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

Sec. 6-242. Severability.

The provisions of this Article are severable. If any of its provisions are held invalid by act of a court of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

Sec. 6-243. - Sec. 6-249. Reserved.

2. That the Code of Ordinances, City of Portland, Maine, is hereby amended by adding a section to be numbered Chapter 6, Article XIII, which said Article reads as follows:

ARTICLE XIII. RENT BOARD

Sec. 6-250. Creation; composition.

There shall be a Rent Board of seven (7) members. Members of the Rent Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments.

Two (2) members shall be appointed to fill at-large seats, and may reside in any part of the city. The remaining five (5) members shall be comprised of one member from each of the five (5) city council wards. Should the number or location of said city council wards be changed, the districts and number of Rent Board members shall change to mirror such changes.

The City shall take reasonable steps, but is not required, to appoint to the Rent Board with no more than three (3) landlords and at least three (3) tenants.

Sec. 6-251. Appointment; terms.

The members of the Rent Board shall be appointed by the City Council for terms of three (3) years. Such members shall serve until their successors are duly appointed and qualified. Such terms

shall be staggered so that the terms of not more than three (3) members shall expire in any calendar year.

Sec. 6-252. Vacancies.

Permanent vacancies on the Rent Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

Sec. 6-253. Removal of members.

Any member of the Rent Board may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

Sec. 6-254. Compensation.

Members of the Rent Board shall serve without compensation.

Sec. 6-255. Chair and vice-chair.

(a) The members of the Rent Board shall annually elect one (1) of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office, and another of their number as vice-chair. The chair may administer oaths. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross-examination at hearings.

(b) In the absence of the chair, the vice-chair shall act as chair and shall have all the powers of the chair. The vice-chair shall have such other powers and duties as may from time to time be provided by the rules of the Rent Board.

Sec. 6-256. Staff secretary; minutes, public records.

The Housing Safety Office shall designate a member of its staff to serve as staff secretary of the Rent Board and attend all its proceedings. The staff secretary shall keep the minutes of the proceedings of the Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

Sec. 6-257. Quorum and necessary vote.

As to any matter requiring a hearing, no business shall be transacted by the Rent Board without a quorum, consisting of four (4) members being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned from time to time for a period not exceeding three (3) weeks at any one time. The staff secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

Sec. 6-258. Meetings, hearings, and procedures.

(a) Regular meetings of the Rent Board shall be held at the call of the chair or as provided by the rules of the board. Special meetings shall be called by the chair at the request of any three (3) members of the Board or at the request of the city council. All meetings and hearings of the board shall be open to the public.

(b) The Rent Board shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the staff secretary and with the city clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the board upon good cause being shown.

Sec. 6-259. Public hearings.

Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Rent Board and shall be conducted in accordance with relevant state law, this code, and the rules of the board.

Sec. 6-260. Record and decisions.

(a) The minutes of the staff secretary, and the transcript if one (1) is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Rent Board, and the decision of the Board shall constitute the records.

(b) Every final decision of the Rent Board shall include written findings of fact, and shall specify the reason or reasons for such decision.

(c) The staff secretary shall mail notice of any decision of the Rent Board to the applicant and any designated interested parties within five (5) days of such decision.

Sec. 6-261. Conflicts.

No member of the Rent Board shall participate in the hearing or disposition of any matter in which they have an interest, as defined by 30-A M.R.S.A. § 2604(4), as amended.

Sec. 6-262. Appeals to Superior Court.

An appeal from any final decision of the Rent Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Sec. 6-263. Jurisdiction and authority.

In addition to the jurisdiction conferred on it by other ordinances of the City and in accordance therewith, the Rent Board shall have the following jurisdiction and authority:

(a) To hear, review, and approve or deny Landlord applications for rent increases greater than those allowed by the Rent Stabilization Ordinance;

(b) To hear, review, and approve or deny Landlord applications for increases in Base Rent due to the renovation or reconfiguration of existing Covered Units, as provided for in Section 6-234 above.

(c) To hear, review, and grant or deny appeals from Tenants regarding allegations violations of Maine statute regarding the habitability of residential units.

(d) To hear, review, and approve or deny any requests from Landlords for an extension of time in which to reinstate Tenants temporarily displaced due to the Landlord's performance of necessary capital improvements to the Covered Unit and/or the building in which said unit is housed.

(e) To hear, review, and decide the appropriate outcome of all disputes arising between Landlords and Tenants on matters falling within the scope of Article XII of this Chapter, if both parties consent to such mediation and resolution by submitting the landlord/tenant dispute form, as maintained and edited by the Housing Safety Office, signed by both Landlord and Tenant no later than fourteen (14) days before the date on which such a hearing shall be scheduled.

(f) To impose such fines as are necessary and allowed for violations of the provisions of the Rent Stabilization Ordinance.

(g) To prepare and recommend to the City Council changes and amendments to the City's Rent Stabilization Ordinance.

(h) To prepare an annual report on the state of the City's rental unit availability, which shall be presented to the City Council as part of a regularly-scheduled public hearing. This report shall include a summary of rents within each of the five (5) council wards. Such reporting may or may not be done in conjunction with similar reporting required of the City's Rental Housing Advisory Committee, as established by this Chapter.

(i) To initiate changes and amendments to this Article, as well as to the city's Rent Stabilization Ordinance.

3. That Chapter 6, Section 151, of the Code of Ordinances, City of Portland, Maine, is hereby amended as follows:

Sec. 6-151. Registration required.

...

(c) Additional Information Required for Covered Units. A Covered Unit, as defined by Section 6-232 of this Chapter, shall not be considered registered unless and until the registrant has submitted the following additional information:

1. The current rent charged at the time of registration;
2. The increase in rent (if any) when compared to the previous Rental Year's rent;
3. Whether the increase (if any) is attributable to: (1) the Allowable Increase Percentage and Tax Rate Rent Adjustment, as defined in Section 6-232; or (2) also includes Banked Rent, as defined in Section 6-232;
4. The amount of Banked Rent, if any, accumulated in the previous Rental Year;
5. The amount of security deposits or other payments demanded in addition to rent for each Covered Unit; and
6. The number of bedrooms, number of bathrooms, and the presence or absence of a kitchen from each Covered Unit.

(d) Registration data made available. The City's Permitting and Inspections Department or its designee is required to make anonymized data from the registration of Covered Units available to the Rent Board at the Board's request. Such data shall not include the names, or street and unit numbers of any reported units.

4. That Chapter 6, Section 152, of the Code of Ordinances City of Portland, Maine, is hereby amended as follows:

Sec. 6-152. Registration Fees.

...

(b) Long Term Rental Registration Fee. The registrant of a long term rental shall pay fifty dollars (\$50.00) to the City by January 1st of each year. Regardless of any discount a Landlord may be entitled to under subsection (d) below, thirty dollars (\$30) from each registration fee shall be appropriated to Housing Safety Office to cover the administrative expenses of the Rent Board, including the hiring of additional administrative staff if necessary.

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 6, Article XII of the Portland City Code Re:

An Act to Protect Tenants

I **HEREBY CERTIFY** that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 6 Article XII, of the Portland City Code Re: "An Act to Protect Tenants", of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7-22-2020

Signed: Katherine L. Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 41-20/21 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code Chapter 6 Re: An Act to Restrict Short Term Rentals in Portland - Sponsored by Katherine L. Jones, City Clerk

SPONSOR: Katherine L. Jones, City Clerk

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative called An Act to Restrict Short Term Rentals in Portland. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date Restrict Short Term Rentals in Portland 8.3.2020
2. An act to restrict short term rental
3. Clerk's Certification of An Act to Restrict Short Term Rentals.

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT
TO THE PORTLAND CITY CODE CHAPTER 6
RE: AN ACT TO RESTRICT SHORT TERM RENTALS IN PORTLAND**

ORDERED, that the amendment to the Portland City Code called An Act to Restrict Short Term Rentals in Portland shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

An Act to Restrict Short Term Rentals (STRs) in Portland will restrict all mainland STRs to only those that are owner-occupied. It increases the annual fee for all STRs to \$1,000 for mainland and \$400 for island rentals. The initiative also increases penalties for and strengthens enforcement of violations, requires the logging of complaints against STRs, and allows the city to revoke STR licenses for repeated violations.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**

The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to DSA the following address:

P.O. Box 11345 Portland, ME 04104

Dated at Portland, this 24th day of May 2020.

✓ Cathleen Cassie
(Print) Name

72 Waterville St Apt 2
Address

Cathleen Cassie
Signature

✓ Clare LaVergne
(Print) Name

42 Vesper St. Apt. 2
Address

Clare LaVergne
Signature

✓ Andrew Cooper
(Print) Name

39 Waterville St
Address

Andrew Cooper
Signature

✓ Sandra Flanagan
(Print) Name

13 Waterville St
Address

Sandra Flanagan
Signature

✓ Denver Whisman
(Print) Name

62 Waterville St #6
Address

Denver Whisman
Signature

✓ KEITH LANE
(Print) Name

73 Waterville St #2
Address

Keith Lane
Signature

✓ Kathryn H Sykes
(Print) Name

73 Alba St.
Address

K.H. Sykes
Signature

✓ KRYSZTIAN BLODINSKI
(Print) Name

73 ALBA ST
Address

Krystian Blodinski
Signature

✓ NANCY J. GUIMOND
(Print) Name

13 WATERVILLE ST
Address

Nancy J. Guimond
Signature

✓ Mary K Westcott-Casale
(Print) Name

35 Waterville St
Address

Mary K Westcott-Casale
Signature

Subscribed and sworn to before me this 24th day of May, 2020.

Karen L. Snyder
Signature of Notary Public/Attorney-at-law

7/01/2026
Date Commission Expires/Date Entered the Bar

Karen L. Snyder
Printed Name

An Act To Restrict Short Term Rentals in Portland

An Act to Restrict Short Term Rentals (STRs) in Portland will restrict all mainland STRs to only those that are owner-occupied. It increases the annual fee for all STRs to \$1,000 for mainland and \$400 for island rentals. The initiative also increases penalties for and strengthens enforcement of violations, requires the logging of complaints against STRs, and allows the city to revoke STR licenses for repeated violations.

1. That Chapter 6, Sections 6-150.1, 6-151, 6-152, 6-153, 6-154, 6-156, 6-157 and 6-158 of the Portland City Code are hereby amended to read as follows:

Sec. 6-150.1. Definitions.

...

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island. For the purposes of this ordinance, any short term rental located on any of these islands shall be considered an Island Short Term Rental, and not an Owner-Occupied Short Term Rental.

...

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as all or part of the registrant's ~~his or her~~ primary residence. Accessory dwelling units as defined in Chapter 14 of this Code, are not considered owner-occupied units for purposes of short term rental registration and regulation.

...

~~Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.~~ shall have the same meaning as "Permanent residence" as defined in the Maine Resident Homestead Property Tax Exemption, 36 M.R.S. § 681 et seq.

Registrant shall mean the owner of a rental unit, ~~or a tenant, with permission from the owner,~~ seeking to register a rental unit.

...

~~Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.~~

...

Sec. 6-151. Registration required.

...

(c) *Additional Information Required for Short Term Rentals.* A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec. 6-152, and a registration number has been issued.

In addition to all of the information required in Section 6-151 subsection (b) above, a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee:

1. A short term rental application;

2. Whether the rental unit is owner-occupied or is an island short term rental, ~~tenant-occupied, or non-owner-occupied;~~

...

~~b. For Short Term Rental units that are tenant-occupied, the tenant must provide a notarized primary residence affidavit, and a notarized statement of permission by his/her landlord, both on forms supplied by the City. The tenant must also produce for review one of the following demonstrating residency at the tenant-occupied unit:~~

~~i. Valid driver's license or other state-issued identification;~~

~~ii. Valid motor vehicle registration; or~~

~~iii. Other documentation proving primary residence to the satisfaction of the City's Permitting and Inspections Department.~~

...

Sec. 6-152. Registration Fees.

...

(c) *Short Term Rental Registration Fee Structure.* ~~The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any owner-occupied, tenant-occupied, first, and then fees will be attributed at the higher rate for any non-owner-occupied mainland units.~~

~~Owners and tenants may register more than one owner occupied or tenant occupied unit (bedrooms, separate spaces, etc.) within their primary residence.~~

Owner-Occupied Units, Tenant Occupied Units, Island Short Term Rentals	1st Unit -- \$100 2nd Unit -- \$250 3rd Unit -- \$500 4th Unit -- \$1,000 5th Unit -- \$2,000
Non-Owner-Occupied Mainland Units	1st Unit -- \$200 2nd Unit -- \$500 3rd Unit -- \$1,000 4th Unit -- \$2,000 5th Unit -- \$4,000

1. For any Island Short Term Rental, the registrant shall pay a fee of four hundred dollars (\$400) to the city each year at the time of registration or renewal. Subject to the limitations in Sec. 6-153, below, the registrant may register more than one Island Short Term Rental, but for each additional Island Short Term Rental, the registrant must pay an additional fee of four hundred dollars (\$400).

2. For any Owner-Occupied Mainland Short Term Rental, the registrant shall pay a fee of one thousand dollars (\$1,000) to the city each year at the time of registration or renewal. Subject to the limitations in Sec. 6-153, below, the registrant may register more than one Owner-Occupied Mainland Short Term Rental within their primary residence, including but not limited to additional bedrooms and separate spaces, but for each additional Owner-Occupied Mainland Short Term Rental, the registrant must pay an additional fee of one thousand dollars (\$1,000).

...

Sec. 6-153. Limitations on Short Term Rental Units.

(a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(b) *Limitation on Total Number of Short Term Rentals.* No more than 400 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

Any mainland ~~short-term~~ rental unit in an owner-occupied multi-unit, where the unit is not the primary residence of the owner, shall not be counted considered as an ~~owner-occupied unit~~ for the purposes of this ordinance, nor shall such unit be eligible for short term rental.

(c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* ~~An~~ No individual or entity may ~~only~~ register up to more than five (5) short term rental units in the City, including ~~owner-occupied, non-owner-occupied,~~ and island short term rental units, in any one (1) calendar year. For purposes of this section, short term rental units registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(d) No individual or entity may register a short term rental in ~~any single family home unless it is owner-occupied; tenant-occupied with permission of the owner;~~ or located on an Island.

(e) ~~The number of short term rental units that may be operated in a multi-unit building are as follows:~~

Total # of Units in a Building	# of Short Term Rental Units Allowed in a Building	
	Owner-Occupied	Non-Owner-Occupied
2	1	1
3	2	2
4	3	2
5	4	2
6-9	5	4
10+	5	5

~~1. Tenant-occupied units, where the tenant is the registrant, shall be counted towards these limits.~~

~~2. Owner-occupied units shall be counted towards these limits.~~

~~(f) Notwithstanding the requirements of subsections (c) and (e) Subject to the limitations contained in this section, owners may register up to five (5) owner-occupied units (bedrooms, separate spaces, etc.) within their primary residence, provided that the number of rental units does not exceed the number of bedrooms.~~

...

Sec. 6-154. Allocation of Short Term Rentals.

(a) ~~Non-owner-occupied mainland short-term rental units, which are limited by section 6-153(b), shall be allocated on a first come, first registered basis. Once the total number of units identified in~~

~~section 6-153(b) has been reached, a waitlist will be formed to help gauge market demand.~~

~~— (b) Notwithstanding~~ Subject to the limitations in section 6-153, current registrations of short term rentals may be renewed each year upon application and payment of the registration fee, so long as the renewal is complete by January 1 of that year.

~~1-~~ (b) Failure to renew by January 1 shall result in the forfeiture of the right to renew the registration, and any subsequent application shall be treated as a new application for registration.

~~— 2. — The renewal date for 2019 only shall be February 1, 2019.~~

(c) No registration under this Article shall be transferrable or assignable.

...

Sec. 6-156. Short Term Rental Violations and Penalties.

Notwithstanding the provisions of sections 6-1, 6-155, or 6-157, short term rentals operating in violation of this article shall also be subject to fines set forth below. For the purposes of this section, each day of operating a short term rental in violation of this article shall constitute a separate violation.

(a) For the violation of operating a short term rental without a valid registration, the violator shall be penalized with a fine of \$1,000 per day for the first offense and an additional fine of \$1,500 per day for each additional offense, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City.

(b) For any other violation of this Article pertaining to a short term rental, notwithstanding an otherwise valid short term rental registration, the violator shall be penalized with a fine of \$1,000 per day for each such violation, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City.

Any such fines may be in addition to any suspension or revocation imposed in accordance with the provisions of section 6-157 of this Article. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees.

Sec. 6-156⁷. Enforcement.

(a) The building authority as defined in section 6-1 or his or her designee is authorized to institute or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) The Permitting and Inspections Department shall decline to grant registration or renewal to any dwelling unit upon failure of the registrant to meet all of the requirements of this chapter.

(d) Complaints.

1. Any member of the public, including persons and organizations, may file complaints regarding any short term rentals operating in violation of this Article with the Permitting and Inspections Department. Public complaints, or copies thereof, regarding any such violation received by any City Department shall immediately be transmitted to and received as filed properly by the Permitting and Inspections Department.

2. The Permitting and Inspections Department shall establish and maintain a log of all complaints received under this subsection for each short-term rental, and shall annually, on or before July 1, publish and present to the City Council a report containing the entire log of complaints from the previous 12 months.

3. The Permitting and Inspections Department shall investigate all complaints as appropriate, and request voluntary correction by the owner and/or registrant responsible for the cause of any substantiated complaint.

4. If the owner and/or registrant fails to remedy the cause for any substantiated complaint within seven days after such a request, the Permitting and Inspections Department shall pursue appropriate enforcement action under this section, including referral to the building authority for enforcement under subsection (a) above.

5. Nothing in this subsection shall be construed to alter, apply to, or restrict the activities, policies, or procedures of the Portland Police Department, nor to prohibit or restrict any otherwise appropriate response by the Portland Police Department or any of its Officers, provided that copies of all complaints received by the Portland Police Department regarding any short term rentals operating in violation of this Article shall be transmitted to the Permitting and Inspections Department as provided in paragraph 1, above.

(e) Any registration under this article may be revoked or suspended for violation of any of the provisions of this Chapter. If a violation is found to exist by the Permitting and Inspections

Department, in addition to the suspension or revocation of the then-current registration, the Permitting and Inspections Department may also prohibit the Owner not only from registering that unit under this Article, but also from registering any other dwelling unit under this Article, for 12 months following the current registration expiration date.

(ef) Any short term rental at a property that is designated by the City as a disorderly house and fails to remedy the disorderly house as required by section 6-202, shall, ~~at the discretion of the City Manager or his or her designee,~~ have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal. Upon the second designation of the short term rental property as a disorderly house, the City shall, ~~at the discretion of the City Manager or his or her designee,~~ prohibit the registered owner from operating the property as a short term rental or post the property against occupancy pursuant to section 6-201.

(eg) Fines ~~may~~ shall be attributed to Property Management firms found operating short term rental units in violation of this article. These fines ~~may~~ shall be in addition to fines levied against owners of property.

(fh) Violations of the provisions of this article shall be grounds to deny an application or renewal application for a short term rental registration.

...

Sec. 6-1578. Revenue Allocation.

...

~~Sec. 6-158. Reserved.~~

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

CHAPTER 6, Section 6-150, 6-151, 6-152, 6-153, 6-154, 6-156, and 6-158 of the Portland City Code Re:

An Act to Restrict short Term Rentals in Portland

I HEREBY CERTIFY that the petition filed on July 13, 2020 in my office regarding amendments to the Portland City Code Chapter 6, 6-150.1, 6-151, 6-152, 6-153, 6-154, 6-156 and 6-158, of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated:

7-23-2020

Signed:

Katherine L. Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 17, 2020

SUBJECT: Order 42-20/21 Setting Election Date on Citizen Initiative Amendment to the Portland City Code Chapter 35 Re: No Cannabis Cap Campaign - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

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

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

I. SUMMARY

II. AGENDA DESCRIPTION

This item sets an election date for a Citizen Initiative called No Cannabis Cap Campaign. It also allows the use of a summary on the ballot, pursuant to Chapter 9 of the Portland City Code Sec. 9-41. Staff is recommending that the summary language be used for the ballot.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

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

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting Election Date No Cannabis Cap Campaign 8.3.2020
2. Cannabis Campaign
3. certification for Cannabis Cap Campaign

Prepared by:

Date: 7/17/2020

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER SETTING ELECTION DATE ON
A CITIZEN INITIATIVE AMENDMENT
TO THE PORTLAND CITY CODE CHAPTER 35
RE: NO CANNABIS CAP CAMPAIGN**

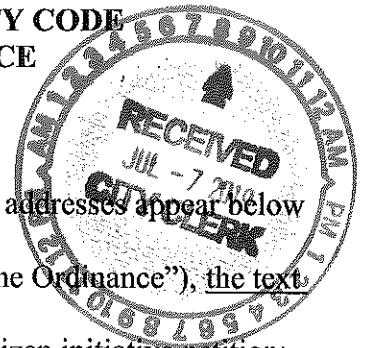
ORDERED, that the amendment to the Portland City Code called No Cannabis Cap Campaign in Portland shall be submitted to the voters of the City on November 3, 2020; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to place the following on the ballot, as shown below:

Shall the municipality approve the Portland City Code amendment as summarized below?

This initiative proposes to modify Chapter 35 of the Portland City Code, Governing the Regulation of Marijuana Businesses, in two ways: (1) a reduction from 250' to 100' in the required distance between marijuana retail facilities and dispensaries; and (2) removing the cap on the number of marijuana retail stores and dispensaries in the City.

**AFFIDAVIT FILED PURSUANT TO §9-36 OF PORTLAND CITY CODE
SEEKING PETITIONS FOR INITIATION OF ORDINANCE**



The undersigned hereby depose and say as follow:

- (1) The undersigned are registered voters of the City of Portland, whose respective addresses appear below next to their names;
- (2) The undersigned file this affidavit for the purpose of initiating an ordinance ("the Ordinance"), the text and a summary of which is annexed to this Affidavit as Exhibit A;
- (3) The undersigned will constitute the Petitioners' Committee and circulate the citizen initiative petition;
- (4) All notices to the Committee are to be sent to David Boyer the following address:

476 Saint John St Portland ME 04103

Dated at Portland, this 7 day of July 20 2020.

✓ David Boyer
(Print) Name

476 Saint John St
Address

[Signature]
Signature

✓ Sara M McKee
(Print) Name

476 Saint John Street
Address

[Signature]
Signature

✓ Mark N Dion
(Print) Name

45 Ellison Ave
Address

[Signature]
Signature

✓ Diane Russell
(Print) Name

32 Grant ST
Address

[Signature]
Signature

✓ Bob Montzinger
(Print) Name

23 Cypress St.
Address

[Signature]
Signature

✓ Shaun Bowen
(Print) Name

250 Burnside Ave
Address

[Signature]
Signature

✓ Elizabeth Boyson
(Print) Name

27 Clifton St.
Address

[Signature]
Signature

✓ Raige Clifton
(Print) Name

228 Brighton Ave.
Address

[Signature]
Signature

✓ Garin Baner
(Print) Name

22 Fleetwood St.
Address

[Signature]
Signature

✓ IAN MARQUIS
(Print) Name

480 SAINT JOHN ST.
Address

[Signature]
Signature

Subscribed and sworn to before me this 7th day of JULY, 2020.

[Signature]
Signature of Notary Public/Attorney-at-law

02-23-2021
Date Commission Expires/Date Entered the Bar

DEBRA L. RANCOURT
Notary Public, Maine

My Commission Expires 2/23/2021

Printed Name

EXHIBIT A:

City of Portland
Citizen Initiative to Chapter 35 the Portland City Code
re: No Cannabis Cap Campaign

1. That Section 35-14(f) of Chapter 35 of the Portland City Code is amended to read as follows:

35-14. Licensing Procedure.

Retail licenses shall be considered as follows:

...

(f)(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' 100' dispersal requirement, ~~the cap imposed by~~ ~~Sec. 35-43~~, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

2. That Section 35-43(h) of Chapter 35 of the Portland City Code is amended to read as follows:

35-43. Additional Retail Store and Dispensary Requirements.

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

...

h. Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' 100' 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 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. that qualifies pursuant to Sec. 35-43(i)(1).

3. That Section 35-43(i) of Chapter 35 of the Portland City Code is hereby repealed.

SUMMARY

This initiative proposes to modify Chapter 35 of the Portland City Code, Governing the Regulation of Marijuana Businesses, in two ways: (1) a reduction from 250' to 100' in the required distance between marijuana retail facilities and dispensaries; and (2) removing the cap on the number of marijuana retail stores and dispensaries in the City.

Portland, Maine



Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CMC

CLERK'S CERTIFICATION OF CITIZEN INITIATIVE AMENDMENT TO

Chapter 35 of the Portland City Code Re:

No Cannabis Cap Campaign

I **HEREBY CERTIFY** that the petition filed on July 17, 2020 in my office regarding amendments to the Portland City Code Chapter 35 Re: No Cannabis Cap Campaign of Fifteen Hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is Fifteen Hundred (1500). The petition is hereby deemed sufficient.

Dated: 7/23/2020

Signed: Katherine L. Jones

Katherine L. Jones, City Clerk

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: July 28, 2020

SUBJECT: **Order 43-20/21 Accepting and Appropriating up to \$50,000 in Donations for the Andrews Square Realignment Project - 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 8/3/2020 **Final Action 8/31/2020**

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

PRESENTATION: Jon P. Jennings, City Manager, brief oral presentation

I. SUMMARY

The Council item would allow the City to accept private funding through various residents of the Andrews Square neighborhood and members of the West End Neighborhood Association for the city led intersection realignment project at Andrews Square.

II. AGENDA DESCRIPTION

This item accepts and appropriates donations of up to \$50,000 for Andrews Square realignment project. The Department of Public Works (DPW) has received Capital Improvement Plan (CIP) funding for an intersection realignment project at Andrews Square (intersection of Clark Street, Pine Street, West Street). Various residents of the Andrews Square neighborhood and members of the West End Neighborhood Association are donating private funds to incorporate various landscaping/hardscaping features into the project. This funding would supplement city CIP funding, as well as a \$20,000 Caring Community Grant from Maine Medical Center, for these landscaping and hardscaping improvements (plantings, landscape lighting, benches, hardscape material for crosswalks). The private funding group has been working in concert with staff in the Department of Public Works.

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

III. BACKGROUND

DPW is acting as the lead entity for the Andrew's Square project and has received CIP funds to redesign and construct the intersection at Clark Street, Pine Street and West Street. Various residents of the neighborhood would like to donate funds in order to bring additional landscaping and hardscape features into the project. This includes, but may not be limited to, raised planting beds, up-lighting at the monument and within the raised planting beds, benches, and crosswalks material different from the City's standard white paint markings.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The private funding will facilitate implementation of the DPW led project. The private funding directly relates to goals around the City's capital improvement planning.

V. FINANCIAL IMPACT

The private funding group will provide up to \$50,000 of additional funds with which to make capital improvements to Andrews Square.

VI. STAFF ANALYSIS AND BACKGROUND

Staff has reviewed this item and recommends approval.

VII. RECOMMENDATION

Staff recommends that the Council vote to approve the order as presented.

VIII. LIST ATTACHMENTS

1. AndrewsSquare

Prepared by:

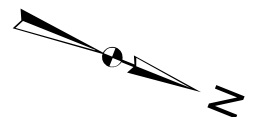
Melissa Graffam

Date: 7/28/2020



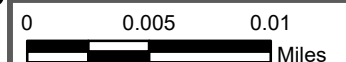
CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD, PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Project Location ANDREWS SQUARE INTERSECTION IMPROVEMENTS



July 2020

DESIGN BY: TSY



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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: ZONING ADDITION TO THE B-7 MIXED DEVELOPMENT DISTRICT**

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

That Chapter 14, Section 14-295 is hereby amended to read as follows:

Sec. 14-295. Permitted uses.

The following uses are permitted in the B-7 zone:

(a) *Commercial:*

1. Professional, business, and general offices;

...

28. Marijuana retail store; ~~and~~

29. Small-scale marijuana caregiver~~s~~; and

30. Veterinary hospitals and clinics provided
there is no outdoor kennel.

...

Sec. 14-295. Permitted uses.

The following uses are permitted in the B-7 zone:

(a) *Commercial:*

1. Professional, business, and general offices;
2. Restaurants and other eating and drinking establishments;
3. Hotels, inns, and bed and breakfasts;
4. Craft and specialty shops, including the on-premises production of handcrafted goods;
5. Retail and retail service establishments, excluding those with fuel pumps;
6. Theaters, concert halls, dance halls, meeting facilities, and exhibition halls;
7. Banking services, excluding vehicular drive-up services (see also conditional use section, [c][3];
8. Cabinetry and carpentry and mill working shops;
9. Indoor amusement and recreation centers;
10. Personal services;
11. Business services;
12. Billiard parlors;
13. Offices of business trades-people;
14. Miscellaneous repair services, excluding all types of automotive repair.
15. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-297 (prohibited uses);

In addition, building mounted telecommunications antennae, discs, transmitting and receiving equipment

and the like shall adhere to the following criteria.
Such roof-mounted equipment shall be:

- a. No taller than fifteen (15) feet above the highest structural steel of the building roof; and
 - b. Set back no less than fifteen (15) feet from the building perimeter; and
 - c. Integrated into the architecture of the building as described in the City of Portland Design Manual;
16. Brew pubs and microbreweries without associated bottling facilities, and brewpubs and microbreweries with associated bottling facilities limited to five-thousand (5,000) bottles per year output;
17. Studios for performance or training in dance, music, or similar pursuits;
18. Electronic data storage;
19. Research and development including laboratories;
20. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, cabinet makers, dancers, graphic artists, and silk screeners and musicians;
21. Health clubs, martial arts personal health and wellness facilities;
22. Registered dispensary;
23. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - a. All applicable provisions of Article V of this chapter shall be met;
 - b. Parking shall be provided in compliance with

Division 20 of this Article;

- c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility;
 - d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period; and
 - e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city;
24. Surface parking existing as of March 9, 2005 and in continuous existence thereafter, including the reorganization of parking spaces and maneuvering aisles. This section shall apply to surface parking accessory to a principle use and a parking lot as a principal use. Existing surface parking that does not comply with the standards of Sec. 14-299(f) may continue, provided that any modifications to the site layout, development constituting a site plan, or building renovations exceeding a value of thirty (30) percent of the assessed value of the building on file at the City of Portland Assessor's Office, shall require the parking to be upgraded to meet the standards of Sec. 14-299(f) to the extent practicable;
25. Surface parking created after March 9, 2005, provided that the spaces (and newly created maneuvering aisles) are thirty-five (35) feet or greater from a street and further that the standards below (a to c) are also met. This section shall apply to surface parking accessory to a principal use or a parking lot as principle use. The thirty-five (35) foot setback need not apply in the case of a property in which eighty percent (80%) of the property frontage has a building within ten (10) feet of the property frontage and or a driveway located perpendicular to the site. The parking area shall meet the standards of Sec. 14-299 (f):

- a. No surface parking shall be encumbered by lease or other use commitment to an off-site use exceeding a twenty-four month term;
 - b. For surface parking areas of twenty-thousand (20,000) square feet or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than twenty-four (24) month terms; and
 - c. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking or convert surface parking to structured parking as long as the replacement parking is located a reasonable distance from the associated use;
26. Notwithstanding Sections 14-295(a)(24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:
- a. All or a portion of the 35-foot setback area had a gravel surface on September 29, 2015;
 - b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015;
 - c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot;
 - d. One of the buildings described in paragraph c above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 square feet or greater;
 - e. The total number of spaces within 35-foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required in Sec. 14-526(a)(4)(a)(1);

- f. The proposed parking spaces meet the landscape and buffer requirements of 14-299(f); and
- g. Parking spaces within the 35-foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided;

27. Bakeries, coffee roasters and commercial kitchens provided such uses include retail sales or a tasting room within the principle building;

28. Marijuana retail store; ~~and~~

29. Small-scale marijuana caregiver-~~r~~; and

30. Veterinary hospitals and clinics provided there is no outdoor kennel.

(b) *Residential:*

- 1. Attached housing including row houses, condominiums, two-family and multifamily dwellings but not planned residential unit developments;
- 2. Handicapped family units;
- 3. Lodging houses;
- 4. Combined living/working spaces, including but not limited to artist residences with studio space;

(c) *Public:*

- 1. Utility substations, including wastewater collection and pumping stations, transformer stations, telephone electronic equipment enclosures, electric transmission and distribution substations and other similar

structures, provided such facilities occupies up to one-hundred (100) square feet (see also conditional use section);

2. Museums, art galleries, and educational exhibition space;
3. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;
4. Pedestrian and multi-use trails;
5. Emergency or safety facilities;
6. Municipal offices;
7. Active recreation parks and facilities, including but not limited to ball fields, skateboard parks, and basketball courts.

(d) *Institutional:*

1. Public or private schools;
2. Medical and mental health clinics but not methadone or other controlled substance addiction treatment centers;
3. Places of assembly;
4. Colleges, universities, or trade schools;
5. Governmental buildings and uses;
6. Nursery and pre-schools, kindergartens, and child day care facilities or home babysitting services;
7. Educational, research, and laboratory facilities;
8. Adult day care center.

(e) *Other:*

1. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. All drive-up

services for all retail or drive-up repair facilities are prohibited except that bank drive-up services, where permitted, area conditional use.

2. Intermodal transportation facilities.

3. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 201-05/06, 4-19-06; Ord. No. 283-09/10, 7-19-10 emergency passage; Ord. No. 278-09/10, 7-19-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 240-10/11, 6-6-11; Ord. No. 279-09/10, 6-6-11; Ord. No. 33-11/12, 1-18-12; Ord. No. 113-11/12, 2-22-12; Ord. 100-15/16, 11/16/2015; 140-18/19, 2-20-2019)



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Zoning Text Amendment to B-7 Mixed Development District Zone

191 Marginal Way

Earle W. Noyes & Son, Inc., Applicant

Submitted to: Mayor Snyder & the City Council From: Chair Mazer & the Portland Planning Board Council Meeting Date: August 3, 2020	Prepared by: Christian Roadman, Planner Date: July 18, 2020
--	--



Context of the B-7 zone. 191 Marginal Way is highlighted in teal

I. Introduction and Project Summary

Earle W. Noyes & Son, Inc., seeks a zoning text amendment to allow a prospective tenant to site their veterinary practice at 191 Marginal Way, which is zoned B-7 mixed development district. The proposed text amendment would add veterinary hospitals and clinics (provided there is no outdoor kennel) as permitted uses to the B-7 zone.

The review of this proposed text amendment does not include site plan considerations. It is intended to determine if the Planning Board, and now the City Council, find the addition of veterinary facilities consistent with the purpose statement of the B-7 zone, consistent with the comprehensive plan, and worthy of recommendation to the City Council. The proposed additional permitted use would allow a prospective tenant of the applicant to use existing commercial space at 191 Marginal Way for a “veterinary clinic that provides after-hour, weekend and holiday veterinary services.”

II. ZONING ANALYSIS

Neither veterinary hospitals nor clinics are defined in the zoning code, though the B-2, B-2b, and B-2c community business zones include them as permitted uses “provided there is no outdoor kennel.” Veterinary hospitals are permitted in the B-4 Commercial Corridor Zone.

The following is included in the B-7 zone’s purpose statement:

“The purpose of the B-7, mixed development district zone is to establish a zoning district for urban areas in which the city has adopted master plans for redevelopment. Certain districts, including but not limited to bayside, lie at the perimeter of the established downtown and contain significant redevelopment opportunities. The B-7 zone encourages these districts to acquire a distinctly urban form through dense development featuring a mix of uses such as housing, retail, offices, research and development, and artisan studios and that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. Utilization of transportation, other than the automobile is strongly encouraged and is advanced by the installation of bicycle amenities, such as bicycle racks and storage areas. The zone promotes a wide range of uses in high quality structures and public open spaces to achieve twenty-four (24) hour urban vitality and shared parking infrastructure.”

“Twenty four hour urban vitality” and “dense development featuring a mix of uses” could be cited as supporting the consistency of emergency veterinary clinics with the purpose statement for the B-7 mixed development zone. It is worth noting that “medical and mental health clinics” are already permitted uses in the zone. An urgent care clinic is located within a different unit of the same commercial property which the applicant hopes to make available to a veterinary clinic. In the applicant’s cover letter, the proposed veterinary clinic is explicitly linked to the “urgent care model.”

Many other uses are currently permitted in the B-7 mixed development district zone, including:

Residential:

- Attached housing including row houses, condominiums, two-family, and multifamily dwellings
- Handicapped family units
- Lodging houses
- Combined living / working spaces

Commercial:

- | | |
|---|--|
| • Professional, business, & general offices | • Business services |
| • Restaurants | • Billiard parlors |
| • Hotels & inns | • Offices of business trades-people |
| • Craft & specialty shops | • Non-automotive repair services |
| • Retail establishments | • Telecommunication and broadcast facilities |
| • Theaters & concert, & exhibition halls | • Brew pubs & microbreweries |
| • Banking services | • Performance & training studios |
| • Woodworking shops | • Electronic data storage |
| • Indoor amusement & recreation centers | • Studios for artists and craftspeople |
| • Personal services | • Health clubs & wellness facilities |

- Registered dispensary
- Hostels
- Bakeries, coffee roasters, commercial kitchens

- Marijuana retail store
- Small-scale marijuana caregiver

Institutional:

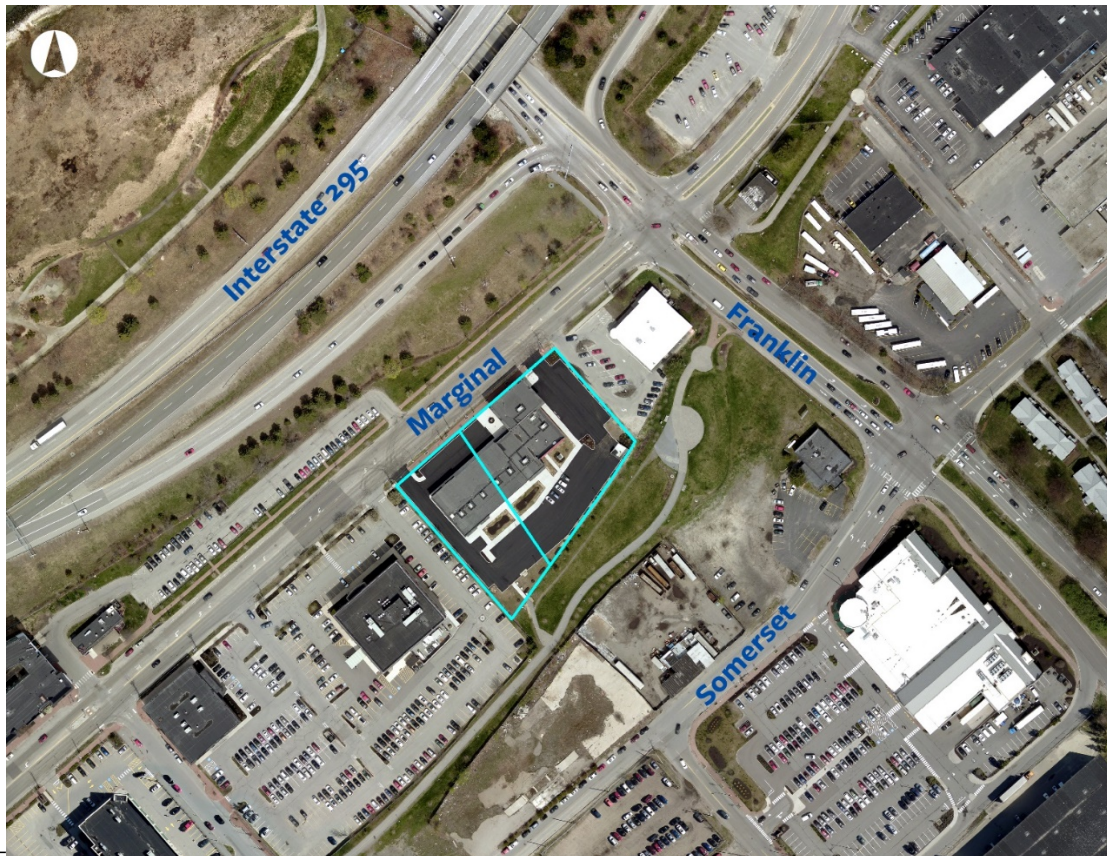
- Schools
- Medical & mental health clinics
- Places of assembly
- Colleges, universities, & trade schools
- Nursery schools & day care facilities
- Government buildings & uses
- Educational, research, & lab facilities
- Adult day care center

Public:

- *Utility substations*
- *Museums & art galleries*
- *Landscaped pedestrian parks*
- *Pedestrian & multi-use trails*
- *Emergency & safety facilities*
- *Municipal offices*
- *Active recreation parks & facilities*

Other:

- Accessory uses incidental & subordinate to permitted uses
- Intermodal transportation facilities
- Wind energy systems



Context of 191 Marginal Way, which is outlined in teal

III. CONSISTENCY WITH CITY COMPREHENSIVE PLAN

[Portland's Plan 2030](#) identifies a vision statement, policy goals for the City, and principles of future land use. Several of these are relevant to the proposed text amendment's proposal to allow emergency veterinary services in the Bayside neighborhood area.

Vision statements:

Equitable:

"We will incorporate the needs of our residents in planning for our future."

Dynamic:

"Portland will plan for a built environment that encourages an active citizenry."

Connected:

"We will foster accessible linkages between where we live, work, shop, and play."

Policy goals:

Environment: *"Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation."*

Transportation: *"Support sustainability by reducing energy consumption, greenhouse gas emissions, and stormwater impacts."*

"Support economic vitality by ensuring the efficient movement of goods, services, and people."

Economy: *"Create economic prosperity by growing Portland's tax and employment base."*

Future Land Use:

Reinforce the Center: *"Though Portland's commercial and entrepreneurial activity takes place throughout the city, downtown Portland remains at the center of the region's arts and cultural, economic, and civic health, and Portland's Plan embraces the principle that downtown should continue to be a predominant locus of activity for the broader region."*

The applicant provided additional analysis of consistency with the comprehensive plan (**attachment 3**).

PUBLIC COMMENT

The Planning Board received no written public comment in advance of their public hearing on May 12. One member of the public offered comment during the meeting: opposing the zone change "on principal" and felt that the comprehensive plan does not support the style of development at the site for which the change is particularly proposed.

PLANNING BOARD DISCUSSION

Planning Board discussion was supportive of the proposed text amendment. The Board noted that the proposed service would be helpful to peninsula residents and compatible with the intent of the comprehensive plan and the B-7 zone.

the downtown area is a good one for seniors (citing existing accommodations on State Street) and acknowledged appreciation for the inclusion of memory care in the applicant's intended development.

PLANNING BOARD RECOMMENDATION

At a public hearing on June 9 2020, the Planning Board unanimously found (7-0) that a proposed zoning text amendment to Division 17 Section 14-295 of the City's Land Use Code (adding veterinary hospitals and clinics without outdoor kennels as permitted uses within the B-7 zone) is consistent with the Comprehensive Plan for the City of Portland. The Planning Board recommended this action to the City Council.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

Mary E. Costigan
(207) 228-7147 direct
mcostigan@bernsteinshur.com

April 10, 2020

James Rather
Development Review Services Manager
City of Portland
389 Congress Street
Portland, ME 04101

RE: Application for B-7 Text Amendment

Dear James:

I am writing on behalf of my client, Earle W. Noyes & Son, Inc., to apply for a text amendment to the B-7 Mixed Development District Zone. As explained in more detail below, we are seeking to amend the B-7 zone by adding Veterinary Hospitals and Clinics as a permitted use.

My client owns the commercial property located at 191 Marginal Way. The property contains five commercial units, one of which is occupied by ConvenientMD. They have an interested tenant for one of the available spaces. The prospective tenant is a veterinary clinic that provides after-hour, weekend and holiday veterinary services. They provide a much-needed service of veterinary care in the urgent care model, which provides an after-hours care option that is more cost effective and convenient for non-emergency treatment compared to an emergency hospital visit. Although the B-7 zone is a mixed-use zone with a wide variety of uses, veterinary hospitals and clinics are not listed as permitted uses, and therefore would be prohibited in the zone.

The proposed veterinary clinic is consistent with other permitted uses in the zone and is also consistent with the Comprehensive Plan. As set forth in more detail in the attached Comprehensive Plan Analysis, permitting veterinary clinics in the B-7 aligns directly with many of the Plan's goals; notably, the economic and transportation goals. It provides a much-needed service to pet owners in Portland, particularly those who live on the peninsula.

April 10, 2020
Page 2

Enclosed with this letter are the above-referenced Comprehensive Plan Analysis, evidence of Right, Title and Interest and the Proposed Text Amendment. Thank you for your consideration. Please contact me directly if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Costigan", is centered below the word "Sincerely,".

Mary E. Costigan

cc: Peter Noyes
Brent Noyes

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE CHAPTER 5
RE: RESTRICTING OFF-LEASH DOGS IN BAXTER WOODS

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

*1. That Section 5-15.1 of Chapter 5 of the Portland City Code
is hereby amended to read as follows:*

DIVISION 1. GENERALLY

Sec. 5-15.1. Definitions.

The following words when used in this article shall have
the meaning given herein:

At large shall mean and include any of the following:

- (a) On the public street or publicly owned property unless
controlled by a leash of not more than eight (8) feet
in length, except as provided below;

...

- (e) Within the following city-owned property unless (1) on
a leash or other tether of not more than twenty-
five(25) feet in length; or (2) the owner is physically
present within fifty (50) feet of the dog and at all
times has a leash and has the dog under voice control.
Voice control shall mean that the dog returns
immediately to and remains by the side of the owner in
response to the owner's verbal command. At no time
shall one owner have more than three (3) dogs under
voice control:

- 1. Baxter Woods, pursuant to the following schedule
and additional requirements regarding leash

length:

- From August 1 to March 31: Dogs are permitted under voice control at the following times: From 5 a.m. to 9 a.m. and from 3 p.m. to 10 p.m. From 9 a.m. to 3 p.m. all dogs must be on an eight (8) foot leash.
- From April 1 to July 31, all dogs must be on an eight (8) foot leash at all times.
- Additionally, dogs must be on an 8-foot leash at all times on the Northern Carriage Path and in all areas of Baxter Woods north of the Northern Carriage Path.

2. Capisic Pond Park;

...

14. Valley Street Park; and

15. Presumpscot River Preserve;

16. Canco Woods; and

17. Any city owned island park areas and open space; unless such property is posted by the parks authority with signs stating that "Maximum Eight-Foot Canine Leash is Required" to accommodate mass gatherings or public events; and



CITY OF PORTLAND
Parks, Recreation & Facilities Department
Sally DeLuca, Director

CITY OF PORTLAND
Parks, Recreation & Facilities Department
Ethan Hipple, Deputy Director

March 2020

To Portland City Councilors,

The Department of Parks, Recreation and Facilities is recommending changes to the current off-leash dog policy in Baxter Woods (Chapter 5 of City Code). Specific code revisions are attached to this memo. The proposed changes represent a compromise that was arrived at after multiple public meetings of the Parks Commission, consultation with Maine Audubon, and conversations with community and dog-owner groups. The proposal has been informed by both the 2018 Baxter Woods Management Plan, as well as the 2019 Bird Surveys Report (attached to this memo). On February 26, 2020, the Sustainability and Transportation Committee voted unanimously to forward this proposal to the City Council.

Department Proposal, as recommended by **Parks Commission 7/18/19** (10 in favor, 1 opposed) and **Sustainability and Transportation Committee 2/26/20** (unanimous):

- **April 1 through July 31, annually:** Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- **August 1 through March 31, annually:** Dogs permitted off-leash and under voice control from 5am to 9am, and from 3pm to 10pm. From 9am to 3pm, dogs must be on 8-foot leash.
- **Habitat Restoration Area:** In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas. The habitat restoration area would be delineated by designating the Northern Carriage Path and areas north of it on-leash only. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

Background Information

Baxter Woods was donated to the City of Portland by Governor Percival Baxter in 1946. Among the many conditions in the deed are the following:

- *"shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreational and educational purposes..."*
- *"shall forever be kept in its natural wild state and as a bird sanctuary for wild birds...."*

Chapter 5 of Portland City code currently allows for dogs to run off-leash in Baxter Woods, but within voice-command of the owner. Baxter Woods is used heavily by dog-owners and staff have received verbal and written comments from the public about the current policy. Before a policy change was first publicly proposed



CITY OF PORTLAND
Parks, Recreation & Facilities Department
Sally DeLuca, Director

CITY OF PORTLAND
Parks, Recreation & Facilities Department
Ethan Hipple, Deputy Director

in March of 2019, the majority of the public comments have been opposed to the current permissive off-leash policy. Following changes proposed by staff, the majority of public comments have been in favor of retaining the existing policy, with a smaller number supporting changes to the policy to restrict some or all off-leash dogs.

Many of the comments opposed to the current off-leash policy list safety as a primary concern. Numerous dog owners have told us that they do not bring their dog to Baxter Woods for fear of their dog being harassed or attacked by other unruly dogs, and some parents have told us that they prefer not to bring their children there for the same reason. Many of the written comments are attached to this memo.

Staff have had many conversations with teachers and daycare operators who have tried to use Baxter Woods for outdoor classroom space and exercise space, only to be turned back due to the high number of unruly off-leash dogs. Teachers reported that recently arrived immigrant children in particular sometimes felt threatened by the presence of off-leash dogs. This proposal attempts to balance the hours of off-leash activity so that the park is welcoming to all.

Management Plan, 2018

In 2018, staff contracted with Forest Ecologist Rob Ryan to conduct an ecological assessment of Baxter Woods. The study looked at current conditions, soil and water quality protection, forest health, and wildlife conservation (attached to this memo).

One finding of the Management Plan Report was that the off-leash dog activity was having a negative impact on ground-nesting and ground-feeding birds. Baxter Woods in its present day condition with dogs running off leash at all hours would not qualify as a “sanctuary for wild birds”. The report recommends enforcing an on-leash dog policy at Baxter Woods.

Bird Surveys, 2019 and 2020

Staff contracted with Biodiversity Research Institute to conduct surveys of all birds in Baxter Woods so that we have baseline data to compare to future years when potential policy changes will take effect. The surveys were conducted in the Summer and Fall of 2019. Additional surveys will take place in Spring of 2020. The findings of the surveys to date showed that Baxter Woods has a lower number of nesting and reproducing birds than other comparable areas in the City of Portland, and that off leash dog activity has likely had a negative effect on breeding bird populations. The report is attached to this memo.

Nearby Off Leash Areas

There are many parks and open spaces in Portland that allow off leash dogs. Within 1 mile of Baxter Woods, there are 4 public properties that allow off-leash dogs (Evergreen Cemetery, Capisic Pond Park, University Park, and Canco Woods). We also have dedicated dog parks that also allow off leash dogs (Quarry Run, Valley Street). Staff believe that the public will still have ample access to high-quality, conveniently-located open spaces for their dogs to run free in a more appropriate location.



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Portland currently has 813 acres of parks and open spaces. 495 of the total 813 acres are designated by ordinance as off-leash areas. Baxter Woods represents 32.5 acres of the current off-leash area. With the proposed changes, there would be 462.5 acres of off-leash area in Portland, out of a total of 813 acres of parks and open spaces (57% off leash).

Process Timeline

April 2019: Parks Commission Public Meeting to discuss potential changes. The meeting and agenda were publicly posted on the City website, and staff put up posters at entrances to Baxter Woods two weeks prior to the meeting. Email invitations were also sent to the “Responsible Dog Owners of Baxter Woods” facebook group admin, as well as the Deering Center Neighborhood Association.

At the April 4, 2019 meeting, staff presented a proposal to require dog owners to use 25 foot leashes year-round in Baxter Woods. Staff recommended that the Parks Commission take public comment on this issue and then take an advisory vote on the proposal. The Parks Commission heard much public comment on the issue, with many off leash dog owners opposed to the proposal and asking if a compromise was possible. The Parks Commission took no action at this meeting, and asked staff to research whether a compromise proposal was possible.

July 2019:

On July 18, 2019, staff presented a compromise proposal to the Parks Commission. The compromise proposal was crafted after careful consideration of public comments at the April 4, 2019 meeting and further consultation with Maine Audubon, Forest Ecologist Rob Bryan, and members of the community group Responsible Dog Owners of Baxter Woods. Specifically, staff met with Dawn Leland (Responsible Dog Owners of Baxter Woods) and resident Marc Lesperance, both of whom had taken on a leadership role in opposing changes to the proposed leash law. Staff sought out feedback from a wide variety of experts and users of the park to come up with a compromise proposal that would allow for some off-leash dog use in Baxter Woods, but that would also enable the City to fulfill its role as the steward of the property and to maintain the property as described in the deed.

The City recognizes the value and sense of community that comes from the many daily users of the park who are there specifically to let their dogs run off-leash. Our overall goal is to balance the many needs of *all* kinds of park users, so a compromise policy was developed that would consist of the following:

- **April 1 through July 31, annually:** Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- **August 1 through March 31, annually:** Dogs permitted off-leash and under voice control from 5am to 9am, and from 5pm to 10pm. From 9am to 5pm, dogs must be on 8-foot leash. *During the July 18, 2019 meeting, the evening start time for off leash hours was amended from 5pm to 3pm.*
- **Habitat Restoration Area:** In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration



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efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas. The habitat restoration area would be delineated by designating the Northern Carriage Path and areas north of it on-leash only. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

The compromise proposal offers access to dogs on-leash 12 months a year, and for 8 of those 12 months, dogs off-leash and under voice control would still be welcome. The compromise proposal also mirrors hours of off-leash use that are used at East End Beach so that dog owners have a simple, easy to remember schedule that will be easy to follow and enforce.

The compromise proposal also changes the leash requirement from a 25 foot leash to an 8 foot leash. This was primarily due to public comment at the April 4, 2019 meeting. Many dog owners stated that a 25 foot leash in a tightly wooded area would result in tangles and potential aggression, so the recommendation was changed from 25 feet to 8 feet. An 8 foot leash will also enable dog owners to keep their dogs out of sensitive habitat restoration areas.

During the season when dogs would be allowed off leash (August through March), staff are proposing limited hours for off leash activity (only from 5am to 9am, and again from 3pm to 10pm) In effect, this would require that dogs are required to be on leash from 9am to 3pm. This is scheduled so that during the school day, school groups, daycares and others can use the woods without off-leash activity. We have a wide variety of park visitors in Portland, many of whom love the presence of off leash dogs, some who are indifferent, and some who feel threatened by off-leash dogs. This proposal seeks to find a balance so that everyone can feel comfortable visiting Baxter Woods.

The Parks Commission voted in favor of the amended staff proposal (10 in favor, 1 opposed). The Parks Commission vote is advisory only.

January 15, 2020: Sustainability and Transportation Committee Workshop

The Sustainability and Transportation Committee held a workshop on Baxter Woods Leash rules that included presentations from Parks, Recreation and Facilities Staff, as well as Friends of Baxter Woods.

February 26, 2020: Sustainability and Transportation Committee Recommendation

The Sustainability and Transportation Committee heard presentations from the Friends of Baxter Woods and City staff, and took public comment. The Committee voted unanimously to forward the proposal to City Council.



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Peer Land Management Policies

Most conservation areas in the region that are managed as bird or wildlife sanctuaries simply ban dogs altogether due to their well-documented negative impact on wildlife. A select few areas have more relaxed rules allow dogs, but on-leash only.

We know of no areas managed as wildlife sanctuaries in Maine that allow for any off-leash dog activity.

- Bangor City Forest, Bangor: Dogs on Leash only
- Fore River Sanctuary, Portland (Owned by Portland Trails): Dogs on Leash only
- Robinson Woods, Cape Elizabeth: Dogs on Leash only (limited hours)
- Gilsland Farm Audubon Center, Falmouth: No Dogs at all
- Wolfe's Neck Center: Dogs on Leash only
- River Point Conservation Area, Falmouth: No Dogs at all

With the compromise proposal, Baxter Woods would stand alone in continuing to allow for a limited amount of off-leash use (outside of prime nesting season) and could serve as an innovative test case in managing for wildlife and off-leash dog use simultaneously.

After numerous conversations with Maine Audubon, their staff affirmed that this compromise policy would have some positive benefits for birds and wildlife, especially if combined with a habitat restoration area. Audubon experts state that with proper restoration and enforcement, we could see up to a dozen ground-nesting bird species in Baxter Woods. Likely species include, but are not limited to, ground sparrows, woodcock, oven birds and wood thrush.

Enforcement:

Staff do currently enforce leash laws at Baxter Woods, but ticketing is rare as we try to take a more educational approach. We are working on funding strategies to bring on additional Rangers to patrol and enforce leash laws throughout the City.

History of Off Leash Dog Ordinance in Baxter Woods

During the April 4, 2019 meeting, some Commissioners raised the question of "When did the City start to allow off leash dogs at Baxter Woods?" Staff researched the various versions of Chapter 5 of the City Code and discovered that Baxter Woods was added to the list of off-leash voice control parks (along with 13 other parks) during December of 1983. At the time, the city was debating whether to allow dogs and off-leash dogs in Western Cemetery, and as part of those deliberations, a list was created of parks where off-leash activity was permitted. Baxter Woods was included on that list for unknown reasons.

Conclusion

We hope that the Council will consider this proposal that would allow the City to serve as a better steward of this property and to abide by the conditions set forth in the Baxter Woods deed. Through working with various stakeholders and experts, we believe we have arrived at a good-faith compromise proposal that would



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continue to allow off-leash activity for 8 months of the year, while restricting off leash activity only during the 4 months of the year when bird breeding is most likely.

Sincerely,
Ethan Hipple

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

Attachments:

Proposed Chapter 5 Code Revisions
Baxter Woods Management Plan (2018)
Baxter Woods Bird Surveys (2019)
Written public comment
2/10/20 Memo from Corporation Counsel concerning Baxter Woods Deed

Chapter 5 ANIMALS AND FOWL*

*Cross reference(s)--Unleashed animals prohibited in cemeteries, § 7-135; feeding of animals so as to control rodents and vermin, § 22-15; storing of feed for animals so as to control rodents and vermin, § 22-16.

Art. I. In General, §§ 5-1--5-15

Art. II. Dogs, §§ 5-15.1--5-75

Div. 1. Generally, §§ 5-15.1--5-30

Div. 2. Impoundment, §§ 5-31--5-70

Div. 3. Canine Waste, §§ 5-71--5-75

Art. III. Feeding of Wildlife Prohibited, §§ 5-110--5-111

Art. IV. Keeping of Domesticated Chickens, §§ 5-400--5-499

Art. V. Restrictions on the Sale of Dogs and Cats.

§§5-500--5-505

Art. VI. Prohibition on Display of Wild and Exotic Animals.

§§5-506--5-509

ARTICLE I. IN GENERAL

Sec. 5-1. Reserved.

Sec. 5-2. Reserved.

Sec. 5-3. Reserved.

Sec. 5-4. Reserved.

Sec. 5-5. Reserved.

Sec. 5-6. Reserved.

Sec. 5-7. Reserved.

Sec. 5-8. Reserved.

Sec. 5-9. Reserved.

Sec. 5-10. Reserved.

Sec. 5-11. Reserved.

Sec. 5-12. Reserved.

Sec. 5-13. Reserved.

Sec. 5-14. Reserved.

Sec. 5-15. Reserved.

ARTICLE II. DOGS*

*State law reference(s)--Dogs, 7 M.R.S.A. § 3401 et seq.

DIVISION 1. GENERALLY

Sec. 5-15.1. Definitions.

The following words when used in this article shall have the meaning given herein:

At large shall mean and include any of the following:

- (a) On the public street or publicly owned property unless controlled by a leash of not more than eight (8) feet in length, except as provided below;
- (b) In a motor vehicle parked and not restrained from projecting its head from the vehicle;
- (c) Within the following city-owned parks unless on a leash or other tether of not more than twenty-five (25) feet in length: Bayside Park; Baxter Pines; Deering Oaks; Dougherty Field; Eastern Promenade, except as provided in subsection (e)(5) below; Longfellow Park; Payson Park; Quaker Park; Stroudwater Park; Western Promenade; unless such park is posted with signs stating that "Maximum Eight-Foot Canine Leash is Required" by the parks authority to accommodate mass gatherings or public events;
- (d) Except as provided in subsection (e)(5) below for the wooded portion of Evergreen Cemetery, and subsection (h) below for the Western Cemetery, within all city-owned cemeteries unless on a leash or other tether of not more than twenty-five (25) feet in length; provided, however, dogs shall be allowed on the roadways and walkways of the cemeteries only and not on the cemetery lots;
- (e) Within the following city-owned property unless (1) on a leash or other tether of not more than twenty-five (25) feet in length; or (2) the owner is physically present within fifty (50) feet of the dog and at all times has a leash and has the dog under voice control. Voice control shall mean that the dog returns

immediately to and remains by the side of the owner in response to the owner's verbal command. At no time shall one owner have more than three (3) dogs under voice control:

1. Baxter Woods, pursuant to the following schedule and additional requirements regarding leash length: ~~s;~~

- From August 1 to March 31: Dogs are permitted under voice control at the following times: From 5am to 9am and from 3pm to 10pm. From 9am to 3pm all dogs must be on an eight (8) foot leash.
- From April 1 to July 31, all dogs must be on an eight (8) foot leash at all times.
- ~~1.~~• Additionally, dogs must be on an 8-foot leash at all times on the Northern Carriage Path and in all areas of Baxter Woods north of the Northern Carriage Path.

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2. Capisic Pond Park;
3. The portion of Evergreen Cemetery to the north and west of Northern Avenue, in the wooded area only;
4. East End Beach, from the day after Labor Day through the day before Memorial Day;
5. Eastern Promenade park within (1) the area bounded by the following: Cutter Street to the lower sidewalk to the exit side of the Fort Allen roadway and back to Cutter Street; and (2) the mid-slope nature path. Said areas of Eastern Promenade park to be open to dogs under voice control from Memorial Day through Labor Day from 5:00 a.m. to 9:00 a.m. and 5:00 p.m. to 10:00 p.m. of each day, and from Labor Day through Memorial Day from 5:00 a.m. to 10:00 p.m. of each day;
6. Hall School Woods;
7. At North Street/Washington Avenue across from East End Community School;
8. Letson Purchase;
9. Ocean Avenue Dog Park;

10. Woods located behind Portland Arts and Technical High School;
11. Pine Grove Park;
12. Riverton Park;
13. University Park;
14. Valley Street Park; ~~and~~

15. Presumpscot River Preserve;

~~14.~~ 16. Canco Woods; and

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~~15-~~ 17. Any city owned island park areas and open space; unless such property is posted by the parks authority with signs stating that "Maximum Eight-Foot Canine Leash is Required" to accommodate mass gatherings or public events;

- (f) On the East End Beach beginning on Memorial Day through Labor Day of each year between the hours of 9:00 a.m. and 5:00 p.m., whether leashed or not;
- (g) Within any playfields, school yards and playgrounds whether leashed or not;
- (h) Within the Western or Eastern Cemeteries whether leashed or not;
- (i) All areas referred to in subsections (c), (d), (e), (f) and (g) above are more particularly defined on maps on file in the office of the Department of Public Works.

Dangerous dog shall mean:

- (a) any dog, that, without provocation, or, upon being incited by its owner or any other person in control of the dog, assaults an individual or domesticated animal, or public or private property; or
- (b) any dog that, by attacking or threatening to attack an individual or an individual's domesticated animal, causes a reasonably prudent person, acting in a reasonable and non-aggressive manner, to fear bodily harm.

Owner shall mean and include any person owning, keeping, possessing, or harboring a dog.

Public street shall mean and include any street, whether accepted or unaccepted, and include sidewalks, turnarounds, and other portions thereof.

Publicly owned property shall mean and include all property owned by the city, including without limitation any park or cemetery of the city, and all property owned by any other public or governmental entity unless such entity has established different regulations.

(Ord. No. 31-83, § 1, 11-7-83; Ord. No. 356-83, 12-19-83; Ord. No. 176-96, § 1, 3-4-96; Ord. No. 224-97, § 1, 3-17-97; Ord. No. 60-98, 8-3-98; Ord. No. 75-99, 10-4-99; Ord. No. 143-01, 1-3-01; Substitute Ord. No. 185, 2-21-01;

Ord. 108-15/16, 11-16-2015)

Editor's Note: Original should read under (b) dangerous dog "on public or private property"

Sec. 5-16. License required.

No dog shall be kept within the limits of the city unless such dog shall have been licensed and such license displayed by its owner in accordance with the statutes of the state. The provisions of this section shall not apply to any dog belonging to an out-of-state resident visiting within the city without the intention of becoming a resident, but the owner of such a dog shall comply with the remaining provisions of this article.

(Code 1968, § 421.1; Ord. No. 31-83, § 2, 11-7-83)

State law reference(s)--Licenses for dogs, 7 M.R.S.A. § 3451 et seq.

Sec. 5-17. Running at large prohibited.

(a) No dog shall be permitted to be at large within the city. Anyone whose dog, while at large and without provocation, assaults any person, animal or property shall be subject to a penalty of double the otherwise applicable penalty unless the dog owner is cited under Sec. 5-21 in which case that section shall control the applicable fine.

(b) The minimum penalty for violations of this section shall be as follows:

- 1st violation: \$75.00
- 2nd violation: \$100.00
- 3rd violation: \$150.00
- 4th or more violations: \$500.00

These penalties shall be calculated and assessed on an owner regardless of whether the dog running-at-large is the same dog in each violation.

(Code 1968, § 421.2; Ord. No. 31-83, § 3, 11-7-83; Ord. No. 68-87, § 1, 8-17-87; Ord. No. 176-96, § 2, 3-4-96; Ord. No. 75-99, 10-04-99; Ord. No. 143-01, 01-03-01)

Cross reference(s)--Streets, sidewalks and other public places, Ch. 25.

Sec. 5-18. Disturbing the peace.

No person shall own, possess, or harbor any dog which by loud, frequent, or habitual barking, howling, or yelping, disturbs the peace of any person. Any person who shall violate the provisions of this section shall, upon the first occasion

thereof, be given a warning and shall, upon conviction of any subsequent violations within a period of six (6) months from such warning, be subject to a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00).

(Code 1968, § 421.9; Ord. No. 279-77, § 1, 7-6-77; Ord. No. 31-83, § 4, 11-7-83)

Cross reference(s)--Offenses against the public peace, § 17-16 et seq.

Sec. 5-19. Interference with animal control officer prohibited.

No person shall interfere with, hinder or molest any animal control officer or other person authorized to enforce such laws in the performance of any duty of such officers, or seek to release any dog in the custody of an animal control officer, except as provided in this article.

(Code 1968, § 421.6; Ord. No. 176-96, § 3, 3-4-96)

Sec. 5-20. Records to be kept.

It shall be the duty of an animal control officer to keep, or cause to be kept, an accurate and detailed record of the licensing, impoundment and disposition of all dogs coming into his or her custody and of the name of the owner.

(Code 1968, § 421.7; Ord. No. 176-96, § 4, 3-4-96; Ord. No 143-01, 1-3-01)

Sec. 5-21. Dangerous Dog.

(a) It shall be a violation of this Ordinance to own, keep, possess or harbor a dangerous dog;

(b) The minimum financial penalty for a violation of this section is five hundred dollars (\$500.00) for the first offense, seven hundred and fifty dollars (\$750.00) for the second offense, and one thousand dollars (\$1,000.00) for the third offense. This penalty shall not be waived nor shall any portion of it be suspended by the court. These penalties shall be calculated and assessed on an owner regardless of whether the dangerous dog is the same dog in each violation.

(c) In addition to the financial penalty imposed by subsection (b), after hearing a court of competent jurisdiction shall order:

1. that the dangerous dog be muzzled, restrained, confined to the premises of its owner in a secure enclosure or any other reasonable measure to be

imposed to protect the safety, health and welfare of the City's inhabitants; or

2. that the dog be euthanized if it has injured a person or domesticated animal or if it has a history of a prior assault. The cost of seizure and euthanasia of the dog shall be assessed to the owner of the dangerous dog.

(d) Owner to pay restitution. Where the victim of a dangerous dog has incurred medical expenses, veterinary expenses or any other direct financial loss, the owner of said dangerous dog shall be ordered to pay restitution to the victim in accordance with the criteria set forth in 17-A M.R.S.A. §1325.

(e) Dogs presenting immediate threat to public. After issuing a summons and before hearing, if the dog poses an immediate or continuing threat to the public, a sheriff, local law enforcement officer or animal control officer shall order the owner or keeper of the dog to muzzle, restrain or confine the dog to the owner's premises or to have the dog confined at the owner's expense at a place determined by the sheriff, local law enforcement officer or animal control officer. If the owner or keeper fails to comply, the sheriff, local law enforcement officer or animal control officer may apply to District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public and turn the dog over to the applicant or other suitable person.

(f) Ex parte. An order may be entered ex parte upon findings by the court or justice of the peace when:

- (1) The dog has inflicted a serious bodily injury as defined in title 17-A, section 2, subsection 23; or
- (2) There is a reasonable likelihood that the dog is dangerous or vicious and:
 - a. Its owner has failed to muzzle, restrain or confine the dog; and
 - b. That failure poses an immediate threat of harm to the public.

- (g) Modify order. An order may be modified by the court.

- (1) Upon two (2) days' notice or a shorter period the court may prescribe, the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.
- (2) The Court shall hear and determine the motion as expeditiously as possible.
- (3) The owner shall submit an affidavit setting forth specific facts to substantiate the modification or dissolution of the order. The applicant has the burden of presenting evidence to substantiate the original findings.

(h) Recovery of Costs/Liens. The owner of the dog shall be assessed any costs incurred by the City under this section. The City or any person taking possession of a dog as provided in this section has a lien on that dog in accordance with Title 17, section 1021, subsection 6. In addition, costs assessed by the City shall be enforceable by lien for the benefit of the City pursuant to Section 1-16 of this code in addition to any penalties provided in this section.

(i) Treble damages. If a dog whose owner or keeper refuses or neglects to comply with the order, wounds any person by a sudden assault or wounds or kills any domestic animal, the owner or keeper shall pay the person injured treble damages and costs to be recovered by a civil action.

(Ord. No. 75-99, 10-04-99; Ord. No. 143-01, 1-3-01)

Sec. 5-22. Enforcement

The provisions of this division may be enforced by any designated representative of the Chief of Police or by the canine control officer.

(Ord. No. 75-99, 10-04-99)

Sec. 5-23. Reserved.

Sec. 5-24. Reserved.

Sec. 5-25. Reserved.

Sec. 5-26. Reserved.

Sec. 5-27. Reserved.

Sec. 5-28. Reserved.

Sec. 5-29. Reserved.

Sec. 5-30. Reserved.

DIVISION 2. IMPOUNDMENT

Sec. 5-31. Causes; confinement period.

Unlicensed dogs, whether or not at large, and dogs found running at large, whether or not licensed, shall be taken and impounded by an animal control officer in a shelter designated by the city as the city animal shelter and there confined for a period of not more than six days.

(Code 1968, § 421.3; Ord. No. 328-75, § 1, 5-19-75; Ord. No. 255-90, 2-21-90; Ord. No. 176-96, § 5, 3-4-96; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-32. Notice to owner if possible.

Where the ownership of any dog impounded under section 5-31 is known or can be reasonably ascertained by an animal control officer, such officer shall, if possible, notify the owner within three (3) days of such impoundment, but failure to give such notice shall in no way impose any liability upon the city for the destruction or transfer to another of any dog so impounded and not reclaimed within a period of six (6) days.

(Code 1968, § 421.4; Ord. No. 328-75, § 1, 5-19-75; Ord. No. 255-90, 2-21-90; Ord. No. 176-96, § 6, 3-4-96; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-33. Redemption by owner.

Any owner may regain possession of an impounded dog upon presentation of a valid certificate of vaccination against rabies, a license for the current year and the receipt evidencing payment of the municipal impoundment and accrued shelter boarding fees.

(Code 1968, § 421.4; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-34. Disposition of unclaimed dogs.

Any dog impounded under the provisions of this division and not reclaimed by the owner within the six (6) days shall be considered to be abandoned by the owner and the property of the city and may, after consultation with the designated shelter, be humanely destroyed or given to the designated shelter or any person deemed to be responsible and a suitable owner who will agree to comply with the provisions of this article.

(Code 1968, § 421.4; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00)

Sec. 5-35. Fees.

(a) Any dog impounded under this division may be reclaimed upon payment of the municipal impoundment charge and the accrued boarding charges at the rate established pursuant to Title 7, M.R.S.A., Part 9. In addition, any unlicensed dog shall be given a temporary license by the shelter upon proof of rabies vaccination, and notice of such temporary license shall be provided to the city clerk by the shelter.

(b) The municipal impoundment charge is hereby established as twenty dollars (\$20.00) per dog for the first impoundment, forty dollars (\$40.00) per dog for the second impoundment, and fifty-five dollars (\$55.00) per dog for each impoundment thereafter. The designated shelter or the city shall collect such charge prior to release of the dog to any person. If the shelter collects the fee, the shelter shall forward it to the city or credit the City's account in a manner and on a schedule approved by the City's Finance Director. If the designated shelter waives all or a portion of its own fees and charges, the shelter may waive the municipal impoundment fee to the same extent but not to a greater extent.

(Code 1968, §§ 421.5, 421.8; Ord. No. 160-75, 2-19-75; Ord. No. 329-75, § 1, 5-19-75; Ord. No. 258-76, §§ 1, 2, 5-17-76; Ord. No. 122-79, § 1, 2-22-79; Ord. No. 550-86, 5-12-86; Ord. No. 255-90, 2-21-90; Substitute Ord. No. 44-00, 7-31-00; Ord. No. 268-08/09, 5-18-09)

Sec. 5-36. Reserved.
Sec. 5-37. Reserved.
Sec. 5-38. Reserved.
Sec. 5-39. Reserved.
Sec. 5-40. Reserved.
Sec. 5-41. Reserved.
Sec. 5-42. Reserved.
Sec. 5-43. Reserved.
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Sec. 5-65. Reserved.
Sec. 5-66. Reserved.
Sec. 5-67. Reserved.
Sec. 5-68. Reserved.
Sec. 5-69. Reserved.
Sec. 5-70. Reserved.

DIVISION 3. CANINE WASTE

Sec. 5-71. Duty to dispose.

It shall be a violation of this division for any person who owns, possesses or controls a dog to fail to remove and dispose of any feces left by his/her dog on any sidewalk, street or publicly owned property.

(Ord. No. 468-83, 6-8-83)

Sec. 5-72. Reserved.

Editor's note--Ord. No. 236-83, adopted Oct. 17, 1983, repealed § 5-72. Said former section, relative to duty of dog owners to possess means of removing canine waste, derived from Ord. No. 468-83, adopted June 8, 1983.

Sec. 5-73. Enforcement.

The provisions of this division may be enforced by any designated representative of the director of parks and recreation or, the chief of police, or by the canine control officer.

(Ord. No. 468-83, 6-8-83; Ord No. 75-99, 10-04-99)

Sec. 5-74. Penalties for violation.

Violation of this division shall be punished by a minimum penalty of two hundred and fifty dollars (\$250.00) for each violation. The minimum penalty for a third offense under this section shall be five hundred dollars (\$500.00). Where financial hardship is demonstrated, a violator of this division may perform community service in lieu of the financial penalty, if such a program is available through the city. Such community service shall consist of removing canine waste within the city at a rate of 25 hours per offense and 50 hours for the third (or more) offense. (Ord. No. 468-83, 6-8-83; Ord. No. 176-96, § 7, 3-4-96; Ord. No. 75-99, 10-04-99)

Sec. 5-75. Exemption.

This regulation shall not apply to a dog accompanying any handicapped person who, by reason of his/her handicap, is physically unable to comply with the requirements of this division. (Ord. No. 468-83, 6-8-83)

Sec. 5-76. Reserved.
Sec. 5-77. Reserved.
Sec. 5-78. Reserved.
Sec. 5-79. Reserved.
Sec. 5-80. Reserved.
Sec. 5-81. Reserved.
Sec. 5-82. Reserved.
Sec. 5-83. Reserved.
Sec. 5-84. Reserved.
Sec. 5-85. Reserved.
Sec. 5-86. Reserved.
Sec. 5-87. Reserved.
Sec. 5-88. Reserved.
Sec. 5-89. Reserved.
Sec. 5-90. Reserved.
Sec. 5-91. Reserved.
Sec. 5-92. Reserved.
Sec. 5-93. Reserved.
Sec. 5-94. Reserved.
Sec. 5-95. Reserved.
Sec. 5-96. Reserved.
Sec. 5-97. Reserved.

Sec. 5-98. Reserved.
Sec. 5-99. Reserved.
Sec. 5-100. Reserved.
Sec. 5-101. Reserved.
Sec. 5-102. Reserved.
Sec. 5-103. Reserved.
Sec. 5-104. Reserved.
Sec. 5-105. Reserved.
Sec. 5-106. Reserved.
Sec. 5-107. Reserved.
Sec. 5-108. Reserved.
Sec. 5-109. Reserved.

ARTICLE III. FEEDING OF WILDLIFE PROHIBITED

Sec. 5-110. Prohibition against feeding wildlife on specified public property.

(a) Within the Portland Downtown District, as established and defined by order of the City Council, Order #306, (3/16/1992), amended by Council Order #185 (2/22/95), no person shall intentionally dispense any type of food, substance or seeds to feed any species of wildlife upon the public ways or upon property owned or controlled by the city.

(b) "Wildlife" as used in this Article means any undomesticated or untamed bird or animal without a known or identifiable owner and includes, but is not limited to, wildlife such as pigeons and squirrels. The definition does not include dogs or deer.

(c) This section shall not apply within the boundaries of Lincoln Park.
(Ord. No. 12-02/03, 8-5-02)

Sec. 5-111. Warning required before prosecution.

Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal or written warning to an individual and if the individual ceases the activity, then no citation shall issue. Once an individual has been given one

City of Portland
Code of Ordinances
Sec. 5-111

Animals & Fowl
Chapter 5
Rev. 7-01-09

warning, the requirement in this subparagraph has been met and
no subsequent warnings are required.
(Ord. No. 12-02/03, 8-5-02)

ARTICLE IV. KEEPING OF DOMESTICATED CHICKENS

Sec. 5-400. Purpose.

The purpose of this article is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis while creating standards and requirements that ensure that domesticated chickens do not adversely impact the neighborhood surrounding the property on which the chickens are kept.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-401. Reserved.

(Ord. No. 152-08/09, 2-18-09; Ord. 244-14/15, 6-24-2015; Ord. 18-17/18, 8-21-2017, Chicken permit repealed.)

Sec. 5-402. Number and type of chickens allowed.

(a) The maximum number of chickens allowed is six (6) per lot regardless of how many dwelling units are on the lot.

(b) Only female chickens are allowed. There is no restriction on chicken species.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-403. Non-commercial use only.

Chickens shall be kept as pets and for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

(Ord. No. 152-08/09, 2-18-09)

Sec. 5-404. Enclosures.

(a) Chickens must be kept in an enclosure or fenced area (chicken pen) at all times during daylight hours. Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact. The chicken pen must provide adequate sun and shade and must be impermeable to rodents, wild birds, and predators, including dogs and cats. It shall be constructed with sturdy wire fencing buried at least 12" in the ground. The pen must be covered with wire,

aviary netting, or solid roofing. The use of chicken wire is not permitted.

- (b) Chickens shall be secured within a henhouse during non-daylight hours.
- (1) Any henhouse shall be at least ten (10') feet from any residential structure or any other structure on any adjacent lots. The henhouse shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator and bird-proof wire of less than one (1) inch openings. The use of scrap, waste board, sheet metal, or similar materials is prohibited. The henhouse must be well-maintained.
- (2) Henhouses shall only be located in rear yards, and shall meet zoning setbacks applicable to detached accessory structures. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the setbacks for structures generally applicable in the zoning district are met. In no case may a henhouse be placed in the front yard. Henhouses are not allowed to be located in any part of a home.

(Ord. No. 152-08/09, 2-18-09; Ord. No. 42-11/12, 10/3/11)

Sec. 5-405. Odor and noise impacts.

(a) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible at the property boundaries.

(b) Perceptible noise from chickens shall not be loud enough at the property boundaries to disturb persons of reasonable sensitivity.

(Ord. No. 152-08/09, 2-18-09)

Sec. 406. Lighting.

Only motion-activated lighting may be used to light the exterior of the henhouse.

(Ord. No. 152-08/09, 2-18-09)

Sec. 407. Predators, rodents, insects, and parasites.

The property owner and/or chicken owner shall take all necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites that may result in unhealthy conditions to human habitation may be removed by the City, through the animal control officer, or any other designee, and the cost of the same shall be borne by the property owner and/or chicken owner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 408. Feed and water.

Chickens must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds and predators.
(Ord. No. 152-08/09, 2-18-09)

Sec. 409. Waste storage and removal.

Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully enclosed container. No more than one, twenty gallon container of manure shall be stored on any one property housing chickens. All other manure shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 410. Fees for reinspections.

Following the city's issuance of a notice of violation of the requirements hereunder and an order to correct violations, the city will reinspect at the expense of seventy five dollars (\$75.00) to the property owner and/or chicken owner to determine whether the violations have been fixed in compliance with this article. Failure to correct the violation shall result in a penalty imposed pursuant to sec. 4-411 below in addition to the reinspection fee. If the violations have not been fixed in compliance with this chapter, the violator shall be assessed a reinspection fee of one hundred and fifty dollars (\$150.00) for each subsequent reinspection. Failure to pay the assessment for reinspection shall create a lien on the property of the violator and the assessment and lien shall be collected and enforced pursuant to section 1-16.
(Ord. No. 152-08/09, 2-18-09)

Sec. 411. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this article shall be a civil violation and a fine of one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense. This penalty is in addition to any expense for reinspection of the property.
(Ord. No. 152-08/09, 2-18-09)

Sec. 412. Revocation of permit.

A permit to keep chickens may be revoked where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of any other applicable ordinance or law.
(Ord. No. 152-08/09, 2-18-09)

Sec. 413. Removal of chickens.

In addition to the penalty stated in §4-411, any violation of the provisions of this article shall be grounds for an order from the city to remove the chickens and the chicken-related structures.

The health inspector, health officer, or animal control officer may order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.
(Ord. No. 152-08/09, 2-18-09)

Sec. 414. Separability.

In the event that any section, subsection or portion of this article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article.
(Ord. No. 152-08/09, 2-18-09)

Sec. 5-415. to 5-499 Reserved.

ARTICLE V. RESTRICTIONS ON THE SALE OF DOGS AND CATS

Sec. 5-500. Definitions.

The following words when used in this article shall have the following meanings:

Animal care facility shall mean an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission or practice is, in whole or significant part, protecting the welfare of animals and placing animals in permanent homes or with animal rescue organizations.

Animal rescue organization shall mean any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue of animals and the placement of those animals in permanent homes, and which does not obtain dogs or cats from a breeder or broker for payment or compensation.

Breeder shall mean a person who maintains dogs or cats for the purpose of breeding and selling their offspring.

Broker shall mean a person who transfers dogs or cats at wholesale for resale by another.

Cat shall mean a member of the *Felis catus* family.

Dog shall mean a member of the *Canis familiaris* family, or resultant hybrid.

Offer for sale shall mean to sell, offer for sale or adoption, barter, auction, give away or otherwise dispose of a dog or cat.

Pet shop shall mean any place, business, establishment or vehicle required to be licensed under 7 M.R.S. § 3933. Such definition shall not include an animal care facility or animal rescue organization, as defined.
(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-501. Prohibition on Pet Shop Sales.

(a) A pet shop shall offer for sale only those dogs and cats that:

(i) Are older than eight (8) weeks; and

(ii) Have been obtained from or are displayed in cooperation with:

- (1) An animal care facility; or
- (2) An animal rescue organization; and

(b) A pet shop shall not offer for sale a dog or cat that is younger than eight (8) weeks old;

(c) Each pet shop shall maintain records sufficient to document the source of each dog or cat the pet shop acquires, for at least one (1) year following the date of acquisition. Such records shall be made available, immediately upon request, to any designated representative of the City including, but not limited to, the Chief of Police or his or her designee, any animal control officer, any designated representative of the Animal Welfare Program or any state humane agent as defined in 17 M.R.S. §1011.

(d) Each pet shop offering dogs or cats for sale shall post, in a conspicuous location on the cage or enclosure of each animal, a sign listing the name of the animal care facility or animal rescue organization from which each dog or cat in the cage or enclosure was acquired.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-502. Prohibition on Sales in Public Places.

(a) It shall be unlawful for any person to sell, exchange, trade, barter, lease or display any dog or cat on any roadside, public right-of-way, parkway, median, park, other recreation area, flea market or other outdoor market, or commercial or retail parking lot regardless of whether such access is authorized.

(b) This section shall not apply to the following:

- (i) The display or adoption of dogs or cats by an animal care facility or an animal rescue organization; or
- (ii) The display of dogs or cats as part of a state or county fair exhibition, 4-H program, or other similar exhibitions or educational programs.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-503. Enforcement.

The provisions of this Article may be enforced by the City Manager or his or her designee.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-504. Penalties for Violation.

(a) A violation of this Article shall be punished by a minimum penalty of two hundred and fifty dollars (\$250.00) Each instance of a dog or cat offered for sale and displayed or obtained in violation of this Article is considered a separate violation under this provision.

(b) This Article may also be enforced pursuant to Portland City Code Chapter 1, §§1-1 to 1-15.

(Ord. No. 40-16/17, 9-7-2016)

Sec. 5-505. Severability.

In the event that any section, subsection or portion of this article, or the application of such section, subsection or portion of this article to any person or circumstance, shall be declared by any competent Court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article, or the applicability of such section, subsection or portion of this article to other persons or circumstances.

(Ord. No. 40-16/17, 9-7-2016)

ARTICLE VI. Prohibition on Display of Wild and Exotic Animals.

Sec. 5-506. Definitions.

The following words and phrases have the following meanings:

Director means the City Manager or his or her designee, which is the party responsible for enforcement of this Article.

Display means any exhibition, fair, act, circus, ride, or similar undertaking in which wild and/or exotic animals are required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience, whether or not a fee is charged.

Mobile or traveling housing facility means a transporting vehicle such as a truck, trailer or railway car, used to transport or house wild and/or exotic animals while traveling for exhibition or other performance of those wild and exotic animals.

Traveling animal act means any display of wild and/or exotic animals where such animals are transported to, from, or between locations for the purpose of such display, in a mobile or traveling housing facility.

Wild and/or exotic animal means any live animal from any of the following scientific classifications:

- a) Artiodactyla (including hippopotamuses, giraffes, camels, and llamas, but excepting cattle, swine, sheep, and goats);
- b) Crocodilia (including alligators and crocodiles);
- c) Elephantidae (elephants);
- d) Felidae (including tigers, lions, jaguars, leopards, cheetahs, and cougars, or any hybrid thereof, but excluding domestic cats);
- e) Marsupialia (including kangaroos);
- f) Non-human primates (including apes, monkeys, and lemurs);
- g) Perissodactyla (including rhinoceroses, tapirs, and zebras);
- h) Pinnipedia (including seals, sea lions, and walruses);
- i) Ursidae (bears); or
- j) Elasmobranchii (including nurse sharks and lemon sharks).

This definition does not include or apply to horses.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-507. Prohibited Acts.

(a) It shall be a violation of this Article for any person, business, entity, corporation, limited liability company or other similar organization to allow for the participation of a wild and/or exotic animal in a traveling animal act in the City of Portland;

(b) The penalty for violations of this Article shall be \$500.00 per offense. Each and every wild and/or exotic animal exhibited and each day exhibition occurs shall constitute a separate offense; and

(c) This Article may also be enforced pursuant to Chapter 1, section 1-15 of the Portland City Code.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-508. Administration and Enforcement.

The Director shall be responsible for the administration and enforcement of the provisions of this Article.
(Ord. No. 30-17/18, 9-18-2017)

Sec. 5-509. Effective Date.

This Article shall be effective on October 18, 2017.
(Ord. No. 30-17/18, 9-18-2017)

Baxter
to
Port-
land
City of
Deed

KNOW ALL MEN BY THESE PRESENTS, That I, Percival Proctor Baxter of Portland, County of Cumberland, State of Maine, in consideration of one (\$1.00) dollar and other valuable considerations paid by the CITY OF PORTLAND, a Municipal Corporation incorporated under the laws of the State of Maine and a body politic located in said County of Cumberland, the receipt whereof I do hereby acknowledge, and in furtherance of my desire to convey and donate to the CITY OF PORTLAND an area of land in the Deering District of said Portland, to be held forever by said CITY as TRUSTEE IN TRUST for the benefit of the people of Portland do hereby remise, release, sell, convey and forever quit-claim unto the said CITY OF PORTLAND and its successors to be forever held in trust the following described land located in said CITY, bounded and described as follows -

All my right title and interest in and to a certain tract or parcel of land with the buildings thereon situated between Forest and Stevens Avenues, Hartley Street and Baxter Road, so called in the City of Portland, State of Maine and located and described as follows:

Beginning on the westerly side of Forest Avenue at the northeast corner of the lot of land conveyed by Francis O. J. Smith to Owen Durgin by deed dated August 1875 and recorded in Cumberland County Registry of Deeds in Book 418, Page 501; thence northerly by the westerly side of Forest Avenue 523.0 feet more or less to the southeast corner of the lot of land conveyed by James P. Baxter to Saint Elizabeth's Roman Catholic Asylum by deed dated March 10, 1908, and recorded in said Registry in Book 821, Page 58; thence westerly by land of said Saint Elizabeth's Roman Catholic Asylum and by the lot of land conveyed by James P. Baxter to Roman Catholic Bishop Corporation Sole by deed dated March 10, 1908, and recorded in said Registry in Book 821, Page 59, a distance of 1850.81 feet to the easterly side of Stevens Avenue; thence southerly by the easterly side of Stevens Avenue 253.15 feet to a stone monument marking an angle in said easterly side of Stevens Avenue; thence southerly by said easterly side of Stevens Avenue 290.84 feet to the lot of land conveyed by James P. Baxter to John H. Fogg by deed dated June 14, 1899, and recorded in said Registry in Book 680, Page 31; thence easterly by land formerly of said Fogg 125 feet to a point; thence southerly by land formerly of said Fogg 10 feet to the lot of land conveyed by James P. Baxter to Charles Rich by deed dated July 7, 1879, and recorded in said Registry in Book 461, Page 117; thence easterly by land formerly of said Rich 2.0 feet to the northeasterly corner of said Rich lot; thence southerly by the land formerly owned by said Rich 39.7 feet more or less to the lot of land conveyed by James P. Baxter to Mark F. Fogg by deed dated June 13, 1900, and recorded in said Registry in Book 692, Page 53; thence easterly by land formerly of said Fogg and by the lot of land conveyed by James P. Baxter to Arthur D. Parkhurst by deed dated July 20, 1914, and recorded in said Registry in Book 934, Page 287, a distance of 99.44 feet to the northeast corner of said Parkhurst lot; thence southerly by the easterly line of land now or formerly of said Parkhurst and its continuation across the easterly end of Percival Street and its continuation southerly by other land of said

Grantor a distance of 250 feet to the northerly line of the lot of land conveyed by James P. Baxter to Alvin E. Plummer by deed dated April 13, 1885 and recorded in said Registry in Book 517, Page 372, said point being distant 100 feet from the northerly side of Hartley Street; thence easterly on a line parallel with and distant 100 feet from said northerly line of Hartley Street and by the rear line of lot formerly owned by said Plummer and by the lot of land conveyed by James P. Baxter to Charles E. Spear on October 27, 1899, recorded in said Registry in Book 682, Page 153, and by the lot of land conveyed by James P. Baxter to Fred P. Freeman and William L. Turner by deed dated May 18, 1885, recorded in said Registry in Book 517, Page 479, and by other land of said Grantor and by the lot of land conveyed by James P. Baxter to Alvin E. Plummer by deed dated June 15, 1885, and recorded in said Registry in Book 520, Page 117 a distance of 235.14 feet to the northeasterly corner of the lot formerly owned by said Plummer; thence southerly by the easterly line of land formerly owned by said Plummer 100 feet to the northerly side of Hartley Street; thence easterly by said northerly side of Hartley Street 878.23 feet to the southwesterly corner of the lot of land conveyed by Percival P. Baxter to George I. Geer by deed dated August 19, 1944, and recorded in said Registry in Book 1757, Page 109; thence northerly by the westerly line of land of said Geer 100 feet to the northwest corner of said Geer lot; thence easterly on a line parallel with said northerly side of Hartley Street and by land of said Geer and by the lot of land conveyed by James P. Baxter to Albert F. Mann by deed dated May 10, 1888, recorded in said Registry in Book 546, Page 141, and by the lot of land conveyed by James P. Baxter to Abram H. Milliken and George A. Lovell by deed dated December 7, 1897, recorded in said Registry in Book 660, Page 10 and by the lot of land conveyed by James P. Baxter to Ebenezer M. Gay and John Archibald by deed dated August 6, 1894, recorded in said Registry in Book 613, Page 456, and by the lot of land conveyed by James P. Baxter to the Delano Planing Mill Company by deed dated August 21, 1895, recorded in said Registry in Book 629, Page 117 a distance of 245.4 feet to the northeast corner of said Delano Planing Mill Company lot; thence southerly by land formerly of said Delano Planing Mill Company 8.15 feet to the lot of land conveyed by Martha A. Gray to Mary E. Gray by deed dated July 19, 1894 and recorded in said Registry in Book 615, Page 280; thence easterly by land formerly of said Mary E. Gray and by the lot of land conveyed by Martha A. Gray to Mary E. Gray by deed dated August 31, 1900, recorded in said Registry in Book 692, Page 423, and by the lot of land conveyed by Martha A. Gray to Margaret O'Connor by deed dated April 8, 1903, and recorded in said Registry in Book 733, Page 31 and by the lot of land conveyed by Martha A. Gray to Lillie B. Rowe by deed dated December 16, 1892 recorded in said Registry in Book 604, Page 217 and by the lot of land conveyed by Martha A. Gray to Lillie B. Rowe by deed dated June 30, 1891 recorded in said Registry in Book 582, Page 15 and by the lot of land conveyed by Martha A. Gray to Alvah E. Plummer by deed dated April 30, 1885 recorded in said Registry in Book 517, Page 464 a distance of 387.85 feet to the southwesterly corner of the Owen Durgin lot above mentioned; thence northerly by

the westerly line of the lot formerly owned by said Durgin 75 feet to an iron stake; thence easterly by land formerly owned by said Durgin 86.78 feet to said westerly side of Forest Avenue and the point of beginning.

Together with a right of way 33 feet in width in common with others from Forest Avenue to Stevens Avenue over land of said Saint Elizabeth's Roman Catholic Asylum and land of Roman Catholic Bishop Corporation Sole adjoining the northerly line of the lot above described lot and subject however to a right of way 33 feet in width from Forest Avenue to Stevens Avenue over said above described lot and adjoining the northerly side line of the above described lot.

Said above two strips each 33 feet in width are to be used together for street purposes and were conveyed and reserved in the deeds from James P. Baxter to Saint Elizabeth's Roman Catholic Asylum and to Roman Catholic Bishop Corporation Sole dated March 10, 1908, and recorded in said Registry in Book 821, Pages 58 and 59.

TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereto to said CITY OF PORTLAND as TRUSTEE as aforesaid and its successors in trust and the same shall not be conveyed or encumbered by said City but shall be held forever for the benefit of the people of said Portland

subject to the following terms, restrictions, reservations and conditions

- 1 - shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreational and educational purposes the same forever to be known as "MAYOR BAXTER WOODS";
- 2 - shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians, and any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;
- 3 - shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom;
- 4 - that the heavy ornamental iron gates now in possession of said City shall be erected by said City either at the Forest Avenue or Stevens Avenue entrance within one year after the date of this deed;
- 5 - that said City shall erect within one (1) year after the date of this deed and shall forever maintain on the land hereby conveyed a suitable bronze marker the said marker to recite the conditions of this gift, the same to be attached to a granite boulder located on said land and provided by said City;

This conveyance is made subject to all of the above mentioned terms, restrictions, reservations and conditions, and I the said PERCIVAL PROCTOR BAXTER COVENANT with the said CITY OF PORTLAND as such Trustee and its successors in trust that I will WARRANT and DEFEND the said premises to the said City and its successors in trust against the lawful claims and demands of all persons claiming by through or under me.

IN WITNESS WHEREOF, I the said PERCIVAL PROCTOR BAXTER being unmarried hereby set my hand and seal this eighth day of April in the year of our Lord one thousand nine hundred and forty-six.

Signed and Sealed in the Presence of

Alice M. Gurney .

Percival Proctor Baxter Seal

STATE OF MAINE :
SS.
CUMBERLAND. :

Portland, April 8, 1946

Personally appeared the above named PERCIVAL PROCTOR BAXTER and acknowledged the above instrument to be his free act and deed.

Before me, Alice M. Gurney

Notary Public Notarial Seal

Received April 17, 1946, at 10h 25m A. M., and recorded according to the original

MAINE
FULL DISCHARGE
FORM 21-117
Me. 10-206

Federal
Ld.Bk.
of
Spf'g.
to
Larrabee
&
Disch.

KNOW ALL MEN BY THESE PRESENTS, That THE FEDERAL LAND BANK OF SPRINGFIELD, 310 State Street, Springfield, Massachusetts, owner of a certain mortgage given by Joseph S. Larrabee and Susan E. Larrabee to the said THE FEDERAL LAND BANK OF SPRINGFIELD, dated December 31, 1925, and recorded in Cumberland County Registry of Deeds, in Book 1220 at Page 105, does hereby acknowledge that it has received full payment and satisfaction of the same and of the debt thereby secured, and in consideration thereof it does hereby cancel and discharge said mortgage and releases unto the said Joseph S. Larrabee and Susan E. Larrabee and their heirs and assigns forever the premises therein described.

IN WITNESS WHEREOF the said THE FEDERAL LAND BANK OF SPRINGFIELD has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Edward M. Whitaker, its Assistant Treasurer, this 3rd day of April 1946.

THE FEDERAL LAND BANK OF SPRINGFIELD CORPORATE
SEAL
By Edward M. Whitaker

Assistant Treasurer

Signed and Sealed in Presence of

I. B. Welch

COMMONWEALTH OF MASSACHUSETTS COUNTY OF HAMPDEN, SS.

On this 3rd day of April 1946, before me personally appeared Edward M. Whitaker to me personally known, who, being by me duly sworn, did say that he is the Assistant Treasurer of THE FEDERAL LAND BANK OF SPRINGFIELD and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said Edward M. Whitaker acknowledged said instrument to be the free act and deed of said corporation and his own free act and deed.

dms Before me, Allyn K. Talmadge Notary Public Notarial Seal

Received April 17, 1946, at 11h 50m A. M., and recorded according to the original

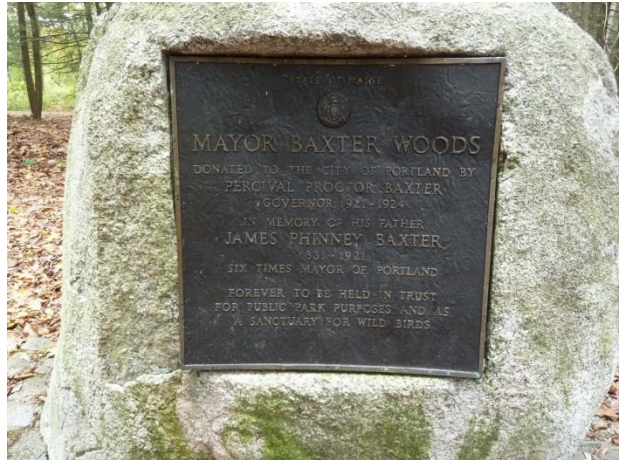
Forest and Wildlife Habitat Management Plan

for

Mayor Baxter Woods

Portland, Maine

Plan Date: May 18, 2018



Robert R. Bryan, LF# 907
Forest Synthesis LLC
271 Harpswell Neck Road
Harpswell, ME
rbryan@forestsynthesis.com

Forest Synthesis LLC

*Forest Management, Ecology, and
Certification*

www.forestsynthesis.com

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Introduction

Mayor Baxter Woods is a unique late successional forest located in the heart of the City of Portland that was donated to the City by Governor Percival Baxter in 1946 “...for the benefit of the people of Portland public recreational and educational purposes...” that “ shall forever be kept in its natural wild state and as a sanctuary for wild birds...”

At the request of the City of Portland Parks and Recreation Department, Forest Synthesis, LLC has prepared an ecological assessment and management plan based on the principles laid out in Governor Baxter’s deed. Key components of this project include assessment, mapping, of and recommendations for:

1. Natural ecosystems, including wildlife habitats based on forest type, age, structure, as well as non-forest habitats,
2. Other natural features, including wetlands, streams, vernal pools,
3. Forest health concerns, including invasive plants, insects, and disease,
4. Cultural features and human use, including historic features, trails, and a qualitative assessment of impacts associated with recreational use,
5. Protection, restoration and enhancement forest ecosystems and wildlife habitats, and
6. Ecological monitoring.

Management Goals and Objectives

Goals Based on Deed Restrictions

Based on Governor Baxter’s deed to the City¹, management goals for Mayor Baxter Woods (referred to hereafter in this report as MBW) include:

1. Use for public recreational and educational purposes, and
2. Keep the property in its natural and wild state and as a sanctuary for wild birds.

Restrictions associated with the deed that affect use and management include:

1. No streets for public conveyances and no cement walks, with only paths and trails for pedestrians,
2. Any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;
3. Use solely by pedestrians; horses, automobiles and other motor vehicles are excluded, except those of the City used solely in caring for the woods.

Reconciling Current Uses and Deed Conflicts

In attempting to identify specific management actions that are compatible with the deed requirements, several issues have been identified.

- The deed requires that MBW be “used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park and for public recreation and educational purposes” and

¹ See Appendices for a summary of key deed restrictions

“shall forever be maintained for the sole use of pedestrians.” However, recreational uses conflict with the requirement that the forest be maintained as a “sanctuary for wild birds.” In particular, off-leash dogs are likely having a significant negative impact on ground-nesting and ground-feeding birds as well as those associated shrubs and small trees. A related concern is that the high density of trails and foot traffic adds to wildlife disturbance whether or not dogs are leashed. (see maps).

- Exotic (non-native) plant species identified as “invasive” by the Maine Natural Areas Program (MNAP) are altering the natural character in many places within MBW. The MNAP notes that because these plants can out-compete native species they are a direct threat to Maine’s natural and working landscapes. In addition, some exotic species not formally classified as “invasive” by MNAP are becoming well established in MBW. Because some of the invasive and exotic species are trees, the deed creates an internal conflict between the goal of maintaining the property in a “wild and natural state,” which implies that exotic species should be removed, and the restriction that trees that are a “menace to life may be removed, but no other trees therein shall be taken down.”
- Two species of exotic insect pests are found in the forest, notably elongate hemlock scale and hemlock wooly adelgid. Both insects kill hemlocks. While research into using predatory insects to control hemlock wooly adelgid shows some long-term promise, currently insecticides are the only effective control method to control with hemlock pest. Because of the widespread abundance of hemlock in MBW and in particular the dense hemlock midstory that characterizes much of the forest, maintaining all hemlocks may be impossible without repeated and widespread pesticide use. While tree mortality associated with native insects is a natural forest process, allowing widespread mortality of native tree from an exotic insect is not a “natural.....state” of the forest. Harvesting some of the midstory hemlocks threatened by these exotic insects would allow more light to reach the forest floor and encourage the establishment of other native tree seedlings. In the long run this would result in a more resilient forest of native species, but removing any hemlocks would conflict with the restriction on cutting of trees other than those that are hazardous.

Integrated Goals and Objectives

Clearly identified management goals and objectives are essential to guide management and to provide a framework for evaluating whether or not management outcomes are successful. The plan utilizes the following framework:

Goals: Broad generalizations about the future resource conditions that management is designed to culture. Goals are often long-term in nature and may also encompass values of interest to the landowner.

Objectives: Detailed descriptions, pertaining to a specific goal, of what the resource will look like or the management approaches necessary to achieve that goal. Objectives are often measureable and often are more short-term in nature than goals.

The goals and objectives below attempt to balance the internal conflicts within the deed by considering the long-term dynamics of the forest and its context within the surrounding cityscape. In addition, forest management goals that are not specifically mentioned in the deed but are considered to be a core

component of ecosystem management consistent with deed requirement that the forest be maintained “in a natural wild state and as a sanctuary for wild birds” are included.

1. Goal: Promote recreational uses that are consistent with maintaining the property in a wild and natural state and as sanctuary for wild birds

Objective:

- Reduce disturbance to forest birds from recreational use

Monitoring:

- Number and type of ground-nesting and understory birds using the forest

2. Goal: Maintain a natural ecosystem based on native plant and wildlife species and natural ecosystem processes

Objectives:

- Develop and implement a plan to control invasive plants and other non-native plants
- Develop and implement a plan to control non-native insects that currently or could in the foreseeable future threaten forest health (e.g. hemlock wooly adelgid, hemlock scale, browntail moth, winter moth)
- Allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time
- Maintain and enhance shrub and old-field habitat
- Restore degraded areas near property lines and along trails

Monitoring:

- Extent and density of invasive and other exotic plants
- Extent and density of non-native insects that threaten forest health
- Forest species composition, density, and tree size by major vegetation layer
- Extent and condition of shrub and old-field habitat
- Condition of restored areas

3. Goal: Protect soils and water quality

Objectives:

- Manage trails to minimize the area of soil compaction from pedestrians
- Minimize concentrated runoff from trails and associated impacts within MBW and lower in the watershed
- Ensure that ditches, culverts, and other components of the drainage system are designed to accommodate the increasingly intense rainfall events associated with climate change

Monitoring

- Condition of ground-layer vegetation adjacent to trails
- Condition and size of drainage structures relative to needs for large storm events
- Erosion and overflow within the drainage system

4. Protect City property from encroachment and inappropriate use

Objectives:

- Clearly mark all boundary lines with fencing or other means
- Restore areas where abutters are encroaching on City property
- Discourage unauthorized dumping of brush with appropriate signage

Monitoring:

- Condition of boundary lines
- Evidence of encroachment and unauthorized dumping

5. Goal: Promote educational uses consistent with the MBW deed

Objective:

- Develop educational programs and materials that emphasize the natural ecosystem and wildlife values of MBW

Monitoring:

- Number and type of educational programs and number of different audiences

Management Plan Summary

Table of Cover Types and Land Uses

The following table summarizes major cover types (forest/non-forest) and land uses. More detailed cover type information and descriptions are included in later sections of the report.

Cover Type/Land Use	Area (acres)
Deciduous forest	5.57
Coniferous forest	1.03
Mixed forest	22.98
Meadow/shrub	0.87
Shade tree/mown grass	1.47
Pond	0.22
Parking	0.10
Abutter encroachment	0.22
Total	32.46

Summary of Past management

Dates	Management Activity
1947-48	Individual risk tree removal to reduce per direction of Percival Baxter
49-50	Red pine planted with help of Deering High School students near Forest Avenue
1989-90	Some individual tree work (risk tree removal, etc.)
2004	Red pine thinning per direction of Maine Forest Service District Forester Dennis

Late 1990's to early 2000's	Brennan
2000-present	Removal of large Norway maple along Stevens Ave and near old home site
	Removal of Norway maple along Hartley Ave and control of Japanese barberry, multiflora rose, and Japanese knotweed.

Summary of Management Recommendations - 2016-2025

Following is a summary of activities included in the later sections of the report. Please refer to the Individual Stand Descriptions and Recommendations and other referenced sections for additional details on implementing the recommendations. Management recommendations included in this plan represents the opinion of Forest Synthesis based on the forest ecosystem assessment, restrictions spelled out in the MBW deed, and consultations with City and outside experts.

- Final decisions on which management actions to take and when to implement them will require further consideration by the City.
- Detailed plans for most of the recommended activities should be prepared before implementation, and the results of management should be monitored as needed.
- Recommendations below are prioritized. Priority 1 items are considered to be most important and should be undertaken first.

Stand or Area	Priority/Timing	Recommendations (This is a summary only - see applicable management plan sections for details.)	Management Plan Sections
All	1	Develop and implement a plan to control and monitor invasive plants as well as other aggressive non-native plants.	<i>Invasive Plants</i>
All	1	Develop and implement a plan to protect hemlock, red pine, and oaks from exotic insects and diseases that threaten these species in Maine. Highest short-term priority should be focused on mapping and protecting the old hemlock legacy trees in found throughout the forest.	<i>Insects and Disease; Stand Descriptions and Management Recommendations</i>
11, F4	1	Many properties on Hartley Street are encroaching onto City property. Where MBW abuts residential properties the City should clearly mark the boundary with fencing or multiple posts and signs and work with abutters to restore degraded city property to a natural condition. Signs should be placed at various points along other boundaries and access points.	<i>Boundary Lines</i>
All	1	Recreational uses, and in particular unleashed dogs, are likely having and adverse impact on ground-nesting and ground-feeding birds. Because the Baxter deed requires that the City maintain Baxter woods for recreational use and as a sanctuary for wild birds, the city should require that dogs be leashed. The city could consider closing some minor trails to create wider spaces between trails and thus minimize disturbance of wildlife.	<i>Recreational Use</i>
F1-F4	1	Develop and implement a site planting and maintenance plan that includes a) planting shrubs and wildflowers for wildlife food and cover as described in the <i>Stand Descriptions and Management Recommendations</i> for each area, and b) maintaining the wildlife habitat provided by these existing open/shrub areas by periodic	<i>Distribution of Habitat Types and Development Stages; Stand Descriptions and Management</i>

		brush mowing; cutting encroaching trees would also be beneficial but apparently is not allowed per deed restrictions.	<i>Recommendations</i>
All	1	The City should have a legal and policy review to decide under what circumstances trees may be cut in MBW.	<i>Reconciling Current Uses and Deed Conflicts</i>
All	1	Monitor the results of management actions and make corrective actions as needed. Annually monitor breeding birds, vernal pools, insects and diseases, invasive plants, condition of trails, boundary lines, and recreation use.	<i>Monitoring</i>
1	2	Thin the red pine plantation and allow natural regeneration to develop. The goal is to promote the best trees, develop understory wildlife habitat, and reduce risk from insect and disease.	<i>Stand Descriptions and Management Recommendations</i>
10	2	Remove all Norway maple and plant native species in conjunction with drainage improvements near Forest Avenue	<i>Stand Descriptions and Management Recommendations</i>
Trails	2	Review all trails and develop and implement a trail management and maintenance plan to minimize erosion, runoff and soil compaction, restore a more natural character, and restore historic landscaping.	<i>Trails</i>
All	2	Allow dead, dying trees, and downed trees and limbs to remain in place unless they represent a threat to trail users, and scatter downed limbs that fall on trails within the forest rather than chipping them.	<i>Wildlife Trees, Dead and Downed Wood, and Retention Patches</i>
1-10	2	The City has limited options to enhance habitat for birds and other wildlife due to the deed restrictions that do not allow tree cutting. In forest areas, allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time.	<i>Distribution of Habitat Types and Development Stages</i>
VP1, VP2	3	Consider enhancing the vernal pools to create more natural contours or a longer period when water is present, as described in the recommendations.	<i>Vernal Pools</i>
n/a	3	Compile historical and archaeological information from the Buttrick study and other sources to create a more complete and accurate history and maps of land use at MBW. These could be used for educational purposes and as a record for long-term management.	<i>Historical, Cultural, and Archaeological Sites</i>
5a	4	Removing some of the midstory hemlock in other parts of this stand would proactively reduce risk of hemlock loss while enhancing wildlife habitat by promoting understory and ground cover plant layers. However, this does not appear to be allowable under the deed restrictions.	<i>Distribution of Habitat Types and Development Stages ; Stand Descriptions and Management</i>

Maps



Notes:

Base map: Google Terrain

Forest Synthesis LLC

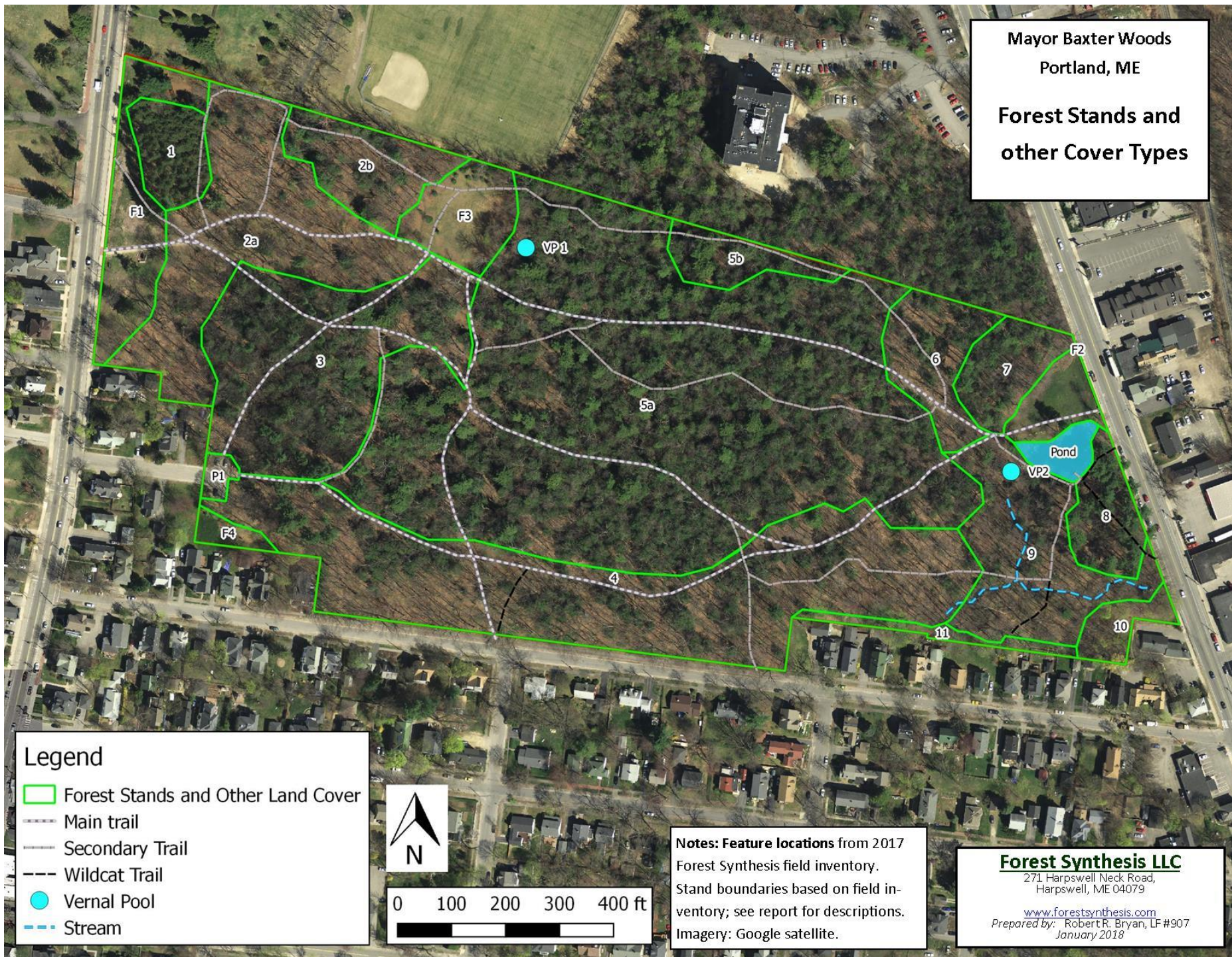
271 Harpswell Neck Road,
Harpswell, ME 04079

www.forestsynthesis.com

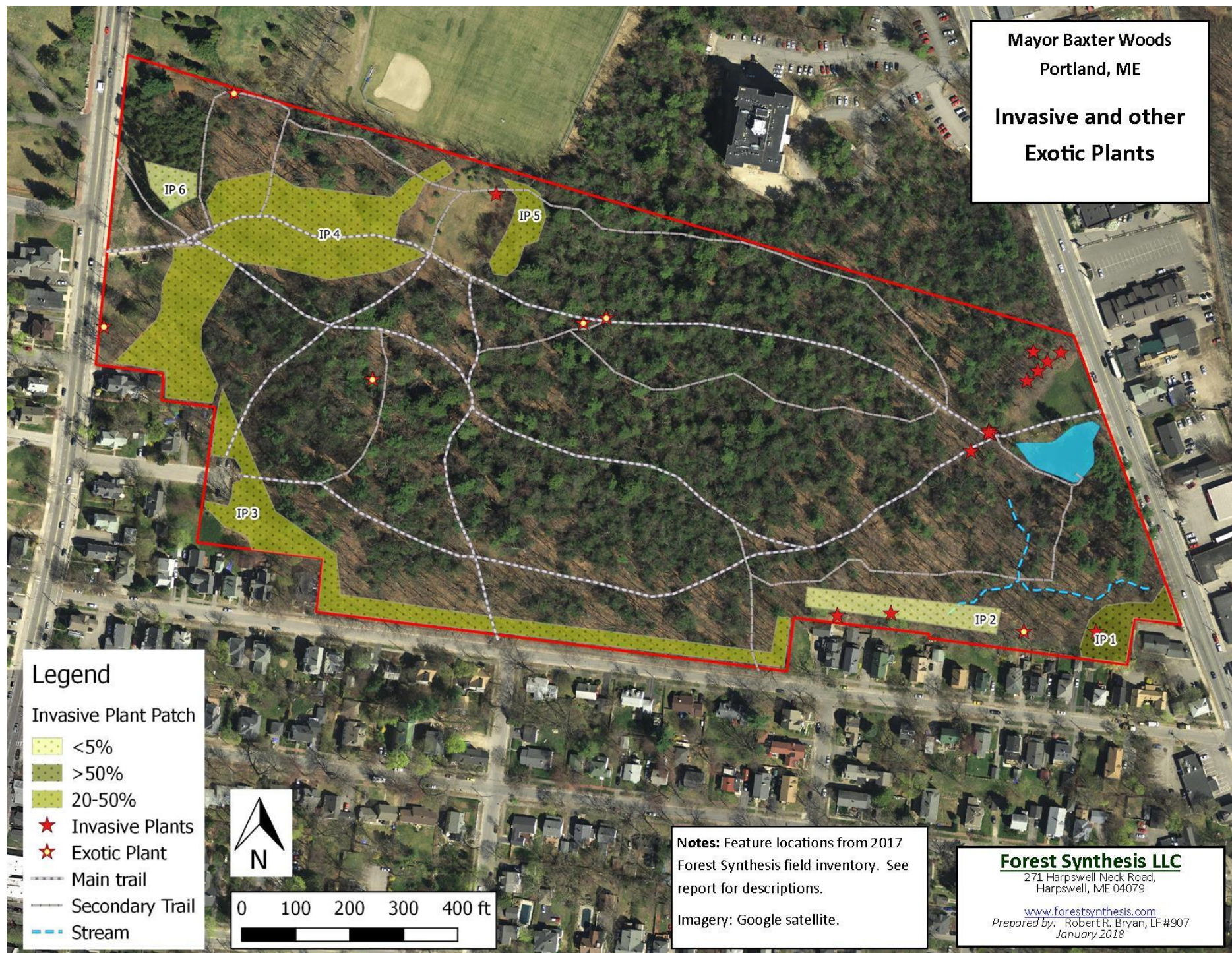
Prepared by: Robert R. Bryan, LF #907
January 2018

Mayor Baxter Woods
Portland, ME

Forest Stands and other Cover Types

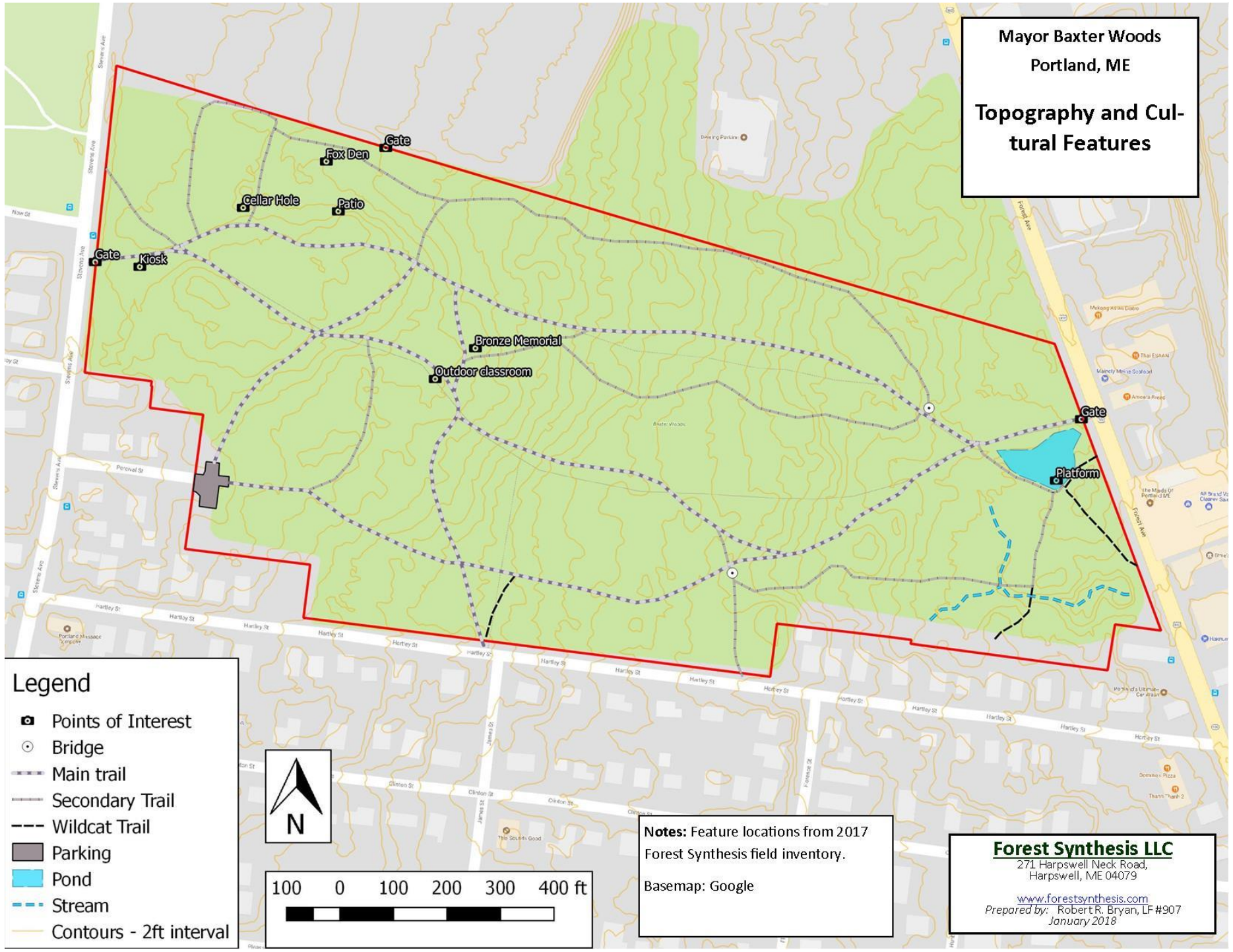


Mayor Baxter Woods
Portland, ME
Invasive and other
Exotic Plants



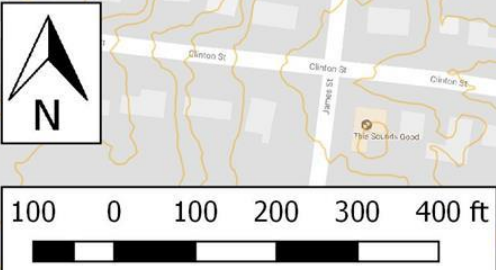
Mayor Baxter Woods
Portland, ME

Topography and Cul-
tural Features



Legend

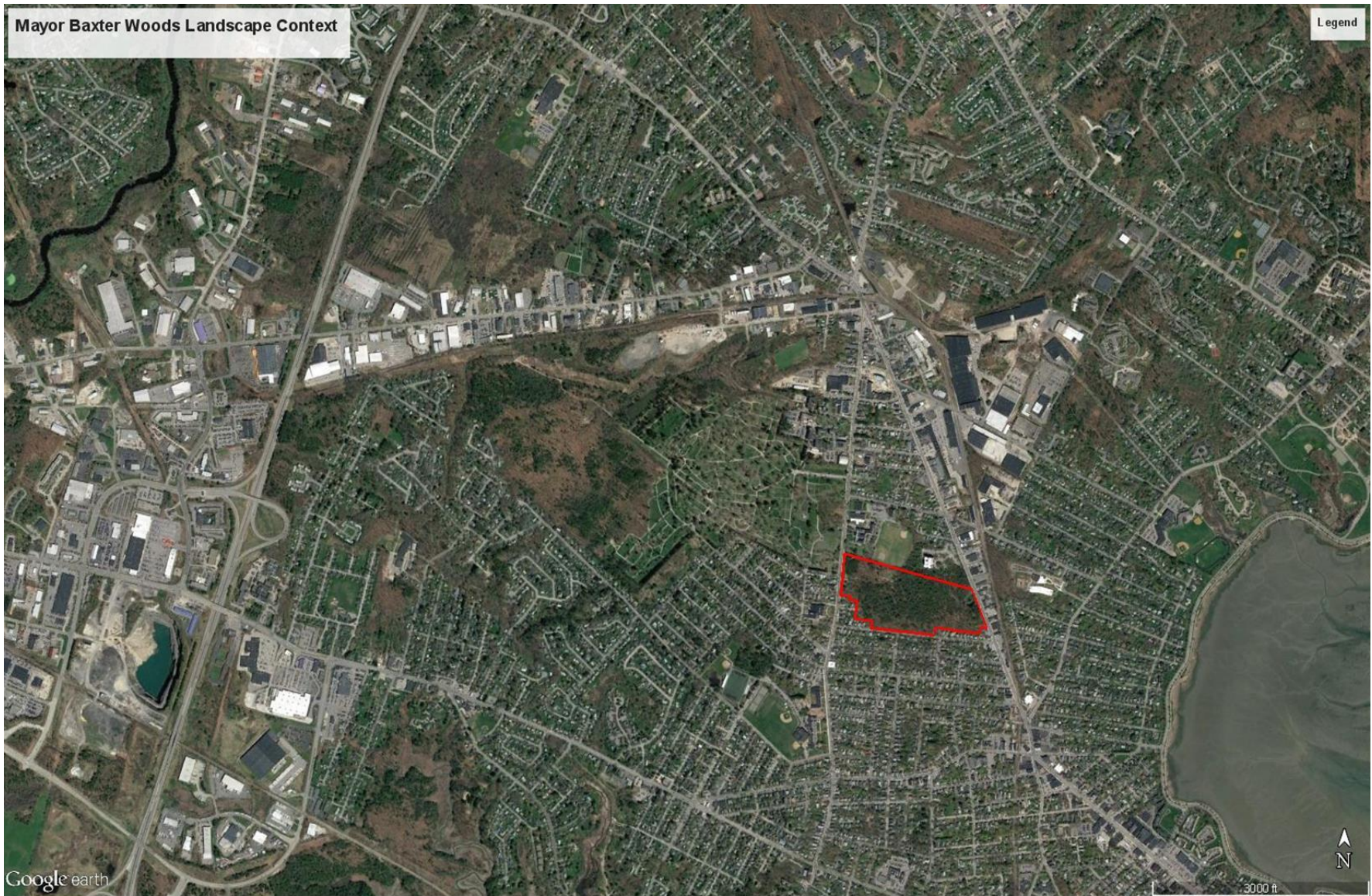
- Points of Interest
- Bridge
- Main trail
- Secondary Trail
- Wildcat Trail
- Parking
- Pond
- Stream
- Contours - 2ft interval



Notes: Feature locations from 2017 Forest Synthesis field inventory.

Basemap: Google

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Prepared by: Robert R. Bryan, LF #907
January 2018



Notes:

Imagery source: Google Earth

Forest Synthesis LLC

271 Harpswell Neck Road,
Harpswell, ME 04079

www.forestsynthesis.com

Prepared by: Robert R. Bryan, LF #907
January 2018

Property Description

General Forest Description

Mayor Baxter Woods is located between Forest Avenue and Stevens Avenue in the Deering section of Portland (see Locus Map). The property is predominantly forested and characterized by old stands of red oak, white oak, white pine, hemlock and other species. With dominant canopy trees 180-200 years in age and untouched in over 100 years of age, the average size and age of the trees is extremely rare. As an example of old oak-pine-hemlock forest Baxter Woods may be without par anywhere in Maine.

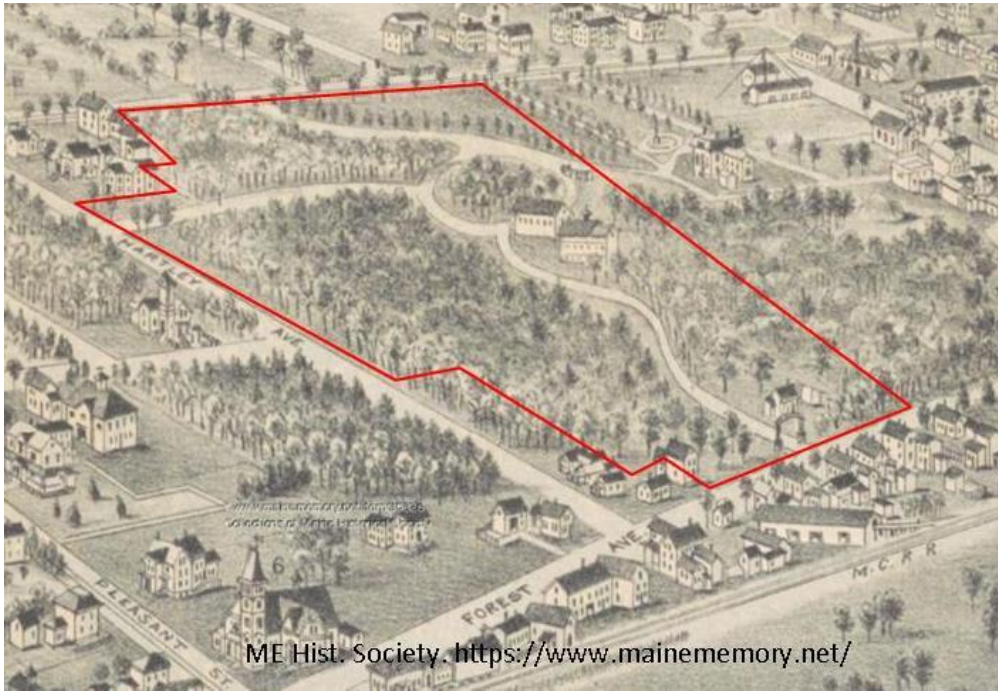
The terrain slopes gently in an easterly direction from Stevens Avenue to Forest Avenue. The soils originated as sandy outwash from glacial streams during the last ice age and range from excessively well-drained sands in the west to moderately well drained with a few somewhat poorly drained and poorly-drained pockets to the east. Intermittent seasonal water coursed and small streams drain to the east.

MBF is located in the Casco Bay watershed and drains to Back Cove, which is located short distance to the east.

Property History

Woodlands in this region were cleared for farming beginning in the late 1700's after the Revolution and into the 19th century, with abandonment of marginal farmland beginning in the latter half of the 19th century. Most of what we see as forest today in southern and central Maine was formerly farm field and pasture.

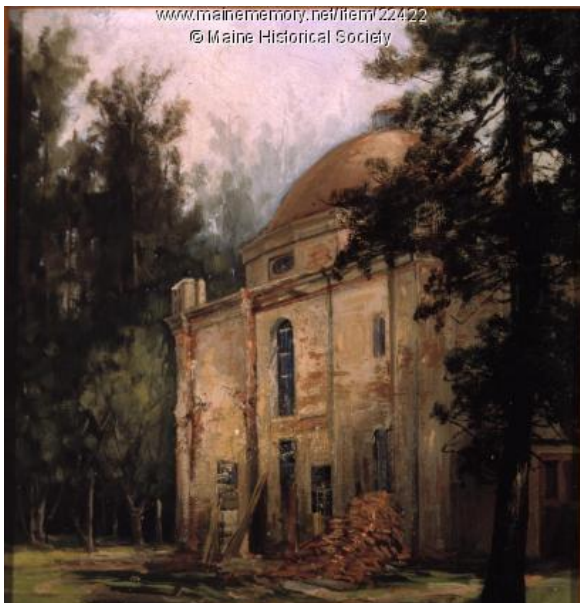
At MBW, smooth soil surfaces in the western third of the woods (Stand Map areas 1, 2a, 2b, 3, F1 and F3) and near Forest Avenue (areas 7, 8, 9 and F2) indicate that these areas were plowed at one time. Pit-and-mound soil topography is found on the remainder of the property. Pit-and-mound (or "pillow-and-cradle") topography develops over hundreds of years as forest trees tip over with age or wind and the root mass decays, leaving a mound where the root mass and uprooted soil were deposited and a shallow depression where the root mass once anchored the tree. Because pit-and-mound topography is smoothed out when former forest soils are plowed, its presence indicates that most of the central part of the property (Stand Map areas 4, 5a, 5b, and 6) was ever plowed, but it could have been partly cleared for pasture and or have been part of a farm woodlot. The presence of very old hemlock in the middle of the property is another sign that this area has always been wooded.



Baxter Woods was once part of the estate of F.O.J Smith, whose mansion “Forest Home” occupied the area near Stand F3 (see Stand Map)² from 1836 until the late 1800’s or early 1900’s. The mansion was surrounded by large trees at the time that Harrison Bird Brown painted the scene in 1880-1881³. While it is likely that Mr. Smith may have cut some trees for forest health and aesthetics, the size and apparent age of some of the overstory trees suggest that the forested areas were largely undisturbed during his tenure. This is confirmed by

1843 aerial map of Deering with current boundary of Mayor Baxter Woods outlined. “Forest Home” is located approximately where Stand Map area F3 is located today.

the 1886 Birds-eye View of Deering (Maine Historical Society, www.mainememory.net), which depicts mature forest in the eastern two-thirds of MBW (see image). The same map shows young forest and/or planted trees near Stevens Avenue, which confirms the likelihood that that the western third of the property was cleared and plowed at one time.



This painting of the Forest Home library c. 1839 also confirms that Baxter Woods had many mature trees at that time.

The same hands-off management continued after the estate was sold to James Phinney Baxter in 1878. The Stevens Avenue kiosk notes that oldest tree in Mayor Baxter Woods dates from 1807. One white oak stump observed in 2017 and estimated to have been cut about 5 years previously had approximately 185 annual rings (rough field count), suggesting the tree was established sometime around the 1830’s.

The red pine grove (Stand Map, area 1) was estimated to be planted in 1949 according to a resident who remembered both Baxter Pines and Baxter Woods planted with seedlings that involved Deering High School students and State of Maine plant stock. The stand was thinned in 2004 with advice from Dennis Brennon, the Maine Forest Service District Forester at the time.

² See the brochure *Welcome to Baxter Woods* for a more extensive ownership history beginning with F.O.J. Smith.

³ The estate was sold to James Phinney Baxter in 1878, so presumably the painting was commissioned by the former mayor Baxter as it is owned by the City.

Access

MBW has excellent access from Forest Avenue, Stevens Avenue, and Hartley Street for public recreation and for any management that might occur. The main trails provide a network of interior access. There is currently only one small fence opening on the north boundary, but a new gate is proposed for that area

Interaction with Surrounding Properties

Single family residential homes are located adjacent to the south and southwest. Multi-unit residential properties and playing fields are located to the north, commercial properties across Forest Avenue to the east and Evergreen Cemetery across Stevens Avenue to the west.

Legal Obligations

The principal legal obligations are the Baxter deed described in the introduction. Maine's laws applicable to timber harvesting and water quality protection, pesticide use, as well as municipal ordinances also apply. Because the City has an active urban forestry program and is familiar with legal requirements these will not be described in greater detail in this plan. Prior to any site disturbing activities, check with the City planning department, Maine Forest Service, and Maine DEP, or other applicable agencies (e.g. Maine Board of Pesticide Control) for the most recent applicable regulations.

Forest Ecosystem Planning and Management

The following sections describe ecological resources of importance and include recommendations to protect their values, Soil and Water Quality Protection, Management for Fish, Wildlife, and other Biodiversity, and Planning for Climate Change. Other management recommendations to achieve specific management objectives are included in later sections of this plan.

Soil and Water Quality Protection

Soils

Identification and Significance

Soils are critical to the long-term ecological health of the forest and a key factor in determining the species of trees and other plants that may be present. Most soils can be readily damaged by heavy equipment when soils are wet after rains and during the spring and fall mud seasons. Wetter sites may have very short windows for forest management activities and may be limited to either winter operations on frozen ground conditions or to dry periods at other times of the year.

A Natural Resource Conservation Service (NRCS) “Web Soil Survey” report for Baxter Woods was prepared for MBW (see Attachments). The field reconnaissance confirmed that NRCS mapping showing excessively well-drained sands in the west to moderately well drained with a few somewhat poorly drained fine sandy loams and poorly-drained pockets to the east. These soils are excellent for pine, oak and hemlock and are important factor in why these species are so prevalent today.

Trails

Current Conditions

The location of trails is shown several of the maps. Trails were classified into three major for the purposes of this plan:

Main trails: Gravel base, 10-15 foot width with culverts and ditching as needed, suitable for vehicular use.

Secondary trails: Footpaths 3-5 feet in width, natural soil base, not suitable for vehicular uses

Wildcat trails: Non-maintained trails established by customary pedestrian use

Some areas of slight surface erosion were noted on some the main trails, especially in Stand 4. The riprap ditch along the main trail in the eastern half of Stand 4 has been identified by the City as a possible area of improvement to restore a more natural character to the trail. Several of the main trail intersections have become very wide as result of walkers who cut the corner when going from one trail to the next.

Recommendations

Review all trails and develop and implement a trail management and maintenance plan with the following components:

- Ensure that the crown on main trails is sufficient to effectively and rapidly shed surface runoff;

- Minimize ditching by using changes in slope, ditch turnouts, and cross-drain culverts as needed to direct water into adjacent forest areas where it will infiltrate into the soil rather than be concentrated in an artificial drainage system;
- Replace and upgrade culverts as needed to ensure that they are capable of handling more intense rainfall occurring as a result of climate change (e.g., historically “50-100 year” storm events);
- Apply other applicable guidelines for roads and trail in **Best Management Practices for Forestry: Protecting Maine’s Water Quality** (“BMPs”; see *References* section) to protect soil and water quality;
- Use appropriate landscaping to minimize soil compaction and widening of the main trail junctions;
- Restore the historic stone work along the main trails;
- Manage secondary trails using the guidelines in the **Recreational Trail** section of the Appendices;
- Close most wildcat trails by placing brush and/or signage as needed;
- Refer to the *Recreation Use* section later in this report for recommendations related to trail management and related impacts on plant and wildlife habitat.



Lack of defined trail edges is leading to soil compaction and loss of vegetation at main trail junctions

Water Quality

- Always apply Maine’s **Best Management Practices** for water quality protection when disturbing soils or cutting trees.
- See *Aquatic Habitats and Riparian Zones* for other fish and wildlife habitat protection measures.

Management for Wildlife, Fish and Other Biodiversity

Introduction

This plan includes an assessment of current wildlife habitat conditions to use as a baseline against which to measure progress towards its long-term wildlife management goals. The habitat assessment methodology is based on and Maine Audubon's **Foresters for Maine Birds** (publication pending) and information on non-avian species from **Focus Species Forestry, a Guide to Integrating Timber and Biodiversity Management in Maine** (Bryan 2007). While both of these documents are geared towards landowners and managers with an interest in active forest management program, the assessment methodologies are well suited to MBW's goal to maintain the forest in a natural condition as a sanctuary for wild birds.

Forest Classification

The basic building block used for forest wildlife habitat assessments and management planning is the forest stand, which is an area that is generally similar in terms of vegetation cover type (species mix of dominant vegetation), age-class distribution, and site quality. Some stands may be very uniform in size and species composition (for example a stand of even-aged white pine) while others may be composed of patches of different species and ages (for example, an uneven-aged hemlock-hardwood forest). Stands may vary from a few acres to over 100 acres in size. For this property, aerial photography and field data were used to divide the forest into stands and to create the *Stand Map*.



Forest age, structure and type are key determinants of wildlife habitat. The young forest of shrubs and saplings above at Baxter Woods area F3 may be used by birds such as eastern towhee and chestnut-sided warbler, while older forest areas like this oak-hemlock forest type (Stand 5b) will attract birds such as Blackburnian warbler and black-throated blue warbler.

Forest Habitat Types

For habitat assessment purposes, common forest types found on the property have been grouped into Forest Habitat Associations, which generally share a common suite of wildlife species in any given region. The **Foresters for Maine Birds** habitat associations are described in the following table.

Forest Habitat Classification

Map Symbol	Forest Habitat Association <i>(comments in italics)</i>	Common Forest Types	Baxter Woods
NHW	Northern Hardwoods¹ <i>May include up to 25% softwoods</i>	Northern Hardwoods (beech-birch-maple and variants) Aspen-Birch (early successional variant)	No
NMW	Northern Mixedwoods² <i>Neither hardwoods nor softwoods exceed 75% of stocking</i>	Northern Hardwood/Hemlock Northern Hardwood/Spruce-Fir Hemlock (in patches) Aspen-Birch (early successional)	No
NSW	Northern Softwoods³ <i>May include up to 25% hardwoods</i>	Spruce-Fir Spruce-Hemlock White Pine-Mixed Conifer Northern White Cedar Aspen-Birch (early successional)	No
OP	Oak-Pine⁴ <i>May range from pure oak-dominated hardwoods to mixed hardwood and softwood stands</i>	Northern Red Oak Red Oak-Mixed Hardwoods Red Oak-White Pine-Red Maple White Pine Hemlock and Hemlock-Oak-Pine	Yes
MHW	Mixed Hardwoods	Oak-Northern Hardwoods Oak-Aspen-Birch	Yes

Habitat Age Class, Stand Structure Class, and Canopy Cover

Many wildlife species are closely linked to specific forest ages and structures, including tree size, canopy density, and vertical structure (i.e., canopy layering), and timber management options are also age and size related. Stands are classified in terms of general size and combinations of stand structure class (which is related to maturity) and canopy cover as described in the following tables. **Stand Structure Class** is an indication of ecological development, wildlife habitat condition, and commercial forestry potential. **Habitat Age Class** is used to summarize the stand structure classes into broad habitat conditions for assessment and planning.

Forest Habitat Age and Structure Classes			
Habitat Age Class	Stand Structure Class ¹		Description ²
Young	1	Regeneration	1-10 years old, <1" DBH ⁴
	2	Sapling	2-5" DBH, 10-30', <30% overstory ³ cover
Intermediate	3a	Intermediate - Single-aged (Poletimber)	Overstory 5-10" DBH, total canopy cover > 60-70% with midstory component <30%
	3b	Intermediate - Two-aged (Poletimber)	Overstory 5-10" DBH and <60% cover, development of midstory and understory variable depending on time since last harvest or other canopy disturbance
Older	4	Maturing (Small Sawtimber)	Overstory trees 10-16" DBH dominant, total canopy cover typically >60-70%
	5	Older Complex (Large Sawtimber)	Overstory trees >16" DBH dominant. Multiple canopy layers common with total canopy cover typically >60-70%

¹Equivalent forest product classes in parentheses.

²These are general descriptions; diameter and canopy cover may vary by species and site. Percent cover of any layer may be less than indicated if there has been recent harvesting (typically within 10-15 years)

³See Vegetation Layer table

⁴DBH: diameter at breast height (4.5 ft.)

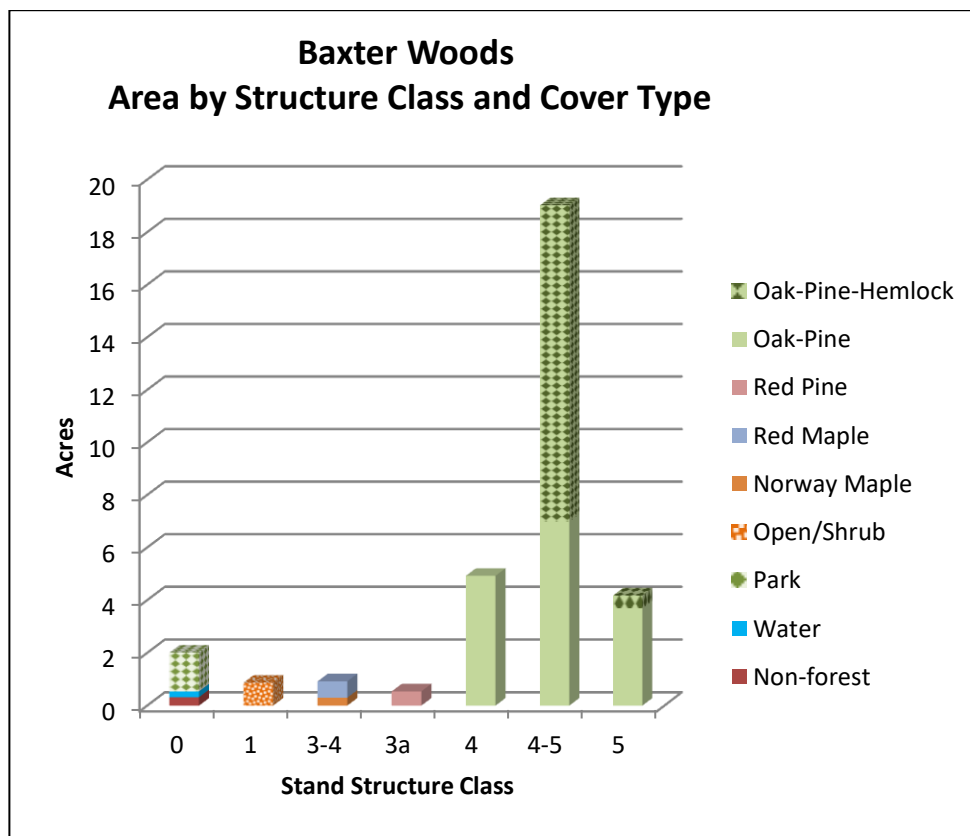
Vegetation Layer		Height (ft.)	Bird Habitat Notes
Canopy	Overstory	>30	Canopy heights of >50-60' are important for many mature forest species, including Black-throated Green Warbler and Blackburnian warbler.
	Midstory	6-30	Important nesting and foraging stratum for species like Canada Warbler that prefer dense midstory. Other species, such as Eastern Wood-Pewee, prefer a more open midstory.
Understory		1-6	Important feeding and nesting cover for mature-forest species such as Black-throated Blue Warbler and Veery.

Canopy Cover Classes

Cover Class	% Canopy Cover
A	>80
B	60-80
C	30-60
D	5-30
E	<5

Distribution of Habitat Types and Development Stages

The distribution of forest habitat type and associated development classes as well as other cover types on the property are summarized in the following chart.



Stand Class	Area (acres)	Percent
0	2.01	6.2%
1	0.87	2.7%
3-4	0.92	2.8%
3a	0.54	1.7%
4	4.92	15.2%
4-5	19.02	58.6%
5	4.18	12.9%
TOTAL	32.46	100.0%

Forest Canopy Layers					
Stand Number	Type	Stand Structure Class and % Cover			Acres
		Overstory	Midstory	Understory	
1	Red Pine	3a/B	0	1E	0.54
2a	Oak-Pine	5B	2-3D	1B	2.85
2b	Oak-Pine	4-5B	2C-	1-2C	0.92
3	Oak-Pine	3-5B	3C	1E	3.12
4	Oak-Pine	5A	2C	1D, C	5.47
5a	Oak-Pine-Hemlock	5B	2-3B	1D,C	12.04
5b	Oak-Pine-Hemlock	5C	2-3C	1D	0.49
6	Oak-Pine	4-5A	2-3C	1D	0.84
7	Red Maple	3-4A	2D	1C	0.62
8	Oak-Pine	4-5A	2C	1B	0.59
9	Oak-Pine	4-5B	2C	1C	1.80
10	Norway Maple	3-4A	2D	1C	0.30

11	Non-forest				0.22
F1	Park	2-4C	0	0	1.06
F2	Park	2D	0	0	0.41
F3	Open/Shrub	n/a	n/a	n/a	0.72
F4	Open/Shrub	n/a	n/a	n/a	0.15
Pond	Water	n/a	n/a	n/a	0.22
P1	Non-forest	n/a	n/a	n/a	0.10
					32.46

Current Conditions

The preceding chart and table show that older stands (Classes 4 and 5) account for over 81% of the forest area, and exceptionally large proportion for any forest in Maine. Nearly all stands have moderate to full canopy cover of mature trees. Midstory is generally moderate, and understory is moderate to low. Extensive area with limited to no understory can be easily observed while walking the trails, especially in the middle third of MBW. To a large extent this is caused by the very dense hemlock midstory in these stands, which limits the light available for forest regeneration. While attractive from a visual perspective, the lack of understory cover limits the habitat for species that nest and forage in the lower canopy layers. Old field, shrub, and young saplings, and important habitat type for some species, represent less than 3% of the area.

Recommendations

Specific to forest age and structure, the City has limited options to enhance habitat for birds and other wildlife due to the deed restrictions that do not allow tree cutting.

- In all stands except open/shrub areas, allow late successional forest conditions, including large trees, canopy gaps, and understory regeneration, to develop naturally over time. Tree mortality from wind events, ice storms, and native insects and diseases will result in canopy gaps that will allow establishment and development of the understory and ground cover plants and habitat for birds that use these areas. While a systematic plan should be developed and implemented to protect a significant portion of the oldest hemlocks from the exotic hemlock wooly adelgid (HWA) and outbreaks of hemlock scale (see *Insects and Disease* section later in this report), allowing these pests to go untreated in some patches will result in an increase the light reaching the forest floor in those areas and stimulate growth in the understory.

Rare, Threatened, and Endangered Species, Natural Communities, and Significant Wildlife Habitat

Information on known locations of rare, threatened and endangered species, Significant Wildlife Habitats, and rare or exemplary plant communities was provided by the Maine Natural Areas Program (MNAP). Beginning with Habitat (BWH) maps prepared by the Maine Department of Inland Fisheries and Wildlife (MDIFW) in cooperation with the Maine Natural Areas Program (MNAP) were also reviewed.

Current Conditions

The Beginning with Habitat maps and MNAP report do not show any high-value plant and wildlife habitats in or near Baxter Woods. The nearest mapped features are in Back Cove and on the Fore River.

- The Forest Synthesis field assessment did not identify any areas that would be classified as Significant Wildlife Habitats by MDIFW.
- A systematic survey for rare, threatened, or endangered plants and animals was not part of the Forest Synthesis assessment, but given the location and type of habitats present the presence of these species is highly unlikely.
- Forest stands 2, 3, 4, 5, and 6 have dominant canopy trees 180-200 years in age have not been harvested in well over 100 years. However, because Baxter Woods is less than 100 acres in size MNAP reports that none of the forest communities there qualify a “natural community of statewide significance.” Nonetheless, as an example of old-growth oak-pine-hemlock forest Baxter Woods may be without par anywhere in Maine.

Recommendations

- Management of the forest consistent with the MBW deed restrictions would also be consistent with the MNAP guidelines for natural communities and help protect its significance.

Vernal Pools

Identification and Ecological Significance

Vernal pools are small, fishless water bodies that provide breeding habitat for a unique group of amphibians and invertebrates, including (yellow) spotted and blue-spotted salamander, four-toed salamander, wood frog, and fairy shrimp. During most of the year, adult spotted salamanders and wood frogs are found in the nearby forest; spotted salamanders may be found up to several hundred feet from the pools and wood frogs are found up to a quarter mile or more from pools. Vernal pools are best identified in spring when breeding adults and/or eggs are present. By mid or late summer they are frequently dry. Typically, vernal pool species breed in small isolated pools and ponds, but other areas such as forested wetlands and stream floodplain channels are also often used. See ***Focus Species Forestry*** guidebook for more information. More detailed information may be found in **Forestry Habitat Management Guidelines for Vernal Pool Wildlife in Maine** (Calhoun and deMaynadier 2004).

Current Conditions

Two areas with some vernal pool characteristics were observed in MBW (see Stand Map). Informal observations were recorded during an April, 2016 field visit and again in October 2017.

- **VP1.** This is ephemeral pool formed by a small seep near the Forest Home site. A short stone wall at one end of the pool, its location adjacent to the Forest Home site, and the overall configuration suggest that some evidence that this pool may have been enhanced during the Smith estate period of the property to be part of the estate landscaping. The pool is currently 6-8" deep at spring high water and was dry when observed in October 2017. No spotted salamander or wood frog eggs were observed in April 2016 when eggs were found elsewhere in MBW.



Vernal Pool 1 was probably a landscape feature of the Forest Home Estate and could be enhanced by increasing its depth.

- **VP2.** VP2 is a small excavated pool in Stand 9, but with water over 12" in depth in April 2016. At that time 12 spotted salamander egg masses and 1 wood frog egg mass were observed in the pool. In October 2017 this pool was dry, but the number of egg masses observed suggests that the pool has a sufficiently long hydroperiod in some years to maintain small population of obligate vernal pool amphibians.
- **Pond.** In April 2016 both spotted salamander and wood frog egg masses were observed in the pond.

Recommendations

- VP1 could be enhanced to deepening the pool to a depth of 12"-16" to improve its potential value as vernal pool habitat. A short section of PVC pipe extending 2 ft. below the pool bottom could be installed to serve as a water table monitoring well. Water table depth data from this well could then be used to decide whether or not excavating the pool would be effective.
- VP2. This pool was clearly excavated and has steep sides and a small berm of excavated material around the edges. The pool could be visually enhanced by contouring the edges to create a more natural appearance.

Aquatic Habitats and Riparian Zones

Identification and Ecological Significance

Aquatic habitats at Baxter Woods include the pond near Forest Avenue and the ephemeral stream. Riparian areas are areas that are influenced by, and that influence, aquatic habitats. Species that benefit from aquatic habitats vary greatly with size, depth, vegetation, bottom structure, current, and other factors. Over 60 wildlife species in Maine are dependent on the adjacent riparian habitats for part of their life cycle, and many other species are frequently found in riparian habitats.



Pond. Despite its small size and urban location the pond attracts great blue herons, mallards, black ducks, amphibians, and many other species.

Ephemeral stream. A small, seasonally intermittent stream and tributary are located in the southeast corner of the property. The stream ends in a storm drain near Forest Avenue. Stream surveys were not part of assessment in this plan, but values presumably include habitat for some insects and other invertebrates, and as a source of naturally filtered water that drains into the Back Cove estuary.

Recommendations

- Maintain a border of native vegetation around the pond and landscaping as necessary to direct foot traffic to targeted areas where soil compaction and vegetation disturbance would be minimal.
- Maintain the forest adjacent to the stream in a natural condition. Keep the number of trail crossings to minimum. Where crossings cannot be avoided orient trail perpendicular to the stream. Avoid trails that closely parallel the stream (e.g., within 25 feet).

Wildlife Trees, Dead and Downed Wood, and Retention Patches

Identification and Ecological Significance

Wildlife trees include:

- **Snags:** Dead standing trees.
- **Cavity or den trees:** Live trees with nesting cavities or mammal dens.
- **Recruitment trees:** Large live trees that will be permanently retained (i.e., will never be harvested) and will eventually contribute to the snag, cavity tree, and downed woody material for wildlife and other biodiversity benefits. Typically these are large trees with significant decay or other cull defect, or beech with evidence of bear use

Downed Woody Material: Fallen tree trunks, branches and leaves.

Retention Patches: Areas of live vegetation roughly $\frac{1}{4}$ acre or more that are retained within larger harvest openings (e.g., >5 acres).

Wildlife trees and downed woody material are recognized for their value to vertebrate wildlife (e.g., woodpeckers, marten, wood ducks, and salamanders), insects, and fungi and for their role in the cycling of nutrients and organic matter in the forest. Standing dead wood and woody debris also provide nesting and hibernation habitat for native bee species. All sizes provide value, but large cavity trees (> 16 inches) are required by species such as barred owl and wood duck. The value of downed woody material also increases with size.

Retention patches are used when harvesting (for certain silvicultural or wildlife habitat management objectives) removes most of the overstory. In these cases retained patches of trees and other vegetation serve as a habitat “lifeboat” for species with low mobility (e.g., understory herbs, lichens, mosses and liverworts) whose habitat would be eliminated by even-aged management practices that clear most vegetation when regenerating the forest. Retention patches over one acre in size have the best temperature, humidity, and light conditions for retaining understory plants.



Decaying trees provide feeding and nesting habitat for woodpeckers. Excavated nest cavities in turn provide habitat for other species.

Observations

- Snags, cavity trees, and large and small woody material are moderately abundant in Baxter Woods.

Recommendations

- Allow dead, dying trees, and downed trees and limbs to remain in place unless they represent a threat to trail users.
- Scatter downed limbs that fall on trails within the forest rather than chipping them.

Forest Health

Invasive Plants

Identification and Ecological Significance

The Maine Natural Areas Program defines an invasive plant as “a plant that is not native to a particular ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.” MANP describes invasive plants as “a direct threat to what we value about Maine's natural and working landscapes [and the] second-greatest threat to global biodiversity after loss of habitat. Invading plants out compete native species by hogging sunlight, nutrients, and space. They change animal habitat by eliminating native foods, altering cover, and destroying nesting opportunities” ([MNAP website, 2017](#)). A list of some of the most problematic invasive species commonly found in Maine forests is included in the Appendices.

Current Conditions

The location of invasive plants is shown on the Invasive and other Exotic Plants map. Norway maple (classified as “probably invasive” by the Maine Natural Areas Program) is the most abundant exotic species. It dominates one stand (Stand 1) and is exhibiting invasive behavior in many areas of the MBW. Other species observed in mixed patches or as scattered clumps include Asiatic bittersweet, bush honeysuckle, common buckthorn, Japanese barberry, Japanese knotweed, Bishop’s weed (also “probably invasive”). Linden is an exotic species that is not classified as invasive but it is becoming well established in the understory and mid-canopy in many places. Lemon balm, another exotic not “invasive,” was observed in a large patch in Stand 11. Lists of invasive plants are included in the Individual Stand Descriptions and Recommendations.



Bishop’s weed (goutweed) is an example of an invasive exotic plant that is preventing the growth of native species in Mayor Baxter Woods

Some invasive plant control has occurred. Larger Norway maples in the vicinity of Hartley street were cut to eliminate seed sources, but where small Norway maples were cut and not treated with chemicals aggressive re-sprouting has occurred.

Recommendations

- The City should develop a plan and implement a plan to control and monitor invasive plants and other aggressive non-native plants throughout the MBW.
- To prevent introduction of other invasive plants, equipment used in the forest should be pressure-washed before being used on site.
- If mulch is needed, only use weed-free mulch, such as straw or wood chips that do not have any invasive plant seeds.

General approaches. Early detection and control is the key to managing invasive species. Small vines and shrubs may be pulled by hand, but treatment with a safe herbicide is the most effective means of controlling larger plants or large areas. Treatment methods are summarized in the Appendices.

Mechanical Control. Cutting is not an effective control measure as invasive plants will re-sprout vigorously. With diligence both barberry and smaller honeysuckle plants may be effectively controlled by hand pulling. During the spring when soils are moist is generally the best time. Pull all plants that are not too large. An “Extratigator” or similar brush puller (e.g. “Weed Wrench”) may be used to pull larger plants. To limit the chance of re-sprouting, care should be taken to ensure that as much root material as possible is removed. Any plants that are too large for pulling should be marked with flagging and GPS for follow-up control with chemicals.

Chemical Control. Where hand pulling is not effective or feasible, herbicides are generally the only effective treatment option. When properly handled and applied the herbicides glyphosate and triclopyr have been shown to have very low risk for organisms other than plants and they have minimal soil movement and break down rapidly. Other chemicals may be more effective in certain situations. Treatment methods are localized (individual plants and/or cut plant stems) and designed to minimize the amount of chemical use and damage to non-target plants. These chemicals and methods are recommended by The Nature Conservancy and other conservation groups for management of natural areas.

Follow-up monitoring and control 2-3 years after the initial treatment is necessary, regardless of whether mechanical or chemical controls are used.

Herbicide use is regulated by the Maine Board of Pesticide Control and all legal requirements must be followed.

Insects and Diseases

Current Conditions

Elongate hemlock scale (*Fiorina externa*) is a serious exotic pest of eastern hemlock. It also can be found on fir, spruce and other conifers. EHS attacks the surface of the hemlock needle and sucks out the fluid. This process causes the needles to turn yellow and drop prematurely ([Maine Forest Service webpage](#))

accessed 2/8/18). EHS was observed on several plots during the field assessment and is the likely cause of hemlock mortality in Stand 5b.

Hemlock wooly adelgid is an invasive aphid-like insect that feeds on hemlocks that has devastated hemlock stands in southern New England and in the Appalachians. HWA has spread north through the Midcoast region of Maine and is causing hemlock decline and mortality throughout this region. In northern New England decline can be slow, and cold winters tend to kill many of the insects. No evidence of hemlock decline caused by HWA – typically a thin, pale-green crown – was observed at MBW during the field reconnaissance, but it has been observed by City Forester Jeff Trarling.

Red pine in Maine is threatened by several pests and diseases, including the exotic red pine scale, and *Siroccocus* shoot blight, which is devastating red pine plantations in Maine. There is no evidence that the MBW red pine plantation (Stand 1) is affected yet, but this stand as well as the mature red pine scattered throughout Baxter Woods are at risk.

Beech-bark disease, which results from the combined action of exotic insect and an exotic fungus, has devastated American beech stands throughout its range. Beech bark disease was observed at MBW, but the trees are very healthy compared with most areas in Maine. There is no known control for beech bark disease. Dead and dying trees can be removed, but because beech regenerates through root, suckers and mature trees are often connected by root systems, it is impossible to eliminate or slow the disease by cutting.

Browntail moth, winter moth, and gypsy moth are exotic insects are serious threats to oak forests, and will also affect some other tree species. None have been observed at MBW to date, but browntail moth and winter moth are common in the Casco Bay region. Personal observations are that the oldest trees are most at risk during winter moth outbreak. Browntail moth seems to result in less tree mortality, but the toxic hairs shed by the developing caterpillars cause significant rashes on most people.

Recommendations

Hemlock Wooly Adelgid and Elongate Hemlock Scale

- Develop a comprehensive plan to monitor and control hemlock wooly adelgid and elongate hemlock scale.
- Consult with the Maine Forest Service and other experts as needed. Management references are included on the [Maine Forest Service HWA web page](#), and Forest Synthesis can provide contacts at the Nature Conservancy, which has an active program and recommendations to control HWA in key ecological areas.
- Chemical pesticides are generally the only consistent method to control HWA and EHS. However, the Maine Forest Service and US Forest Service are experimenting with biological controls, and the City should ask MFS if they would use Baxter Woods as an experimental site.
- Even if biological controls are used, the city should map and protect individual, old hemlocks with chemical methods. Ground injections of systemic pesticides (e.g., imidacloprid) can provide long lasting control of individual trees (up to 10 years), and studies have shown there is no evidence of chemical movement beyond the treated tree.

Red Pine Pests and Diseases

- To reduce the risk of major loss of red pine from red pine scale, *Sirrococcus*, and other diseases, monitor for these threats and manage the red pine plantation to allow a mixed stand of red pine and other native trees and shrubs to develop over time. See Stand 1 recommendations for details.

Browntail Moth, Winter moth, and Gypsy Moth

- Develop a contingency control plan for browntail moth, winter moth, and gypsy moth and monitor the forest on a regular basis for the presence of these exotic insect pests.

Planning for Climate Change

Researchers have estimated that Maine's average temperatures will increase at least by 3.5° F by 2100 if climate-warming emissions are significantly reduced and by as much as 12.5° F if emissions are not reduced. By 2100, the optimum climate for spruce and fir is predicted to shift to north of the Canadian border, while the optimum climate for northern hardwoods such as sugar maple and yellow birch is predicted to retreat to the western mountains and northwestern highlands of Maine. The northern limit of optimum climate for oak, which is now best adapted to southwestern Maine, is predicted to shift north to the Canadian border. Trees that are outside of their optimum climate are likely to become stressed, with potential for increased rates of health decline and mortality due to insects and diseases. Disturbances, including harvests and other management actions, can be used to facilitate the response of vegetation types to climate change.

Examples of species that are tolerant of warmer temperatures include white pine, red oak, and red maple. The general recommendations below have been developed by the author for consideration when developing plans for forest management.

Recommendations

- Landowners and managers can help mitigate climate change by sequestering carbon in soils, the forest floor, and in the canopy. Forest soil carbon loss can be minimized by avoiding clearcutting and other practices that heat the forest floor and increase decay and oxidization of organic matter. Managing for older and larger trees will store more carbon on the stump. Some studies have shown that carbon is also sequestered in long-lived forest products after trees are harvested.
- Consider planting species that are currently at the northern limit of their range and that can tolerate warmer temperatures.
- Increase culvert sizes over those included in BMP guides and otherwise modify water management and stream crossing practices to accommodate increases in storm severity



Cool-climate species such as sugar maple and yellow birch (shown here) as well as red spruce and other species may decline as the climate warms. Red oak, white pine, and red maple are well adapted to a warming climate.

Other Management Considerations

Historical, Cultural, and Archaeological Sites

Mayor Baxter Woods is well known as the site of the “Forest Home” estate of Francis Ormond Smith. Evidence of the estate remains in the form of cut granite blocks and landscape alteration near the small field in the northwestern part of property (Stand Map, areas 2B and F3). Archaeological studies in 2014 by Norm Buttrick and students from Catherine McCauley High School identified evidence of the estate.

Recommendations

- Compile information from the Buttrick study and other sources to create a more complete and accurate history and maps of land use at MBW. These could be used for educational purposes and as a record for long-term management.
- Consult with Maine Office of Historic Preservation about possible location of other historical and archeological sites.

Societal Considerations

Public forest management should include opportunities for members of the public to ask questions about and provide comments on draft plans before they are finalized.

Boundary Lines

Clearly marked boundaries are necessary to prevent timber trespass and other damage to property, including both protection from abutters and to ensure that you do not encroach on the lands of others. Boundary lines are delineated by roads, stone walls, and shorelines.

Current Conditions

- Boundaries formed by Forest Avenue, Hartley Street, and Stevens Avenue are clear.
- A chain link fence marks the north boundary.
- The boundary north of residences on Hartley Street (vicinity of Stand Map, area 11) has a few survey pins, but is not marked between the widespread pins. Most residential properties on Hartley Street have encroached onto City property (Stand Map, areas 11 and F4). Examples of encroachment include fencing, paved driveways, lawns, and gardens and brush dumping.
- Cedar post and rail fencing marks most of the boundary behind residences on Steven’s Avenue. However, sheds and equipment from two abutting properties at the south edge Stand 2a encroach several feet onto City property where there is no fence.

Recommendations

- Where MBW abuts residential properties on Hartley Street and Stevens avenue the City should clearly mark the boundary with fencing or other means (e.g., multiple posts and signs) and work with abutters to restore degraded city property to a natural condition. City Forester Jeff Tarling that surveyors will be working on this line in 2018.
- Signs should be placed at various points along other boundaries and access points



Example of unmarked property line and encroachment behind residences on Hartley Street.

Recreational Use

Current Conditions

- Walking, bike riding, and dog walking are common recreational activities in MBW. See maps for trail locations.

Recommendations

- As noted elsewhere in this report, recreational uses and in particular unleashed dogs are likely having an adverse impact on ground-nesting and ground-feeding birds. Because the Baxter deed requires that the City maintain Baxter woods for recreational use and as a sanctuary for wild birds, the city should require that dogs be leashed.
- The city could consider closing some minor trails to create wider spaces between trails and thus minimize disturbance of wildlife.

Forest Fire Protection

The property does not present any unusual vulnerability to fire compared with other wooded properties in the region. Forest fire risk is generally low due to Maine's climate. In the unlikely event that fire did occur, the current trail network provides good access to the interior of the forest for fighting fires.

Monitoring

Periodic monitoring is important to identify trend and issues that may develop and to help provide information for future management decisions. Many monitoring activities could be conducted by qualified volunteers. Recommended monitoring activities are included below.

Vernal Pools. Annually monitor depth, hydroperiod, and use by vernal pool species and other wildlife in April-May. See *The Maine Municipal Guide to Mapping and Conserving Vernal Pools* (Morgan and Calhoun 2012).

Breeding birds. Annually coordinate a post-migration breeding bird survey with Maine Audubon volunteers (June). Divide the forest into four to six monitoring blocks and identify singing males in each block. Compile data by species and the canopy layer where they are known to nest (see *Forestry for Maine Birds*). Ideally compare results with Evergreen Woods. Bird data from the spring migration period (May) would also be of interest.

Insects and Diseases. Monitor hemlock wooly adelgid, elongate hemlocks scale and other insects (see *Insect and Disease* section of this report). Contact the MFS District Forester or the MFS Division of Forest Health Monitoring (207-287-2431) if any concerns arise.

Invasive Plants. Monitor results if invasive plant controls and periodically check for new occurrences. Take appropriate action if any are found. See *Invasive Plants* section and Appendices for more information.

Condition of roads and trails. Check roads and trails for blocked ditches, culverts, and erosion problems.

Boundary lines. Periodically inspect boundary lines to be sure evidence is clearly visible and to check for unwanted encroachment from abutting properties.

Recreation use. Use trail cameras or other monitoring methods for fixed periods of time to quantify and describe recreation use and evaluate the potential impact of unleashed dogs on wildlife.

References and Resources

Literature Cited

Bryan, R.R. 2007. **Focus Species Forestry: A Guide to Integrating Timber and Biodiversity Management in Maine.** Maine Audubon, Falmouth, ME. Download: <http://www.forestsynthesis.com/resources.html>.

Maine Audubon. 2017. **Forestry for Maine Birds.** Maine Audubon, Falmouth, ME

Maine Department of Conservation. **Best Management Practices for Forestry: Protecting Maine's Water Quality.** Maine Forest Service, Augusta, ME. 1-800-367-0223.

Morgan, D.E., and A.J.K. Calhoun. 2012. **The Maine Municipal Guide to Mapping and Conserving Vernal Pools.** University of Maine, Sustainability Solutions Initiative, Orono, ME.

Mayor Baxter Woods Resources

2014 Archaeological Survey. <https://dcna.me/forest-home-of-francis-oj-smith/> (accessed 1/2/2018)

Appendices

Mayor Baxter Woods Deed Restrictions

As quoted in the City's **Welcome to Mayor Baxter Woods** brochure, restrictions in the 1946 deed from Governor Percival P. Baxter to the City include:

"...the above described premises with all the privileges and appurtenances thereto to said City of Portland as trustee as foresaid and its successors in trust and the same shall not be conveyed or encumbered by said City but shall be held forever for the benefit of the people of said Portland subject to the following terms, restriction, reservations and conditions:

- 1. shall forever be retained and used by said City in trust for the benefit of the people of Portland as a Municipal Forest and Park for public recreational and educational purposes the same forever to be known as "MAYOR BAXTER WOODS";*
- 2. shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians, and any trees that shall fall or that may become a menace to life may be removed, but no other trees therein shall be taken down;*
- 3. shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom;*
- 4. that the heavy ornamental gates now in possession of said City shall be erected by said City either at the Forest Avenue or Stevens Avenue entrance within one year of the date of this deed;*
- 5. that said City shall erect within one (1) year after the date of this deed and shall forever maintain on the land hereby conveyed a suitable bronze marker the said marker to recite the conditions of this gift, the same to be attached to a granite boulder located on said land and provided by said City."*

Assessment Methods

Aerial photography, published maps, and field reconnaissance were used to map the extent of wetlands and the location of streams. Field map data were collected on a hand-held Global Positioning System (GPS) receiver. Base map information was prepared on a Geographic Information System (GIS) using data from the Maine Office of GIS and the field data.

The on-site visit occurred on March 26, 2016. Observations recorded in each forest stand included species composition, canopy closure, understory density, average tree size classes and quality, tree health, forest regeneration, soils and site conditions. There was no systematic timber inventory. Field data collected provides a basis for management recommendations and satisfies the requirements of the Tree Growth Tax Law.

Each stand has a number of the Forest Stand and Cover Type Map. To avoid repetitive text, where appropriate stands that are similar in character have been grouped in the descriptive tables below.

Individual Stand Descriptions and Recommendations

The following descriptions are based on an analysis of aerial imagery and the field assessment undertaken during October-December 2017. After discussions with the City it was agreed that quantitative, statistically valid forest inventory was not needed to gather the information needed to describe baseline conditions and develop recommendations designed to meet the City's objectives.

Notes on the stand descriptions and recommendations:

- **Wildlife Habitat Values.** Wildlife values are primarily based on the forest type and structure. The small size of the forest and setting in a developed landscape will limit habitat potential for many species, as will the high density of trails and number of unleashed dogs. These issues are discussed elsewhere in the report and are generally not addressed in the individual stand tables below.
- **Management recommendations.** Management recommendations in the stand tables below are generally limited to vegetation management options. Other recommendations, such as those for trails and strategies for multi-stand issues such as control of exotic insects, are addressed elsewhere in the report.

Stand 1			Map Unit	Acres
			1	0.54
CURRENT CONDITIONS				
Cover Type	Red (Norway) Pine	Overall Structure Class & % Cover		3B
Principle canopy species:	Red Pine	Overstory Class & % Cover		3a/B
		Midstory Class and % Cover		0
		Understory Class & % Cover		0
Stand description, age and history:	This stand was planted in 1949 and has a single canopy layer 6-10” in DBH (diameter at breast height, or 4.5 ft.) and 30-50 ft. in height. The southern and western sides were thinned in 2004 and have a layer of lowbush blueberry, asters, and grasses as well as seedlings and sprouts of red oak and black cherry. Seedlings near the edges have been mown periodically. The smooth soil surface topography in this and nearby stands suggest that the western third Baxter Woods was a field at one point in time.			
Wildlife Habitat Values	Wildlife habitat is essentially limited to the overstory canopy layer provides wildlife cover and feed (seed from cone crops) for species that tolerate high levels of human activity.			
Stand stocking:	The area that was thinned is well stocked but is nearing the time when another thinning would promote continued growth. The unthinned area is overstocked with trees of small crowns, which severely limits growth potential. Thinning the entire stand would promote the most vigorous trees as well as allowing native species to develop in the under understory, thereby improving			
Soils, Slopes, Site Quality, and Growth Rate	Soils are nearly level and well drained with good site quality. Growth rates estimated to be average.			
Forest Health	No forest health issues were noted, but the exotic red pine scale insect and <i>Siroccocus</i> shoot blight are devastating red pine plantations in Maine and this stand is at risk.			
Invasive and Exotic Plants	Bittersweet and Norway maple, <5% cover			
Cultural Features	This is a planted stand. A trail passes through the east side of the stand and along the west edge.			
Management Objectives and Recommendations				
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers			
Management Recommendations	• Thin the stand to approximately 60% canopy closure to promote regeneration of native trees, which will be aided by jays, squirrels, and other wildlife moving seeds from nearby stands. This will improve wildlife habitat and promote transition to a more natural species mix while reducing impacts should red pine scale or <i>Sirroccus</i> become established.			

	- Control invasive plants. - In approximately 10 year the stand should be thinned again to less than 50% canopy cover of red pine. - Stand edges should not be mowed.
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Stand 2a		Map Unit	Acres
		2a	2.85
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Oak		5B
Overstory	Red oak (80%), white oak		5B
Midstory	Red oak, black cherry, hemlock, red maple, linden		2-3D
Understory:	Black cherry, red maple.		70%
Stand description, age and history:	Overstory of mature red oak 16-30” DBH and 60-80’ in height overtops a low-density midstory of hardwood saplings and small poles with a minor hemlock component. The smooth soil surface topography in this and nearby stands suggests that the western third Baxter Woods was a field at one point in time.		
Wildlife Habitat Values	The overstory and midstory provide good nesting and bird foraging habitat and acorns are a valuable food for many species, but species characteristic of larger forest blocks are unlikely to nest here. Large snag and/or canopy trees and downed logs were observed.		
Stand stocking:	Well stocked with large trees.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues were noted		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	A large rectangular pit reminiscent of a cellar hole but with no evidence of a foundation is located north of the main carriage trail. Sheds and equipment from tow abutting properties at the south edge of this stand encroach several feet onto City property where there is no fence.		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species deciduous forest with multiple canopy layers		
Management Recommendations	• Control invasive plants • Refer to general recommendations for trails • Research history of “cellar hole” (see cultural features) • No other active management recommended at this time.		

Stand 2b		Map Unit	Acres
		2b	0.92
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Oak –White Pine		5B
Overstory	Red oak & white oak (80%), plus white pine and red pine		4-5B
Midstory	Red oak, black cherry, red maple		2C-
Understory:	Black cherry, alternate-leaved viburnum.		1-2C
Stand description, age and history:	Mature hardwoods with a mixed conifer component. The overstory ranges from 12-24" DBH and 50-70' in height. Ground cover species noted include lowbush blueberry, black cherry seedlings, and asters. The smooth soil surface topography in this and nearby stands suggests that the western third		

	Baxter Woods was a field at one point in time.
Wildlife Habitat Values	In addition to species favoring mature hardwoods, pine warblers may nest in this stand, but species characteristic of larger forest blocks are unlikely to nest here.
Stand stocking:	Well stocked with mature trees
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.
Forest Health	No issues were noted
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.
Cultural Features	A level feature reminiscent of a landscape patio bordered by large cut stones is located in the southeast corner of this stand north of the carriage trail.
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Refer to general recommendations for trails - Research and decide on management of the “patio” area described above - No other active management recommended at this time.

Stand 3		Map Unit	Acres
		3	3.12
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	White Oak-Red Oak-White Pine		4B
Overstory	White oak, red oak, white pine, plus lesser amounts of hemlock and white ash		3-5B
Midstory	Hemlock, red maple		3C
Understory:	Hemlock, red maple		<5%
Stand description, age and history:	Mature hardwoods with a mixed conifer component. The largest oaks range from 20-40” DBH, with other species in the 12-20” diameter range. Ground cover species noted include lowbush blueberry, black cherry seedlings, and asters. The smooth soil surface topography in this and nearby stands suggests that the western third Baxter Woods was a field at one point in time.		
Wildlife Habitat Values	In addition to species favoring mature hardwoods, pine warblers may nest in this stand, but species characteristic of larger forest blocks are unlikely to nest here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues noted. Hemlock wooly adelgid may be present but it was not observed in the understory.		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	None noted except trails		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species forest with multiple canopy layers		
Management Recommendations	- Refer to general recommendations for trails - No other active management recommended at this time		

Stand 4		Map Unit	Acres
		4	5.47
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Red Oak		4-5A
Overstory	Red oak, plus minor component of beech, white oak, white ash, sugar maple, yellow birch and hemlock		5A
Midstory	Hemlock, beech, red maple, red oak		2C
Understory:	Beech, witch hazel, black cherry, balsam fir		5-70%
Stand description, age and history:	This is primarily a hardwood stand with hemlock in small patches. Structure is multi-aged but a mature canopy is dominant, ranging from 12-30" DBH and 60-80' in height.		
Wildlife Habitat Values	This stand provides habitat values of mature deciduous mixed forest, but species characteristic of larger forest blocks are unlikely to nest here. Scattered snags and cavity trees 12-18" observed.		
Stand stocking:	This stand is well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and well drained with good site quality. Growth rates estimated to be average to above average.		
Forest Health	No issues were noted		
Invasive and Exotic Plants	Norway maple, Asiatic bittersweet common buckthorn, and bush honeysuckle, 20-50% cover in patches, found throughout most of the stand.		
Cultural Features	Carriage trail and footpaths		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species forest with multiple canopy layers		
Management Recommendations	- Control invasive plants - Refer to general recommendations for trails - No other active management recommended at this time.		

Stand 5a		Map Unit	Acres
		5a	12.04
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Oak-White Pine-Hemlock		4-5A
Overstory	White oak, red oak, white pine; associated include hemlock, red pine, red maple, white ash, beech, and yellow birch		5B
Midstory	Hemlock, plus lesser amounts of red maple, white ash and yellow birch		2-3B
Understory:	Hemlock		0-30% (average <10%)
Stand description, age and history:	This is a distinctly two-aged stand with a mature hardwood-dominated canopy 16-30" DBH and 60-80' in height over an intermediate conifer layer dominated by hemlock. The presence of scattered large, old (probably over 150 years) hemlock in the overstory suggests that this area may never have been completely cleared. In contrast to the stands nearer to Stevens Avenue, the hummocky soil surface topography indicates that this area was never plowed.		
Wildlife Habitat Values	This stand provides habitat values of mature mixed hardwood-conifer forest, but has a minimal understory and ground cover layers favored by some species, and species characteristic of larger		

	forest blocks are unlikely to nest here.
Stand stocking:	Well stocked with mature trees.
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping, moderately well drained on the west to somewhat-poorly drained in lower-lying drainages and seeps downslope to the east. Growth rates estimated to be average.
Forest Health	Hemlock scale was observed on two plots; hemlock wooly adelgid (HWA) may be present in small amounts but was not observed. Due to the large amount of hemlock in this stand complete control of HWA may not be feasible and cultural practices to promote species diversity should be considered. No other issues were noted.
Invasive and Exotic Plants	A patch dominated by bittersweet is located near the west end of the stand adjacent. Linden, an exotic not technically classified as “invasive” is becoming established in the understory (see map).
Cultural Features	A shallow seasonal pool that appears to have been a landscape feature of the Forest Home estate is located near the western end of this stand (see map VP1). Carriage trails and footpaths cross the stand in a generally east-west direction.
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Consider excavating the seasonal pool (VP1) to a high-water depth of 18-28” to enhance habitat values for amphibians - Closing the two footpaths within the stand interior would reduce disturbance to wildlife. - Refer to general recommendations for trails - Removing some of the midstory hemlock in other parts of the stand would proactively reduce risk of hemlock loss while enhancing wildlife habitat by promoting understory and ground cover plant layers. However, this does not appear to be allowable under the deed restrictions.

Stand 5b		Map Unit	Acres
		5b	0.49
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Hemlock		5B
Overstory	Hemlock, plus white pine, red oak, and yellow birch		5C
Midstory	Hemlock, red oak		2-3C
Understory:	Hemlock beech		20%
Stand description, age and history:	This is a legacy patch of very old (probably over 150 years) hemlock and other species. There is no evidence of cutting.		
Wildlife Habitat Values	This stand is an inclusion within the larger Stand 5a. Refer to that stand description for details		
Stand stocking:	Moderate density due to some loss of overstory hemlock.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping, moderately well drained on the west to somewhat-poorly drained in lower-lying drainages and seeps downslope to the east. Growth rates estimated to be average.		
Forest Health	Several large hemlocks have died within the past 10 years, possible from hemlock scale.		
Invasive and Exotic Plants	None noted		
Cultural Features	Footpath		
Management Objectives and Recommendations			
Desired Future	Older, mixed species forest with multiple canopy layers		

Condition	
Management Recommendations	- Control elongate hemlock scale and hemlock wooly adelgid (see <i>Insect and Disease</i> section) - Refer to general recommendations for trails

Stand 6		Map Unit	Acres
		6	0.84
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	Red Oak – White Pine		4-5A
Overstory	Red oak, white pine, plus beech and red pine		4-5A
Midstory	Hemlock, beech; associates include red maple and yellow birch		2-3C
Understory:	Hemlock, beech		<30%
Stand description, age and history:	Mature hardwood-conifer mix with a dense, mature overstory 12-24" DBH and 60-80' in height over a moderate density understory and midstory. This stand is very similar to Stand 4 and has a lower hemlock component than Stand 5. An old fire scar was observed on a white pine stump.		
Wildlife Habitat Values	Typical of a mature oak-pine forest, but species characteristic of larger forest blocks are unlikely to live here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth	Soils are gently sloping and moderately well drained with apparently average growth rates.		
Forest Health	Hemlock scale and beech-bark disease (<i>Nectria</i> canker) observed		
Invasive and Exotic Plants	None observed		
Cultural Features	Footpath and carriage trail		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species oak-pine forest with multiple canopy layers		
Management Recommendations	- Refer to general recommendations for trails - No other management activities recommended at this time		

Stand 7		Map Unit	Acres
		7	0.62
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Maple		3-4A
Overstory	Red maple, plus minor component of red oak and white ash		3-4A
Midstory	Red oak, hemlock, red maple		2D
Understory:	Winterberry, arrow-wood viburnum, balsam fir, hemlock, yellow birch, white pine		+/- 50%
Stand description, age and history:	This is younger, even-aged stand that developed on what was likely an old field. The overstory is 8-12" DBH and 50-70' in height. The smooth soil surface topography in this area was likely a field at one point in time.		
Wildlife Habitat Values	The dense understory provides cover not generally found elsewhere in Baxter Woods.		
Stand stocking:	Well stocked with intermediate-sized trees.		
Soils, Slopes, Site Quality, and Growth	Mostly level, somewhat poorly drained with poorly drained patches. Growth rates estimated to be average to below average where wet.		

Forest Health	No issues were noted
Invasive and Exotic Plants	Japanese knotweed, barberry, burning bush
Cultural Features	None observed
Management Objectives and Recommendations	
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers
Management Recommendations	- Control invasive plants - Allow this stand to develop - no other management activities recommended at this time.

Stand 8		Map Unit	Acres
		8	0.59
CURRENT CONDITIONS		Structure Class and % Cover	
Cover Type	White Pine – Red Oak – Red Maple		4-5A
Overstory	White pine (60%), plus red oak, white oak, and red pine		4-5A
Midstory	Red oak, white oak, yellow birch , beech, white ash		2C
Understory:	Red oak, balsam fir, maple-leaved viburnum, hazelnut, huckleberry, lowbush blueberry		60-70%
Stand description, age and history:	The overstory is 12-24” DBH and 60-80’ in height. This essentially an even-aged stand but with a developing understory. The smooth soil surface topography in this was likely a field at one point in time.		
Wildlife Habitat Values	This stand buffers one side of the pond and has better understory habitat that is more robust than in most other parts of the forest. General habitat values are characteristic of older forests but species characteristic of larger forest blocks are unlikely to nest here. Large (>18”) and mid-sized snags and/or cavity trees were observed here.		
Stand stocking:	Well stocked with mature trees.		
Soils, Slopes, Site Quality, and Growth Rate	Soils are gently sloping and appear to be moderately well drained. Growth rates are estimated to be average.		
Forest Health	No issues were noted.		
Invasive and Exotic Plants	A single Japanese barberry plant was observed.		
Cultural Features	Two short “wildcat” trails (unauthorized footpaths) lead from the pond area to Forest Avenue		
Management Objectives and Recommendations			
Desired Future Condition	Older, mixed species pine-oak forest with multiple canopy layers		
Management Recommendations	- Control invasive plants - Consider blocking the wildcat trails - No other management activities recommended at this time.		

Stand 9		Map Unit	Acres
		9	1.8
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Red Maple-Red Oak		4-5B
Overstory	Red maple, red oak, white ash, beech		4-5B

Midstory	White ash, yellow birch, hemlock, red maple	2C
Understory:	Balsam fir, beech, hemlock, yellow birch, winterberry	+/- 40%
Stand description, age and history:	This is maturing hardwood stand in a low-lying area with stream channels. The overstory is 10-18" DBH and 60-80' in height over a low-density midstory with trees 2-4" DBH.	
Wildlife Habitat Values	A moderately dense understory in the north half of the stand provides good wildlife cover. Several snags and downed trees were observed. A small excavate pool (VP2) was observed in this stand. Twelve spotted salamander egg masses and one wood frog egg mass were observed here in April 2016.	
Stand stocking:	Well stocked with mixed hardwoods	
Soils, Slopes, Site Quality, and Growth	Soils are nearly level with steeper slopes immediately adjacent to the lower section of the stream. Soils vary from moderately well drained to somewhat poorly drained in lower lying areas. Growth appears to be average for the site.	
Forest Health	No issues were noted.	
Invasive and Exotic Plants	One Japanese barberry was observed near the carriage trail.	
Cultural Features	Footpaths and storm drain	
Management Objectives and Recommendations		
Desired Future Condition	Older, mixed species forest with multiple canopy layers	
Management Recommendations	• Control invasive plants • No other management activities recommended at this time.	

Stand 10		Map Unit	Acres
		10	0.3
CURRENT CONDITIONS			Structure Class and % Cover
Cover Type	Norway Maple		3-4A
Overstory	Norway maple (75%), white ash (25%)		3-4A
Midstory	Red oak, hemlock, red maple		2D
Understory:	Winterberry, balsam fir, hemlock, yellow birch, arrow-wood viburnum		+/- 50%
Stand description, age and history:	This intermediate-aged stand has developed on a site that was a field at one point in time. The dominant Norway maple overstory 1-16” DBH and 60-80’ in height developed from seed sources in nearby residential areas.		
Wildlife Habitat Values	A moderately dense provides good wildlife cover in parts of the stand, but other areas are very open. There snags or cavity trees and little downed wood.		
Stand stocking:	Well stocked		
Soils, Slopes, Site Quality, and Growth	Soils are moderately well drained to somewhat poorly drained and slope toward the stream and storm drain near Forest Avenue. Overall site quality and growth rates are good.		
Forest Health	No insect or disease issues were noted.		
Invasive and Exotic Plants	Norway maple dominates the stand. One burning bush plant was also observed.		
Cultural Features	None		
Management Objectives and Recommendations			
Desired Future Condition	Restored forest dominated by native species		

Management Recommendations	Remove all Norway maple and plant native species in conjunction with drainage improvements near Forest Avenue
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Area 11. Encroachment Zone 0.22 acres

Description

This narrow strip along the property boundary north of Hartley Street has been encroached upon by the back yards of residences in that area. Small lawns, gardens, and furniture are found on the Baxter Woods property in this area. A slackline has been attached two trees on city property in the woods behind one of the homes. Brush dumping is also evident. Invasive plants include bush honeysuckle, Japanese barberry, Bishop's weed, and Lemon balm.

Recommendations.

- Clearly establish the property line with a fence or other permanent markers with signage.
- Restore the area to more natural conditions by removing all landscaping features, controlling invasive plants, and planting native trees and shrubs.

Area F1 Stevens Avenue Entrance - 1.06 acres

Description

This area is being managed like a typical city park with scattered trees and mown grass. Overstory trees 10-18" DBH and 60-60 ft. in height cover approximately 15% of the area; species included linden, Norway spruce, sugar maple, and white pine . A patch of recently planted sugar maple 2-3" DBH and 10-20 ft. in height accounts another 15%. Shrubs and understory trees are absent. Wildlife use would be primarily limited canopy species tolerant of edges and human activity. This area provides a transition from the urban environment to the natural forest that characterizes most of Baxter Woods.

Recommendations

- Plant patches of native shrubs with wildlife food and cover value away from the areas of greatest human activity.
- After the City has adopted an action plan for the forest the kiosk could be updated with additional information on the unique ecological values of Baxter Woods and goals for management.

Area F2 Forest Avenue Entrance - 0.41 acres

Description

This area is being managed like a typical city park with scattered planted trees (larch, paper birch, tupelo) and a large white pine and red maple. The entire area between and under the trees is mowed. Wildlife use would be primarily limited canopy species tolerant open-scattered trees and human activity. This area provides a transition from the urban environment to the natural forest that characterizes most of Baxter Woods.

Recommendations

- Plant a border of native shrubs with wildlife food and cover value along the north edge of the mown area and along the pond edge, leaving one or two openings for vistas and pond access.

Area F3 North Meadow 0.72 acres

Description

This area has a diversity of open/edge habitat, including mown grass, old field edges with grasses, goldenrods, raspberries, staghorn sumac, and apple that is unique in Baxter Woods. Invasive plants include common buckthorn along the west edge and bittersweet on the east.

Recommendations

- Control invasive plants.
- Develop a site planting and mowing plan to include:
 - a) Increasing the area in old field habitat by allowing encroachment into the frequently mown area, or purposefully planting patches to native wildflowers that will benefit butterflies and other insect pollinators.
 - b) Planting patches of natives shrubs that provide wildlife food and cover.
 - c) Maintaining the habitat type by mowing old field areas on a 3-5-year cycle so that both old field and shrub patches will always be present, and cut trees that are encroaching on this area if allowed by deed.

F4 Lawn and Shrub - 0.15 acres

Description

Residences near the West end of Hartley Street are encroaching onto City property. The MBW south boundary is unmarked and encroachment appears to extends 20 ft. to 50 ft. past the property line, including includes mown lawn, raised-bed garden, and leaf dumping. The remaining area includes a mix of goldenrods, asters, raspberries and planted white pine and white spruce saplings. Invasive plants include Norway maple and Japanese knotweed.

Recommendations

- Control invasive plants.
- Fence or otherwise clearly mark the entire boundary line and work with abutters to maintain the area in a natural condition. Maintaining a mix of shrubs and old-field herbaceous plants would provide habitat conditions that are under-represented on the MBW.

Maine Audubon Priority Forest Birds

Species, Region ¹ and Habitat Age Class	Preferred Stand Condition	Habitat Preference 1: Preferred; 2: Utilized; 0: Not used			
		Oak Pine	Northern Hardwood	Northern Mixedwoods	Northern Softwoods
Young Forest					
American Woodcock	Young forest and shrub patches with clearings for singing grounds and roosting	2	2	2	0
Chestnut-sided Warbler	Young forest patches typically 5-15 years old	0	1	2	0
Mourning Warbler (N/C)	Young forest with dense understory 2-10 years after harvest	2	1	2	2
Magnolia Warbler	Young of multi-aged forest with dense young conifers	0	0	1	1
Intermediate & Older Forests					
Black-throated Blue Warbler	Intermediate and older forests with dense understory and saplings, large forest blocks	2	1	1	0
Yellow-bellied Sapsucker	Intermediate and older forests with snags or decaying trees and shade-intolerant tree species	2	1	2	0
Eastern Wood-Pewee	Intermediate or older forest with gaps	2	2	2	0
Black-throated Green Warbler	Intermediate to older forest with hemlock or other conifers, large forest blocks	0	0	2	1
Older Forests					
Bay-breasted Warbler	Older – multi story	0	0	2	1
Blackburnian Warbler	Older conifer and mixed interior forest	2	0	1	1
Northern Parula	Older conifer or mixed moist forests, large patches	0	2	2	1
Scarlet Tanager	Older forest with oak, large forest blocks	1	1	2	
Ovenbird	Older forest, large forest blocks	1	1	1	2
Wood Thrush	Older forest, larger forest blocks	1	1	2	
Young to Older Forests					
Veery	Riparian forest and other moist forests with dense understory	2	1	2	2
Black-backed Woodpecker (N)	Variable aged forests with abundant dead/dying conifers	0	0	0	1
Boreal Chickadee	Variable aged forests with cavity or decaying trees	0	0	0	1
Canada Warbler	Variable aged, moist forests with dense understory; riparian areas, swamps	0	2	1	2
Northern Flicker	Variable forest ages, snags or decay trees >12" preferred for nesting	1	1	2	2
Olive-sided Flycatcher	Variable, peatlands, riparian areas, young forest, and gaps with snags	0	0	0	1

¹ Region: N – North, C – Central, S – South. No letter indicates statewide occurrence

Source: **Forestry for Maine Birds: A Forester's Guide.** Maine Audubon, Falmouth, ME. Publication pending 2016

Maine Audubon Priority Species known to breed at HRF or nearby:

Source: noted by J. Witham 2016

Breeding Birds

American Woodcock – breed here on a couple of occasions

Chestnut-sided Warbler – was one male around for a couple of years post-harvest, gaps just not big enough for them

Black-throated Blue Warbler – present in most years, most prevalent when red maple stump sprouts were at their peak

Eastern Wood-Pewee – increased following harvest, numbers down now

Black-throated Green Warbler – most common breeder with Ovenbird

Blackburnian Warbler – third most common

Northern Parula – one or two males every year

Scarlet Tanager – consistent breeder in low numbers

Ovenbird - most common breeder with BTG

Veery – numbers have dwindled to 0-1

Canada Warbler – one male for many years in red maple swamp

Northern Flicker – always around, few observations every year, never found a nest

Migration only

Magnolia Warbler

Yellow-bellied Sapsucker

Olive-sided Flycatcher

Mourning Warbler

Other species never observed at HRF

Harvest Guidelines for Retaining Wildlife Trees and Woody Biomass

General Guidelines for all Managed Stands

Dead Snags	- All dead snags should be considered for retention. - Under conditions where hand crews are operating, snags that represent a hazard should be felled at the logging contractor's discretion as needed to comply with safety guidelines. - Felled snags should be left in place.
Live Cavity Trees and Recruitment Trees	- The general guideline is: Four trees per acre >12" dbh, including one >18" dbh. - Select cavity trees first, if present, and then use recruitment trees to meet the guideline as needed. Retain a mix of species characteristic of the stand. - All live cavity trees with evidence of advanced decay and signs of use by wildlife should be considered for retention. However, cavity trees (<12" dbh) may be removed from the stand for silvicultural purposes unless there are not enough larger trees to meet the objective. - Trees suitable for consideration as recruitment trees include live pulpwood-quality trees of large diameter (>14" dbh) with evidence of interior defect and decay. Yellow birch and aspen with broken tops and maples with dead limbs in the lower crown are good candidates for consideration. Larger is better. - When possible, avoid timber harvesting from April through mid July to avoid disrupting nesting birds and denning animals.
Downed and Dead Woody Debris	- Avoid damaging existing downed woody material during harvesting, especially large (12"+) logs and stumps. - Attempt to leave large (>12 inch dbh and > 6 feet long) cull logs on site. Culls bucked out at the landing should be hauled back in the woods. - If whole-tree harvesting, retain and scatter tops, limbs and smaller trees from 20% of the trees harvested.

Retention of Live Trees in Even-aged Regeneration Harvests

Harvest block <10 ac.	- Leave the amount specified in the <i>General Guidelines for All Managed Stands</i> - Additional overstory retention may not be needed if adjacent stands are in long-term uneven-aged management. - Retain understory vegetation on ≥20% of the area.
Harvest block >10 ac.	- Leave the amount specified in the <i>General Guidelines for All Managed Stands</i>. - Leave representative uncut overstory in patches on ≥5% of the area. Larger patches (≥1 ac.) are preferred to protect forest understory vegetation. Identify retention patches prior to initial shelterwood cuts. - Retain understory vegetation on ≥20% of the area.

Notes:

- Diameter targets for standing trees and downed logs will vary with forest type and site.
- Where trees of sufficient diameter to meeting the targets are not present, retain the largest trees present and attempt to achieve a similar basal area in retained trees.
- Not all stands can meet targets for numbers of wildlife trees at all times, and small scale variability (e.g., on any given acre) may be significant. Therefore, it may be appropriate to attempt to meet targets across several stands.
- Avoid or minimize biomass harvests in riparian zones, rare plant and wildlife habitats, and on low productivity sites and other sensitive areas. Avoid repeated biomass harvests on the same site.
- CAUTION! Dead and decaying trees are very dangerous, and loggers may need to fell them to comply with safety policies. If so, they should be left on the ground to provide habitat.**

Source: Developed by Maine Audubon (May 2008) based on *Biodiversity in the Forests of Maine* (C.A. Elliott, ed., U. Maine Coop. Extension 1999), other wildlife tree recommendations from multiple northeastern wildlife authors and researchers, and *Biomass Harvesting Guidelines for Forestlands, Brushlands, and Open Lands* (Minnesota Forest Resources Council, December 2007). The 20% understory retention guidelines for even-aged harvest is not included in the above but is recommended by Maine Audubon to help ensure that understory plant species and structure will become a significant part of the future stand.

Recreational Trail Planning Considerations

Well used recreation trails have the potential to disturb some wildlife species. Disturbance will vary with species, usage level and type, and season. Following are some general considerations for ecologically friendly trails that may be used by a wide range of public and private ownerships. Not all the uses discussed below are applicable to all landowners or appropriate in all situations.

Considerations for Recreation Trail Design and Use	
Trail Design and Layout	
✓ Well used recreation trails have the potential to disturb some wildlife species. Disturbance will vary with species, the usage level, type, and season. ✓ To minimize disturbance to wildlife, create wildlife security areas consisting of large patches of habitat without trails, rather than crossing all sections of a woodlot with trails. ✓ To minimize disturbance to aquatic wildlife, trails should not run parallel with the shore of water bodies and open wetlands for any distance. Rather, approach water bodies with spur trails to a screened viewpoint or have loop trails only approach the shoreline for short distances. See Maine Audubon's Conserving Wildlife in Maine's Shoreland Habitats. ✓ Poorly designed and built hiking trails can cause soil compaction, erosion, and degradation of water quality. American Trails has a number of excellent on-line resources on trail building and design (download: http://www.americantrails.org/resources/trailbuilding/index.html). The US Forest Service Trail Construction and Maintenance Handbook is also a helpful resource (download: http://www.fhwa.dot.gov/environment/fspubs/07232806/index.htm).	
Mechanized Use	
✓ Mountain bikes increase the potential for permanent soil damage, off-trail use, and conflicts with other users. However, studies have generally shown that mountain bikes have no more impact on wildlife than pedestrians. ✓ ATV use can cause severe soil damage, impact water quality, and affect forest values for other users of the area. Where ATV use is an objective, trails should follow the general design and layout principles above and use appropriate techniques to minimize damage to soils and water quality. Stream crossings and associated approaches, wet sites, and erosion on steep trails should be primary considerations. ✓ Trails should avoid sensitive winter habitats such as deer wintering areas and be planned to minimize conflicts with non-mechanized users. ✓ Consult trail design guidelines applicable to the type and amount of use anticipated.	
Pets	
✓ Dogs should be leashed during the nesting season of ground-nesting birds (April to end of July). Examples of ground nesting birds that might be disturbed by dogs include woodcock, hermit thrush, and ovenbird. Dogs should also be leashed during winter when snow restricts animal movement and cold temperatures require energy conservation for survival.	

Widespread Invasive Forest Plants in Maine

The following table lists some of the most frequently encountered invasive plants in Maine forests. This is not intended to be a complete list – forest owners and managers should consult sources of information such as the Maine Natural Areas Program for more complete information.

Widespread Invasive Forest Plants in Maine		
Common Name	Scientific Name	Habitat
Barberry, Japanese	<i>Berberis thunbergii</i>	Forest understory
Buckthorn, common	<i>Rhamnus cathartica</i>	Forest understory
Buckthorn, glossy	<i>Frangula alnus</i>	Forest understory
Honeysuckle, bush	<i>Lonicera morrowii</i>	Forest understory
Honeysuckle, Japanese	<i>Lonicera japonica</i>	Forest understory
Honeysuckle, Tatarian	<i>Lonicera tatarica</i>	Forest understory
Japanese knotweed	<i>Fallopia japonica</i>	Edges
Bittersweet, Asiatic	<i>Celastris orbiculata</i>	Edges, forest canopy vine
Loosestrife, purple	<i>Lythrum salicaria</i>	Wetlands
Rose, multiflora	<i>Rosa multiflora</i>	Old field, edges
Source: Maine Natural Areas Program 2006		

Control of Invasive Terrestrial Plants in Maine

Common Name	Scientific Name	Habitat	Control
Autumn Olive & Russian Olive	<i>Eleagnus umbellata</i> , <i>Eleagnus angustifolia</i>	Edges and open areas	Mechanical: Pull smaller plants, followed by mowing or pulling sprouts as needed. Chemical: Glyphosate on cut stumps. (1)
Barberry, Japanese	<i>Berberis thunbergii</i>	Forest understory	Mechanical: Pull shrubs, followed by mowing or pulling sprouts. Flame torch to lower stem may also be effective. Chemical: Glyphosate or triclopyr on cut stumps. (1, 2)
Bittersweet, Asiatic	<i>Celastris orbiculata</i>	Edges, forest canopy vine	Mechanical: Repeated cutting or pulling plants. Chemical: Glyphosate or triclopyr on cut stems. Seed bank may necessitate treatments repeated for several years. The flowers and fruit of Asiatic bittersweet grow from the joints where leaves join the vine, whereas American bittersweet's flowers are in terminal clusters. (1)
Buckthorn, common & glossy	<i>Rhamnus cathartica</i> <i>Frangula alnus</i>	Forest understory	Mechanical: Flame torch stems <42 inches diameter. If cutting, repeated treatment is required. Chemical: Glyphosate or triclopyr cut stem or foliar treatment. Treat in fall when green leaves persist after native trees and shrubs have lost their leaves. Resprouting may occur and seed bank may last 3 years. (1, 2)
Honeysuckle, bush Honeysuckle, Tartarian	<i>Lonicera morrowii</i> <i>Lonicera tatarica</i>	Forest understory	Mechanical: Cutting, burning. Repeated treatments may be required. Chemical: Glyphosate or triclopyr on leaves or cut stumps. (1, 2) Note: all non-native shrub honeysuckles have a hollow pith that is usually brown.
Honeysuckle, Japanese	<i>Lonicera japonica</i>	Forest understory	Mechanical: Pull shrubs and roots when soil is moist (repeated treatment likely required). Chemical: Glyphosate or triclopyr on leaves or stems. A vine that is distinguished from Maine's rare native vine honeysuckles by the separate leaves at the tip of the stem (on natives, a single fused terminal leaf wraps around the stem). (1)
Knotweed, Japanese	<i>Fallopia japonica</i>	Edges	Mechanical: Repeated cutting (3 or more times/season). Chemical: Cutting followed by glyphosate (repeat may be necessary). (1)
Mustard, garlic	<i>Alliaria petiolata</i>	Forest understory, esp. moist/rich soils	Mechanical: Hand pulling in early season. Chemical: Glyphosate foliar or dormant season basal spray. (1)
Loosestrife, purple	<i>Lythrum salicaria</i>	Wetlands	Mechanical: Pulling individual plants. Chemical: Glyphosate foliar spray or cut stem treatments. Biological: Release of beetles that feed exclusively on loosestrife has been effective on large infestations. (1)
Rose, multiflora	<i>Rosa multiflora</i>	Old field, edges	Mechanical: Repeated mowing (up to six time per year for 2 years). Chemical: Glyphosate or triclopyr on cut stems. (1, 2)

Notes:

- This table is intended to provide a broad overview of problematic forest invasive species and methods to control them. Consult the sources below and other experts (e.g., an ecologist and/or forester and a licensed herbicide applicator) to develop and implement an invasive species control plan.
- Herbicides used on areas open to the public must be applied under the supervision of a licensed applicator, or for terrestrial application only if applied by an employee or volunteer and the area is closed for 7 days. Other legal requirement of the Maine Board of Pesticide Control apply but are not included in this overview.
- Both glyphosate ("Roundup," Rodeo," "Accord" etc.) and triclopyr ("Garlon," "Pathfinder," "Remedy," "Renovate," "Tahoe," etc.) may be used on forests certified by the Forest Stewardship Council if the [FSC Pesticide Policy](#) is followed (as of 2007).

References:

- [University of Maine Invasive Plant Fact Sheets](#)
- [Wisconsin Manual For the Control of Ecologically Invasive Plants](#)

Other Sources of Information:

[Weed Control Methods Handbook: Tools and Techniques for Use in Natural Areas](#) (The Nature Conservancy; mechanical and chemical control methods)
[The Nature Conservancy - Wildlands Invasive Species Program](#) (information, links, workshops, on-line forums, etc)
[Weeds Gone Wild: Alien Plant Invaders of Natural Areas](#) (lists, species fact sheets, and other information)

Glossary of Forestry Terms

The following glossary was adapted from the Massachusetts Department of Conservation Forest Stewardship guidelines.

Acceptable Growing Stock (AGS) - See **Management Potential**.

Aesthetics - forest value rooted in beauty and visual appreciation

Allowable Harvest - the calculation of the amount of forest products that may be harvested, annually or periodically, from a specified area over a stated period, in accordance with the objectives of management.

Aspect - the orientation of a slope with respect to the compass; the direction toward which a slope faces. North facing slopes are generally cooler than south facing slopes, which often results in different plant communities.

Basal area - a measurement of the cross-sectional area of a tree trunk, in square feet, at breast height. Basal area (BA) of a forest stand is the sum of the basal areas of the individual trees, and is reported as BA per acre. Basal area is used as an indicator of total stand stocking (occupancy of a site).

Biological diversity - the variety of plants and animals, the communities they form, and the ecological functions they perform at the genetic, stand, landscape, and regional levels.

Biological legacy - an organism, a reproductive portion of an organism, or a biologically derived structure or pattern inherited from a previous ecosystem—Note: biological legacies often include large trees, snags, and down logs left after harvesting to provide refuge and to structurally enrich the new stand.

Biological maturity - the point in the life cycle of a tree at which there is no net biomass accumulation; the stage before decline when annual growth is offset by breakage and decay. See **Financial Maturity**

Biomass – 1) the total weight of all organisms in a particular population, sample, or area; biomass production may be used as an expression of site quality; 2) tree tops or entire trees that are harvested and chipped as a source of fuel.

BMP - Abbrev. *Best Management Practices*.

Board foot - See **Volume, tree**

Bole - the main trunk of a tree.

Broad-based dip - an erosion control structure similar to and having the same purpose as a waterbar. Structurally, broad-based dips differ in that they are generally longer, less abrupt, often are paved with stone and are more appropriately used on truck roads. See **Waterbar**.

Browse - portions of woody plants including twigs, shoots, and leaves used as food by such animals as deer.

Buffer Strip - a forest area of light cutting used to protect sensitive sites or vistas.

Canopy - the upper level of a forest, consisting of branches and leaves of taller trees.

Catastrophic Disturbance – Natural disturbances that result in substantial tree mortality, such as wildfire, hurricanes, tornadoes, or major insect outbreaks

Cleaning - See **Intermediate Cuttings**.

Coarse Woody Debris (CWD) - Dead and down woody material that is generally greater than 3” in diameter. Also referred to as Downed Woody Material (DWM). See **Biological Legacy**

Cord - See **Volume, tree**.

Compartment - a subdivision of a forest property for administrative convenience and record keeping purposes

Community - a collection of living organisms in a defined area that function together in an organized system through which energy, nutrients, and water cycle.

Conservation - the wise use and management of natural resources.

Coppice Cutting - See **Regeneration Cutting**.

-Corridor - a strip of wildlife habitat unique from the landscape on either side of it that links one isolated ecosystem “island” (e.g., forest fragment) to another. Corridors allow certain species access to isolated habitat areas, which consequently contributes to the genetic health of the populations involved.

Critical habitat - Uncommon habitat of great value to wildlife such as abandoned fields, orchards, aspen stands, blueberry barrens, cliffs, talus, caves, etc.

Crop tree - a term traditionally reserved to describe a tree of a commercially desirable species, with the potential to grow straight, tall, and vigorously. However, a crop tree can be one selected for non-timber purposes (varying with landowner objectives), such as mast production or den tree potential. See **Management Potential**

Crown class - an evaluation of an individual tree’s crown in relation to its position in the canopy and the amount of full sunlight it receives. The four recognized categories are: dominant (D), codominant (C), intermediate (I), and overtopped or suppressed (S).

Cull Tree - a live tree of commercial species that contains less than 50% usable material.

Rough cull: a tree whose primary cause of cull is crook, sweep, etc.

Rotten cull: a tree whose primary cause of cull is rot.

Danger tree - A standing tree that presents a hazard to employees due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stems or limbs, and the direction and lean of the tree. OSHA 1910.266, Logging Operations

Daylight - verb; to cut vegetation adjacent to a road or other open area to increase solar insulation to its surface. Daylighting is often used to speed the time for roads to dry after a period of wet weather.

DBH - abbrev. *diameter at breast height*; the diameter at breast height of a standing tree measured at 4.5' above the ground.

Den Tree-living hollow trees that are used for shelter by mammals or birds. Syn.; cavity tree.

Diameter-limit cut - a timber harvesting treatment in which all trees over a specified diameter may be cut. See **High Grading**.

Disturbance - a natural or human-induced environmental change that alters one or more of the floral, faunal, and microbial communities within an ecosystem. Timber harvesting is the most common human disturbance. Windstorms and fire are examples of natural disturbance.

Ecology - the study of interactions between living organisms and their environment.

Economic Maturity - See **Financial Maturity**

Ecosystem - a natural unit comprised of living organisms and their interactions with their environment, including the circulation, transformation, and accumulation of energy and matter.

Ecosystem management - Forest management that is applied with emphases on 1.) maintaining biodiversity, 2.) addressing societal or social needs, and 3.) being adaptive. See **Forest Management**.

Ecotype - a genetic subdivision of a species resulting from the selective action of a particular environment and showing adaptation to that environment. Ecotypes may be geographic, climatic, elevational, or soil-related.

Edge - the boundary between open land and woodland or between any two distinct ecological communities. This transition area between environments provides valuable wildlife habitat for some species, but can be problematic for some species, due to increased predation and parasitism. Syn.: ecotone

Endangered species - See **Rare Species**

Even-aged stand - See **Stand Structure**.

Featured Resource - the resource that is the primary focus of management activities.

Financial maturity - the point in the life cycle of a tree or stand when harvesting can be most profitable, i.e., when the rate of value increase of an individual tree or stand falls below a desired alternative rate of return. Syn.: Economic Maturity

Forest land - Land that is at least 10% stocked with trees.

Forest interior dependent species - animal species that depend upon extensive areas of continuous, unbroken forest habitat to live and reproduce, and are susceptible to higher rates of predation and population decline when interior forest habitat is fragmented or disturbed. See **Fragmentation**.

Forest management - the practical application of biological, physical, quantitative, managerial, economic, social and policy principles to the regeneration, management, utilization and conservation of forests to meet specified goals and objectives while maintaining the productivity of the forest.

Forest Road - A road owned by and under the jurisdiction of the Department of Conservation and Recreation, Division of Parks and Recreation.

Forest type - aggregations of tree species that commonly occur because of similar ecological requirements. Examples of major northeastern forest types include northern hardwoods, white pine, oak-pine, and spruce-fir. Syn. forest association.

Filter Strip - an area of forest land, adjoining the bank of a water body, where forest vegetation and undisturbed soils are retained to filter surface runoff..

Fragmentation, forest - the segmentation of a large tract or contiguous tracts of forest to smaller patches, often isolated from each other by non-forest habitat. Results from the collective impact of residential and commercial development, highway and utility construction, and other piecemeal land use changes. Indiscriminant heavy forest harvesting may also result in fragmentation of mature forest habitat.

Ford - a stream crossing using a stable stream bottom as the roadbed.

Fuel management - the act or practice of controlling flammability and resistance to control of wildland fuels through mechanical, chemical, biological or manual means, or by fire in support of land management objectives.

Girdling - a method of killing unwanted trees by cutting through the living tissues around the bole. Can be used instead of cutting to prevent felling damage to nearby trees. Girdled trees can provide cavities and dead wood for wildlife and insects.

GIS - Geographic Information System. A computer-based system for collecting, storing, updating, manipulating, displaying and analyzing geographically referenced data.

GPS - Global Positioning System. A satellite-based navigation system.

Grade - the angle of an inclined surface as expressed in terms of percent slope: vertical rise per 100' of horizontal run.

Grade, tree - A classification system for standing trees that is based on their potential for yielding high value lumber.

Growing Stock - For inventory purposes, all live trees that are between 5.0" dbh to 10.9" dbh and are greater than 50% sound. See **Management Potential**

Growth, net - The average annual net increase in the volume of trees expressed either as a per acre value or total value for a given unit of land. Mathematically it is expressed as follows: {[growth of the existing trees at the beginning of the period]+[ingrowth the volume of trees that have reached merchantability during the period]} – {(the volume of trees that have died during the period) + (the volume of trees that have become cull during the period).

Habitat - the geographically defined area where environmental conditions (e.g., climate, topography, etc.) meet the life needs (e.g., food, shelter, etc.) of an organism, population, or community.

High-grading - a type of timber harvesting in which larger trees of commercially valuable species are removed with little regard for the quality, quantity, or distribution of trees and regeneration left on the site; often results when a diameter limit harvest is imposed. See **Diameter Limit Cutting**.

Herbaceous - A class of vegetation dominated by non-woody plants known as herbs; [graminoids (grass), forbs and ferns].

Incidental taking - the taking of a rare species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Intermediate Cuttings - Operations conducted in a stand during its development from regeneration stage to maturity. These are carried out to improve the quality of the existing stand, increase its growth and provide for earlier financial returns, without any effort directed at regeneration.

Cleaning: a cutting made in a stand, not past the sapling stage, to free the best trees from undesirable individuals of the same age that overtop them or are likely to do so. See *weeding*.

Thinning: a cutting whose purpose is to control the growth of stands by adjusting stand density.

Salvage Cutting: a harvest whose primary purpose is to remove trees that have been or are in imminent danger of being killed or damaged by injurious agencies.

Weeding: a cutting made in a stand not past the sapling stage that eliminates or suppresses undesirable vegetation regardless of crown position. See *Cleaning*.

Landing - any place where round timber is assembled for further transport, commonly with a change in method. Generally, a cleared area where log trucks are loaded.

Legacy tree - a tree, usually mature or old-growth, that is retained on a site after harvesting or naturally disturbance to provide a biological legacy. See **Biological Legacy**

Management plan - a document prepared by natural resource professionals to guide and direct the use and management of a forest property. It consists of inventory data and prescribed activities designed to meet ownership objectives.

Management potential - For forest inventory purposes, a classification method in which a tree is rated based on the likelihood that it will develop into a tree that will be structurally sound, vigorous and yield products of high value. The three classes are as follows:

Preferred Crop Tree: the highest class; a tree with a dominant crown and no or minimal sweep or crook and no or few limbs in the butt 16' log.

Acceptable Growing Stock: a tree of codominant or greater crown class with moderate sweep or crook and a moderate number of limbs in the butt 16' log.

Unacceptable Growing Stock: Any tree not meeting the above criteria.

Also, see **Growing stock**

Mast - Seed produced by woody-stemmed, perennial plants, generally referring to soft (fruit) or hard (nut) mast.

Matrix, forest - The most extensive and connected landscape element that plays the dominant role in landscape functioning.

MBF - Abbrev. Thousands of board feet. See **Tree Volume**

Merchantable - of trees, crops or stands, of a size, quality and condition suitable for marketing under given economic conditions even if so situated as not to be immediately accessible for logging. See **Operable**.

Multiple use and value - a conceptual basis for managing a forest area to yield more than one use or value simultaneously. Common uses and values include aesthetics, water, wildlife, recreation, and timber.

Niche - the physical and functional location of an organism within an ecosystem; where a living thing is found and what it does there.

Old growth stand - A stand that has been formally designated as an old growth stand. These areas must meet a preponderance of the following four criteria: 1.) Be of a size that is large enough to be self sustaining. 2.) Show no evidence of significant post-European disturbance. 3.) Should have a component of trees that are greater than 50% of the maximum longevity for that species. 4.) Shall be a makeup that is self-perpetuating.

Old growth attributes - attributes often associated with old growth forests such as large amounts of coarse woody debris, large trees, etc. that are achieved through deliberate actions in a managed forest. See **Biological legacy**

Operable - trees, crops or stands that are both merchantable and accessible for harvesting. See **Merchantable**.

Patch - a small area of a particular ecological community surrounded by distinctly different ecological communities, such as a forest stand surrounded by agricultural lands or a small opening surrounded by forestland.

Poletimber - See **Size Class**.

Population - a group of individuals of one plant or animal taxon (species, subspecies, or variety).

Preservation - a management philosophy or goal which seeks to protect indigenous ecosystem structure, function, and integrity from human impacts. Management activities are generally excluded from "preserved" forests.

Raptor - A bird of prey.

Rare species - A collective term used to describe species that are uncommon, including

Endangered: native species which are in danger of extinction throughout all or part of their range (e.g., within state), or which are in danger of extirpation from Massachusetts, as documented by biological research and inventory.

Threatened: native species which are likely to become endangered in the foreseeable future, or which are declining or rare as determined by biological research and inventory.

Special concern: native species which have been documented by biological research or inventory to have suffered a decline that could threaten the species if allowed to continue unchecked, or which occur in such small numbers or with such restricted distribution or specialized habitat requirements that they could easily become threatened.

These definitions may vary depending on jurisdiction (e.g federal or state definitions).

Regeneration - the renewal of a tree crop, whether by natural or artificial means - may be broken down into those treatments that produce stands originating from seed (high forest) or from vegetative regeneration (coppice or sprouts) and create even-aged or uneven-aged stands. Syn. reproduction.

Regeneration Cutting - Any removal of trees intended to assist regeneration already present or to make regeneration possible. The operation creates either an even-aged stand or an uneven-aged stand. See **Even-aged stand** and **Uneven-aged stand**

Clearcutting; (even-aged) removal of the entire stand in one cutting with reproduction obtained artificially or by natural seeding from adjacent stands or from trees cut in the clearing operation.

Seed-tree: (even-aged) removal of the old stand in one cutting, except for a small number of seed trees left singly or in groups.

Shelterwood: (even-aged) removal of the old stand in a series of cuttings, which extend over a relatively short portion of the rotation, by means of which the establishment of essentially even-aged reproduction under the partial shelter of seed trees is encouraged.

Selection: (uneven-aged) removal of trees, throughout all size classes, either as single scattered individuals or in small groups at relatively short intervals, repeated indefinitely, by means of which the continuous establishment of reproduction is encouraged and an uneven-aged stand is maintained.

Coppice: (even-aged or uneven-aged) any type of cutting in which dependence is placed mainly on vegetative reproduction.

Release - removal of overtopping trees to allow understory or overtopped trees to grow in response to increased light.

Reserve tree - a tree, pole-sized or larger, retained in either a dispersed or aggregated manner after the regeneration period under the clearcutting, seed tree, shelterwood, group selection or coppice methods. Syn. Standard, legacy tree

Residual stand - trees remaining following any silvicultural operation.

Riparian Area - an area in close proximity to a watercourse, lake, swamp or spring.

Rotation - the planned number of years between the formation or regeneration of a crop or stand and its final harvest at a specified stage of maturity.

Rotation, extended - a rotation longer than necessary to grown timber crops to financial maturity or size and generally used to provide habitat or nontimber values.

Salvage Cutting - See **Intermediate cutting**

Sapling - See **Size Class**

Sawtimber - See **Size Class**.

Seed Tree Cutting - See **Regeneration Cutting**.

Seedling - See **Size Class**.

Seep (Seepage) - Groundwater (as opposed to surface flow) escaping through or emerging from the ground along an extensive line or surface, as contrasted with a spring where water emerges from a localized spot..

Selection cutting - See **Regeneration Cutting**.

Selective cutting - a cutting that removes only a portion of trees in a stand. Note: selective cutting is a loose term that should not be confused with cutting done in accordance with the selection method, is not a recognized silvicultural system and is often synonymous with or associated with High Grading.

Shelterwood Cutting - See **Regeneration Cutting**.

Silviculture - the theory and practice of controlling forest establishment, composition, structure and growth.

Silvicultural prescription - a detailed, quantitative plan, at the stand level of resolution, for conducting a silvicultural operation.

Silvicultural System - a program for the treatment of a stand throughout a rotation. An even-aged system deals with stands in which the trees have no or relatively little difference in age. An uneven-aged system deals with stands in which the trees differ markedly in age.

Site - the combination of biotic, climatic, topographic, and soil conditions of an area; the environment at a location.

Site index – See **Site Quality**.

Site preparation - Hand or mechanized manipulation of a site designed to enhance the success of regeneration.

Site quality - the inherent productive capacity of a specific location (site) in the forest affected by available growth factors (light, heat, water, nutrients, anchorage); often expressed as site index – the height of the average tree in an even-aged stand at a given age. In New England 50 years is generally used as the base age.

Size Class:

Seedling: a young tree, less than sapling size of seed origin.

Sapling: a tree greater than 1" dbh and less than 4.9" dbh.

Poletimber: a tree greater than 4.9" dbh and less than sawtimber size.

Sawtimber: a tree greater than 11.0" dbh having at least 8' of usable length and less than 50% cull.

Slash - tops, branches, slabs, sawdust or debris resulting from logging or land clearing operations.

Slope, steep - An area where the average, sustained slope is greater than 50%. See **Grade**.

Snag - a standing dead tree, greater than 20' tall, which has decayed to the point where most of its limbs have fallen; if less than 20' tall it is referred to as a *stub*. A hard snag is composed primarily of sound wood, generally merchantable and a soft snag is composed primarily of wood in advanced stages of decay and deterioration. See **Biological legacy**.

Special concern, Species of - see **Rare species**

Stand - a community of trees possessing sufficient uniformity as regards composition, constitution, age, spatial arrangement or condition to be distinguishable from adjacent communities, so forming a silvicultural or management entity.

Stand Structure - A description of the distribution and representation of tree age and size classes within a stand.

Even-aged, single-storied: Theoretically, stands in which all trees are one age. In actual practice, these stands are marked by an even canopy of uniform height characterized by intimate competition between trees of approximately the same size. The greatest number of stems are in a diameter class represented by the average of the stand. The ages of the trees usually do not differ by more than 20 years.

Even-aged, two-storied: Stands composed of two distinct canopy layers, such as, an overstory and understory sapling layer possibly from seed tree and shelterwood operations. This may also be true in older plantations where tolerant hardwoods may become established as management intensity decreases (burning and other means of understory control). Two relatively even canopy levels can be recognized in the stand. Both canopy levels tend to be uniformly distributed across the stand. The average age of each level differs significantly from the other.

Uneven-aged (sized): Theoretically, these stands contain trees of every age on a continuum from seedlings to mature canopy trees. In practice, uneven-aged stands are characterized by a broken or uneven canopy layer. The largest number of trees is in the smaller diameter classes. As trees increase in diameter, their numbers diminish throughout the stand. Generally, a stand with 3 or more structural layers may be considered as uneven-aged.

Mosaic: At least two distinct size classes are represented and these are not uniformly distributed, but are grouped in small repeating aggregations, or occur as stringers less than 120 feet wide, throughout the stand. Each size class aggregation is too small to be recognized and mapped as an individual stand. The aggregations may or may not be even-aged.

Stocking - the degree of occupancy of an area by trees. In even-aged stands, stocking levels are expressed as different levels (A, B and C) based upon stocking guides that use tree diameter, basal area and number of trees per acre. The A level represents the density of undisturbed even-aged stands. The B level represents the minimum density for maximum basal area and cubic foot growth. The C level represents both the minimum stocking of acceptable growing stock to make a stand suitable for management for timber products and represents 10 years growth below the B level.

Overstocked: stands above the "A" level of stocking for their forest type, tree density and size class.

Fully stocked: stands between the "A" and "C" levels of stocking for their forest type, tree density and size class.

Understocked: stands below the "C" level of stocking for their forest type, tree density and size class.

In uneven-aged stands, stocking is based on residual basal area, maximum tree size and a ratio known as "Q" which is a mathematical expression of the desired diameter distribution.

Structure, horizontal - the spatial arrangement of plant communities; a complex horizontal structure is characterized by diverse plant communities within a given geographic unit.

Structure, vertical - the arrangement of plants in a given community from the ground (herbaceous and woody shrubs) into the main forest canopy; a complex vertical structure is characterized by lush undergrowth and successive layers of woody vegetation extending into the crowns of dominant and co-dominant trees. (See *crown class*.)

Stumpage value - the commercial value of standing trees.

Succession - the natural series of replacements of one plant community (and the associated fauna) by another over time and in the absence of disturbance.

Sustained yield - historically, a timber management concept in which the volume of wood removed is equal to growth within the total forest. The concept is applicable to nontimber forest values as well.

Thinning - See **Intermediate cuttings**.

Threatened species - See **Rare species**.

Tolerance - a characteristic of trees that describes the relative ability to thrive with respect to the growth factors (light, heat, water nutrients, anchorage). Usually used to describe shade tolerance: the ability of a species to thrive at low light levels.

T.S.I. - timber stand improvement; a loose term comprising all intermediate cuttings made to improve the composition, constitution, condition and increment of a timber stand. The practice may be commercial; yielding net revenues or precommercial or noncommercial; where the cost of accomplishing the work exceeds the value of the products removed.

Unacceptable Growing Stock (UGS) - See **Management Potential**.

Understory - the smaller vegetation (shrubs, seedlings, saplings, small trees) within a forest stand, occupying the vertical area between the overstory and the herbaceous plants of the forest floor.

Uneven-aged stand - See **Stand Structure**

Vernal or autumnal ponds - a class of wetland characterized by small, shallow, temporary pools of fresh water present in spring and fall, which typically do not support fish but are very important breeding grounds for many species of amphibians. Some species are totally dependent upon such ponds; examples are spring peepers and mole salamanders.

Volume, tree - the contents of the merchantable portion of a tree, expressed either as 1.) Board foot volume, where a board foot is equivalent to a piece of wood 12" x 12" x 1" thick, excluding the waste inherent in processing; 2.) Cubic foot volume with no waste attributed to processing; 3.) Cord volume, where 80 cubic feet of solid wood are equivalent to one cord. One cord of wood contains 128 cubic feet of air, bark and wood or 4.) Tons of oven-dry wood.

Water Bar - a shallow depression, 12" to 36" wide, cut across a dirt road or skid trail at approximately a 30 degree angle to its alignment, for the purpose of diverting the overland flow of water from the surface of the road. See **Broad-based dip**.

Wildlife tree - a live or dead tree designated for wildlife habitat or retained to become future wildlife habitat.

Attachments

The following components of the management plan are included as separate documents:

Baxter Woods Soil Report, Natural Resource Conservation Service.

**Maine Natural Areas Program & Department of Inland Fisheries and Wildlife
Report**

November 1, 2019

This report provides results from transect bird surveys conducted at Baxter Woods Park during the nesting season and fall migration 2019

Inquiries about this work and report may be directed to **Patrick Keenan** at:
patrick.keenan@briloon.org

Biodiversity Research Institute

276 Canco Road

Portland, ME 04106

Introduction

Biodiversity Research Institute conducted bird surveys at the Mayor Baxter Woods Park in Portland, ME. This property was donated by Governor Percival Baxter in 1946 for the purpose to “Forever to be held in trust for public purposes and as a sanctuary for wild birds.” At the request of the City of Portland Biodiversity Research Institute conducted bird surveys:

- Determine nesting or breeding bird species present
- Survey of migratory birds (fall)
- Provide recommendations for bird habitat improvements

Surveys occurred in the summer and fall of 2019 but not during spring migration or the winter.

The “Forest and Wildlife Habitat Management Plan for Mayor Baxter Woods” (18 May 2018 from Forest Synthesis LLC) (hereafter, ‘Management Plan’) provides an excellent description of the property and its habitats and outlines various goals and objectives to guide management activities for the property. Our focus is to provide information about birds on the property and align general goals with input specific to activities that will promote bird diversity and abundance on the property.

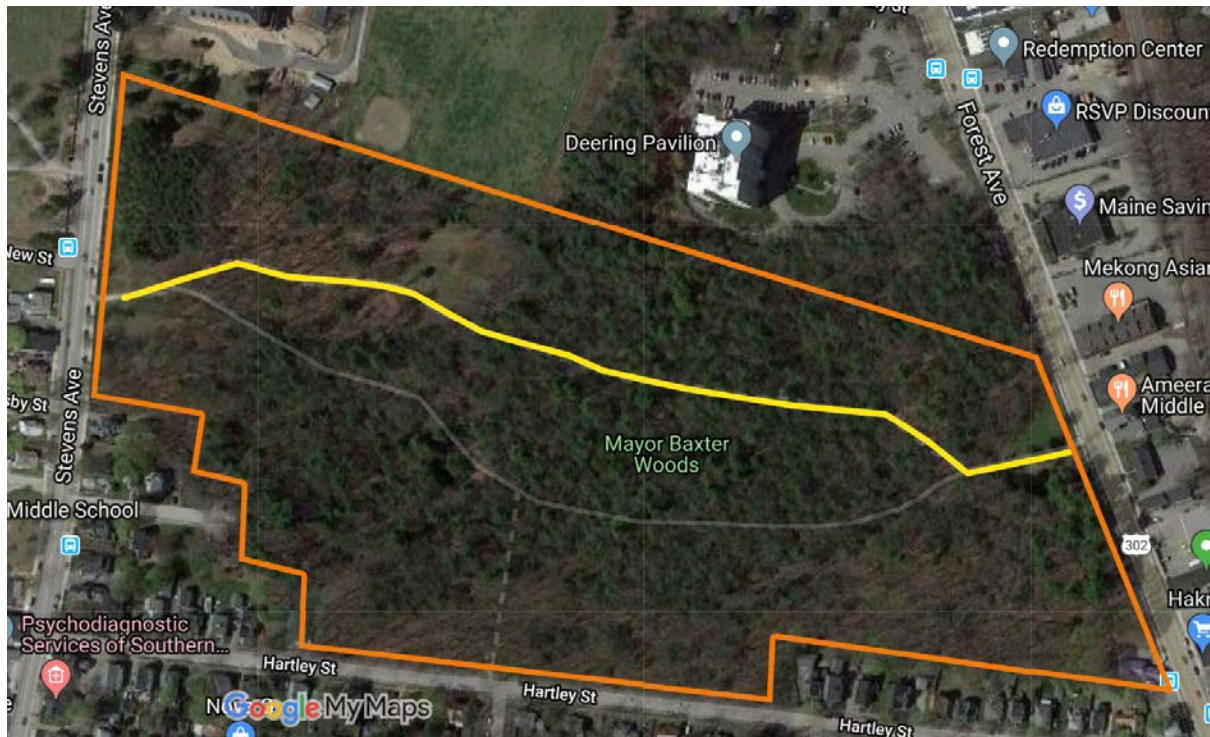
Mayor Baxter Woods Property

The management plan established the ‘cover type’ and ‘land use’ as shown in the following table. The property is approximately 32.46 acres and is dominated by mixed forest with portions of Coniferous and Deciduous forest. There are several access points / trailheads along Forest Avenue and Stevens Avenue and the property abuts backyards on Hartely Street.

Cover Type/Land Use	Area (acres)
Deciduous forest	5.57
Coniferous forest	1.03
Mixed forest	22.98
Meadow/shrub	0.87
Shade tree/mown grass	1.47
Pond	0.22
Parking	0.10
Abutter encroachment	0.22
Total	32.46

The forest patch represents forest dominated by Pine-Oak Woodland plant community with many large and old trees. It also includes stands of Hemlock. The forest of Mayor Baxter Woods is remarkably lacking in understory vegetation. This is likely due to the mixed use of recreation (dog walking-both on and off leash, biking, and child play) and the lack of defined trails. This has implications for the diversity of birds present in the forest.

The map image of Mayor Baxter Woods below provides the approximate outline of the property (orange) and the travel transect used for bird surveys (yellow).



Survey Methods

We used line transect surveys to determine the presence and abundance of birds in Mayor Baxter Woods. Surveys began at dawn in the breeding season and lasted 40 minutes. The exact positions of first detection for birds were recorded and we documented both the location along the transect and distance from the transect to define the spatial arrangement of animals. Every individual detected was recorded. Position along transect was estimated using a GPS. Birds were detected by sight and sound. Both sides of the trail were scanned visually to increase the chance of detecting a bird in that fashion. Finally, additional information on breeding status of the birds were included where relevant including finding nests, nest-

building activities, or carrying food for integration of these data into Maine's 2nd Breeding Bird Atlas.

Results

Family	Species (Common Name)	Species (Scientific Name)	Number of Surveys Encountered	Maximum Number Observed	Breeding Confirmed
Trochilidae	Ruby-throated Hummingbird	<i>Archilochus colubris</i>	1	1	
Picidae	Downy Woodpecker	<i>Dryobates pubescens</i>	1	2	yes
Picidae	Hairy Woodpecker	<i>Dryobates villosus</i>	2	2	yes
Picidae	Pileated Woodpecker	<i>Dryocopus pileatus</i>	2	2	
Tyranidae	Eastern Wood Pewee	<i>Contopus virens</i>	2	3	yes
Hirundidae	Tree Swallow	<i>Tachycineta bicolor</i>	1	1	
Corvidae	American Crow	<i>Corvus brachyrhynchos</i>	1	5	
Corvidae	Blue Jay	<i>Cyanocitta cristata</i>	1	1	yes
Paridae	Black-capped Chickadee	<i>Poecile atricapillus</i>	2	3	yes
Paridae	Tufted Titmouse	<i>Baeolophus bicolor</i>	1	1	
Mimidae	Gray Catbird	<i>Dumetella carolensis</i>	2	2	yes
Vireonidae	Red-eyed Vireo	<i>Vireo Olivaceus</i>	2	10	yes
Parulidae	Black-throated Green Warbler	<i>Setophaga virens</i>	2	2	yes
Parulidae	Chestnut-sided Warbler	<i>Setophaga pensylvanica</i>	1	1	yes
Icteridae	Brown-headed Cowbird	<i>Molothrus ater</i>	1	1	
Cardinalidae	Northern Cardinal	<i>Cardinalis cardinalis</i>	1	1	yes
Fringillidae	American Goldfinch	<i>Spinus tristis</i>	2	4	
Passerellidae	Chipping Sparrow	<i>Spizella passerina</i>	2	4	yes

Breeding Season. The following table provides details of the bird species detected in Mayor Baxter Woods during the breeding season. Surveys occurred on June 25 and July 4 in 2019.

We documented 11 species of nest bird species at Baxter Woods during our surveys. We detected an additional 7 species that were not confirmed to be breeding at the site during the nesting period. None of these species are unusual or listed as Endangered or Threatened by Maine Inland Fisheries and Wildlife Service (Appendix 1).

Fall Migration.

The following table lists bird species observed during fall surveys on September 13, October 3, October 21 in 2019. We show the Number of surveys each species was detected on and the maximum number of individuals detected.

Family	Species (Common Name)	Species (Scientific Name)	Number of dates detected of three	Maximum number of individuals detected
Anatinae	Mallard Duck	<i>Anas platyrhynchos</i>	1	2
Laridae	Herring Gull	<i>Larus argentatus</i>	2	1
Columbiformes	Rock Pigeon	<i>Columba livia</i>	1	2
Picidae	Downy Woodpecker	<i>Dryobates pubescens</i>	3	2
Picidae	Hairy Woodpecker	<i>Dryobates villosus</i>	1	1
Picidae	Northern Flicker	<i>Colaptes auratus</i>	1	2
Picidae	Red-bellied Woodpecker	<i>Melanerpes carolinus</i>	1	1
Picidae	Yellow-bellied Sapsucker	<i>Sphyrapicus varius</i>	1	1
Sittidae	White-breasted Nuthatch	<i>Sitta carolinensis</i>	3	3
Tyranidae	Eastern Phoebe	<i>Sayornis phoebe</i>	1	1
Corvidae	American Crow	<i>Corvus brachyrhynchos</i>	3	6
Corvidae	Blue Jay	<i>Cyanocitta cristata</i>	3	2
Certiidae	Brown Creeper	<i>Certhia americana</i>	3	2
Paridae	Black-capped Chickadee	<i>Poecile atricapillus</i>	3	13
Paridae	Tufted Titmouse	<i>Baeolophus bicolor</i>	1	2
Vireonidae	Warbling Vireo	<i>Vireo gilvus</i>	1	1
Mimidae	Northern Mockingbird	<i>Mimus polyglottos</i>	1	1
Regulidae	Ruby-crowned Kinglet	<i>Regulus calendula</i>	2	4
Turdidae	American Robin	<i>Turdus migratorius</i>	3	3
Parulidae	American Redstart	<i>Setophaga ruticilla</i>	1	2
Parulidae	Black-and-white Warbler	<i>Mniotilta varia</i>	1	3
Parulidae	Bay-Breasted Warbler	<i>Setophaga castanea</i>	1	2
Parulidae	Blackpoll Warbler	<i>Setophaga striata</i>	1	2
Parulidae	Black-throated Blue Warbler	<i>Setophaga caerulescens</i>	1	1
Parulidae	Black-throated Green Warbler	<i>Setophaga virens</i>	1	8
Parulidae	Common Yellowthroat	<i>Geothlypis trichas</i>	1	3
Parulidae	Nashville Warbler	<i>Oreothlypis ruficapilla</i>	1	4
Parulidae	Northern Waterthrush	<i>Parkesia noveboracensis</i>	1	1

MAYOR BAXTER WOODS BIRD SURVEYS

Parulidae	Tennessee Warbler	<i>Oreothlypis peregrina</i>	1	1
Parulidae	Yellow-rumped Warbler	<i>Setophaga coronata</i>	3	4
Cardinalidae	Northern Cardinal	<i>Cardinalis cardinalis</i>	1	1
Cardinalidae	Rose-breasted Grosbeak	<i>Pheucticus ludovicianus</i>	1	1
Fringillidae	American Goldfinch	<i>Spinus tristis</i>	3	2
Fringillidae	House Finch	<i>Haemorhous mexicanus</i>	3	2
Passerellidae	Song Sparrow	<i>Melospiza melodia</i>	3	1
Passerellidae	White-throated Sparrow	<i>Zonotrichia albicollis</i>	2	11
Passeridae	House Sparrow	<i>Passer domesticus</i>	2	4

Observations during surveys during fall migration detected 37 species at Mayor Baxter Woods. None of these species are unusual or listed as Endangered or Threatened by Maine Inland Fisheries and Wildlife Service (Appendix 1).

Discussion and Recommendations

Mayor Baxter Woods provides habitat for nesting birds and supports birds during fall migration. We did not observe species that are endangered or threatened in Maine. We did not conduct surveys during the spring or winter given the timeline for this project. Bird migration is seasonal and can be highly variable with large numbers of birds appearing one day and disappearing the next.

The absence of ground or near ground nesting bird species at Mayor Baxter Woods is striking but not surprising given the mixed recreational use of the park and the lack of understory vegetation. Indeed, the use of the property seems dominated by dog walkers (both on leash and off leash). Impacts to bird diversity and abundance due to disturbance by dog walking and is well documented (Mallord et al. 2007). Additionally, the urban park setting likely hosts other nest predators including raccoons, foxes, feral cats, and squirrels. Notably lacking were species of thrush (Veery, Hermit Thrush), Ovenbird, Song Sparrow, all of which are common in nearby forest patches but were not observed nesting at Baxter Woods.

Habitat enhancements to increase understory vegetation may increase bird use but should coincide with changed to other park regulations, such as clearly defining trails, allowing dogs only on leash, and providing information for public visitors that highlight the parcel as bird friendly and offer guidance to limit impacts to birds such as staying on trails and keeping dogs on a leash. Attracting birds through habitat modifications under the current recreational use plan may lead to birds attempting to nest but failing due to disturbance, or worse being predated.

In addition, as mentioned in the Management Plan, restoration of habitats should include native species and management of invasive species to offer higher quality bird habitat.

A review of e-bird data supports that compared to adjacent areas (Evergreen Cemetery and Capisic Pond trails) Baxter Woods is not routinely visited by birdwatchers. Evergreen Cemetery and Capisic Pond are well known birding hotspots with three birding hotspot location in ebird with 139 species and 181 checklists, 157 species and 525 checklists, and 197 species and 2355 checklist contributed by birdwatchers. Comparatively, birdwatchers have submitted 32 checklists that documented 32 species at Mayor Baxter Woods. Connecting these two nearby sites for birdwatchers may help increase the appreciation of this parcel by birdwatchers and the community more broadly.

References

Mallord, J. W., P. M Dolman, A. F. Brown, and W. J. Sutherland. (2007). Linking recreational disturbance to population size in a ground-nesting passerine. *Journal of Applied Ecology* 44:185-195.

Appendix 1

Maine Endangered and Threatened Bird Species

Maine's Endangered Bird Species

- American Pipit (*Anthus rubescens*) (breeding population only)
- Black-crowned Night Heron (*Nycticorax nycticorax*)
- Black Tern (*Chlidonias niger*)
- Golden Eagle (*Aquila chrysaetos*)
- Grasshopper Sparrow (*Ammodramus savannarum*)
- Least Bittern (*Ixobrychus exilis*)
- Least Tern (*Sterna antillarum*)
- Peregrine Falcon (*Falco peregrinus*) (breeding population only)
- Piping Plover (*Charadrius melodus*)
- Roseate Tern (*Sterna dougallii*)
- Sedge Wren (*Cistothorus platensis*)

Maine's Threatened Bird Species

- Artic Tern (*Sterna paradisaea*)
- Atlantic Puffin (*Fratercula arctica*)
- Barrow's Goldeneye (*Bucephala islandica*)
- Common Gallinule (*Gallinula chloropus*)
- Great Cormorant (*Phalacrocorax carbo*) (Breeding population only)
- Harlequin Duck (*Histrionicus histrionicus*)
- Razorbill (*Alca torda*)
- Short-eared Owl (*Asio flammeus*) (Breeding population only)
- Upland Sandpiper (*Bartramia longicauda*)

Habitat Restoration area in Baxter Woods

Robert Bryan <rrbryan.54@gmail.com>

Wed, May 29, 2019 at 1:40 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>

Cc: Eric Topper <etopper@maineaudubon.org>, Doug Hitchcox <dhitchcox@maineaudubon.org>, Jeff Tarling <jst@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>

During our May 17 field walk I agreed to make a base map that could be used for planning in the bird habitat restoration area.

Please review the attached map and make sure that it includes the entire area that we discussed and let me know if other changes are needed.

Among the ideas that we discussed and/or that are in the 2018 management plan:

- **Red Pine.** Possible thinning to encourage understory and midstory development. Consider closing the trail on the east side of this stand.
- **Red Oak and Red Oak-White Pine.** Understory development is generally good. Allow stand to develop naturally.
- **Shrub and Meadow.** Allow meadow to develop into old-field habitat. Options might include planting native wildflowers for pollinators and/or planting native cool season grasses to improve habitat. Develop and maintain shrubby margins; periodic brush cutting in some areas (for example, the sumac stand) can help maintain the shrub habitat type.
- **Red Oak - White Pine - Hemlock.** Promote understory development by planting shade-tolerant native shrubs. Take steps to limit impacts to the fringe of the vernal pool. Consider excavating the pool in the middle (to perhaps 2 feet in depth) to provide a longer hydroperiod. Protect selected hemlock legacy trees against hemlock woolly adelgid. Consider moving the walking path nearer to the north line to provide a larger area of undisturbed habitat in this area.

All areas:

- Dogs on leash during the bird breeding season throughout Baxter Woods. (I recall we discussed possibly more stringent regulations within the habitat restoration area).
- Control invasive plants
- Eradicate aggressive non-native plants, notably Linden (*Tilia cordata*)
- Use brush, downed logs, etc. to keep foot traffic and pets n trails
- Develop educational materials and programs.

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Bird Habitat Restoration Area_Baxter Woods.jpg
1364K



MEMORANDUM

TO: Sally DeLuca, Director
Department of Parks, Recreation & Facilities

FROM: Jen Thompson, Associate Corporation Counsel

DATE: February 10, 2020

Re: Leash Restrictions for Dogs in Baxter Woods

I understand that the Sustainability & Transportation Committee is considering a recommendation, advanced by the Department of Parks, Recreation & Facilities, to amend Chapter 5 of the City's Code of Ordinances in order to place new restrictions on the presence of off-leash dogs in Baxter Woods. Currently, Chapter 5 of the City's Code permits dogs to be off-leash in Baxter Woods so long as they are under voice control. See Chapter 5, Section 5-15.1(e). The proposal now being advanced by staff seeks to impose limited restrictions on the presence of off-leash dogs in Baxter woods in order to better fulfill the City's charge to maintain Baxter Woods as a bird sanctuary and to address public safety concerns. Specifically, staff are recommending the following restrictions:

- April 1 through July 31, annually: Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- August 1 through March 31, annually: Dogs permitted off-leash and under voice control from 5am to 9am, and from 5pm to 10pm. From 9am to 5pm, dogs must be on 8-foot leash. During the July 18, 2019 meeting, the evening start time for off leash hours was amended from 5pm to 3pm.
- Habitat Restoration Area: In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year-round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas.

In connection with staff's recommendation and the Committee's consideration of the pending proposal, this office has been asked to provide guidance on the extent to which imposing leash restrictions for dogs in Baxter Woods is necessary or permissible under the City's Code and/or the 1946 deed from Governor Percival Baxter, conveying the land to the City of Portland.

As requested, I offer the following thoughts as guidance for the Committee and the Council:

The City Council has broad discretion to manage its parks as it sees fit, so long as it does so in a manner that is consistent with the City Code and any other regulations governing the use of those lands. It is under this broad authority that the City has long regulated where in the City dogs may be off leash and where leashes are strictly required. Those restrictions are outlined in Chapter 5 of the City's Code. As with all of its ordinances, the City Council is free to amend Chapter 5 in order to revise existing leash requirements as it sees fit in its legislative discretion – again, so long as it is not otherwise prohibited from doing so. Given the City's broad discretion under its police powers, the only restriction other than the

City Code that might limit the Council's regulatory authority over Baxter Woods is the language of the deed conveying the land to the City.

As the Committee is aware, one of the bases for staff's recommendation that off-leash dogs be restricted in Baxter Woods is a requirement outlined in the language of the deed that Baxter Woods be maintained as a "bird sanctuary." According to staff, the presence of off-leash dogs in the park have negatively impacted bird and wildlife habitat and breeding, particularly by ground-nesting birds, thereby inhibiting the City's ability to optimally satisfy the purpose of Governor Baxter's vision for the use of the land.

The deed from Governor Baxter to the City requires that "Mayor Baxter Woods," so-called, must be retained by the City for the benefit of the people of Portland subject to a number of terms, restrictions, reservations and conditions. The restrictions enumerated in the deed include, in pertinent part, requirements that the land:

1. Shall forever be retained and used by [the City] in trust for the benefit of the people of Portland as a Municipal Forest and park and for public recreational and educational purposes the same forever to be known as "Mayor Baxter Woods;"
2. shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians . . .
3. shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom

Although the language of the deed expressly requires that the land be "kept in its natural wild state and as a sanctuary for wild birds," there is no mention of dogs or any requirement as to whether they be permitted or excluded. As such, it does not appear to me that the City Council is required to permit dogs to be off leash dogs in Baxter Woods, nor is it required to prohibit them. Rather, the Council is free to exercise its broad discretion to decide, as a policy matter, whether and to what extent it wishes to apply its leash laws in Baxter Woods, just as it does in other City parks. In making that decision, it is certainly free to weigh whether, as staff suggests, limiting off leash dogs will better allow the City to meet its obligation to maintain the park as a bird sanctuary or, as suggested by others, doing so would negatively impact its use as a "park . . . for public recreational . . . purposes." That consideration and balancing of differing policy objectives is entirely in line with the Council's authority over its public spaces and with its exercise of legislative discretion.

Baxter Woods Leash Law Implementation Timeline

February 2020

Consideration by Sustainability and Transportation Committee

March 2020

Pending recommendation from Sustainability and Transportation Committee, Corporation Counsel would review the actual text changes to the ordinance to be included with proposal to full Council. (Chapter 5).

April 2020

Consideration by full City Council

April--May 2020

Habitat restoration efforts begin with community plantings (regardless of Council action). Habitat restoration can take place on an ongoing basis into the future (not dependent on any action from Council)

April--May 2020

Water quality testing to be undertaken by the City. Possible Spring bird surveys could take place in the Spring as well (previous bird surveys covered summer and fall season, so spring data would be desirable so that impacts of policy changes can be measured in the future against this baseline data).

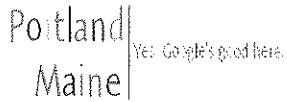
May 2020

Pending Council decision, May would serve as a month to educate visitors to Baxter Woods with signage, etc...

June 2020

Enforcement effective date June 1, 2020 (pending Council action).

Followup monitoring into the future: bird populations, water quality, forest ecology.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Adrienne Fine <adrienne.fine@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 6, 2020 at 8:29 AM

Thank you,

I am very glad to see that it is only 9am-3pm for leash laws. I thought it was until 5pm which was concerning. Ideally it would be 10am-3pm to allow folks a little more time on weekend mornings, especially in the winter when it is very cold before 9am.

I still think the 4 months during the nicest time of year where dogs must be on a leash all the time is overkill and a serious concern for those who live in the neighborhood. I think the restoration area makes sense though!

I appreciate your response and sending this to me.

Adrienne

On Thu, Mar 5, 2020 at 5:20 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Adrienne,

Thanks for the email.

You'll be glad to know that what is currently being proposed is to set specific hours and locations for off-leash voice control dogs in Baxter Woods. The current proposal does not aim to exclude them all together.

I've attached the proposal for you. It also includes a lot of information on your bird questions.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov



On Wed, Mar 4, 2020 at 10:25 AM Adrienne Fine <adrienne.fine@gmail.com> wrote:

Hi Ethan,

I hope you are well. I just sent the following email to the City Councilors regarding the Baxter Woods Leash Law but also wanted to send it to you, who I've communicated with before on this issue, to make sure it is part of any upcoming public hearing process.

I've been meaning to attend the City Council committee meetings on the Baxter Woods leash law issue, but have been unable to. I am writing to urge you to vote down the current leash law going to the council. I understand that some leash law will likely be implemented but the one proposed is very restrictive. Would the council consider leash law hours of 10am-3pm Monday through Friday all year, and at other times allow off leash dogs?

I live near Baxter Woods and have a small dog, who I walk in the woods multiple times a week. I understand that the schools use the woods and that some children are afraid of dogs, so I am fine with leash laws during school hours.

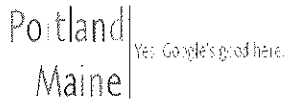
I have heard the bird sanctuary argument but I have never seen ground nesting birds in the woods. When Baxter Woods was deeded as a bird sanctuary I understand that was to prevent people from shooting birds or hunting birds in that area. There are many skunks and raccoons and even fox living in the woods so the likelihood of birds nesting on the ground doesn't make any sense due to these natural predators. Restricting dogs during a time of year or from certain areas due to birds seems useless considering these other predators.

Baxter woods was also deeded to be dog friendly. The availability of dog friendly and off-leash areas in the City is becoming more limited. Many people selected this neighborhood because it is dog friendly. Taking away off-leash entirely does not feel dog friendly. Most parks in Portland require dogs to be on a leash, so this is one of the few havens for working people to give their dogs some quick off-leash exercise throughout the week without having to drive outside of the City limits. Restrictive leash laws like those proposed will continue to drive people out of the City.

Please consider implementing leash laws only Monday through Friday 10am to 3pm, and if necessary those same hours on Saturday and Sunday too. Extending leash laws to 5pm or for all hours through the spring and summer months completely removes the dog friendly aspect of the Deering neighborhood. Who is going to use this park if it isn't dog owners? While I'm walking in Baxter Woods I'd say 95% of people have dogs.

Thank you,
Adrienne Fine

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

**Ethan Hipple** <ehipple@portlandmaine.gov>

Baxter Woods leash law proposal

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 6, 2020 at 12:47 PM

To: Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com>

Cc: Alex Marshall <amarshall@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi Carolyn,

Our dog waste numbers came from observations from Park Rangers during their regular patrols of the Woods. It is not meant to be a comprehensive count of every piece of dog waste in the park, but merely what we see while we make our routine visits. Thanks for your help in picking up dog waste! Every bit helps.

I have attached the current proposal for you. The hours and dates contained in this memo are what the Sustainability and Transportation Committee recommended at their 2/26 meeting.

There have been many questions about how to create an effective boundary to delineate the habitat restoration area without introducing fencing, etc... this was discussed at the Sustainability and Transportation Committee meeting. One effective way to establish that boundary is to make the Northern Carriage Path and all of the land north of the Northern Carriage Path off limits to off-leash dogs. This would have the effect of keeping off-leash dogs out of the Habitat Restoration area and providing an on-leash trail. We have heard from dog owners who prefer to keep their dogs on leash for various reasons, or who have dogs that don't socialize well with off-leash dogs. This on-leash path would simultaneously create a border for the habitat restoration area and give those people and pets a place to enjoy the woods as well.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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207-808-5400

ehipple@portlandmaine.gov

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On Tue, Mar 3, 2020 at 10:52 AM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:

Hi Ethan,

I hope that you are caught up, always tough after being away.

As I mentioned, I am wondering about a few things that were not clear from the information conveyed to me

from the meeting (I was unable to attend).

First, how was the poop data collected? I am not disputing the amount cited, as I go through periods of obsessively picking up every one I see and my numbers are fairly high. I just wonder how is it possible to arrive at an accurate count? The only way I can think of would be to divide the park into sections and have enough people to simultaneously count each section on a specific day. . . and then maybe repeat this procedure a few times. The noticeable poops vary quite a bit with weather, as they disappear after a storm and then reappear with a thaw. I can create a clean walk on my route only to have it sullied by a thaw (and/or some new visitors) by the next day. I know of some others who are diligent about picking up extra droppings, yet my fear is that new laws will do nothing to encourage compliance and may in fact have the opposite effect as our group may not be able to entice participation in frequent cleanup days.

Second, there is a lot of confusion about the off leash hours. The paper reported before 9 a.m. and after 5 p.m., while the proposal had been modified to off-leash after 3 p.m. No one seems to know for sure what was passed last week, although we do realize that the full Council could amend the proposal.

Finally, I have been hearing about blocking off-leash dogs from Stevens to Forest on the main path on the Motherhouse side. Again, there is a lot of speculation and confusion, and it would be helpful to learn what has actually been planned.

best wishes,

Carolyn

p.s. The trails have been treacherous this past week, as the cycle of thawing and refreezing results in glare ice with water, and the park has been relatively quiet as a result. I mentioned the issues around increased risks of falling with dogs on leash in my last email, and I do hope that consideration will be given to certification for dogs under voice control. This would at least offer owners motivation for both training and proving that their dogs are under voice control and so reduce their risk of injury if they have to walk in daylight hours.

On Sun, Mar 1, 2020 at 1:00 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks for your comments Carolyn. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov



On Wed, Feb 26, 2020 at 7:52 AM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:
another aspect of the leash law proposal that I would like to bring to your attention:

The Parks Department has repeatedly stated that they do not have the resources to enforce current rules and that they tried education (e.g., signage) and it did not work.

I would like to suggest that you give strong consideration to our proposed 10-2 (as compared to 9-3) on-leash compromise. This would provide the following positive benefits:

1. a significantly shorter time span for enforcement of new rules (which should, in turn, increase compliance and may be more feasible within the City's budget)
2. allow dog walkers more time during daylight and warmer hours during the cold, icy winter months
3. allow for parents of school-age children to walk their dogs after drop-off
4. give more time for shift workers to walk after work hours
5. enhance compliance, which in turn will help our Friends group in maintaining a cooperative relationship with the City (again, we would like to offer trainings, a means of communicating with school groups who might want to be in the woods prior to 10 a.m., regular clean-up days, etc.)
6. would still provide the dog phobic or those with reactive dogs on leash the prime hours of the day (I would gladly flip this around and take their hours!)

For reasons related to those cited above, I believe that more detailed analysis of the 4-month period of no dogs merits consideration.

Thank you for your consideration.

On Tue, Feb 25, 2020 at 3:41 PM Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com> wrote:
February 25, 2020

To: Spencer Thibodeau, Jill Duson, Belinda Ray
Cc: Ethan Hipple

From: Carolyn Ehringhaus (11 James St., Portland, ME 04103)

I am writing in support of keeping the most expansive off-leash rules as possible in Baxter Woods.

My greatest concerns focus on **health and safety**:

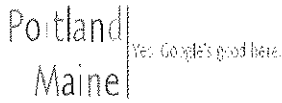
- 1: Baxter Woods is the only location that I dare walk with my dogs off leash due to the increasing prevalence of **tick-borne disease** such as Lyme, anaplasmosis, and babesiosis. Recent news releases highlight our local epidemic levels of these diseases, and there is no vaccination for humans (the canine vaccination is marginally effective, as many vaccinated dogs get Lyme). The lack of understory in Baxter woods is not conducive to deer who carry and drop huge numbers of reproducing ticks, as I have yet to see one in my 18 years of daily walks. All alternatives cited by the City for off-leash dogs are out of bounds for this reason (one of my two has a serious congenital heart disease and must be protected from all disease and injury).

2: Another topic that has received news coverage recently is the **increased injury rates among older adults due to falling while walking dogs on leash**. Walking, especially on the ice-covered trails as we see in BW throughout the winter, will be particularly dangerous even if wearing cleats. I do not go to the woods early and late in the day, as it is too cold and too dark and also does not fit with my other responsibilities. I rarely see many people during the daytime hours when I am there, yet I will now have to risk falling and breaking limbs every single day for months on end (I gave it a sample trial last week with my two dogs and almost went down a number of times – as a 67-year old woman with osteoporosis, my future prospects in getting my dogs their daily needed exercise are intimidating).

3: **Social connection:** Dogs are here to stay, with dog ownership increasing steadily; social scientists report greater happiness being reported by dog owners and many local seniors acquire dogs for company. With off-leash dogs, owners are able to connect with owners, dogs socialize with dogs, and everyone benefits. Dogs on leash changes this dynamic and greatly reduces any possibility of social interaction. **Social isolation** is real, and Portland's aging population will suffer as a consequence of the committee's precipitous decision. (This isolation is not limited to seniors as increasing numbers of younger adults work from home, stay-at-home mothers benefit from adult socialization during school hours, etc.)

On a different note, I can say that our #1 reason against leaving Portland has always been Baxter Woods, as we are fortunate to live nearby and have gotten to know most of our neighbors from our outings there. I have witnessed a number of other walkers say the same or even that they moved to this neighborhood because of the woods. The new laws will be a huge loss to many residents. Please reconsider, or at the very least delay until further data can be gathered concerning the actual day-to-day experiences of Portland's residents who rely on these woods. In addition, I hope that the Parks Department might consider working with the Friends of Mayor Baxter Woods group to pilot a **certification program** in order to have more leash-free time options in BW, as this could provide great incentives for responsible ownership.

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law Support

Ethan Hipple <ehipple@portlandmaine.gov>
To: Christopher Cutler <christopherjcutler@gmail.com>

Sun, Mar 1, 2020 at 12:59 PM

Thanks for your comments Chris. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 7:22 PM Christopher Cutler <christopherjcutler@gmail.com> wrote:

Greetings Councillors & Parks Department,

My name is Chris Cutler, I am a current resident of Portland, living on Clinton St. in the Deering Center neighborhood just a few blocks away from Mayor Baxter Woods. My fiancée, dog (Oscar), and I moved into our home this past September after a long search for dog-friendly residences in the area. We were drawn towards this particular neighborhood in no small part because of the beautiful public woods that are so easily accessible. Having this natural "escape" within walking distance has been an incredible aspect of our new location, especially because I work from home, and therefore take multiple walks to stretch my legs, clear my head, and decompress, every day. I bring Oscar walking with me as many times as I can, but lately it's become clear that Baxter Woods is not an inclusive space for dogs with moderate canine social anxiety such as him. A combination of vague rule definitions, little to no City enforcement, and inflexible park-goers has created an environment in which Oscar and I no longer feel welcomed or even understood. It is my intention to detail our experiences for you all to consider during your public committee meeting on Wednesday February 26th (unfortunately, I will be out of town on that date, but would otherwise make a public statement with content similar to what is in this email). I fear that there are many other citizens who have similar perceptions or experiences to my own, and who have not been appropriately

represented in the public dialogue as it relates to potential future leash law changes for Mayor Baxter Woods.

Our dog, Oscar, is a seven-and-a-half year old rescue, adopted by my fiancée in New Orleans while she was in undergrad at Tulane University. He was a “neglect” case, having been found as a stray multiple times before being taken in for good by the local ASPCA. He is an incredibly sweet and loving dog, always looking to make more human friends when we have guests over, or even while out on walks. That being said, Oscar generally does not have positive reactions when approached by unknown dogs. While he is more than able to have healthy and stable canine relationships (for example, with my parents’ and my fiancée’s parents’ dogs), the introductions require some serious, intentional planning and execution. Obviously, we do not expect to have the luxury of these intentional introductions with every dog we encounter - normally, on streets or sidewalks, we are able to communicate to other dog owners that Oscar does not like to be approached. This has generally been a good strategy for avoiding canine conflicts with other leashed dogs, but it becomes an almost impossible task when encountering some off leash dogs (and their respective owners) in Baxter Woods.

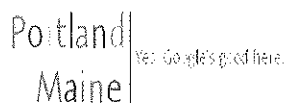
In my opinion, one of the main reasons why these incidents continue to occur is the vague nature of the current off-leash rules/laws. As it stands now, owners are required to have their dogs within 50 feet, and “under voice control” at all times. Unfortunately, there seems to be a wide range of interpretations with respect to what it really means for a dog to be under voice control. I think that dog owners who let their dogs wander off-leash in Baxter Woods do genuinely believe that their dogs are responsive to voice commands, in a vacuum. However, based on my many experiences of having off-leash dogs approach me and Oscar (oftentimes with no owner in sight), it’s apparent that the mere presence of another dog and/or human can interfere with the responsiveness of an otherwise well-behaved dog. In addition to the “squishy-ness” of this rule, the lack of enforcement within the Woods only encourages owners to continue their behavior. This can also lead to a sense of entitlement for those who may have technically not been following the rules, simply because they have never been told otherwise. I realize this attitude of some dog owners will make it challenging to make any changes to the current rules and/or enforcement, but it will certainly not be any easier to make these changes in the future if this “voice control” issue continues to go unaddressed. It is my hope that any future rule changes will be accompanied by strict enforcement of the new rules.

Ultimately, it is not my intention to entirely take away anyone’s privilege to walk in Baxter Woods with their dogs off-leash. I think the compromise solution proposed by the Parks Department is a great option that would continue to allow for off-leash activities, while giving those people in similar situations to mine a time of day / time of year when we can feel comfortable walking through the Woods without fear of being approached. Having these specific, enforced, on-leash periods in Mayor Baxter Woods would greatly improve our current quality of life, and would solidify my fiancée’s and my desire to remain in this neighborhood for years to come.

I appreciate the time and effort you’ve spent so far addressing this topic, and I thank you for reading and considering my experiences in preparation for your Committee meeting this Wednesday. If you have any questions in the meantime, don’t hesitate to contact me via email (christopherjcutler@gmail.com), or by phone at (860) 808-9887. I look forward to your decision and further City Council discussion.

Best,
Chris Cutler

--
Chris Cutler
B.S.E. Acoustical Engineering & Music
University of Hartford '15
(860) 808-9887



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>

Sun, Mar 1, 2020 at 12:59 PM

To: Nellie Wood <wood.nellie@gmail.com>

Thanks for your comments Nellie. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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212 Canco Rd, Suite A
Portland, Maine 04103
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ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 6:57 PM Nellie Wood <wood.nellie@gmail.com> wrote:

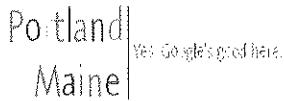
To Whom It May Concern:

I am writing in support of the compromise on the leash law in Baxter Woods.

I am a dog lover and in general I like that well-trained dogs have the opportunity to freely explore the outdoors, however, public parks should be able to be enjoyed by many different people. I live half a mile from the park and my sister was visiting with her 2 dogs, which were on leash. We were approached by two dogs without their owner in sight and were not able to move away from them, making one of the dogs very nervous. We were then yelled at by the dogs' owner for "not knowing the rules" and having leashed dogs in a leash-free park. It left me with a pit in my stomach and no interest in returning to the park anytime soon. I have other friends who live very close to the park but whose dogs have anxieties and have never been able to use this wonderful space.

A compromise would allow all dog owners, those who need to leash their dog, and those who don't, the ability to enjoy the park.

Thank you,
Nellie Wood



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law Support

Ethan Hipple <ehipple@portlandmaine.gov>
To: Tessa Wood <tessa.m.wood@gmail.com>

Sun, Mar 1, 2020 at 12:58 PM

Thanks for your comments Tessa. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
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ehipple@portlandmaine.gov

www.portlandmaine.gov



On Mon, Feb 24, 2020 at 11:34 AM Tessa Wood <tessa.m.wood@gmail.com> wrote:
Hello Councilors and Parks Department -

My name is Tessa Wood. I moved to Portland (Deering Center) this past September. I love where I live now, not least because it is barely a block from the Mayor Baxter Woods. I have a very sweet dog named Oscar. He immediately falls 100% in love with every human he meets, but he is not quite the same with other dogs. I got him when he was 2 (he's 7 now), so he already had some baked-in anxieties around other dogs. That's not to say we haven't worked hard to make his "social anxiety" better, but to a certain degree (just like with some humans), it's just a part of his hardwiring. Oscar has plenty of canine friends, but to forge those relationships, it took a lot of intentional training and introduction. Beyond basic obedience classes, Oscar has earned two higher level training certifications: Canine Good Citizen (CGC), and Advanced Canine Good Citizen (CGCA), both tests administered and recognized by the American Kennel Club. He is a good dog.

When looking for a place to live in Portland, I was very excited to find not only a dog friendly home, but also one that was so close to such a lovely place for walking Oscar (on leash). Unfortunately, it quickly became clear to me that the Baxter Woods were not a safe place to take Oscar.

I had thought that dogs being allowed off-leash in the Baxter Woods would be ok for Oscar, since the dogs were required to be under voice control within 50 feet of their owners. However, this is rarely adhered to, and it is a problem. Of course, there are dogs who are refreshingly well-trained, who come to their owners immediately when called, even in the excitement of seeing another dog. In the Baxter Woods, it seems that

these are the exceptions that prove the rule, so to speak. I have encountered a poorly trained off-leash dog almost every single time I've gone into the Woods. I tell the owner from afar to please not let their dog approach Oscar, and they call the dog, but the dog continues to approach us, often bounding all the way up to us. This has happened more times than I can count, and that's not even getting into the number of times an off-leash dog has approached us without another human in sight.

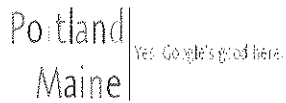
Both of these situations are stressful and deeply frustrating to me. I have stopped using the Woods altogether now, which breaks my heart; despite Oscar's anxiety in the face of being confronted by strange dogs, he loves the Woods when he feels safe, and so do I. But I don't feel that way.

I understand the appeal of having a place for one's dog to run free, and I understand why some other dog owners want to keep using the Baxter Woods the way they always have. But I want to be able to use the Baxter Woods at all. Right now, that is not possible.

Best,

Tessa M. Wood, RPT

Owner, Underdog Pianos
(207) 689-7848
www.underdogpianos.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash proposal

Ethan Hipple <ehipple@portlandmaine.gov>
To: ehowland@maine.rr.com

Sun, Mar 1, 2020 at 12:58 PM

Thanks for your comments Ethan. I am just getting back from being out of town and getting caught up on correspondence. Just wanted to let you know that your comments will be added to the compilation of written public comments on this issue as it progresses through the process of review by the full City Council.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov



On Sun, Feb 23, 2020 at 10:46 AM <ehowland@maine.rr.com> wrote:

Dear Spencer,

I can't go to the Sustainability Committee's meeting on Wednesday so I am writing to ask that you turn down the proposal to require dogs to be on leashes in Baxter Woods.

The proposal does more harm than good. It would hurt a community of hundreds of dog walkers who help keep the woods a safe, clean place to walk, talk and soak up a small slice of nature. The bonds between the people using the woods spills over into all our lives and makes Portland a better place to live.

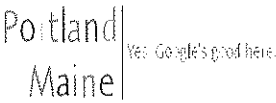
Meanwhile, current data indicate the bird population in the woods is similar to other areas such as Maine Audubon's Gilsland Farm in Falmouth.

If you don't reject the proposal, I hope you will table it to give the parks department more time to gather information about the bird population found in Baxter Woods.

Tabling the proposed ordinance would also give city staff time to work with the Friends of Baxter Woods to develop a balanced plan for how Baxter Woods is used that addresses everyone's concerns.

Thank you,

Ethan Howland
28 Mayland St.
828-5329



Ethan Hipple <ehipple@portlandmaine.gov>

baxter Woods

Debra Flynn <debra_ann@maine.usa.com>

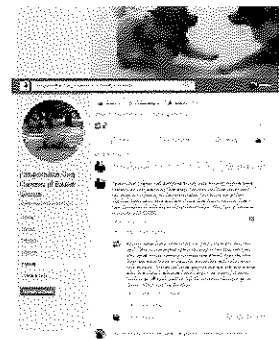
Thu, Jan 30, 2020 at 11:55 AM

To: "ehipple@portlandmaine.gov" <ehipple@portlandmaine.gov>

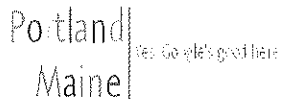
Hello,

The situation in Baxter Woods is now so unsafe that we can no longer go in there, even though we literally live next to it! I sent a screenshot of the latest, today, comment from another dog owner saying I should stay out of there. They do not live on this street, Hartley Street. Micheal who lives a doors up from me, also has been complaining as he has terriers that are molested constantly and has changed his walking habits as well due to these dogs. People are on their cell phones with ear pieces in not watching their off leash dog, not to mention them chasing the wildlife in a sanctuary as their owners talk umonst themselves. As you know I love these woods but now with the loose dogs even coming into our fewnced in portion of the yard it is way to stressful and unsafe please help. People are believing this is a dog park where they can bring their off leash dogs, not pick up after them or watch them.

Debra Ann Gorneault 207-387-3083
11 Hartley Street
Portland Maine



Screenshot_2020-01-30 Responsible Dog Owners of Baxter Woods - Posts.png
404K



Ethan Hipple <ehipple@portlandmaine.gov>

your email re baxter woods.

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Wed, Jan 8, 2020 at 11:40 AM

Thanks David,
I've received your comments and will pass them on to the Committee.

FYI, there are already rules regarding dogs and leashes in Baxter Woods. We are simply looking to change them to balance the needs of diverse park users and wildlife. However, we understand that there will be different opinions on the matter. Hopefully you can attend the meeting so you can learn more about the specifics and the rationale.

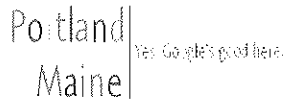
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
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ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 8, 2020 at 10:01 AM david victor <dvictor242@gmail.com> wrote:

I'm distressed by the proposal to have onleash rules for baxter woods, especially the restrictions in april through july 31. it's especially confusing since , from what i've gathered, the parks commission is planning to build a fence around an area to accommodate groundnesting birds. why restrict dogs then. it makes no sense. i certainly hope that , if the rules currently proposed are put into effect, the numerous outraged baxter woods community members consider alternatives, such as a referendum (a la peoples park) , to overturn this thoughtless revision that will effect so many for a minimal benefit.

david victor



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leashing

Jeff Levine <blumlevine@gmail.com>

Sat, Jan 11, 2020 at 5:36 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>, Troy Moon <thm@portlandmaine.gov>

Cc: "Ray, Belinda" <bsr@portlandmaine.gov>, "Thibodeau, Spencer" <sthibodeau@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>

To the Committee:

I am writing as a nearby resident who frequently uses Baxter Woods for recreation and exercise. I am also a dog owner. Until recently, I supported off-leash dogs in Baxter Woods. I was encouraged by the formation of a group to encourage responsible dog stewardship in the woods and hoped that the problem of a few bad apples wouldn't ruin things for all the responsible owners.

Unfortunately, I don't think the efforts to encourage good behavior have helped. This issue has been around for at least five years (see, for example, https://www.pressherald.com/2014/04/23/a_controversy_unleashed_/) and has not improved. I am still regularly run at by strange dogs, whose owners range from apologetic to indifferent. While I have not been physically hurt yet, I have had property damage. I don't see why people should have to continually put up with poor pet behavior when trying to have quiet enjoyment, in a place that is explicitly for quiet enjoyment. I have friends who will not allow their small children in the woods as a result of the loose dogs. I also have friends who are dog owners who will not allow their dogs in the woods, due to the loose dogs.

These woods were provided to the City for residents to share. I don't see why allowing dogs off-leash is such a high priority when there are other uses who suffer as a result. This is not the only place in the area that allows off-leash dogs. The woods behind Evergreen Cemetery are nearby, and much larger, without the inevitable conflicts that will occur in a small space such as Baxter.

The proposal for allowing dogs by time of day and year is a good first step, but I am not sure how that prevents the significant damage to the natural resources of the woods. I'd encourage the Committee to look at fencing off a portion of the woods as a dog park, perhaps the area right on Stevens or Forest Avenues, and leaving the rest as a leashed area. The bulk of the woods themselves should require leashing at all times of the day and year.

thanks,

Jeff Levine
10 Amherst Street



Ethan Hipple <ehipple@portlandmaine.gov>

Re: A compromise for dogs in Baxter Woods

shambaugh@zwi.net <shambaugh@zwi.net>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Jan 14, 2020 at 8:32 AM

Thank you!

On 2020-01-14 08:27, Ethan Hipple wrote:

Hi Ben,

Thanks for your thoughtful email. Your compromise proposal is very similar to the compromise proposal that will be presented to the Sustainability and Transportation Committee tomorrow night (5:30pm, Council Chambers). I've attached that for you. Hopefully you can be there.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Tue, Jan 14, 2020 at 8:19 AM <shambaugh@zwi.net> wrote:

Dear friends,

I am not able to make the hearing tomorrow and so am sending this to share a few thoughts and a possible compromise regarding dogs in Baxter woods. As you can see below, I have been walking dogs in Baxter Woods daily for more than 14 years. Since my dog died, I have been walking an elderly neighbor's dog there every morning. Just this morning, I had meaningful conversations there with people there who I would not know if it wasn't for walking dogs together. This is a crucible of community, the heart and part of what makes Portland great. A point worth mentioning -- somehow strangers will talk with others who have dogs, when they wouldn't do the same with those who don't. Dogs are wonderful "ice breakers" that help people connect.

There is great value to the community of dog walkers in the woods and a great joy in having the dogs off leash, something which not only helps train and socialize the dogs but also helps burn off some energy for those who are inside all day. Contrary to those who might say that this space from non-dog folks who want to walk or want to preserve a home for birds, I would point to Evergreen Cemetery, a huge, beautiful, dog-free and bird-full place, right next door -- in fact, even more accessible than Baxter Woods. (The roads are even plowed!) The back cove trail is likewise very close and only has dogs on lead.

I also understand that there are those who would like to enjoy the woods without dogs, that there are schools who use the space -- both for young kids doing "nature" walks and for older kids with cross country meets etc.

For a compromise, I suggest that you consider the model of dogs on beaches and have specific hours for off leash and specific hours when a leash is required (and maybe some where no dogs are allowed at all.) It works very well at the East End and Scarborough beaches. For example, say dogs off leash from 7-9 am and 5-9 pm, and maybe even no dogs at all from 10-12 (though this seems excessive if the leash rules are obeyed). Unlike the beaches, these guidelines might have to be "all year" and not just summer.

Thanks for listening and considering a solution that works for everyone and preserves what is one of the gems of Portland (not just the woods but the community of people who use it). Thanks for all you do to serve this wonderful city we call home.

Sincerely,

Ben Shambaugh

147 Clinton Street

Portland, ME 04103

207 400-7516

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner -- proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly.

These, however, are very limited and – as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today – a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh

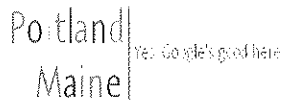
147 Clinton Street

Portland, ME 04103

207 400-7516

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 **Baxter Woods Off Leash Memo December 2019.pdf**
998K



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Baxter Woods Leash Rules Workshop 1/15/20 at Sustainability and Transportation Committee

Teresa Valliere <tvallier@maine.rr.com>

To: Ethan Hipple <ehipple@portlandmaine.gov>

Hi Ethan,

Thank you for handling the Baxter Woods issues so respectfully. I personally don't want to lose access to the park of disappointment should the vote go that way.

Governing the commons is a really hard job, and I think that the process has been fair and inclusive. I know many folks. Thank you for all you do and the respectful leadership you demonstrate.

Teresa

Teresa Valliere, LCSW, LADC, CCS

Valliere Counseling and Professional Support
phone 207.233.9276

<http://valliherecps.com>

MAILING LIST

FMI about counseling, supervision, training or consultation, please contact me at tvallier@maine.rr.com

<http://Therapists.PsychologyToday.com/rms/68128>

Office: 57 Revere Street #1
Portland, ME 04103

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On Jan 15, 2020, at 1:28 PM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hey Teresa,

When you click on the link to the specific agenda, look to the top left corner of the page where there is a tab for "Agenda" information and the proposal there.

Let me know if that doesn't work.

Take care,

Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 15, 2020 at 12:45 PM Teresa Valliere <woodfordscorner@gmail.com> wrote:

Hi Ethan,

I've been trying to find the actual proposal for the workshop tonight, but can't find it on line. I follow the link but it
Can you help?

~Teresa Valliere

President
Friends of Woodfords Corner

FMI call Teresa at 207-233-9276

MAILING LIST

PAYPAL for sponsorship/donation

email woodfordscorner@gmail.com

website Friends of Woodfords Corner

Facebook and Instagram

FMI call Teresa at 207-233-9276

Let's be the neighbors we want to have.

FWC is a 501c3 charitable organization comprised of residents, businesses and local organizations supporting the Woodfords Corner neighborhood.

On Jan 7, 2020, at 4:46 PM, Portland Parks, Recreation & Facilities Department <ehipple@portlandmaine.gov>

PORTLAND

PARKS, RECREATION & FACILITIES

Hello there,

You are receiving this email as you have expressed an interest in changes at Baxter Woods, or have submitted written comments. Please see below for an invitation to attend the Sustainability and Transportation Committee Workshop on this topic. Hope to see you there.

All the best,
Ethan Hipple

Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

Baxter Woods Leash Rules Workshop

City Council Sustainability and Transportation Committee

Wednesday, January 15, 2020, 5:30pm

City Council Chambers, City Hall, 389 Congress Street

During this workshop, the Committee will weigh whether the establishment of an off-leash season and specific hours for dogs is in the best interest of the city in order to increase wildlife habitat and address safety and other issues.

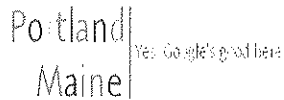
The public is welcome and encouraged to attend to lea
proposal. City staff will present background information c
the Sustainability and Transportation Committee will ask t
Woods to present information as well. As this is a Commi
will be no vote taken on this issue at this meeting, and th
comment. If and when the Committee takes a vote on tl
comment will be allowed at that time.

More information and specific proposal for rule
at: <http://portlandmaine.gov/586/Sustainability-Transpo>



This email was sent to woodfordscorner@gmail.com
why did I get this? [unsubscribe from this list](#) [update subscription](#)
City of Portland Parks, Recreation & Facilities · 212 Canco Rd · Suite A · Por

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There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Question about bird survey for Mayor Baxter Woods

Patrick Keenan <patrick.keenan@briloon.org>

Tue, Jan 21, 2020 at 12:39 PM

To: Jordan Bailey <jordan@portlandphoenix.me>, Ethan Hipple <ehipple@portlandmaine.gov>, Marc Lesperance <baxterwoodsfriends@gmail.com>

Hi Jordan,

Thank you for your interest in the bird surveys that BRL conducted at Mayor Baxter Woods. These surveys are part of the cities effort to determine what species of birds use the property and habitats for breeding and during other times of the year. We conducted surveys in the summer and fall of 2019.

To answer your question, yes, that research that Mallord et al. is relevant. It is a study that documents impacts to birds and models the impact to a common European bird species, Wood Lark, at the population level. There are various studies highlighting recreational disturbance generally and disturbance and predation by dogs in a number of settings and habitats. This science is pretty consistent. Providing the citation was meant to help inform the reason(s) why we may not have found ground nesting birds at that property. I have attached another article here from a study conducted in Australia, that looked specifically at dog walking. It is important to recognize the larger picture here and the utility of the property so that the city and citizens may select management policies in line with their values as well as the intended use of the property.

I hope that it is OK that I have included Ethan Hipple at the City of Portland and Marc Lesperance of the Friends of Mayor Baxter Park here as they have supported and shown interest in the bird surveys respectively.

For added context and perspective, I have also shared Loss et al. paper investigating the impact of cats on wildlife. Also Loss, et al. related to bird-building collisions.

I hope this is helpful. Feel free to reach out if you have other thoughts/questions. My office number is 207 839 7600 x 242.

Be well,
Patrick

On Fri, Jan 17, 2020 at 4:32 PM Jordan Bailey <jordan@portlandphoenix.me> wrote:

Hello Patrick,

I'm reporting on the city's efforts to protect bird habitat in Baxter Woods and reviewed the bird survey you conducted.

I noticed that it says on page 7 that it is well documented that dog walking disturbs bird nesting, and then cites a 2007 study by Mallord et al. I looked at that study and it looks like it was conducted in England on Woodlarks. Can you tell me if you think the results of that study are comparable to the species and conditions in Baxter Woods? If not, are there any other studies you know of about dog disturbance on nesting birds that are more comparable?

Thank you,
Jordan

--

Jordan Bailey

Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Jordan Bailey
Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Patrick C. Keenan
Outreach Program Director, Biodiversity Research Institute, www.briloon.org
Products, Marketing, Business Support, Avinet Research Supplies, www.avinet.com
276 Canco Road, Portland, ME 04103
(207) 839-7600 x242

3 attachments



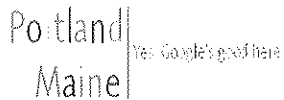
Banks and Bryant_biology letters.pdf
75K



Lossetal2013NatureCommunications-Impactofcatpredation.pdf
365K



loss_et_al_bird-building_collisions_condor_2014.pdf
353K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>
To: Janice Charek <jbcharek@gmail.com>
Cc: Justin Costa <jcosta@portlandmaine.gov>

Sun, Jan 26, 2020 at 8:32 PM

Thanks for your comments Janice. We will make sure they are passed along to the Council committee that is considering this proposal.

Take care,
Ethan

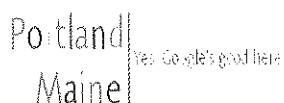
On Fri, Jan 24, 2020, 4:35 PM Janice Charek <jbcharek@gmail.com> wrote:
Dear Councilor Costa,

We are writing in support of the proposed leash law for Baxter Woods as outlined in the presentation by Ethan Hipple at the January 15th meeting of the Sustainability and Transportation Committee. Our backyard on Hartley Street abuts the Baxter Woods and we have two Jack Russell Terriers which must be walked on leash. As one of our dogs was attacked by a large off-leash dog when she was a puppy, she is naturally fearful when approached by off-leash dogs in the woods. Many times we avoid walking our dogs in the woods because of our inability to avoid stressful confrontations with off-leash dogs. It seems "voice control" as required by the current rules is more of a wish than a reality in many cases.

Should the compromise proposal be adopted we will look forward to being able to walk our dogs in peace during the hours of 9 a.m. - 3 p.m. for most of the year and at any time during the warmer months, and enjoy the wonderful resource we have in the Baxter Woods.

Sincerely,

Janice and Michael Charek
25 Hartley Street
Portland



Ethan Hipple <ehipple@portlandmaine.gov>

baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Jan 30, 2020 at 2:08 PM

To: Debra Flynn <debra_ann@maine.usa.com>

Cc: Alex Marshall <amarshall@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Thanks Debra. I will make sure your comments get passed along the Council as they weigh this decision.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Thu, Jan 30, 2020 at 11:55 AM Debra Flynn <debra_ann@maine.usa.com> wrote:

Hello,

The situation in Baxter Woods is now so unsafe that we can no longer go in there, even though we literally live next to it! I sent a screenshot of the latest, today, comment from another dog owner saying I should stay out of there. They do not live on this street, Hartley Street. Micheal who lives a doors up from me, also has been complaining as he has terriers that are molested constantly and has changed his walking habits as well due to these dogs. People are on their cell phones with ear pieces in not watching their off leash dog, not to mention them chasing the wildlife in a sanctuary as their owners talk umonst themselves. As you know I love these woods but now with the loose dogs even coming into our fewnced in portion of the yard it is way to stressful and unsafe please help. People are believing this is a dog park where they can bring their off leash dogs, not pick up after them or watch them.

Debra Ann Gorneault 207-387-3083

11 Hartley Street

Portland Maine



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Aimee Kudlak <akudlak@maine.rr.com>

Fri, Apr 5, 2019 at 3:18 PM

Thanks for the comments Aimee.
Take care,
Ethan

Ethan Hipple
Deputy Director
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212 Canco Rd, Suite A
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207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
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On Fri, Apr 5, 2019 at 2:50 PM Aimee Kudlak <akudlak@maine.rr.com> wrote:

Dear Ethan,

Thank you for reaching out to all of us who love Baxter Woods. I too am a dog walker there. My 16 1/2 year old dog, Freddy, has outlived almost all of his former friends. There are a lot of both old and new dog owners walking in the woods these days. Some of the new dog owners need as much training as their dogs. But I can't imagine that there is so much damage being done by the dogs that they would have to be kept on leashes.

When I first started walking in Baxter, there was a huge forest of trees behind the Mother House on Stevens Avenue. These were cut down to make a ball field for Cathrine McAuley high school which was very rarely used. No one seemed to complain about the destruction of these woods and all the wildlife it destroyed. Now plans are in the works to build five or six buildings on this ball field. The noise and traffic and commotion coming from the construction will do more harm to the wild life in Baxter Woods than any dog can do, not to mention the influx of all the people that will be moving into those condos.

The dog walkers actually do a lot to clean up the woods. We do a poop cleanup weekend in the Spring, pick up broken bottles and trash and try to keep the woods as natural as we can. One time, someone tossed a bunch of metallic confetti on one of the paths. It took weeks to clean it up, but we did.

I hope this situation can be resolved in a way that will benefit all living things: dogs, cats (yes some people walk their cats), birds, squirrels, fox, raccoons, chipmunks, salamanders, frogs, fish, turtles, trees, but most of all the people who love Baxter Woods and want to keep it just as it is and has been for the past 73 years.

Sincerely,,
Aimee A Kudlak



Ethan Hipple <ehipple@portlandmaine.gov>

Re: A Baxter compromise — set hours

shambaugh@gwi.net <shambaugh@gwi.net>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Apr 5, 2019 at 5:02 PM

Thank you Ethan, for all your work and your love of the parks!

On 2019-04-05 12:55, Ethan Hipple wrote:

Thanks for the suggestion Ben.

We are looking at some compromise options and weighing that with the possible impact on safety and bird sanctuary habitat.

I appreciated the civility shown at the meeting last night by all involved. I know it is a tough topic that folks are passionate about.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
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On Thu, Apr 4, 2019 at 6:09 PM Shambaugh <shambaugh@gwi.net> wrote:

Dear Ethan,

Thank you for a good hearing and your great research. I appreciate your points and suggest a possible compromise, which you mentioned but did not include in your bullets points. Off leash 7-9 and after 5 pm. Leashed at other times. That allows the middle of the day for all and does limit bird threats. It works on the beaches and Robinson woods and could work here too.

Thanks again
Ben Shambaugh

Sent from my iPhone

On Apr 1, 2019, at 3:44 PM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi there Ben,
Thanks for the thoughtful comments and sorry to hear about the loss of your dog Sasha.

We will make sure the Parks Commission gets a copy of your comments for the meeting this Thursday.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 2:33 PM <shambaugh@gwi.net> wrote:

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner -- proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly. These, however, are very limited and -- as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today -- a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh

147 Clinton Street

Portland, ME 04103

207 400-7516

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter woods and Quarry Run dog park

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 8, 2019 at 11:10 AM

To: Audrey Bergeron <audrey.b.bergeron@gmail.com>

Thanks Audrey.

We are looking at possible compromises and studying whether that could have a positive impact on safety and the bird sanctuary issues.

Enforcement is still required during off-leash voice control times because many people do not comply with voice control rules (dog 50 feet from owner, must return when called).

But either way, we will be looking at alternatives.

Our Parks Maintenance crew is capping the debris that is exposed each Spring--most likely will happen next week. And the piece of metal will be removed sooner. Thanks for letting us know!

Take care,
Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

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On Sun, Apr 7, 2019 at 9:42 AM Audrey Bergeron <audrey.b.bergeron@gmail.com> wrote:

To the Deputy Director, Dept of Parks, Rec, & Facility:

I would first like to thank you for all that you do to ensure that Portland has so many beautiful parks for the public to enjoy. I attended the public comment hearing regarding Baxter woods this past week and, although I disagreed with your suggestion regarding the leash law, I appreciate the time and effort you put into your presentation.

I have two requests for your department. The first is regarding Baxter woods and the second is regarding Quarry Run dog park.

My request for Baxter woods is to follow a model similar to East End beach where dogs must be on leash for a certain time (like 9-5) for certain months (April through October). This would be easier to enforce because it limits the enforcement period to 8 hours a day. It would also give people who want to enjoy the woods without meeting dogs a time of day to do so and this time lines up well with the school day and cross country meets. This would also encourage dog walkers to bring their dogs outside of these hours so they can let their dogs off leash. I know that you expressed concern over birds not knowing this schedule, but based on the research you presented, I don't believe you can definitively say the presence of dogs is the only thing affecting the bird population. For example, you compared the number of bird species to places like Wolfe's Neck, but these places do not experience the noise pollution from planes and traffic, the amount of people, or nearby construction that Baxter woods does.

My request regarding Quarry Run dog park has to do with the bricks and chunks of metal that are currently sticking out of the dirt in the open area at the top of the hill where people and dogs tend to congregate. My understanding is that this is an old land fill and this is a recurring issue. My concern is that the sharp corners of these bricks and metal parts are trip hazards for humans and could cut dogs' paws. Is there a plan with the weather warming up to fill in more dirt in this area or to have these items pulled out?

Thank you for your consideration.

Audrey Bergeron
14 Florence St Apt 2



Ethan Hipple <ehipple@portlandmaine.gov>

Question: Baxter Woods - Complaints about dogs, Support of a Leash Law in Baxter Woods...

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 8, 2019 at 6:33 PM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Cc: "sld@portlandmaine.gov" <sld@portlandmaine.gov>, "mlesperance@maine.rr.com"

<mlesperance@maine.rr.com>, Jessica Grondin <jgrondin@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>

Hi Marc,

I've answered your questions below in red. Jessica Grondin will be responding to your FOAA request.

Take care,
Ethan**Ethan Hipple**

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 8, 2019 at 4:17 PM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Mr. Hipple: I am following up on your presentation at the Parks Commission meeting last Thursday, April 4, 2019 and have a few questions for you and the Parks Department.

At the meeting on Thursday you mentioned that the City has received "many complaints" from Portland citizens about off leash dogs at Baxter Woods, and in your 3/7 memo (attached) to the Parks Commission – you note that the Parks Department "...regularly receive(s) verbal and written comments from the public about the current policy: primarily the comments are opposed to the off-leash policy, with a smaller number in favor."

While my unofficial tally of speakers at the Thursday meeting polled 24 who spoke against the leash law, I counted only 1 and possibly a 2nd person who favor the leash law in Baxter Woods. As a discounting of the overwhelming public response against the leash law at Thursday's meeting – both you and at least one member of the Parks Commission pointed out that the written comments submitted to the City and in the Commission's packets were more "50/50" in favor of the leash law.

Being compelled to verify the written complaints the City attests to, I reviewed the Public Comments pdf (attached) and tallied the following comments:

- 10 distinct complaints about off-leash dogs in Baxter Woods
- 11 neutral or general statements or communications about Baxter Woods (e.g. concerning tree trimming, replacing signage, ducks in the Baxter Woods Pond, etc.)

- 15 written comments in support of Baxter Woods as-is – and most directly against a full time leash law

I can provide a written summary of the comments tally if you'd like, but clearly the written comments are not, by the numbers, in favor of a leash law!

My questions are:

1. How does your statement in the 3/7 memo, that comments received are "...opposed to the off-leash policy" reconcile to the tally above of public comments released in the PDF (attached) and summarized above?

EH Response: I think most reasonable people would conclude that 10 written complaints about a single property would qualify as an issue worth addressing, but you are free to disagree. The tallies are interesting, but we are not aiming to simply count up which side has more "votes" in favor and going with that. Sometimes land management decisions require thoughtful choices that don't please everyone--our job as Park professionals is to try to balance the many uses of parks: open space, athletics, habitat, play, trails, access to water, accessibility, dog play areas, etc... The bottom line is that we receive many complaints about off-leash dogs at Baxter Woods, and we also have deed issues, so that prompted us to work with the Parks Commission on creating some reasonable recommendations to address that. As you know, public comment is encouraged as part of that process. One of the things the Parks Commission asked us to do is to explore possible compromises (such as designated off-leash hours, which you suggested in your earlier email), which we are currently evaluating and will discuss at the June meeting.

2. What did the Parks Department receive for verbal comments about off-leash dogs in Baxter Woods, and how does it tally and validate such complaints?

EH Response: Verbal complaints were generally made to our Rangers in the field, or phone calls to our office. We do not log verbal comments.

3. Will the Department release the verbal comments, or a summary of the verbal comments received about Baxter Woods (dog-related or not)?

EH Response: We do not log verbal comments.

4. The most recent written public comment (see PDF) was dated January 2019, and many go back as far as 2013 – will the Parks Department share new, previously unreleased public comments it has received since January 2019? I submitted an e-mail just last week, that you graciously acknowledged and forwarded to the Commission – and I am certain many others submitted written comments as well that should be tallied and considered before the Commission votes on the proposed leash law.

EH Response: Yes, our proposal has generated a lot of written public comment, mostly opposed to the proposed change, and we have shared all written comment we received with the Parks Commission prior to their meeting last week. Those comments also get posted as backup material on the agenda website. I've attached that for you in the meantime.

Lastly – I submitted a Freedom of Access Act request to Jessica Grondin earlier today (4/8/2019) for the City of Portland's communications with Forest Synthesis, LLC and/or Robert Bryan concerning the Forest and Wildlife Habitat Management Plan for Mayor Baxter Woods – report dated May, 18, 2018. I am seeking any City (Parks or other Department's) communications with Forest Synthesis, Robert Bryan or any other consultants related to the work Forest Synthesis and/or Robert Bryan did on the City's behalf as it relates to Baxter Woods. Please let me know if you have any questions about this FOAA request. **Good to know, thanks. Jessica will work with you on that.**

Thanks, Marc

Marc Lesperance, 103 Candlewyck Terrace, Portland, ME
04102

W: (207) 209-0517 | M: (207) 329-4953 | H: (207) 774-6584

marc.lesperance@anthem.com

[Quoted text hidden]

5 attachments



4, leash laws, and other concerns.pdf
162K



2019-01-10 City of Portland Mail - Fwd_ Baxter Woods concerns.pdf
125K



Public Comments Baxter Woods Off-Leash.pdf
1489K



Public Comments Baxter Woods Off-Leash 4-3-19.pdf
434K



Public Comments Baxter Woods Off-Leash 4-1-19.pdf
1243K



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: City Park Inquiry

Ethan Hipple <ehipple@portlandmaine.gov>
To: Avril Williams <adandyline@gmail.com>

Thu, Apr 11, 2019 at 4:34 PM

Hi Avril,
Presumpscot River Preserve is lovely (but a long walk in). Deering Oaks is another option, or Fore River Sanctuary.

Here is a good map of city parks and forests: <https://www.google.com/maps/d/viewer?mid=1a4gsFhxy7BDqsN0NtlS2IDkhsA&ll=43.663640789674496%2C-70.28501602131433&z=14>

Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Thu, Apr 11, 2019 at 1:55 PM Avril Williams <adandyline@gmail.com> wrote:

Thank you so much for getting back to me! Curious if you know an area that would be better suited. Was interested in Baxter due to having a surrounding wooded area as opposed to a wide open park but not opposed to other options. Thanks so much for your time!

Avril Williams
A Dandy Line Studios

On Apr 11, 2019, at 9:26 AM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Avril,
Typically for yoga or fitness classes under 25 people, we don't require a permit, so you should be all set to do your class. Copying Rusty Groh, one of our Event and Permitting Coordinators who can get you more information if you need it.

FYI, Baxter Woods does have a high number off off leash dogs (and a high amount of dog waste), so just tread carefully! You are free to do the class there, just wanted you to be aware.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland

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From: **Ethan Owens** <eowens@portlandmaine.gov>
Date: Thu, Apr 11, 2019 at 8:44 AM
Subject: Fwd: City Park Inquiry
To: Ethan Hipple <ehipple@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>

Could one of you guys give her a shout?

Ethan Owens CPRP, CPSI, AOLCP
Parks Assistant Director, Athletic Facilities and Playground/Courts Manager
City of Portland - Parks, Recreation and Facilities Management Dept.
212 Canco Road Portland, Maine 04103 ~ USA
207-808-5400 eowens@portlandmaine.gov

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

From: **Avril Williams** <adandyline@gmail.com>
Date: Fri, Apr 5, 2019 at 1:54 PM
Subject: City Park Inquiry
To: <eowens@portlandmaine.gov>

Hi! My name is Avril Williams and I'm a certified yoga instructor. I am looking for a space to teach outdoor yoga and was really interested in Baxter Woods as I think it would be amazing to offer a yoga class that is in nature while still being in the city! I would love to teach the classes regularly throughout the summer and early fall for one hour and offer them by donation, pay what you can. Is that possible? Do I need some kind of permit? Looking to start next month if possible so any direction you can offer would be so helpful. Feel free to read more about me on my web site, www.adandyline.com. Thanks for your time.

Avril Williams
A Dandy Line Studios

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: sarah furman <sarahfurman@msn.com>

Thu, Apr 11, 2019 at 10:02 AM

Thanks for the comments. We are working on some compromise proposals right now. I'll make sure the Parks Commission sees your comments.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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ehipple@portlandmaine.gov

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On Wed, Apr 10, 2019 at 6:40 PM sarah furman <sarahfurman@msn.com> wrote:

Dear Mr. Hipple,

I have been a resident of Portland for the last 20 years, and have been enjoying Baxter Woods for the last 14 years with my dogs. I walk my dog at Baxter Woods at least 4 times a week. We have met many people in the park, and many dogs. I have to say that all the dogs I have met have been well behaved, and the owners have been respectful of the park. Additionally, I have only seen one incident of drug use in the park. I do fear that if dogs are not allowed off leash, then this park will become a place for drug use and for the homeless to stay. I do hope you will reconsider the leash law that may go to vote in the future as it will certainly change the safe, clean, and friendly park that we all enjoy at Baxter Woods.

Thank you for your consideration,

Sarah Furman



Ethan Hipple <ehipple@portlandmaine.gov>

ground-nesting birds

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Thu, Apr 11, 2019 at 3:29 PM

Thanks David,

I did hear that comment at the meeting, but I can't vouch for the source or validity of it. If you're interested, I've attached our Management Plan, completed by licensed Forest Ecologist Rob Bryan.

We are working to protect habitat for ground nesting *and* ground feeding birds, which are not necessarily the same. There are also many birds that utilize the pond, which is at ground level.

Either way, we have two issues at Baxter Woods: dog and human safety issues, as well as a bird sanctuary issue. We are exploring some potential compromises that may help improve both. We'll discuss those at the June meeting.

Take care,
Ethan

Ethan Hipple
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On Thu, Apr 11, 2019 at 3:00 PM david victor <dvictor242@gmail.com> wrote:

at last week's meeting, Mark said that there are only three ground-nesting birds that he knew of (in the area , I assume) , whippoorwills, killdeers and another , but that none of these was in Portland. I didn't hear you respond to this. have you verified this? do you know his source?

it seems to me that the question regarding how many ground-nesting birds we might expect has to be quantified. for example, if only one or two species would be coming to the woods ,if dogs were leashed is that a sufficient number to change this long-lasting situation so drastically?

we have to have a sense of proportion in a democracy or it doesn't work. and given the relatively few complaints (I've been told that the average per year is quite low) what remains of the argument that is pro-leashing?

david victor
portland



Baxter Woods Ecological Assessment and Plan FINAL 2018-5-18.pdf
5435K



Ethan Hipple <ehipple@portlandmaine.gov>

our email exchange yesterday on baxter woods

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Apr 18, 2019 at 11:36 AM

To: david victor <dvictor242@gmail.com>

Cc: Matthew Coleman <mcoleman@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi David,

There are many species of ground nesting birds in the Portland area, including oven birds, ground sparrows, wood cock, wood thrush. Maine Audubon estimates 10-12 species of ground nesting birds that can be found in the area, as well as hundreds of species of ground-feeding birds. Our goal is to create suitable habitat where these birds can live and reproduce, while balancing that with other community needs like biking, walking, and dog walking.

You are correct that the presence of barking dogs can scare away birds. That is one of the things we are working to address so that the woods can once again serve as a viable habitat "bird sanctuary" as stated in the deed.

You can read many of the complaints and comments we've received over the years in the [materials we submitted to the Parks Commission](#). That should give you an idea of the type of comments, and the quantity.

Thanks for letting us know about the trees--they were actually tapping pine trees, so they won't get too far making edible syrup! We did go address it though, thanks for the tip.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Fri, Apr 12, 2019 at 8:44 AM david victor <dvictor242@gmail.com> wrote:

thanks for your response, but you didn't answer a couple of my questions: 1. how many ground-nesting birds are in the portland area; Mark effectively said "none." is this true?, and 2. how many complaints about unleashed dogs in the woods are you receiving annually?

without quantifying , how can any justification be made for changing the rules.

it's also worth pointing out that ground-feeding birds would surely be alerted to the sounds of dogs bounding through the woods to get them and would quickly fly away. cats, which run free and our plentiful in deerling center, are surely a greater threat than lumbering and noisy dogs.

and finally, please remember that for almost five months of the year, the paths in the woods are ice-bound. the only people who are in the woods then are people walking their dogs off-leash. the woods would effectively be empty if leashes were required. often during the winter homeless people inhabit the woods and people presence is comforting.

incidentally, today we noticed that someone is tapping some of the maple trees in the woods. is this authorized by the city?

thanks for listening.

david victor



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Stanley Beretsky <beretsky4444@gmail.com>

Wed, Apr 17, 2019 at 8:39 AM

Hi Stanley,
Thanks for your message.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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Portland, Maine | Yes. Life's good here.

On Wed, Apr 17, 2019 at 8:35 AM Stanley Beretsky <beretsky4444@gmail.com> wrote:

Dear Mr Hipple

Please allow me to keep walking my dog offleash in Baxter Woods. Thank You.

Stanley



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Teresa Valliere <woodfordscorner@gmail.com>
Cc: Parks Commission <parkscommission@portlandmaine.gov>

Wed, Apr 17, 2019 at 8:47 AM

Hi Teresa,
Hope all is well with you. Answers below in red...
Take care,
E

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Wed, Apr 17, 2019 at 8:12 AM Teresa Valliere <woodfordscorner@gmail.com> wrote:
Hi Ethan,

Hope you are well!

Been following the Baxter Woods leash proposal and have some questions -

- when is the next public meeting? Will there be time for public comment at the meeting? **Next regular meeting is first Thursday in June. Final date TBD as some staff and commissioners may be out of town that day. Either way, it will be posted here. Public Comment will be allowed for folks who haven't already made public comment on the issue.**
- Is there a Parks Commission meeting on 5/2? There is your event about public spaces, so I am assuming the next regular meeting is on 6/6 **See above**
- still possible to send public comments via email? and to you or the commission? **You bet. We are sharing all email we get on the topic with the commission.**
- the article in the Forecaster you are quoted saying that dogs are allowed off leash at Evergreen. The friends of Evergreen site says dogs on leash (max 25'). I've been stopped with my dog off leash there by cemetery staff in the past, so I am confused. What is the rule? **The article misquoted me and they issued a correction last week. Off leash dogs are allowed in the Evergreen Woods, behind the cemetery. Dogs in the cemetery itself must be on 25-foot leashes.**

[Quoted text hidden]



Ethan Hipple <ehipple@portlandmaine.gov>

ground-nesting birds in baxter woods.

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Fri, Apr 19, 2019 at 10:59 AM

Thanks for the feedback David.

I also would remind you that we are proposing changes for a variety of reasons that have been brought up by the public: both safety/nuisance issues with off leash dogs, as well as the bird sanctuary issues.

Either way, you raise some interesting points. Human and dog activity have altered the natural habitat at Baxter Woods. Our understanding from the experts in the field is that Baxter Woods could serve as exceptional bird habitat if properly managed. Of course, we would have to monitor and evaluate whether that is true once changes are implemented.

We'll be sure to look at the issues you raise as we are coming up with the best possible policy.

Take care,
Ethan

Ethan Hipple
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On Fri, Apr 19, 2019 at 9:15 AM david victor <dvictor242@gmail.com> wrote:

thanks for you response, but you neglected to mention the fact that a number of these birds do not like habitat like that of baxter woods. for example, oven birds like sites with little undergrowth (baxter woods is filled with undergrowth) and wood thrushes like habitats with running water. woodcocks like young forests. i'm sure that among the other species there are water birds and shore birds. so , how many species are we talking about here, especially when we factor in the urban area that the woods are situated in and the preferable area behind evergreen?

finally, you keep ignoring what I keep pointing out: there are feral cats in the deer center neighborhood and many domesticated cats that run free. cats are the biggest killers of birds, by far, in the u.s. why harp on dogs?

david



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods input

Ethan Hipple <ehipple@portlandmaine.gov>
To: E Hamlin <ehamlin@maine.rr.com>

Fri, Apr 26, 2019 at 8:31 AM

Thanks for the thoughtful comments. I will make sure the Parks Commission gets a copy.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Sun, Apr 21, 2019 at 8:34 PM E Hamlin <ehamlin@maine.rr.com> wrote:

Hi, Ethan,

My wife and I were not able to make the City meeting/discussion about Baxter Woods because of our work schedules, but I wanted to weigh in on it before the formal discussion happens in June. For the record, we do not own any dogs (or pets of any kind), but we do enjoy seeing wildlife.

In case you don't have the time or inclination to get through all that follows, I have thought about this quite a bit, and would vote **in favor of a requirement that dogs be leashed**.

If you are patient, my thoughts follow:

I understand how nice it is for dog owners to have a place where they can take their dogs to play and to visit with other dog owners. It is obvious that the trips to the park are absolutely the highlight of the day for the dogs and probably rank high with the owners, so I don't blame them at all for wanting so badly to keep the current system in place. In my experience, most of the dog owners are fairly responsible about keeping their dogs in line and cleaning up after them. Unfortunately, not all are so good, and when walking through the park it is not uncommon to have dogs run up to and sometimes jump up on us, and on a couple of occasions I have been approached by off-leash dogs and had the owners suggest that I not pet them because they are not good with strangers. Overall, a mixed bag.

When people come visit our house for the first time and note the location, I generally hear myself telling them that Baxter Woods is an off leash dog park. I realize there is more to it than that, but it very much feels like the park use is dominated by off leash dogs and their owners. As noted, many are great people and most of the dogs are nice - with a few painfully obvious exceptions. I discussed this with my wife, and we both acknowledged that we tend NOT to enter the park when we go for walks simply because it is usually full of dogs. I have no idea if others feel the same way, but most of the people I see entering the park have dogs with them.

I was surprised to read that Baxter had indicated a desire for the park to serve at least partly as a refuge for birds. I absolutely agree that the presence of off leash dogs is a deterrent to ground-nesting and to some

extend ground-feeding birds. Given the number of squirrels that I have seen with partially missing or obviously deformed or damaged tails and other injuries, I suspect the dogs are pretty rough on anything at or near the ground. The squirrels seem to thrive regardless, but I doubt other animals are as resilient.

I have been reflecting on the park and how it is used more frequently lately, largely because of the publicity around the upcoming discussion about off-leash dogs, but also in light of events where the park has been misused. A couple of these were recent; I think it was you who I corresponded with recently about the guy who backed his pickup over the sidewalk and into the woods to chainsaw and take wood from the side near Hartley Street. There was also a more recent discussion on a neighborhood social media site ("Nextdoor.com") about someone who drilled into some of the large pine trees in Baxter trying to tap them for resin to make some kind of folk medicine. These are a couple of the more egregious abuses I have seen, but because I live directly across from the wooded section of the park along Hartley, I am painfully aware of how many less responsible dog owners walk their dogs along the sidewalk and allow them to defecate in the park without cleaning it up. This happens frequently when I am home and happen to be looking out, so I assume it occurs many times throughout the day. I cringe every time I see a small child walk into that section of woods to pick up a stick or look at something, and on a rainy day when I have the windows open I can sometimes even smell it in my house or when walking by.

I also frequently see several people dumping their leaf and yard waste, plant material from old windowboxes, etc. I have also seen at least one person dumping other organics such as corn husks, vegetable scraps, and other material. Once this included a turkey carcass, but I retrieved that for proper disposal. I also occasionally see people cutting vegetation (something that looks like trout lilies, but I'm not sure that's what they are) and bagging it up to take away - one guy said he was feeding his animals...another one simply apologized and left. I have also seen people cutting small evergreen boughs in the early winter - presumably for holiday decor. Needless to say, all of this drives me a bit nuts. When I see it and have the opportunity I try to dissuade people, but doubt I am getting much traction. It is very frustrating to see how many people use or treat the park in a way that I feel damages or diminishes it.

I guess it's obvious that I have a number of gripes and concerns, but I think maybe some improved signs encouraging people not to take, cut, tap, or harvest things, and to clean up after their dogs might help. I also think that requiring dogs to be leashed would give the park wildlife a better chance to thrive and might encourage people who do NOT own dogs to use the park more.

Thanks very much.

Sincerely,

Eric Hamlin (90 Hartley)



Ethan Hipple <ehipple@portlandmaine.gov>

Keep Baxter Woods leash free, here's why

Al Ghanekar <al.ghanekar@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Apr 26, 2019 at 12:45 PM

Thanks for the info, Ethan.

Al Ghanekar 777
<http://alghanekar.com>
al.ghanekar@gmail.com 777

On Fri, Apr 26, 2019 at 11:15 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks Al. Appreciate the comments.
Just so you know, we have 495 acres of open space in Portland where dogs are allowed to run off leash.
[Check out our Parks page here to find them.](#)

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

[212 Canco Rd, Suite A](#)

[Portland, Maine 04103](#)

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Thu, Apr 25, 2019 at 11:16 AM Al Ghanekar <al.ghanekar@gmail.com> wrote:

Hello Mr. Hipple,

Please allow dogs to remain off leash at Baxter Woods. I've had my dog for 3 months and I alternate between Baxter Woods and two others in Sopo. A leash law would just force me to only go to Sopo.

I would never walk him around Baxter Woods on a leash because that would be pointless. Dogs need freedom and stimulation, playing with other dogs. They still are biologically wild animals and need to interact with their kind.

We Portland citizens can enforce people to pick up after their dogs if they are not doing it. Putting in a leash law will reduce these dogs' quality of life.

Al Ghanekar 777
<http://alghanekar.com>
al.ghanekar@gmail.com 777

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Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Best Park in Portland!!!!

Parks Commission <parkscommission@portlandmaine.gov>

Fri, May 10, 2019 at 3:17 PM

To: Dory Waxman <mermaidst@gmail.com>, Ethan Hipple <ehipple@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Please see below email.

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

From: **Jason Kaplan** <jasonrkaplan@msn.com>

Date: Thu, May 9, 2019 at 6:12 PM

Subject: Best Park in Portland!!!!

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

Hello to whom ever is reading this.

I just wanted to thank you for having such a wonderful park. The baxter woods park I have been walking threw my entire life. From as a Kid chasing my father threw it on my bike, walking to Deering High school for 4 years. And now as a just someone who enjoys a safe fun play to enjoy nature. The dog community there is wonderful!!! so many happy dogs. Every time you go there are respectful dogs there playing and so much fun to watch and enjoy. Even on the worst days I can go there and watch them play and frolic and feel better. On cold winter days when no one is in the park there are still the loving dog owners who are there clicking around with their cleats trying to stay upright on the ice. I am really sorry its easier for people to complain and people don't appreciate the finer things in life and wright you about all there happy experiences. It would be a real shame if you were to kick so many happy people out of the park with a dog leash law and create such a hostel and dangerous environment for humans and dogs there. I hope you guys have done more research then last time and learned that 25 foot leashes just don't work and are very destructive of the environment. I can't imagine going there and not seeing smiling faces watching people and there dogs playing threw the park like its intended to be. I know people take jobs and everyone wants to make a change that they can say "I made that happen" but leashes make dogs more aggressive and also less trained. Every time I've gone there its the dog crew, that have bought houses in the neighborhood so they could let there dogs play off leash there, that are picking up the trash from all the school kids and calling the cops when they see people drinking or smoking there. I remember the park before the dog people were there and it was not as nice and people didn't take pride in the park. You go there now and people smile when they say this is my park, "I walk my dog here twice a day and love chatting with my dog's friends owners". I understand your hoping that birds that don't exist there will hopefully move in but it doesn't make sense to pick on the dogs. What about the fox, cats, hocks, skunks.... I really hope your not going to try and leash them. It just seems sad to me to ruin something so positive that Portland has for maybe and what ifs. Its a safe park surrounded by friendly neighbors. It would be like suggesting to go to evergreen woods where its hard to see and homeless people pop out from around the bend and there are tones of ticks and no parking with limited hours. 25 foot leashes would be dangerous for dogs. They would

be able to play due to chocking/ strangulation, rope burns and it would make it hard for runners and bikers to enjoy the park. Theres no way they could predict a 25 foot leash. If your worried about the ground nesting birds maybe you could do something like they do for piping clovers. Where they put a fence and a top on it. So the birds won't at least eat them or their eggs. But its nature and thats why we love the park. Who are we to control nature and say who lives. We all wish we could live in harmony but everyone has an off day, even dogs and its not our job to ruin it for everyone but to just smile and say hi to people and hope by being kind we can make their day better.

I hope you don't ruin an amazing park for what ifs and what could be while bending the rules for yourself but you will do what ever you want to.

Thank you for your time and I hope you continue to allow me and everyone ells enjoy the amazing park Baxter provided for us.

Jason Kaplan.
Life time Portland resident

--

You received this message because you are subscribed to the Google Groups "Parks Commission" group. To post to this group, send email to parkscommission@portlandmaine.gov.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>
To: Jennifer Baldwin <jenbaldwin563@yahoo.com>

Wed, May 22, 2019 at 12:28 PM

Thanks for your comments Jennifer. I'll make sure the Parks Commission gets them as well.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

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On Tue, May 21, 2019 at 8:58 PM Jennifer Baldwin <jenbaldwin563@yahoo.com> wrote:

Dear Ethan,

I have been a frequent visitor to Baxter Woods (minimum 1 often 2-3 visits per day) for the last two years since I got my first dog. Prior to that, I would often visit with my sister's dog while dog sitting him, we both live within walking distance of the woods. As I understand it, the developers of the property the abuts Baxter Woods were required to do some environmental impact study as part of the purchase of the previous Maine Girls Academy and determined that the presence of unleashed dogs had a negative impact on ground feeding birds. There are still birds in the woods. I've witnessed three different woodpecker species, turkeys, warblers, owls, crows and the famous falcon from Deering Park was sited there last fall.

I am both a dog lover and a bird lover. I've witnessed many species in the woods on our regular visits and don't believe dogs are negatively impacting the bird sanctuary, putting them on leashes will not change their patterns.

I am opposed to the suggestion that dogs should be required to be on leash at all times in Baxter Woods. It's not necessary. One of the things I love about my neighborhood is the access to the woods and the dog owners who frequent that space. My two year old dog and I have developed a social circle of dog walkers and dogs with various personalities during the last two years. It's often a respite from my high stress professional career and the challenges of family member dealing with Stage IV cancer treatment. Like-minded insofar as our interest in four-legged friends, we've developed a community. I fear this ruling should it pass would upset the patterns and the support I receive daily from my

neighborhood.

Both my dog and I were attacked by a dog (Sherman Rosenberg) who was not under voice command in the fall of 2017. We took this up with Rue and the prosecutor and several months later another neighbor was attacked by the same dog on a sidewalk near the woods. This unruly canine was on leash during the second attack but still exhibited similar aggressive behavior. While I don't think Sherman has the skills or the owner to command his behavior off leash, I'm not letting this experience keep me away from the woods.

I would much prefer some ruling that would limit the human practice of littering the woods both with trash and feces. That has presented a bigger issue for me in the past.

I doubt I will make it to the next public hearing on this topic but wanted to share my thoughts and support for keeping Baxter Woods as a safe area for responsible dog owners to let their dogs frolic off leash.

Thanks,
Jennifer Baldwin



Ethan Hipple <ehipple@portlandmaine.gov>

another Baxter Woods question

Ken Jones <KenJayJay@hotmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Sun, Jun 2, 2019 at 1:56 PM

Hi Mr. Hipple,

I wrote to you a little over a month ago for some information about dogs in Baxter woods. I appreciated your quick response to my questions.

I have another question now.

Amid the concerns about dogs in Baxter, I haven't heard any similar outcry about the campers in the woods leaving litter. Campers are what I call the people who sleep overnight in Baxter woods. Surely their presence on a regular basis must have some negative impact on the woods, I'm guessing even more so than people walking dogs.

I walk in the woods very early in the morning. I've seen individuals and hiking groups and bicycle groups sleeping in hammocks and tents. Since these campers mostly leave by the time the late morning regulars come through, I don't think many people are aware of them. But they do leave an enormous amount of litter behind. Actually, to be fair, the bicycle group that slept in hammocks did not leave any litter behind.

Last Friday morning (May 31), a couple set up a large tent off the field on the school side of the woods. several dogs started rummaging around at this camp site because of food the pair left near what looked like their camp fire from the night before. When another walker and I tried to get the dogs away, the man in the tent became quite rude and threatening.

I called the police. they showed up very quickly and had the pair take down their tent. the pair left the woods about an hour later, but they also did not remove their litter.

I've attached some pictures I took that afternoon. the pictures include a plastic garbage bag full of who knows what, drink cans, and a sawed off tree limb near their fire. Those white piece of paper you see in the one picture are used toilet paper. This is not the first time in the last year we've seen such evidence of people defecating in Baxter woods.

As much as some people seem outraged by dogs in the woods, I find it hard to believe this kind of thing doesn't seem to concern anyone.

So now to my question: Who is supposed to clean up stuff such as this mess the campers left last Friday? This mess was just from two people one night.

I pick up several beer cans weekly and often several pieces of clothing, even shoes and backpacks.

But I draw the line at cleaning up used toilet paper. There are several of the regular late morning dog walkers, much more ambitious than I am, who come through with trash bags and pick up litter.

Thanks for your help,

Ken Jones

4 attachments



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481K



thumbnail_IMG_1654[1].jpg
579K



thumbnail_IMG_1655[2].jpg
448K



thumbnail_IMG_1652[1].jpg
574K



Ethan Hipple <ehipple@portlandmaine.gov>

another Baxter Woods question

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Jun 3, 2019 at 3:40 PM

To: Ken Jones <kenjayjay@hotmail.com>, Jill Mulkern <jmulkern@portlandmaine.gov>

Hi Ken,

My Ranger informs me that the camp has been removed. Please let us know of any other issues that come up.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.govwww.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Jun 3, 2019 at 6:52 AM Ken Jones <kenjayjay@hotmail.com> wrote:

Thanks, I appreciate your quick response.

Ken

From: Ethan Hipple <ehipple@portlandmaine.gov>**Sent:** Sunday, June 2, 2019 3:17 PM**To:** Ken Jones; Jill Mulkern; Matthew Coleman**Subject:** Re: another Baxter Woods question

Thanks for letting us know about the trash. Unfortunately, we are regularly cleaning up after people and removing campsites in Baxter Woods and throughout many parks and open spaces in the city.

Our Rangers will swing through and get this.

Take care,

Ethan

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Comment

Ethan Hipple <ehipple@portlandmaine.gov>
To: Logan Puck <logpuck@gmail.com>
Cc: Justin Costa <jcosta@portlandmaine.gov>

Tue, Jun 4, 2019 at 12:39 PM

Thanks for the comments Logan. We are working on a compromise proposal right now, to allow a limited amount of off-leash dog activity there.

Keep an eye on [Parks Commission agendas here](#) if you'd like to attend a meeting. Ultimately, any change to an ordinance will need to be considered and approved by City Council.

I will share your comments with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Tue, Jun 4, 2019 at 12:15 PM Logan Puck <logpuck@gmail.com> wrote:

Dear Deputy Director Hipple,

I was distressed to learn of the proposal to prohibit off-leash dogs from entering Baxter Woods. My family and I have lived in the Woodford's Corner area for three years now and we bring our dog to Baxter Woods four to five times a week. It's a great place for both us and our dog to exercise and socialize with others. I have made many good friends with other people who walk their dogs at Baxter Woods. I even regularly schedule walks with someone who I met at the park because both us and our dogs get along so well.

Baxter Woods is an ideal space for off-leash dogs. The wooded setting gives dogs the ability to run, meet other dogs, and explore, thus stimulating their minds, senses, and bodies. Additionally, having the dogs on a walking path gives them a purpose and thus reduces potential conflicts. I try to avoid fenced in dog parks with no real walking paths, such as the one on Valley Street, because the dogs get bored and often end up fighting with each other. Moreover, dogs that are leashed tend to become fearful and defensive when coming across one another as opposed to when they have the freedom to run away.

In addition, walking an off-leash dog is much more convenient for myself and many others who have infants and toddlers. Pushing a stroller through the park while also holding onto the dog with a leash can be quite an unwieldy experience. The elderly and people with disabilities may also have trouble walking their dogs on a leash and, therefore, Baxter Woods serves as an excellent space for them to take their dogs, exercise, and socialize with others.

Finally, most of the people I see in Baxter Woods are fellow dog walkers. Making it an unfriendly space for dog owners could turn the park into an unfrequented area that serves as an ideal space for individuals who want to

drink alcohol and do drugs out of view of the public and law enforcement.

I hope you will reconsider this proposal. Baxter Woods is a special space that promotes community, health, and well-being. Please don't take that away from us. Thank you.

Sincerely,

Logan Puck

83 Woodford St
Portland, ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - Off Leash Hi Tech Smartphone App Solution

Ethan Hipple <ehipple@portlandmaine.gov>
To: Joel Bolton <joelkbolton@gmail.com>

Fri, Jun 7, 2019 at 11:09 AM

Hi Joel,
Thanks for the email and the out of the box thinking!

We'll certainly look at that along with our other options. Right now we are considering a compromise to allow off-leash dogs during certain hours. There will be more info coming on that as the next public meeting gets closer. It's currently scheduled for July 18--[keep an eye on the Parks Commission Agenda here](#).

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Thu, Jun 6, 2019 at 5:11 PM Joel Bolton <joelkbolton@gmail.com> wrote:

Dear Ethan,

My wife and I are part of the "dog community" at Baxter Woods. Through the years we've had three Golden Retrievers. All have enjoyed off leash privileges there. As responsible dog owners... which seem to be the vast majority who bring dogs to Baxter... we clean up after our dog. We certainly leash up our dogs if we see others in the park who may be fearful of dogs, when we see small children, track teams running, or other groups enjoying the park. In our 15+ years of near daily trips to Baxter with hundreds of interactions of dogs (if not thousands actually), it is rare occurrence to see a dog act in a vicious manner to other dogs. And I don't think I've ever seen one vicious interaction with a human in those years. Good dogs bring together and good neighbors. Most all seem committed to respecting the underlying vision of Mayor Baxter's park. And I echo the many, many public comments that speak much more eloquently than I can as to how important Baxter is to providing a safe, beautiful space where dogs can be off leash for the exercise they crave without having to drive and further pollute our climate with carbon.

That said, I especially want to commend and acknowledge the signage placed in the park, especially the "Dog Ownership" signs. It's dignified language clearly states the expected behavior and spirit of park enjoyment by all that we as dog owners are responsible for. If all dog owners heed that sign, there should be no problem keeping Baxter an off leash park.

SOLUTION????? I would encourage the Council to consider a low-cost, hi-tech solution. How about putting Smart Lights (solar powered and wi-fi driven) at the various entry points to the park. Those lights when activated would indicate to dog owners the need to "leash up". Any school group, after school group, track team, or anyone sensitive/fearful of dogs who are entering the park could trigger the Smart Lights from their smartphone app... sort of like how I can control my Nest thermostat remotely. Dog owners who use the park could also receive an alert notification that they should "leash up". The alert would time out after perhaps 30 minutes or 1 hour if the "sensitive/fearful" group or individual fails to deactivate the alert or "renew" it. Might be worth exploring. Certainly the technology exists for this. And I suspect the City might even be able to engage

our school computer science programs in a competition to create this, and/or I've bet that many of us who want to keep Baxter off leash would fund a Leash Alert app.

Kind regards,
Joel Bolton - April Fry & Camper
149 Ashmont St.
Portland
207.221.7600



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods

Allison Carroll <acarroll@portlandmaine.gov>

Fri, Jun 7, 2019 at 1:51 PM

To: Amy Segal <amybellsegal12@gmail.com>, Ana Lagunez <analagunez@gmail.com>, Brian Batson <bbatson@portlandmaine.gov>, Caitie Whelan <caitie.whelan@gmail.com>, Chelsea Malacara <chelsea.malacara@gmail.com>, Colette Bouchard <coletteb1821@gmail.com>, Craig Lapine <craig@cultivatingcommunity.org>, Cynthia Loebenstein <cloebenstein@yahoo.com>, Dory Waxman <mermaidst@gmail.com>, Ethan Hipple <ehipple@portlandmaine.gov>, Marie Gray <mariegray263@aol.com>, Matt Coleman <mcoleman@portlandmaine.gov>, Michael Mertaugh <michaelmertaugh@gmail.com>, Nathan Robbins <npalmer.robbins@gmail.com>, Sally Deluca <sld@portlandmaine.gov>, Zack Anchors <zack.anchors@gmail.com>

Another comment from the public for your records.

Take care,

Alli Carroll

Senior Administrative Officer
City of Portland, Parks, Recreation & Facilities
212 Canco Road, Suite A, Portland, Maine 04103
207.808.5428

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

From: **Peggy Akers** <kizzypax@maine.rr.com>
Date: Thu, May 23, 2019 at 7:02 AM
Subject: Fwd: Baxter Woods
To: <parkscommission@portlandmaine.gov>

Sent from my iPad

Begin forwarded message:

From: Peggy Akers <kizzypax@maine.rr.com>
Date: May 22, 2019 at 2:56:26 PM EDT
To: parkscommission@portlandmaine.gov
Subject: Baxter Woods

How disappointed I felt after the long meeting last month when so many of us shared our thoughts and feelings and concerns about changes in the leash law in the park. It seemed that emailing was more important than the passionate voices of the neighborhood dog walkers.

I have had the privilege of walking in that park for over twenty years and meeting so many wonderful friends and dogs. I am a nurse practitioner who works hard to help folks age in place. Older residents walk with their pets there daily and meet friends and comrades. They keep active both physically and mentally. It is a joy to

talk together while our dogs run and play.

I have read what Mr Baxter wrote and knowing that he was a big dog [lover](#) as are other members of his family...I do not believe this is what he was wanting for the use of the park. You have closed the Western Cemetery which was a most special place to be with dogs. I remember how fun it was to watch nuns and teens talk and laugh together as their dogs played. Now you will try and take this joy from us.....please please listen to all our voices. Evergreen cemetery is open for non dog folks and it is so beautiful. Let us have our one little corner of Portland.

Thanks for listening

Peggy Akers

[187 Concord street](#)

[Portland, Maine 04103](#)

207 232 7695

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You received this message because you are subscribed to the Google Groups "Parks Commission" group.
To post to this group, send email to parkscommission@portlandmaine.gov.



Ethan Hipple <ehipple@portlandmaine.gov>

Question: July 18th Parks Commission Meeting...

D Leland <lelanddm@gmail.com>

Tue, Jun 11, 2019 at 8:10 AM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Cc: "sld@portlandmaine.gov" <sld@portlandmaine.gov>, "ehipple@portlandmaine.gov"

<ehipple@portlandmaine.gov>, Parks Commission <parkscommission@portlandmaine.gov>, Anne Callender <anne@whipplecallender.com>

Ethan and Sally,

I was negligent in not thanking you! I do appreciate our friendly conversation in the coffee shop. Thanks so much.

– Dawn

On Sun, Jun 9, 2019 at 10:02 AM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Sally, Ethan: First off thanks for meeting with Dawn and me on Friday, 5/31. We appreciate the extra effort the Parks Department is putting into the desired ordinance change for Baxter Woods. As we discussed briefly on 5/31, I am following up on our request to be allowed the opportunity to present PowerPoint slides at the 7/18 Parks Commission meeting, in support of off-leash dog-walking and our community of family walkers at Baxter Woods.

Since 5/31 I've reviewed the Ch.18 City Code Ordinance covering Parks Commission meetings, and see the following from Ch. 18:

(8) Adopting reasonable rules for the conduct of its meetings, which rules shall include provisions for public comment.

(Ord. No. 50-83, 6-20-83; Ord. No. 70-09/10, 10-5-09; Order 203-13/14, 5-28-2014; Ord. No. 116-14/15, 1-5-2015)

I haven't see anything in Ch. 18 or anywhere else in the City Code that precludes the Commission from granting anyone the right to make a presentation. Nor does our request seem unreasonable or improper given the impact of the ordinance change. But digging deeper into the City Code I found the Council's Rules of Procedure for conducting meetings – with the following provision noted that does allow the City Council to grant additional time for public comment:

*8. Persons addressing the Council on an item prior to start of deliberation on such item by the Council shall be permitted to speak only once on an item, and shall limit their remarks on each item to three (3) minutes. **From time to time, the Presiding Officer may grant an extension of this three (3) minute requirement.***

I would imagine the Parks Commission meetings would have the same or more generous allowances for public comment – especially as the proposed ordinance change in Baxter Woods will directly impact the daily devotions of over 1,000 Portland residents. We are seeking no more than 10-15 minutes of continuous presentation time at the 7/18 Parks Commission meeting, for which 5 or more people will gladly relinquish their public comment time.

We respectfully ask again that the Parks Commission allow us this additional time beyond the 3 minute allotments to present at the 7/18 meeting.

Thanks, Marc

Marc Lesperance, [103 Candlewyck Terrace, Portland, ME 04102](#)

Tel: 207-774-6584; **Cell:** 207-329-4953; **Work:** 207-209-0517

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
 To: Teresa Valliere <tvallier@maine.rr.com>

Mon, Jul 15, 2019 at 9:02 AM

Thanks Teresa,
 We will add to the record!
 Take care,
 Ethan
Ethan Hipple
 Deputy Director
 Parks, Recreation and Facilities Department
 City of Portland
 212 Canco Rd, Suite A
 Portland, Maine 04103
 207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Mon, Jul 15, 2019 at 7:49 AM Teresa Valliere <tvallier@maine.rr.com> wrote:

Hello Ethan and Parks Commission,

I'm hoping I can still offer my perspective on the **proposed leash law change for Baxter Woods** up for discussion this week. Unfortunately, I cannot attend the meeting due to conflict.

Here's why I think the current rules should remain in place

- Within a 15 min walk of Woodfords Corner there are 8 public green spaces, many underutilized. Baxter Woods is the only one where dogs can run off-lead and many dog owners use the space appropriately.
- The city comp plan promotes walkable neighborhoods, but to get to an "off-leash" dog park should Baxter rules change, people like myself will have to drive to one of the 2 dog parks in the city. This is a waste of gas and time for many people.
- The city wants people to use the green spaces - keeping parks active keeps them safer. The only folks in Baxter Woods in the early mornings are the dog walkers and some joggers.
- In the 17 years I've been walking there in the early mornings, I have never seen any problems with dogs interfering with kids, joggers, etc, nor have I ever seen people with small children in the park in those hours
- All the owners in the early morning have voice control of their dogs
- I hear and see birds within the woods every day (except deepest cold winter days) - birds are clearly nesting there. There are plentiful woods in the back of Evergreen, and there are multitudes of birds there as well and dogs are allowed off leash. I trust the birds figure it out.
- How this will be enforced if it should pass? Will the city waste resources monitoring something that doesn't require monitoring?
- I doubt Governor Baxter leashed his dogs on his walks in the woods. I read the materials presented from the city website, and believe the intention is to prevent the cutting of trees or removing the water features. There is no language about leashing dogs.

If the decision is to make a change, I propose that the rule be dogs off-leash, under voice command, until 9 AM all year round.

Thank you,

Teresa Valliere, LCSW, LADC, CCS

Valliere Counseling and Professional Support
phone 207.233.9276

MAILING LIST

<http://vallierecps.com>

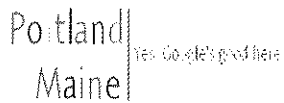
FMI about counseling, supervision, training or consultation, please contact me at tvallier@maine.rr.com

<http://Therapists.PsychologyToday.com/rms/68128>

Office: 57 Revere Street #1
Portland, ME 04103

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Teresa Valliere
tvallier@maine.rr.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods for dogs

Ethan Hipple <ehipple@portlandmaine.gov>

Wed, Apr 3, 2019 at 2:25 PM

To: Caroline Robinson <robinc@portlandschools.org>

CC!! Good to hear from you, and thanks for the comments. I'll pass them on to the Parks Commission.

It is a tough one--I've got many friends and neighbors (you included!) who love to use it as an off-leash dog area, but we are trying to balance that with other uses and the deed restrictions to preserve it as a bird sanctuary. Definitely a good case study of the challenges of balancing the multiple uses of public land.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Tue, Apr 2, 2019 at 10:26 PM Caroline Robinson <robinc@portlandschools.org> wrote:

Howdy!!!!

I hear you are the one sifting through everyone's perspective on the old Baxter Woods leash question!

As a massive fan of Baxter Woods (Lewis and I walk George in there twice a day!) I want to say that it's my favorite part of our neighborhood and watching George gallop around with his buddies is often the best part of my day. I am definitely in the 'please keep off leash permission there' camp.

The community of dog owners there is pretty awesome, very responsive and responsible, and fun to walk with.

That being said....I utterly respect cross country runners who want to not have dogs get excited when they fly through!

Good luck with this one....it's dear to the heart of many!

CC

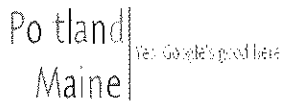
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CC Davies Robinson
English Teacher
Senior Humanities Team
Casco Bay High School

"Love allows understanding to dawn, and understanding is precious. Where you are understood, you are at home." -John O'Donohue

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Ethan Hipple <ehipple@portlandmaine.gov>

Comptemplation of leash law in Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Apr 2, 2019 at 2:24 PM

To: Lita Semrau <lita@portcityarch.com>

Hi Lita,

I've attached a memo that we wrote to the Parks Commission that helps explain the reasoning. Hope it helps answer your questions. FYI... We allow off-leash dogs on approximately 495 acres in Portland. Valley St Dog Park and Quarry Run account for about 6 acres together, and Baxter Woods is 29 acres.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Tue, Apr 2, 2019 at 12:21 PM Lita Semrau <lita@portcityarch.com> wrote:

Just want to know what would motivate even considering a leash law in Baxter Woods – there are already many place in Portland where leashes are required and very few where dogs can run . . . please do not mention the dog park below Maine Med (that place is overused and too small for an adequate walk for me) and we need to more spaces for humans and their dogs to be able to take in a little exercise at their own pace . . . las

Lita Semrau, AIA, NCARB, LEED AP

Port City Architecture

65 Newbury Street

Portland, ME 04101

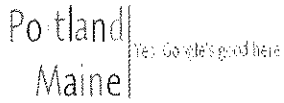
p: 207.761.9000

w: www.portcityarch.com





Baxter Woods Off Leash Memo 3-7-19.pdf
142K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods off-leash issue

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Apr 2, 2019 at 2:26 PM

To: Rochelle Spiegel <rochellespiegel@gmail.com>

Thanks for your comments Rochelle. I will pass them on to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Tue, Apr 2, 2019 at 10:00 AM Rochelle Spiegel <rochellespiegel@gmail.com> wrote:

Hello Mr. Hipple,

I am writing to you because I am a small dog owner and I regularly take my dog off-leash into beautiful Baxter Woods. My husband and I bought our house in the neighborhood to live within walking distance of Baxter Woods. We are responsible dog owners and have always respected this place. Our dog is very well trained and always stays with 15 feet of us. We are also nature lovers and love admiring all of the trees, shrubs, wildflowers, mushrooms, mosses, and birds up in the trees.

We walk there in the mornings before work and I know our presence there has made many strange and or drugged-out homeless people feel very uncomfortable. I've seen them move on and pack up their sleeping bags because they see us coming. I've even called the police many times to report tents and crazy people acting oddly. We've even scared away groups of teenagers smoking pot on their way to school. Responsible and respectful dog owners make a huge difference in this park.

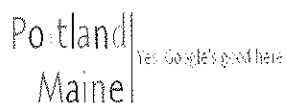
My elderly neighbor has lived in this neighborhood her whole life and will not set foot into Baxter, not because of the dogs, but because that is where the "Bad people hang out", because she only knows that drug addicts used to hang out in there. I try to tell her it's not like that anymore but she is terrified of being mugged or raped by a drug addict living in there.

If this park becomes a leash-only park I'm afraid it will turn into a homeless and druggie haven again, especially on the back trails. Personally, my husband and I would no longer use this park and I know many of us responsible people would just go somewhere else where our dog can run and play with other dogs.

Maybe a better solution would be to have a multi-use park by setting times of the day that are off-leash and leash only, like Willard Beach. This way everyone could use the park.

Please do not take this place from us.

Respectfully,
Rochelle Spiegel
503-307-4091



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods public comment

Ethan Hipple <ehipple@portlandmaine.gov>
To: Marissa Bodnar <marissabodnar@gmail.com>

Tue, Apr 2, 2019 at 3:54 PM

Thanks for the comments Marissa--we'll forward on to the Parks Commission.

Thanks,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Tue, Apr 2, 2019 at 1:39 PM Marissa Bodnar <marissabodnar@gmail.com> wrote:

Hi Ethan,

I'm writing to weigh in on the proposed leash rule in Baxter Woods. I can't make it to the hearing on Thursday, but am hoping the committee will take this under consideration with the other public comments.

As a dog owner who visits these woods multiple times a week, every week, I strongly oppose this proposal. I can't really speak to the bird sanctuary part of the memo, but do feel it's important to share my experiences regarding "safety concerns."

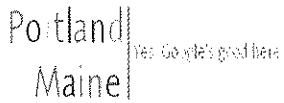
I've been bringing my rescue dog there for more than three years and have never worried for my safety or his. I don't doubt there are occasional incidents – sometimes a dog gets excited and jumps up on someone – but that can also happen anywhere, leash or no leash, rules or no rules. From my experience, the suggestion that dogs in Baxter Woods are "unruly" or a threat to people or other dogs is completely absurd. In fact, I actually see owners of less friendly dogs taking the preemptive step of putting them on a leash.

As a former resident of Deering Center, I can tell you this is the heart of the neighborhood for any dog owner. It's a wonderful community of people and dogs. I've made friends in these woods and so has my dog. The location is still five minutes away from our home and allows us to meet up with other folks to get some activity in, especially on busy work days and the part of the year when daylight is in short supply.

In my opinion, a 25-foot leash just makes for a tangled mess of a walk with brush and trees right along the trails, and as dogs greet each other. The questions I'm left with: How will this be enforced? And if passed, is the city willing to look at making other locations available for off-leash dogs?

Thanks for your time.

Marissa Bodnar (& Atlas)
207-653-3446.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - in support of off leash

Ethan Hipple <ehipple@portlandmaine.gov>
To: Adrienne Fine <adrienne.fine@gmail.com>

Wed, Apr 3, 2019 at 2:07 PM

Hi Adrienne,
Thanks for your comments, we will share with the Parks Commission.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Wed, Apr 3, 2019 at 2:05 PM Adrienne Fine <adrienne.fine@gmail.com> wrote:

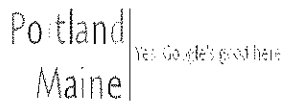
Hello Ethan,

Thank you for accepting emails prior to the meeting in regards to the Baxter Woods dog leash issue. I just wanted to email you as a citizen and neighbor to Baxter Woods (27 Florence St, Portland) to say that I am in support of continuing to allow dogs to be off lease within Baxter woods.

In general I see users of Baxter woods following the current rules of voice command, not letting your dog out of sight, and picking up after them (even off trail). It would be a shame to take away one of the few areas that dogs are allowed off leash within the City limits, especially one that is walking distance from many neighborhoods. Forcing dog owners who chose to buy homes in dog friendly neighborhoods walking distance to Baxter Woods to now drive to the City limits to get to other off leash areas is not favorable. Portland is a dog friendly City and removing this central off leash area would change that perception.

I appreciate your time on this matter.

Thank you,
Adrienne Fine



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Wed, Apr 3, 2019 at 3:50 PM

To: Mollie Bash <mbash2@gmail.com>

Thanks for the comments Mollie. We will share with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Apr 3, 2019 at 9:05 AM Mollie Bash <mbash2@gmail.com> wrote:

Hi Mr Hipple,

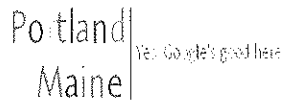
I am writing to you as a citizen of Portland who visits Baxter Woods daily with her two dogs. I live in Portland and am a Portland taxpayer. Baxter Woods is a fantastic off leash space for dogs to be able to play in Portland. As someone who visits daily, changing the leash law would have a significant negative impact on my quality of life as Portland citizen. Every dog owner that I have encountered there is conscientious about watching their dogs and cleaning up after them. There are very few places like Baxter Woods in Portland available for dogs and there are many more places for people to walk if they do not wish to be around dogs.

A far bigger concern in terms of the park being family friendly is the amount of broken glass that can be found in the Woods. This is something that I pick up whenever I see it and I know other people walking their dogs do the same. This will continue to be a bigger problem for children and families if the number of people walking their dogs decreases due to this proposed law.

I am unable to attend the meeting tomorrow due to work but it would be extremely disappointing to lose this space.

Thank you,
Mollie Goldenberg

Sent from my iPhone



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Debra Flynn <debra_ann@maine.usa.com>

Wed, Apr 3, 2019 at 4:03 PM

Thanks very much Debra, I will make sure the Parks Commission sees your comments.
See you tomorrow,
Ethan

Ethan Hipple
Deputy Director
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On Mon, Apr 1, 2019 at 11:07 AM Debra Flynn <debra_ann@maine.usa.com> wrote:

Hello,

I live on Hartley Street and I wanted to let you know that I will be there at the meeting to support the city in it's obligation as a trustee of Baxter Woods.

This is not only a public safety issue, a waste issue but dogs that are loose are detrimental to the environment. Baby birds learning to fly as well as other wildlife are at risk from loose dogs.

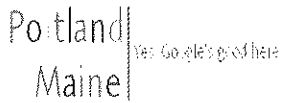
We have 2 greyhounds that have been attacked in the day in these woods, so much that they now refuse to enter or go near them during the day when there are loose dogs. We hear people all the time calling or whistling for their loose dogs. We've had loose dogs come into our yard, no person in sight or dogs come after us walking on the sidewalk past the woods. This isn't a dog park, yet people seem to forget how to be responsible for their pet.

Thank you for addressing this issue of Baxter Woods not being in compliance with the deed.

Debra Ann Gorneault

--

Sent from my Android phone with mail.com Mail. Please excuse my brevity.



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash law change

Ethan Hipple <ehipple@portlandmaine.gov>
To: Anne Callender <anne@whipplecallender.com>

Wed, Apr 3, 2019 at 4:06 PM

Hi Anne,
Thanks for your comments and thoughtful letter. I will make sure the Parks Commission gets a copy.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
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Portland, Maine | Yes. Life's good here.

On Tue, Apr 2, 2019 at 3:03 PM Anne Callender <anne@whipplecallender.com> wrote:
Hello Ethan -

Please include my letter enclosed with the comments on proposed changes to the leash law in Baxter Woods.

I have enjoyed walking my dog in Baxter Woods for the past 15 months (at least twice a day) and have had many wonderful experiences and relationships because of it. Your proposal will deny me and my husband the happiness that we enjoy by having a place near by to let our dog run. Dogs bring a lot of joy and comfort to humans, and they are a big part of a healthy life. Your proposal will impact my life negatively.

Sincerely,
Anne Callender

April 1, 2019

Mr Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Road, Suite A
Portland, ME 04103

RE: Baxter Woods Off-leash Policy

Dear Mr. Hipple -

I am disappointed to read your recommendation of having dogs leashed in Baxter Woods. The study commissioned by the City solely looks at the use of the Woods from an ecological assessment bias that puts more weight on the "sanctuary for wild birds" than it does on the "benefit of the people of Portland for public recreational purposes".

I am frustrated that staff has not taken the time to survey users of Baxter Woods and appears to be heavily influenced by complaints rather than observing those who regularly use it and keep it vibrant. If you did, you would find that the regular users have formed a community that enjoys seeing each other on a regular basis for walks and while allowing their dogs to play. This might sound like a joke, but I used to have regular walks with a Rabbi, a Priest and a professed Communist, and found that we would enjoy each other's company discussing a wide range of topics. None of us would have ever had that opportunity to meet and form such a meaningful relationship if it wasn't for this park.

If the dog owners of Portland knew that we had to regularly write comments to staff about our love and joy of walking with and meeting other people in our community in Baxter Woods, we would fill your in box on a daily basis. The majority of the users are responsible in keeping their dogs under watchful eyes, picking up their feces, and keeping the play under control. The park has allowed us to socialize our dogs as well as ourselves. For over 15 years, I have enjoyed the benefits of this park, it seems capricious to change the rules now.

I disagree that there ample access to other open spaces for dogs to run free in Portland. Baxter Woods proximity to 3 streets has an advantage for my safety. I would not be comfortable walking alone in Evergreen Woods because of its lack of visibility and proximity from habituated areas. The same can be said for Canco Woods, and Valley Street doesn't present itself with a way for me to get exercise in unison. There are more dogs than children in the blocks surrounding Baxter Woods and it provides a welcomed break from walking dogs on leashes on the street.

In this era of disconnectedness, Baxter Woods has given me a way to connect with my neighbors and form bonds with my community that aren't available to me in any other form. Introducing leashes into the park will make it difficult to have the same interactions. Dogs behave differently on leashes when interacting with other dogs. Some appear more aggressive to protect their owners and themselves since they can't retreat to assess the situation. Dogs that enjoy playing with each other will get tangled up in leashes. Twenty-five foot leashes threaten to entangle more humans and do bodily harm.

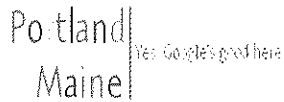
I respectfully request that you and the Parks Commission consider that the benefit for the people of Portland and leave the off leash provision in place. The report did not find that this park had any high-value plant or wildlife habitats. There isn't a lack of wildlife in Baxter Woods with its owls, woodpeckers, hawks, raccoons, squirrels, chipmunks, skunks, foxes and opossums. Evergreen Cemetery with its larger acreage and less light pollution is a greater draw for migrating birds. In 1946 when this land was deeded to the city, dogs could run free without much fear of being hit by cars or being lost or stolen. My mother's dog would walk her to school in the morning, return at lunch to walk her home, and repeat the exercise again at the end of the day. Those days are long gone and dog owners would like to have places to allow them to play with their dogs off leash. There is a big need and desire for these types of spaces and they should be accommodated in similar fashion to providing ballfields for another portion of the population.

Governor Baxter was a tremendous dog fan and I have a hard time believing that he won't have left the woods to the dogs if he knew how limited the options would be for them to roam free and play today.

Thank you for your consideration.

Respectfully,

Anne Callender and Dash the springer spaniel
138 Pleasant Ave
Portland ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Keep Baxter Woods off-leash!

Ethan Hipple <ehipple@portlandmaine.gov>
To: Stephan Spiegel <stephan@stephanspiegel.com>

Wed, Apr 3, 2019 at 4:35 PM

Thanks for your comments Stephan, I'll get them to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Apr 3, 2019 at 4:19 PM Stephan Spiegel <stephan@stephanspiegel.com> wrote:

Dear Mr. Hipple,

I'm writing to voice my strong opposition to the proposal to revoke the off-leash status of Baxter Woods.

I'm both a dog walker and a property owner. I walk my dog almost daily at Baxter Woods. While having to take my dog elsewhere for off-leash activity would be an inconvenience, I'm much more concerned about what the rule change would do to the value of my property.

My wife and I bought our house three years ago. We specifically wanted a home within walking distance to Baxter Woods, because of its status as an off-leash area. We paid significantly over asking for our home, in large part because of its location, and I know we're not the only home buyers in our neighborhood for whom this is the case.

Some of our long-time neighbors have not set foot in Baxter Woods since the 80s or 90s. They are afraid, not of dogs, but of "shady people" who supposedly hang out there. Having never seen anyone of that description in Baxter Woods, it's clear to me that the presence of dog walkers keeps drug users and urban campers out. In fact, some of the wooded areas immediately adjacent to Baxter Woods, on private property and thus off-limits to dog walkers, show signs of recently inhabited encampments.

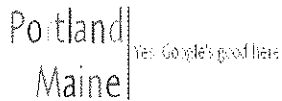
To summarize, I believe banning off-leash dogs from Baxter Woods will lower the surrounding property values in two ways: One, by making the area less desirable to home buyers who are also dog owners, and two, by making the woods themselves more attractive to drug users and homeless people, with the ensuing rise in crime and refuse.

Please don't allow the unattainable "unspoiled" woods imagined by some who would use it once or twice a year ruin it for those of us who use it daily, and to take money out of the pockets of all of us who own property around Baxter Woods!

Regards,

Stephan Spiegel

151 Prospect Street
Portland ME, 04103



Ethan Hipple <ehipple@portlandmaine.gov>

off leash policy - Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 2:29 PM

To: Gayl Anglin <ganglin65@gmail.com>

Thanks for your comments Gayl--I will make sure they are shared with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Mon, Apr 1, 2019 at 1:48 PM Gayl Anglin <ganglin65@gmail.com> wrote:

Dear Ethan,

I received notice about the Parks Commission meeting this Thursday regarding the off-leash policy at Baxter Woods. Unfortunately, I am unable to attend due to another commitment, but wanted to at least send my input.

I am a Portland resident and dog lover. While I do not currently have a dog, I have had dogs most of my life and have always appreciated places where I could allow my dogs to run off leash. That being said, I knew the limits of my voice control with them and never had them in a place that would be disruptive to others or put them in a place where they could be injured or cause an accident. I have on three separate occasions since the beginning of this school year stopped to help people catch their errant dog who had run from Baxter Woods, on one occasion the dog was running in traffic. All three times the owners were exclaiming that "s/he never does this" however, all it takes is one time for a dog to get hit and/or cause an accident. Baxter Woods sits right on two major streets and is not fenced, which in and of itself does not lend it to being an off-leash park. Add to this, the level of voice command that is needed to keep a dog fully under control seems to often be interpreted liberally by dog owners.

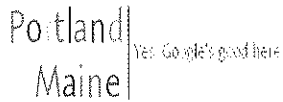
I recommend that Baxter Woods require leashes for dogs, for both their safety and also for the general public, unless the city were to extend a fence around the entire border of the park, which does not seem feasible.

Best regards,

Gayl M. Anglin, Ph.D.

ganglin65@gmail.com

"Hungry man reach for the book, it is a weapon." - Bertolt Brecht



Ethan Hipple <ehipple@portlandmaine.gov>

Please keep dogs free in Baxter Woods!

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 3:44 PM

To: shambaugh@gwi.net

Cc: Justin Costa <jcosta@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Brian Batson <bbatson@portlandmaine.gov>, "Kimberly M. Cook" <kcook@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>, "Mavodones, Nicholas" <nmm@portlandmaine.gov>, Ethan Strimling <estrimling@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Hi there Ben,

Thanks for the thoughtful comments and sorry to hear about the loss of your dog Sasha.

We will make sure the Parks Commission gets a copy of your comments for the meeting this Thursday.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Mon, Apr 1, 2019 at 2:33 PM <shambaugh@gwi.net> wrote:

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the

Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner – proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly. These, however, are very limited and – as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today – a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh
147 Clinton Street
Portland, ME 04103
207 400-7516



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Christina Dalessio <cmd4567@gmail.com>

Mon, Apr 1, 2019 at 3:46 PM

Hi Christina,
Thanks for your comments. I'll make sure the Parks Commission gets a copy.
See you on Thursday.
Ethan H
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207.808-5400
ehipple@portlandmaine.gov

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On Mon, Apr 1, 2019 at 2:50 PM Christina Dalessio <cmd4567@gmail.com> wrote:

Ethan,

After moving to Portland in 1994, I purchased a home within walking distance of Baxter Woods back in 2003 ... expressly so I would be able to walk my dog there off leash.

Over the past 16 years I have visited the park almost daily and have directly observed during that time that off leash dog walkers are in fact the most frequent, caring and responsible users of the park. We pick up after our dogs and we pick up trash left behind by other visitors such as students and families with kids. We are literally the heart and soul of Baxter Woods.

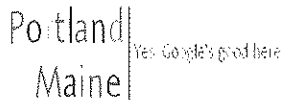
I'm told that you are concerned about ground birds. There has never been a ground bird population in this park since I moved to Portland 25 years ago, nor *would* there be if off-leash dogs were prohibited. There would still be people with kids and dogs walking everywhere in the park, not just on the trails, and there would still be people riding bikes through the park, large groups of students school running through the park, archeology groups digging holes and planting flags in the park, etc. The idea that prohibiting off-leash dogs would somehow prompt a miraculous ground bird revival at the park just doesn't make sense scientifically. The park already IS a bird sanctuary with many different species living there in concert with people and their pets. The dogs do not harm the birds, off-leash or on. In fact, watching and listening to the birds is one of the best parts of walking my dog there.

The tax-paying citizens of Deering/Rosemont/Deering Highlands/ Back Cove neighborhoods need space to run their dogs off-leash. There is simply no way to own a dog over 30 pounds and give it enough exercise on leash only. And other options around the city are not acceptable alternatives.

The woods behind Greenwood cemetery are remote, full of ticks and I do not feel safe walking there. There are literally homeless people living in tents back there. The Valley Street Dog Park is an unsanitary, filthy, dust bowl that is way too small to accommodate all the off leash dog walkers from our area of Portland. We need a place in in our neighborhood that we can walk to. And we have a perfectly good one. Please don't ruin it because of a few "squeaky wheels" who do not represent the majority of users.

In my opinion, the mindset of **exclusion** as a way to solve problems is really what's wrong with our country these days. Instead of **excluding** the people who are the most devoted and frequent users of the of the park, you should look for ways to find common ground and compromise among constituents. It's your job to work **with** us not against us.

See you Thursday.



Ethan Hipple <ehipple@portlandmaine.gov>

Meeting on Thursday

Ethan Hipple <ehipple@portlandmaine.gov>
To: David Little <authorartist775@gmail.com>

Mon, Apr 1, 2019 at 3:58 PM

Thanks for the comments David.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 1:52 PM David Little <authorartist775@gmail.com> wrote:

Hi Ethan. Sorry not to attend the meeting on Thursday.

I guess my issue with off-leash dogs in Baxter Woods is the multitude of dog doo deposits that lie hidden just off the trails. I can't tell you how many times I have stepped in dog shit while going off trail to look at a particular tree, pit and mound, view, and so on. Even setting up one's easel to paint in Baxter Woods can become unpleasant.

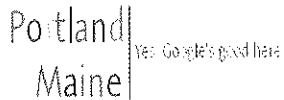
I have been wheeled around, and knocked over by dogs that don't obey voice commands or where the owner is out of sight.

I believe that were JPB alive today, he would be just fine with keeping dogs on leashes.

That's my 2 cents.

David Little

142 Brentwood St, Portland, Maine 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - public comment

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 4:00 PM

To: Sarah Hilzinger Kellogg <sarah.h.kellogg@gmail.com>

Hi Sarah,

Thanks for the thoughtful comments. The program in Boulder looks very interesting and worth looking into.

I'll share your comments with the Parks Commission.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 11:07 AM Sarah Hilzinger Kellogg <sarah.h.kellogg@gmail.com> wrote:

Hello Ethan,

I am writing to share my perspective on the Baxter Woods leash vs. no leash debate since I will be out of town this Thursday night.

I am someone who walks in Baxter Woods many mornings before work (irrespective of whether it is 9 or 90 degrees). In fact, we walk there so frequently that when my dog and I walk out the door of our house in the Back Cove, she takes me straight to Baxter Woods.

I can unequivocally say that the community of dog walkers that use the park is exceptional. We moved to Portland 3 years ago and the community of people that use the park as part of their daily routine are some of the most kind and welcoming people I have met as we've started to put down roots here. It is one of the examples I often cite when telling family/friends about how Portland is different than most cities: there is a degree of implicit trust the city imparts on its people to do the right thing, and it is not uptight or overly restrictive (particularly in contrast to bigger East Coast cities where we grew up/moved from). I think of Portland as a city that aims to strike the right balance between the Maine "frontier" spirit (channeling the type of mindset that is more pervasive Downeast) with the realities of a growing city.

I urge you to consider this balance, trusting your citizens to do what's right (while nudging them in the right direction as needed) and making the woods a place where the greatest number of people and wildlife can co-exist in peace. I am strongly of the mindset that moving from the status quo to a leash-only environment would be a detriment to a robust community, not to mention disband a group that I imagine inadvertently prevents nefarious activity.

On the point of nefarious activity - I think it is critical to be realistic about the state of drug use in the city. We also walk frequently in other wooded areas and have unfortunately had to deal with the aftermath of our dog finding drugs. If we assume the imposition of a leash law would make a large portion (if not all) of the Baxter Woods dog walking community to go elsewhere for their morning and evening (rain or shine) walks, its possible this could have unintended consequences on the safety of the woods. While I appreciate dog poo is

not a minor nuisance... we can all certainly agree that needles and edibles are a more acute safety issue. The community of dog walkers are out in the woods early in the morning and evening, when the park may otherwise be empty, and also the vast majority of us are picking up garbage as we go. To think that the existing community will continue to use the woods in this manner and to this degree (just with their dogs on leashes) is not realistic - we will go elsewhere. I urge you to fully consider what this will mean for how the woods WILL be used.

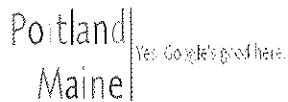
With this in mind, I feel strongly that there must be other ways to address the concerns that others have raised without jumping to a unilateral leash law. While I do not expect I have a full line of sight into the entire suite of concerns, here are just a few thoughts:

- On/off leash hours?
 - I am in full support of the neighboring schools feeling safe when they want to use the woods as outdoor exploratory space. I could fully understand and respect restricting a certain window of time during the school day where dogs must be on leash.
- Seasonal on/off leash?
 - I am not an expert, but I would expect ground bird nesting is particularly sensitive during certain times seasonally - restrictions that limit impact during sensitive times would also be entirely reasonable to me
- Bags/garbage bins?
 - I do not disagree that dog walkers can do a better job of picking up their dogs' poo. Bags and garbage cans at each entrance of the park can make a huge difference in this - there is 1 entrance without a garbage can, several without bags, and where bags are typically available they were not stocked most of this past winter.
- More publicity for park cleanup days?
 - One of the community members organizes this informally in the spring and fall, and a good group does get together to clean things up - but this type of effort may benefit from extra visibility (e.g., promotion by the city and/or Portland Trails)
- Off leash program?
 - I have heard some concern for walkers who do not have/like dogs feeling as if the off leash dogs are running wild and frightening. To address this, other cities have instituted off leash dog programs that allow dog owners that are responsible about off leash behavior to take advantage of it (rather than treat the woods like they are a "dog park"). Boulder (CO) is one example of a well established program that may be worth investigating, but the general model would be the cost of an off leash "tag" covers the cost of verifying that the dog has been trained to respond to basic off leash commands.

The easiest route forward would be to put in place a leash restriction and feel like the job is done. I urge you to take a route that endeavors to find a compromise on all fronts, which may be more challenging/more work, but also takes into account the positives that this community of dog walkers brings to Baxter Woods.

Thank you for your consideration!

Best,
Sarah Kellogg
908-399-9109



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: kevin@ktcole.net

Mon, Apr 1, 2019 at 4:40 PM

Thanks Kevin, we will pass your comments on to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 4:37 PM <ktcole@fairpoint.net> wrote:

Ethan, I'm not sure what's being suggested with respect to Baxter Woods. Unfortunately, I will be out of state when the meeting is to occur on Thursday, so I'm hoping I can add my two cents to the discussion via this e-mail.

Baxter Woods is one of the only really good off-leash areas in the city. I walk my dog there frequently. It's a pleasant stroll and I've not met anyone there who either caused a problem or expressed a complaint. The dogs almost always interact well with each other. I would be very sad to have the rules change to make the area less dog-friendly.

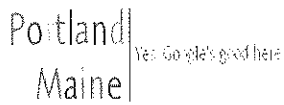
Thanks.

Kevin T. Cole

33 Fessenden Street



This email has been checked for viruses by Avast antivirus software.
www.avast.com



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Proposal

Carolyn Ehringhaus <carolyn.ehringhaus@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Wed, Mar 27, 2019 at 9:21 AM

Hello Ethan: I wrote to you last week regarding the proposal. After reading the materials from the links that you provided, I have written another letter for both you and the commission.

I had thought that the proposal to restrict dogs to leashes was due to negligent owners, particularly regarding waste disposal and dogs not being under voice control. Reading through the proposal documents, however, I see that the ecological report has major emphasis.

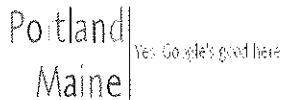
I would like to point out the following, keeping in mind the proposal's suggestion: *"Recreation use. Use trail cameras or other monitoring methods for fixed periods of time to quantify and describe recreation use and evaluate the potential impact of unleashed dogs on wildlife."*

1. Bird nesting: Regarding the ecological study, how many ground-nesting birds reside in or migrate to Baxter woods? I am not a bird expert, yet I do know that Baxter woods are not suitable for at least some of the more common New England ground nesters. We do have a diverse wildlife population, and I suspect that the dogs help to keep down some of the predators that kill birds, such as foxes.
2. Enforcement: With respect to the waste and voice control, signage is posted, yet nothing has been enforced. Additional patrolling and enforcing fines, possibly with the cameras suggested in the report, could quickly change behavior.
3. Previous incidents: As shown in the lengthy attachment documenting letters to the Park service, over a period of six years, there were actually very few letters concerning dog aggression incidents (again, monitoring can determine whether or not incidents occur with greater frequency in off-leash areas as compared to on-leash areas).
4. Alternatives: Baxter Woods is primarily a destination for local residents. It is not a "dog park" (Quarry or Valley St. are not options for many of us due to aggressive dogs and irresponsible owners). There is inadequate parking at these alternatives if Baxter users did switch, and neither Canco Rd. nor Evergreen are good options regarding space and/or parking. (Given the thicker growth behind Evergreen, wouldn't ground bird nesting be an issue?)
5. Dog waste: Lack of picking up has become a problem in Baxter woods and elsewhere. The PPH had an article about Hinckley Park (3/22/19) discussing this. Their Park ranger had planted 300 flags to encourage awareness and promote pickup prior to a predicted rain storm.

6. Lyme disease: In my 17 years of daily trail walking, including walking into growth to pick up waste, I have never found a tick. Given that Lyme disease is a serious health threat, the lack of tall grass and migrating deer in Baxter woods makes it a safer place for many residents and their dogs and/or children.
7. Safety: Prior to the woods becoming popular with dog owners, it was used by alcoholics, drug users, homeless people, and teenage partiers. I continue to pick up large quantities of broken glass, trying to keep the park clean and protect my dog's feet, as do other walkers. If dedicated dog walkers were not there daily taking care of the woods, glass and debris would only accumulate. Given the safety in numbers, there have not been incidents with aggressive humans, yet this could easily change without the presence of dogs.
8. Winter ice/falls: The paths have been covered with ice for much of 2018-2019 and recent winters due to the changing weather cycle. If dog walkers have to go elsewhere, the woods will be under-used much of the year. In addition, I have tried walking with my dog on leash under these conditions, and it is treacherous as even with cleats it is difficult to stabilize against the slightest pull. Many of the walkers are seniors, only adding to these potential human injury problems with increased risk of falling.
9. Quality of life: daily life for many of us has been enhanced greatly by being able to walk outdoors with our dog in Baxter Woods. Many of us walk to the woods and do not need to consume fossil fuels for transportation, and we value and take pride in this neighborhood asset.

I hope that, as a minimum, the council will decide to monitor the situation and will recommend increased patrolling before making any permanent changes. Although I care about wildlife, I think it is prudent to also consider resident quality of life.

Carolyn Ehringhaus
11 James St.
Portland, Maine 04013



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods On-Leash policy

Chelsea Malacara <chelsea.malacara@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Mar 28, 2019 at 10:50 AM

Thank you for the clarification.

On Thu, Mar 28, 2019 at 10:26 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hi Chelsea,

Yes, if the rule change is approved, we would enforce the rule using existing fines. \$75 first offense, and goes up from there.

Unfortunately, we have limited funds for Park Rangers, so it would be enforced at strategic times, not 24/7.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Wed, Mar 27, 2019 at 8:19 PM Chelsea Malacara <chelsea.malacara@gmail.com> wrote:

Ethan,

I just recently saw that there is going to be a council hearing on the proposed rule changes to Baxter Woods. Based on public concerns and most importantly, the ecological impact report, I fully support the decision to require dogs be on leash in Baxter Woods.

I was curious as to how the city intends on enforcing this rule? Will there be a fine, will there be new signage and rangers patrolling especially during peak times and the initial roll out?

Thank you for all your hard work.

Best,

Chelsea Malacara

--

Chelsea Malacara

chelsea.malacara@gmail.com

207-405-1009

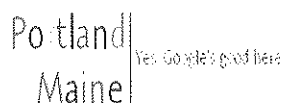
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--

Chelsea Malacara

chelsea.malacara@gmail.com

207-405-1009



Ethan Hipple <ehipple@portlandmaine.gov>

parks 4/4, leash laws, and other concerns

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 9:05 AM

To: D Leland <lelanddm@gmail.com>

Yes, we are proposing that dogs in Baxter Woods are on a 25 foot leash. See attached memo for more information.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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ehipple@portlandmaine.gov

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Portland, Maine | Yes. Life's good here.

On Thu, Mar 28, 2019 at 7:19 PM D Leland <lelanddm@gmail.com> wrote:

Hi - Thanks! I'm reading this as leashing IS going to be proposed. Right?

— Dawn

On Thu, Mar 28, 2019 at 10:20 AM Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Thanks for your comments Dawn. I know it's a tough issue with strong feelings on both sides, so thanks for your efforts to find common ground.

I will share your comments with the Parks Commission.

Our primary concern here is abiding by the deed that calls for Baxter Woods to be maintained as sanctuary for wild birds. However, as you know, there are many properties within Portland where we do allow off-leash dogs, so this isn't an across the board policy change, it's just a change to how we manage this single property. We also hear from the public about dog safety issues at Baxter Woods.

You are correct that picking up feces is a separate, but important issue. I know you have been very instrumental in helping model positive behavior on that! We are working on enforcement, but with only a single full-time Park Ranger, we could use help from groups like yours, and we are always open to new ideas of how to increase enforcement.

We aren't proposing leash vs non leash times at Baxter Woods as that would address just the safety issues, not the underlying deed issues.

We currently have one full time Park Ranger and 4 seasonals that come on in the summer.

Hope this answers your questions.

Take care,

Ethan H

Ethan Hipple

Deputy Director
Parks, Recreation and Facilities Department
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Portland, Maine | Yes. Life's good here.

On Wed, Mar 27, 2019 at 3:01 PM D Leland <lelanddm@gmail.com> wrote:

Hi Ethan,

I met you briefly some time ago at One Longfellow-- I do the Facebook page Responsible Dog Owners of Baxter... Please check out what I've been posting. I'm trying to strike a balance. Those who walk dogs there really do care about the park, the community it enhances, and having space for dogs to interact and run. And they're generally conscientious.

On the plus side

- It's a hub where we've gotten to meet others, and I have several friends I've met there.
- Some dog owners routinely pick up trash and beer cans, too.
- If drinking and drug deals go on, it's at night. There was an instance a year ago when one person saw some suspicious behavior and a group of us walked to the area and that seemed to be a deterrent to the people there. Then it occurred again, same thing.

Enforcement will always be with us

Enforcement is always an issue and it's not feasible to have park staff in there all the time.

- Some people didn't make a big effort over the winter to plow through a foot of snow into the trees to retrieve poop--and of course, that's where the kids go to do projects. The paths have also been littered with it.
- I've seen a couple men who have been unconcerned about picking up after their dogs or have been unpleasant in response to people not wanting dogs jumping on them or accosting their own dogs.
- Dog walkers have to be concerned about bikers who tear through the trails, often giving no warning, with little attention to whether people or dogs can get out of the way.
- We are adults and should know enough to behave--but we're talking about humans.

Some thoughts about leashing

I'm sure you know that most dog owners hate the idea but understand.

- Leashing won't stop people who won't pick up feces.

- What are the main issues that you/parks staff are hearing about? I know the environment is one. Is it any different than other parks? Worse? Better?
- If leashing is the goal, could there be consideration about off-leash times, such as 7-9 a.m. when dogs are most active, and use is greatest?
- What are the staffing and budget situations these days?

It would be lovely to have feedback that I could put on the FB page. Thanks so much.

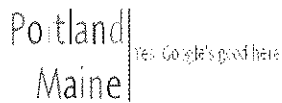
– **Dawn**

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Baxter Woods Off Leash Memo 3-7-19.pdf

142K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods - Dogs Off Lease

Ethan Hipple <ehipple@portlandmaine.gov>
To: Rick Lorello <rick@informationsystemsme.com>

Thu, Mar 28, 2019 at 3:17 PM

Thanks for the comment Rick.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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Portland, Maine | Yes. Life's good here.

On Thu, Mar 28, 2019 at 1:35 PM Rick Lorello <rick@informationsystemsme.com> wrote:

Hello

I don't agree with the request to make Baxter Woods a place to leash the dogs. No ground birds in the park.

--

Rick Lorello

Principal

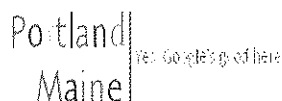
Information Systems of Maine, LLC

Rick@InformationSystemsME.com

207-653-4143

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Dog Policy - Parks Commission April 4th Agenda

Brooks More <brooksmore@gmail.com>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 1:29 PM

Thank you Ethan.

Have a great weekend.

Regards,
Brooks

On Fri, Mar 29, 2019 at 12:47 PM Ethan Hipple <ehipple@portlandmaine.gov> wrote:
Thanks for your thoughtful comments Brooks. I will share with the Parks Commission.
Thanks,
E
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
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ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Fri, Mar 29, 2019 at 12:42 PM Brooks More <brooksmore@gmail.com> wrote:
Hi Ethan,

I saw your email address on some of the correspondence regarding Baxter Woods. So, I'm hoping that you can include these comments as part of the upcoming deliberations.

My name is Brooks More and I live at 7 Tremont St. in Portland. Our family owns a 2 year old dog and walk him every morning in Baxter Woods. In my experience, there is a consistent group of people that walk their dogs in Baxter every morning before work. For us, it is the only way for the dog to get a little bit of exercise in the morning (walking on-leash isn't really exercise for our dog).

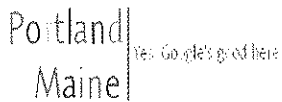
My sense of reading through the agenda materials is that the on-leash policy is inevitable and for good reasons. That being said, I'd like to ask if the Parks Commission could consider some compromises. For example, SoPo went through this type of issue with Willard Beach and decided to allow dogs off-leash for restricted hours and months. Rather than prohibit all off-leash activity in Baxter, would it be possible to limit it to a few hours in the morning? Say 6:00 a.m. to 8:30 or 9:00 a.m. After that window of time, all dogs would have to be on-leash. I realize that this may not address the bird sanctuary issues.

If all off-leash activity is prohibited, my expectation is that everyone will start driving over to the trails behind Evergreen. As a result of this consolidation of use, neighbors over there will then start complaining and it too will become off leash. If there is a chance for compromise, we would greatly appreciate it.

Thanks for your time and consideration.

Brooks

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Proposal

Ethan Hipple <ehipple@portlandmaine.gov>
To: Jessica Marino <jbmarino77@gmail.com>

Mon, Apr 1, 2019 at 9:39 AM

Thanks for your comments Jessica. I will pass them on to the Parks Commission for their meeting this Thursday. Take care,

Ethan

Ethan Hipple

Deputy Director

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Portland, Maine | Yes. Life's good here.

On Mon, Apr 1, 2019 at 8:37 AM Jessica Marino <jbmarino77@gmail.com> wrote:

Hello Ethan,

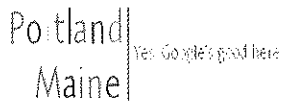
I'm not able to attend the meeting on Thursday night but wanted to share my thoughts. I've lived just blocks from Baxter Woods for 12 years and, even though I am a dog owner, I support enacting some kind of leash law and/or limiting times when dogs may be off leash there. I feel that I cannot safely walk my own dog there. I keep him on leash because he is a squirrel chaser and would gladly run into traffic after one. But we have had countless negative encounters where off leash dogs run up to him and get tangled in his leash. I have had those dog's owners scold me for bringing in a dog on a leash because "this is an off-leash dog park" and have had other times where an owner is nowhere to be found.

I have three children and when they were much younger their babysitter used to take them to the pond in the summer. A few years ago she stopped taking them because she felt like the number of dogs had increased and some were out of control and she didn't feel safe bringing the kids. One of my daughters did Cross Country running at Lincoln last year but after being chased by dogs during practice and during meets she did not sign up this year. There have been other cases where they have gone to Baxter Woods for science class and been approached by dogs with no owners in sight.

Most parents I know will not let their kids walk through Baxter Woods. Nobody will ride their bike there anymore.

I understand that Baxter Woods is a special place for dog owners who want to let their dogs off leash. But they are the minority. There is a huge community of people who cannot use those woods because of the influx of off-leash dogs. Baxter Woods is not a dog park. We have dog parks in Portland for those who want to let their dogs off leash. It is unfair that it is being used primarily by dog owners at a cost of the other neighborhood residents. It's a beautiful place and should be filled with walkers and bike riders. Nobody is saying dogs can't enjoy that park too, but everyone would be safer with those dogs on a leash. I would also support some kind of compromise; perhaps there could be times of day where dogs are allowed off leash and those times could be clearly marked.

Thank you for taking on this issue, which I know people feel passionately about on both sides.



Ethan Hipple <ehipple@portlandmaine.gov>

Dogs and Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Barbara Doughty <babsy1000@yahoo.com>

Mon, Apr 1, 2019 at 8:24 AM

Thanks Barbara. I will share your comments with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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Portland, Maine | Yes. Life's good here.

On Sun, Mar 31, 2019 at 8:18 AM Barbara Doughty <babsy1000@yahoo.com> wrote:

Mr. Hipple:

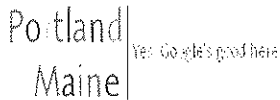
Please do not pass an ordinance that forces dogs to be on a leash in Baxter Woods. For years, I have enjoyed the beauty of that special place and especially seeing dogs running free and interacting with other dogs and humans.

This is a very special community of dog lovers. Incidents of bad behavior by dogs are so rare.

Governor Baxter proclaimed the Woods as a special place to be enjoyed by humans. As a dog lover himself, I can't believe he would have wanted to see them leashed. Doing so will deplete the Woods of many good folks who love to be there with their dog companions.

Barbara Doughty
35 Brook Road
Portland 84103

617-899-2583



Ethan Hipple <ehipple@portlandmaine.gov>

re: Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: J Godsey <joycegodsey@gmail.com>

Mon, Apr 1, 2019 at 8:27 AM

Thanks for your comments Joyce. I will send along to Parks Commission.

Take care,

Ethan H

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

Portland, Maine | Yes. Life's good here.

On Sat, Mar 30, 2019 at 11:04 AM J Godsey <joycegodsey@gmail.com> wrote:

I'm really aghast at this proposed leash restriction in Baxter Woods.

This is a case of a very tiny minority spoiling things for the majority of people.

We visit this park several times a week at various times of day.

And I have never experienced a negative incident in Baxter with my dog or other dogs!

This is a great place for dogs to learn to be social and learn to be off leash and under voice command. Fenced dog parks trap you and your dog with dogs that are unsocial and cannot behave off leash. I simply can't take my dog to a small fenced area, large unsocialized dogs tend to dominate smaller dogs.

It would be appropriate to TICKET people with unsocialized dogs who cause problems and ban those that are unsocialized. You KNOW that a proposed leash law will drive people with well behaved dogs from the park....and almost immediately be violated and you will end up trying identify people to ticket for letting their dogs BE dogs.

Nearly ALL walking and hiking trails on public land in the state are dog friendly. Imposing leash restrictions are usually dictated by the natural environment, to protect ground nesting birds or sensitive plantlife or erosion areas.

Imposing a leash restriction because a few people have caused problems is NOT a way to handle this situation.

From Personal Experience:

My dog and I hike and walk all over the state.

Our few negative experiences are with TOURISTS DOGS who aren't socialized and are off leash and FENCED DOG PARKS where people who refused to properly train their BIG DOGS bring them to wrestle with other untrained big dogs. I have literally had to pick my dog up and FLEE!

We love Quarry Run but that's just too far to go very often. It's practically in Falmouth!

Joyce Godsey
joycegodsey@gmail.com
BookRepairSupply.com
82 Devon St
Portland, Maine 04102
978-918-6031



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods/Dogs

Ethan Hipple <ehipple@portlandmaine.gov>
To: Mary Najarian <pickensmountainmama@gmail.com>

Mon, Apr 1, 2019 at 8:29 AM

Thanks for your comments Mary. I will forward your comments to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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Portland, Maine | Yes. Life's good here.

On Sat, Mar 30, 2019 at 9:10 AM Mary Najarian <pickensmountainmama@gmail.com> wrote:

I understand there is a move on again to require dogs to be on leashes. I am strongly opposed. The woods make a healthy outlet for dogs to run, to be free to chase squirrels if so inclined or to chase each other. The owners enjoy a relaxing social time as well. Please do not impose this unnecessary restriction. Mary Najarian



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter woods

Ethan Hipple <ehipple@portlandmaine.gov>
To: Toji Perlman <tojiperlman@hotmail.com>

Mon, Apr 1, 2019 at 8:30 AM

Thanks for the comments Toji. I will share your comments with the Parks Commission.

Thanks,

Ethan

Ethan Hipple

Deputy Director

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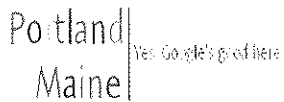
On Sat, Mar 30, 2019 at 4:02 PM Toji Perlman <tojiperlman@hotmail.com> wrote:

Hello,

I read the report concerning the leash laws in Baxter woods. I live next to the woods and walk my dogs there regularly. In the last 6 years, I haven't had one issue with unruly dogs. I think that the reason there have been more complaints than letters of support is because those who enjoy Baxter woods as it is don't feel the need to write to you. I think it would be a big loss for the residents around here to change the leash law. I also think it was largely due to more people using the the park to walk there dogs that pushed out those who where using the woods for sketchy purposes. Limiting its use for dog owners (mostly local families) not a good idea. Thank you for considering my thoughts.

Toji Perlman

Sent from iPad

**Ethan Hipple** <ehipple@portlandmaine.gov>

dog issues

Ethan Hipple <ehipple@portlandmaine.gov>
To: D Leland <lelanddm@gmail.com>

Mon, Apr 1, 2019 at 8:33 AM

Thanks Dawn. I'll make sure the Parks Commission sees your comments.
Take care,
Ethan

Ethan Hipple
Deputy Director
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ehipple@portlandmaine.gov

www.portlandmaine.gov
Portland, Maine | Yes. Life's good here.

On Sun, Mar 31, 2019 at 1:28 PM D Leland <lelanddm@gmail.com> wrote:

Hi Ethan

Maybe you can consider a couple things that came up:

- I tried out a 25' leash today. Did anyone ever actually do that? Dogs can't really play. Mine caught in brush beside the path and then tangled up and tripped another German shepherd and wrapped around people. The leash became covered in mud. It's laughably impractical and just got eye-rolls from people. Try to imagine 10 people with dogs on max. 25' leashes, trying to socialize their dogs.
- Ticks over at Evergreen appear to be an ongoing complaint and several folks mentioned that today. Is the city doing anything to eradicate them, aside from adding toxics to the environment? The deer aren't going away.
- Valley St. park is a poop swamp, a few responsible people come in the early morning, and many of those who do come sit on benches with cell phones and ignore dogs going off to the edges to poop. I've also found piles by the benches, and one day found THREE piles right by the gate.
- If you have a chance, check out (as I did a few weeks ago) the pathetic effort at a "dog park" over in Westbrook: A fenced square, with two broken gates, NO trees or shade or benches, and positioned at a busy intersection near Wm Clarke Dr. and the Hannaford. With snow a foot deep, nothing had been plowed. No one showed up while I was there.

There was nothing about it that said "community."

I realize the decision has probably already been made by those who heard only a few overheated complaints over the years, and no happy messages from those of us who enjoy the space with dogs. It would be interesting to see the place a year off and review the trash left in the woods, which walkers now pick up.

Attached: Leash fun, kids, regular walkers who pick up trash, walkers scouting for dog poop off-path. Enjoy.

Thanks!

— **Dawn**



Ethan Hipple <ehipple@portlandmaine.gov>

FYI: Baxter Woods - Fully eliminating the off-leash policy...

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 9:24 AM

To: "Lesperance, Marc" <Marc.Lesperance@anthem.com>

Hi Marc,

Thanks for your thoughtful comments. I will send them along to the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Fri, Mar 29, 2019 at 8:59 PM Lesperance, Marc <Marc.Lesperance@anthem.com> wrote:

Mr. Hipple: I am writing to you out of my concern that the off-leash policy at Baxter Woods (BW) in Portland will be fully eliminated per the City's proposed ordinance change. My dog (Marco) and I are "regulars" in BW and I think I can speak for other "Regulars" in saying that - we all appreciate the hard work that the City staff and Portland Trails crews put in to keep BW safe, clean and gorgeous! First and foremost we dog owners realize how lucky we are to have BW as an off-leash place to enjoy with our canine loved ones! We respect and appreciate the City's role in protecting BW and honoring the deed governing how BW is to be maintained in perpetuity as a sanctuary for people and birds.

Marco and I walk in BW pretty much every day of the week, and even twice per day sometimes. Marco's ability to be off-leash in BW is a benefit to both he and I, as it allows us to each get the physical exercise and social experience we seek in the forest setting. Science shows that dogs are most fit and happy when they are allowed to sniff and mark territory freely. <http://digest.thefarmersdog.com/the-importance-of-letting-your-dog-sniff/> Requiring a 25ft. or shorter leash would drastically limit all dogs experiences in BW and generally make every one of our dogs lives (who love and need their woods romps) less rich and fulfilling.

If the off-leash allowance is fully eliminated - the thought of 25 ft. leashes being used by multiple dog owners during the same visit to BW causes me to envision people tripping over the long lines, dog leashes getting wrapped together potentially leading to dog fights, and dogs coiling their leashes around young trees or shrubs. People, likely dogs and possibly forest flora are going to get hurt! Even worse, with potentially dozens of leashed dogs around BW at peak use hours – passing runners, bikers or even pedestrians will be endangered. Requiring leashes on the BW setting will likely cause more problems than currently exist with the off-leash allowance.

Touching on the complaints and comments the City has purportedly received concerning off-leash dogs – I

have heard about and experienced first-hand some difficult situations in BW. I think I can speak to some people's concerns. While dog fights are not a common occurrence in BW, the worst I've seen happened when one of the dogs was actually on leash! Similarly – as I noted above – kids and people will not necessarily be safer in BW if a leash-law is enforced. Lastly on this topic - I've never heard of a dog biting a person in BW – so I trust that is not an argument for enacting a full time leash requirement. As for kids or other pedestrians being fearful of dogs – we handlers need to be aware of those situations and typically remove our dogs from the setting as needed. This too is not a reason to disallow off-leash dogs.

Looking at the history of Baxter Woods, I recall an initiative in the mid-1990s to ban dogs, and more recently in 2014, when citizen complaints caused the City to rethink the leash rules for BW. The City has considered leash rules before. But if you go back to the original intent, you may already know that both Mayor Baxter and Governor Baxter – namesakes of the BW park - were huge dog and animal lovers! You can see evidence of this at their Pet Cemetery on Mackworth Island – where a dozen or so dogs, horses and even cats I think are interred. While the BW Deed may not mention dogs – the Baxter's allowed their dogs a free run of their homestead on Mackworth Island. I believe the Baxter's would wholeheartedly support the current off-leash ordinance at BW. While there is no mention of dogs in the BW Deed, likely because Portland had no leash laws back in the 1940's - the Deed clearly disallows HORSES in BW and refers to BW as a bird sanctuary. I cannot imagine there is any evidence that ground-nesting or ground-feeding birds have been adversely impacted by off leash dogs in BW. Squirrels perhaps – but birds have not been threatened by the presence of dogs in BW in recent memory. I do not feel birds can be used as a reason to keep dogs on leashes in BW!

In closing I am ALL for keeping the BW off-leash/voice-command rules as is, but can live with an alternative or a compromise. I would suggest allowing dogs to be off-leash during certain hours in the morning and evening (e.g. 7-9am and 4-6pm per se) during the weekdays, with longer off-leash hours on weekends (say 7-10am and 4-7pm). I urge the City to reconsider fully eliminating the off-leash allowance in a wholesale manner! Allowing dogs to be off-leash for certain hours is a good compromise I think, and one that all impacted parties can find some agreement with.

Thanks, Marc

Anthem, Inc.

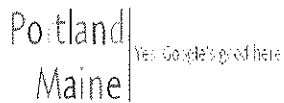
Marc Lesperance, 103 Candlewycck Terrace, Portland, ME
04102

W: (207) 209-0517 | M: (207) 329-4953 | H: (207) 774-6584

marc.lesperance@anthem.com

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Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leash/off leash issue

Ethan Hipple <ehipple@portlandmaine.gov>
To: Shannon Wong <shannonmwong@hotmail.com>

Mon, Apr 1, 2019 at 11:10 AM

Thanks for your comments Shannon. I will pass along to the Parks Commission.

Take care,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

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207.808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

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On Mon, Apr 1, 2019 at 11:08 AM Shannon Wong <shannonmwong@hotmail.com> wrote:

Dear Ethan Hipple,

As a lifelong citizen of Portland and a life long dog owner I'm passionate that we need to have access to off leash opportunities for our pets. Portland has such a great network of trails and park spaces yet, not all of them offer off leash opportunities. As a resident in the Highlands neighborhood, a great joy has been walking with my family and dog to Baxter Wood and letting him run off leash to socialize with other people and dogs. For me, this is one of the reasons Portland is such a great place to live. Our outside spaces are shared spaces, and Baxter Woods is a particular gem. These spaces are becoming fewer and fewer, so I urge you to help to find a way that this park can be maintained as a shared space for humans and off leash dogs.

I understand that the issue of owners not picking up after their pets is a concern. Perhaps, as in South Portland, a ranger could patrol and place flags where there are incidences and volunteer responsible dog owners can organize days to go in and pick up the mess. I know I'd be more than willing to go to the woods and spend an hour once a month to help maintain the cleanliness.

Baxter Woods has offered a special spot for my dog to socialize with other dogs, which is vital for his wellness, simultaneously offering opportunities for me to be social with other dog owners too which can sometimes be rare in the winter months. It's a space that the community can gather for a common purpose. This is a niche need for some people.

Just know that the site is such a valuable space for our particular family, and I know we are not alone. I'm sure we can come up with a way to compromise usage so everyone wins. Please don't take away the freedom of all the because of the short fallings of a few.

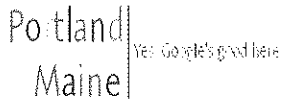
My best,

Shannon Wong

Shannon Wong
Massage & Pottery
Portland, ME
207-329-4386

<http://www.shannonmwong.com> (massage)

<http://www.wongpottery.com> (pottery)



Ethan Hipple <ehipple@portlandmaine.gov>

Comments regarding the Proposed Changes to Baxter Woods Off-Leash Rules

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 2:27 PM

To: Don Caton <dcaton@maine.rr.com>

Cc: "Mavodones, Nicholas" <nmm@portlandmaine.gov>, Justin Costa <jcosta@portlandmaine.gov>, "Kimberly M. Cook" <kcook@portlandmaine.gov>

Thanks for your thoughtful comments Don. I will share them with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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On Mon, Apr 1, 2019 at 1:04 PM Don Caton <dcaton@maine.rr.com> wrote:

My understanding is that you are encouraging public comment for the proposed changes that will require all dogs in Baxter Woods to be on a leash 25 foot or less. I have lived in the same house within walking a short distance of Baxter's Woods for 43 years. My children are the 5th generation of my wife's family that have lived in our house and 2 of them still live in the Deering Center neighborhood with children of their own. I have walked 4 generations of dogs in these woods and I am opposed to such a change:

- The large majority of dog owners are responsible and are self-policing. Each time that the Parks Dept. has brought up issues, things have improved. I doubt that adding another restriction will change the actions of any 'bad actors', only harm the responsible owners and their dogs.
- Baxter Wood's is a neighborhood meeting place for many of these dog owners, including a lot of our older residents. They walk together or meet at the field to let their dogs play, while they enjoy the outdoors and each other's company. Can you imagine what it will be like if groups of 2 or more dog owners try to gather or work together and have a discussion while their dogs play on 25 foot leashes? Someone will get hurt or just as bad: the conversations and gatherings of neighbors will just stop happening. Is that what the Parks & Rec Dept. is trying to achieve?
- During winter, the ice on the paths in the woods is a hazard. Walkers use "grippers" on their boots just to try to stand up. Adding leashes to the mix will cause injuries and force older residents to stop walking there completely.
- I find the argument regarding 'not qualifying' as a bird sanctuary to be a weak and laughable attempt to come up with reasons to leash the dogs. Has the Park & Rec Dept ever provided any education regarding any birds, let alone ground nesting birds, when they nest, or how to protect these nests the woods? There are signs describing trees in the woods – I've nothing to identify birds or that these woods are a bird sanctuary.

· You also state that there alternatives for off-leash. This is a lot like what the federal government did to the American Indians: slowly taking away all the available good land and forcing us to less than desirable alternatives: the woods behind Evergreen Cemetery have a lot of ledge and are more dangerous in the winter time when it is icy. The cemetery is gated and locked, it's hours are 8 am – 4:30 pm: open too late for people that work and not open late enough for those that want to walk after work. The other options mentioned are not very desirable.

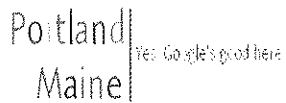
I have to admit that I do agree with the fact that these woods should be available for EVERYONE. I feel bad for those that are just plain scared of any dogs, but I don't agree that the majority of dog owners should be penalized for a few bad actors. Perhaps, you could look at some compromise, something similar to East End Beach: off-leash only before 9am and after 3:30pm (which as it turns out is when most dog owners walk their dogs there). It's not perfect, but it would provide plenty of worry-free access time for families with children, those afraid of dogs, school children.

I appreciate your willingness to request comments and hope your committee and the city council can consider the needs of the dog owners.

Don Caton

14 Holly St

Portland, ME 04103



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Neighborhood Meeting

Ethan Hipple <ehipple@portlandmaine.gov>
To: Eva Humeniuk <evahumeniuk@gmail.com>

Mon, Apr 1, 2019 at 2:28 PM

Thanks for your comments Eva. I will share with the Parks Commission.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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207.808-5400

ehipple@portlandmaine.gov

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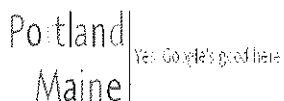
On Mon, Apr 1, 2019 at 1:09 PM Eva Humeniuk <evahumeniuk@gmail.com> wrote:

Hi Ethan, I won't be able to attend the neighborhood meeting on Baxter Woods but wanted to share my email thoughts and suggest a solution.

I walk through these woods quite often with my young children and pup. While, we have not had any bad experiences with dogs off leash I have no doubt others have.

One solution is that, perhaps the woods could have off leash "hours", similar to our beaches likes Willard. Perhaps a time early in the morning (before 7am) and evenings (after 7pm) dogs can be off leash but all other times dogs must be on a leash, (or whatever time everyone thinks is best).

Thank You, Eva



Ethan Hipple <ehipple@portlandmaine.gov>

Dogs in Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Fri, Mar 29, 2019 at 12:54 PM

To: Michael Mertaugh <michaelmertaugh@gmail.com>

Cc: Sally Deluca <SLD@portlandmaine.gov>, "Waxman, Dory" <mermaidst@gmail.com>, Allison Carroll <acarroll@portlandmaine.gov>

Thanks Michael. Sorry to hear about the incident.

So the language we will use will be what is currently in Chapter 5 of City Code--we are simply proposing to move Baxter Woods from the "off leash/voice control" section (5.15-1(e)) to the "25 foot leash" section (5-15.1(c))
<http://www.portlandmaine.gov/DocumentCenter/View/1069/Chapter-5-Animals-and-Fowl---Revised-9182017>

See you on Thursday,

E

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

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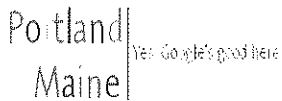
On Thu, Mar 28, 2019 at 1:37 PM Michael Mertaugh <michaelmertaugh@gmail.com> wrote:

Ethan,

I'd like to add my voice to the comments on dogs in Baxter Woods. I frequently ride my bicycle through Baxter Woods enroute to Pat's market on Stevens Avenue or the fish market on Forest Avenue. I was attacked by an off-leash dog there when I was bicycling on the path recently, and the dog owner limply explained: "I'm sorry, my dog freaks out over bicycles." I have seen many other examples of unwelcome behavior by dogs there.

I heartily support the proposed change, with a slight change in wording. I propose: "Dogs in Baxter woods are to be restrained at all times on a leash not exceeding 25 feet in length." This wording makes it clear that the dog owner is responsible for **restraining** his or her dog, which means much more than allowing any behavior within a 25 foot radius. We have all seen examples of aggressive behavior by dogs that are on leash but not restrained by their owners.

Michael



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods, Dogs, etc.

Ethan Hipple <ehipple@portlandmaine.gov>

Mon, Apr 1, 2019 at 12:59 PM

To: Adam Victor <adam_victor@yahoo.com>

Thanks for the comments Adam--I'll pass along to the Parks Commission.

We do receive a lot of citizen comment on off-leash dogs at Baxter Woods--more than for any other open space in the city.

I'll see you at the meeting, and hopefully can answer some of your questions there.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207.808-5400

ehipple@portlandmaine.gov

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On Mon, Apr 1, 2019 at 11:21 AM Adam Victor <adam_victor@yahoo.com> wrote:

Hi, Ethan,

I understand you've received some complaints about unruly dogs in the Woods. I'd be curious as to the volume of complaints -- I've spent a good amount of time there myself (have lived in the neighborhood since 2003), and certainly have seen some rambunctiousness, excitement, and exuberance amongst the dogs — they are dogs, after all — but I've never witnessed danger, attacks, or people cowering in fear. I'm sure it's happened, but it's certainly not characteristic of the space, the dogs, the owners, or even the non-dog-owning bystanders (like myself).

I noted that this morning's Press Herald article does not reference dog attacks, danger, or anything of the like. It does mention that a pregnant woman was "nearly knocked over," and the owner wasn't "apologetic." OK...um...well, that doesn't really sound like a crisis. Also, some middle school students were "terrified" of dogs. That sounds more like a people problem than a dog problem.

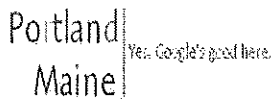
I understand the bird issues, but are we at the stage where if there are negative consequences for any person, or group of birds, we need to make this kind of change? A change that impacts not only the hundreds of dogs and taxpayers who enjoy the park daily, but also the surrounding community?

If you've ever been in Baxter Woods at 7 o'clock in the morning, there is life, there is conversation, there is joy, there is animation, and there is community. People who look out for each other and their dogs. And it is all incredibly enhanced by the untethered nature of both dog and owner.

The net effect of making this change will be a reduction in the park's usage. It will become more sparse, less trafficked, less safe, and less of a community gathering place. Is that what Portland citizens want? I hope not.

See you Thursday night, and thanks for your consideration.

Adam Victor
224 Coyle St.
Portland, ME 04103
207-766-6807



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods concerns

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Jan 10, 2019 at 4:39 PM

To: Chelsea Malacara <chelsea.malacara@gmail.com>

Cc: Sally Deluca <sld@portlandmaine.gov>, Ethan Owens <eowens@portlandmaine.gov>, Matthew Coleman <mcoleman@portlandmaine.gov>, Joe Dumais <jdumais@portlandmaine.gov>, Jeff Tarling <jst@portlandmaine.gov>

Hi Chelsea,
Ethan Owens forwarded me your email...

Sorry to hear about your dog encounters at Baxter Woods. We are currently evaluating our leash policy at Baxter Woods. We do have a recommendation from our ecologist consultant that dogs be limited to on-leash so that we can comply with our deed restrictions to maintain Baxter Woods as a bird sanctuary. And anecdotally, we do receive many complaints of aggressive off-leash dogs in Baxter Woods. It is a complicated issue, with many emotions on all sides, so we don't take it lightly.

We will continue to evaluate the effectiveness of our current policy and report out to Parks Commission on any new recommendations. Ultimately, City Council would need to approve any proposed change to Chapter 5 of city code that regulates dogs on public property.

Feel free to let me know if you have any other questions or background info.

Take care,
Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
o: 207.808-5400
ehipple@portlandmaine.gov

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From: **Ethan Owens** <eowens@portlandmaine.gov>

Date: Wed, Jan 9, 2019 at 10:21 AM

Subject: Fwd: Baxter Woods concerns

To: Ethan Hipple <ehipple@portlandmaine.gov>, Joe Dumais <jdumais@portlandmaine.gov>, Matt Coleman <mcoleman@portlandmaine.gov>, Tarling, Jeff <jst@portlandmaine.gov>

For you guys

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

From: **Chelsea Malacara** <chelsea.malacara@maine.edu>

Date: Wed, Jan 9, 2019 at 9:50 AM

Subject: Baxter Woods concerns

To: <eowens@portlandmaine.gov>

Good Morning,

I wanted to reach out as a member of the Deering Center community and a commissioner on the Portland Parks Commission. Last summer there was talk about monitoring bird activity in Baxter Woods and possibly reevaluating whether or not Baxter Woods should be an off leash park.

As a dog owner myself, I never bring my dog there. The amount of dog bags seems to pile up and of more concern is the number of times myself or my dog has been accosted by other off leash dogs who are not well behaved.

I am currently pregnant and went for a solo walk, without my dog, through the park this morning knowing it wouldn't be busy. While it wasn't busy, I had two scary dog encounters. The first, two dogs came running at me and one jumped high, nearly knocked me over, and scratched my leg. The owner nonchalantly said "yeah the black one still jumps" and kept walking. Then about 5 minutes later, another dog approached me growling, looking like it was ready to bite. Again, another unapologetic owner just said "he's fine."

As someone who is passionate about park preservation, accessibility, wildlife, and dogs, I am curious about what progress or conversations, if any have recently taken place about changing the status of Baxter Woods but also changing rules about off leash dogs and having some type of enforcement. I would be supportive of turning a portion of Baxter Woods into an dog park but as it stands, with such a small footprint and irresponsible dog owner, I don't understand why it's still off leash.

I hope you can shed some light on this matter.

Best,

Chelsea Malacara

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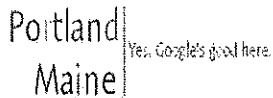
Ethan Owens CPRP, CPSI, AOLCP

Parks Assistant Director, Athletic Facilities and Playground/Courts Manager

City of Portland - Parks, Recreation and Facilities Management Dept.

212 Canco Road Portland, Maine 04103 ~ USA

207-808-5400 eowens@portlandmaine.gov



Ethan Hipple <ehipple@portlandmaine.gov>

Fwd: Baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Oct 10, 2017 at 5:15 PM

To: jackson.mcmann@maine.edu, Mike Murray <msm@portlandmaine.gov>

Hi Jackson,

Thanks for your inquiry. We have an ongoing city-wide park sign project, and Baxter will receive new signs as well. We developed special language for signs at Baxter to address dogs-at-large issues. They are currently in production at the sign company and will be up within a couple weeks of receiving them from the sign company.

Take care,
Ethan

Ethan Hipple, CPRP
Parks Director
City of Portland
212 Canco Rd.
Portland, Maine 04103
o: 207.808-5400
ehipple@portlandmaine.gov

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From: **Mike Murray** <msm@portlandmaine.gov>
Date: Tue, Oct 10, 2017 at 10:59 AM
Subject: Fwd: Baxter Woods
To: Ethan Hipple <ehipple@portlandmaine.gov>

Can you reach out to Mr. McMann on schedule?

Mike Murray
Assistant to the City Manager
City of Portland
389 Congress Street
Portland, ME 04101
207.756.8288

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

From: **Jackson McMann** <jackson.mcmann@maine.edu>
Date: Sun, Oct 8, 2017 at 6:47 PM
Subject: Re: Baxter Woods
To: Mike Murray <msm@portlandmaine.gov>

Good evening,

Today in Baxter Woods I witnessed a bike that was moving very fast hit a dog. The dog was a little shaken up, but overall both the dog and the biker were okay. There are still no signs up. Signs could have prevented that from happening today. Please let me know if you still plan on putting up signs.

On Mon, Sep 11, 2017 at 1:20 PM, Mike Murray <msm@portlandmaine.gov> wrote:
To All,

Parks staff has recently been meeting on this very subject and will be installing signs at both entrances to Baxter Woods outlining current policy and expectations.

Mike Murray
Assistant to the City Manager
City of Portland
389 Congress Street
Portland, ME 04101
207.756.8288

On Mon, Sep 11, 2017 at 8:28 AM, Ethan Strimling <estrimling@portlandmaine.gov> wrote:
Thanks for the note. I have cc'd staff to have them look into this issue.

On Mon, Sep 11, 2017 at 8:24 AM Jackson McMann <jackson.mcmann@maine.edu> wrote:
Good morning,

My name is Jackson McMann and I have lived in Portland for all 22 years of my life. First, I want to say thank you for your career so far as a public official for our wonderful city. You are representing us well, and many of us appreciate what you have done.

I am emailing you to bring to your attention a problem in the heart of Deering: Baxter Woods. This beautiful community area is full of good people and friendly vibes, but there have been some issues surrounding dogs there. Dogs are allowed off-leash here, yet some still get into disputes over how much "off-leash" is allowed. Many bikers and runners get frustrated with people who are just letting their dogs run around. There are also incidences of small children who do not know how to act around dogs (e.g. running around letting the dogs chase them and then screaming when the dog gets a little excited), thus further causing problems. I have yet to meet an unfriendly dog in this community. What I have met, though, is a woman who is terrified of dogs yet continues to walk through Baxter Woods yelling at dog owners to keep their pets away from her.

Baxter Woods is a convenient area for dogs and their owners to take a stroll through nature in a place that is more known for its city environment. Being dog-friendly is a staple of this neighborhood and part of what makes it such a family-centered community. What I am asking is that a sign gets put at the entrance of the woods. Something that gives a friendly warning about off-leash dogs in the areas. There is also a beautiful, on-leash cemetery across the street with plenty of walking/biking paths for those who do not want any contact with dogs.

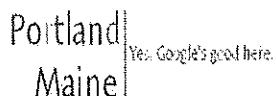
There is no reason that both bikers and off-leash dogs cannot get along. We each have to do our part by being aware of each other and properly training our pets. Either way, thank you for taking the time to read this.

Sincerely,

A Concerned Resident

—
Ethan Strimling
Mayor, Portland
389 Congress Street
Portland, ME 04101
207-874-8941

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Ethan Hipple <ehipple@portlandmaine.gov>

February with Parks, Recreation & Facilities

Stacey Dand <swd@portlandmaine.gov>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Feb 16, 2017 at 3:19 PM

FYI, just a comment on Baxter woods

~~~~~  
Stacey Willis Dand  
Marketing Consultant  
City of Portland -- Public Assembly Facilities Division  
P: 207.808.5436  
E: swd@portlandmaine.gov

----- Forwarded message -----  
From: **Kevin Donoghue** <kjdonoghue@gmail.com>  
Date: Thu, Feb 16, 2017 at 1:36 PM  
Subject: Re: February with Parks, Recreation & Facilities  
To: "Portland Parks, Recreation and Facilities Department" <swd@portlandmaine.gov>

Love the newsletter. I've found Baxter Woods to be pretty poor for skiing with kids as it's essentially become an off-leash dog park.

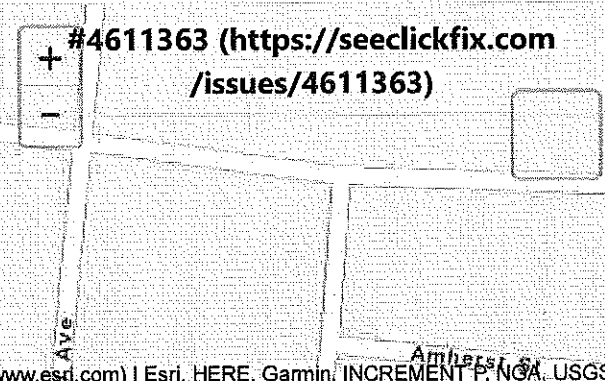
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Recreation Department, City of Portland, Maine · 134 Congress St · Suite 2 · Portland, Me 04103 · USA

0

**#4611363** (<https://seeclickfix.com/issues/4611363>)



www.esri.com) | Esri, HERE, Garmin, INCREMENT P, NOAA, USGS  
43.6726907770178, -70.2883749661866

**Replace Leash Law Signs!**

Created Date: 06/27/2018 1:16 PM

86 Concord Street Portland, Maine

**Details**

Replace Leash Law Signs!: I am a dog owner in Deering Center. I reported this issue last year and received no help. All of the leash law signs are either gone or illegible. Recently there have been several aggressive dogs off leash that have attacked othe...

*This request has no associated secondary questions.*

 1  2

## Comments

All

Public Only

Internal Only

Category:

**Replace Sign**

Recategorize

Status:

**Acknowledged**

Change Status

Assigned to:

**Public Works**

Assign

Due Date:

**07/19/2018**

Change Due Dat

SLA Expires at:

**07/19/2018**

Priority:

**Normal**

Prioritize

 (<https://seeclickfix.com/issues/4611363>)

## Status Log

**Opened:**

06/27/2018 1:16 PM

**Acknowledged:**

06/27/2018 3:17 PM

## Integration Info

**Cityworks AMS****Next poll at:**

in an hour

**Status:**

Succeeded

**Remote ID:**

69152



**Concord St Resident**   
(<https://seeclickfix.com/users/1568725>) | Registered User

Opened

Replace Leash Law Signs!: I am a dog owner in Deering Center. I reported this issue last year and received no help. All of the leash law signs are either gone or illegible. Recently there have been several aggressive dogs off leash that have attacked other dogs, cats, and even children! This is no longer just a Baxter Woods issue, the majority of incidents that I have seen were near Concord/Norwood. Please put up new signs and replace the ones that are unreadable. If not, I fear that you will have a dead dog, cat, or even child on your hands. I'll look forward to seeing swift action. Thank you.

06/27/2018 1:16 PM



**Fix It! Portland**   
(<https://seeclickfix.com/users/873807>) | Verified Official

Assignment

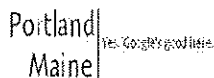
Fix It! Portland assigned this issue to Public Works

06/27/2018 3:17 PM

Check integration

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods



Jeff Tarling <jst@portlandmaine.gov>

---

**Fwd: RE: Baxter Woods**

1 message

Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:24 AM

>>> Randy Billings <rbillings@mainetoday.com> 4/15/2014 12:09 PM >>>

Thanks for forward, Jeff. But could you please forward the original emails? I would like to reach out to these people. If you need me to file a formal Freedom of Access Act request, I would be more than happy to do so; just let me know.

---

**From:** Jeff Tarling [mailto:JST@portlandmaine.gov]  
**Sent:** Friday, April 11, 2014 12:20 PM  
**To:** Randy Billings  
**Cc:** Joe Dumais; Troy Moon  
**Subject:** Re: Baxter Woods

Hi Randy -

Attached our Mayor Baxter Woods park information, including the dedication plaque, MBW brochure which includes a brief description of the prescribed uses by the donor, Governor Percival Baxter, the 1936 Park map, & a draft of a possible new sign that could help educate visitors to the park (the sign mockup was donated by a frequent visitor to the park and dog owner / sign graphic professional).

Baxter Woods has a variety of uses / visitors including - hiking / walking, mountain biking, nature viewing of trees, flora & fauna; outdoor environmental education, and visitors with dogs. While all uses are up in Baxter Woods as it is in all of Portland's



1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

park system, dog use seems to increased exponentially due to popularity. As with any use, for example if the current dog visits where switched with say mountain biking we would likely hear from dog walkers or other groups that there are too much of that activity. Problematic dog visits seem to be limited to small numbers but indicative of the overall use increase.

In the email below also included the requested recent complaints received. In a nutshell - the park has many types of uses and visitors. Mayor Baxter Woods is unique due to donor guidelines or conditions set in the deed to the City by Governor Baxter. "A sanctuary for Wild Birds" was one of the primary uses along with a "held in trust for the people of Portland as a Municipal Forest and Park for public recreational and educational purposes..." kept in a natural state and as a sanctuary for wild birds", the deed mentions use of pedestrians and horses in the use. (see the attached brochure)

I cc'd Troy Moon and Joe Dumais who may have more information on parks & policy etc. More details soon on our proposed public meeting.

Jeff

>>> Randy Billings <rbillings@mainetoday.com> 4/11/2014 9:43 AM >>>

Hi Jeff,

This is a follow-up to our conversation. If you could please send me whatever background material, including the complaints the city has received, about dogs in Baxter Woods, I would greatly appreciate it.

Randy Billings

-----  
-----  
4/2/14

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

Jeff:

I hope the early spring is treating you well. I took my 6th grade students to Baxter Woods this morning and once again encountered the problem of many off-leash dogs. Many of our students who come from immigrant and refugee families are terrified of dogs. Extremely terrified of them. Despite my coaching every time we head to Baxter to stay still if a dog is coming at them, most run in fear and the dog chases them thinking it is a game. Once again, I had a boy in tears today, terrified, hiding behind a tree crying. I asked the seemingly oblivious dog owner to please keep the dog from chasing our students. I did not see any action on his part. There was a small girl walking the woods today with her family, huddling next to her mom scared when she saw a different pair of off-leash dogs in the forest. I saw these same dogs poop in the forest and the dog owner do nothing about it. Actually, he wasn't even watching the dogs as they were running in the direction of the family. Just about every time I take students to the woods we encounter these problems many times throughout the day, particularly with my morning classes. I understand it is difficult balancing the desires of dog owners with the other community uses of the space, however, I am wondering where the conversation is at regarding dogs in the woods. Is there an expectation that dogs need to be on-leash? If so, could we add some signage about this and enforce it? I would really like to use the woods this spring and want to find ways for it to be a positive experience for all of my students. Aside from the dog issues, the students had a blast today and asked to go to the woods for the rest of our science classes for the year.

Any help you could offer is much appreciated.

Thank you,  
6th Grade Science  
Lincoln Middle School

=====

12/15/13

Hoping you can help keep; there's talk in the Deering hood that the schools are attempting to enforce a leash law in Baxter woods. All of the doggy wood hood over here are concerned! These woods are our daily stomping grounds and we want to keep them leash free for our pups to pounce and play.

We've heard it's being sent to the council for a vote...could you message me when you see it up on the council agenda...we plan to organize against this.

Also, wondering if you could help guide me...I'd like to get a copy of Baxter's deed to the city for this patch of wood...how do I go about finding it????

=====

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

9/13/13

Hello,

I obtained your email from Jamie Parker, who was returning a message I left regarding my recent experiences at Baxter Woods park off of Forest Ave. He suggested I forward my comments and concerns to you.

I have been frequenting that park for about two years since moving to Portland. Since spring has arrived however, it has become more and more something of a glorified dog park where various breeds run around unleashed and well beyond the means of their owners reach. I usually visit with my 4 year old who is unfortunately terrified of dogs after having been bitten, yet even if she wasn't afraid, I myself would not like to be caught unawares by the several dogs who inevitably will run up to us while we walk the paths. Owners usually beckon their pets to no avail and they cannot grab them when they are 10-15 feet ahead and quite frequently sometimes show no wish to contain them. I almost always get the supposed reassurance that their dogs 'are really friendly' or that they 'love children'.

I must admit, it's not my desire to please strangers' dogs. For the sake of their happiness and freedom, my particular family, and I believe many others, are negatively affected while visiting what should be a peaceful slice of nature. The dogs eagerly sniff, lick, jump and prod. I am forced to quickly pick up my daughter as she freezes in fear and hides behind me. Sometimes with a drink in my hand or other items, this isn't possible and I shouldn't have to do this. I always immediately inform them my daughter is afraid of dogs and they usually apologize and maybe try to go after their dog, but the damage is done and increasingly my daughter is afraid of who's around the corner and I'm more and more angered, to the point I looked up the park website, obtained the number and left a message that Jamie kindly answered.

The rules of the park clearly state the dog must be leashed OR under voice command, which I take to mean heeding carefully their owner's commands. This is almost never the case. These are animals after all and are eager to explore, and who can blame them when their owners put their needs before other people. I don't believe Gov. Baxter intended these lands to be an animal park. It should be the exception not the norm to see an unleashed dog, especially throughout trails that meander and are sometimes well disguised with summer foliage.

My daughter and I love to identify plants, leaves and wild edibles and we're genuinely on edge to get on our knees and do so, when several dogs in a half hour period will come in contact with us in a way that invades our private time and personal space. It could be a small breed, but we have come across a Great Dane two weeks ago who was unleashed. It is extremely selfish and entirely intentional that owners unleash their dogs; the dogs are almost always leashed entering the park (of course due to traffic), they are then set free to have their fun once under cover of trees. There have been only two occasions where I have been upset enough to vocalize my feelings to the owners themselves and they weren't well received because for some reason it's seen as abnormal to not want to greet every unknown dog with cheer. Not everyone is a dog lover. Humans rights should come before animals. Again, if it was an occasional

1/11/2019

City of Portland Mail - Fwd: RE: Baxter Woods

occurrence I would not think twice, however my daughter has been enrolled in a local preschool, Roots-N-Shoots on nearby Clinton Ave. and part of their curriculum is to regularly visit Baxter Woods. I would be very angered to know that this is still an issue while toddlers are exploring the woods. There are several places in Portland where dog owners may take their pets for their pleasure. Not every natural space should automatically be one. It's not exclusive to Baxter Woods; even the Eastern Promenade is experiencing a lot of unleashed dogs running up and down the hills just adjacent to a children's playground. However, it's more of an issue when as I mentioned the trails and paths are significantly more hidden.

I appreciate your reading these concerns. If you would like to contact me for any reason, please do so here or at 978-489-4982. Thank you again.

Regards,

Yael

Staff writer

Portland Press Herald/Maine Sunday Telegram

Desk: 207-791-6346

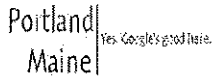
Cell: 207-615-5271

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1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an idea!



Jeff Tarling <jst@portlandmaine.gov>

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**Fwd: Re: Yes to dogs in the woods - an idea!**

1 message

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Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:43 AM

>>> Ben and Shari Shambaugh <shambaugh@gwi.net> 5/5/2014 5:45 PM >>>

Hi Jeff,

As you may have noticed, Baxter woods is looking great these days. Dog owners are listening and they care about their woods, their city, and fellow Portlandians! I have a suggestion, which is to keep the rules as they are (allowing dogs off leash) and enforce them. At \$250 a fine for not picking up after your dog, the city staffer will pay for their summer job many times over -- and if the person shows up at random times and issues fines, people will get the hint. After a few summer months, it will not be needed any more and will not cost the city anything or take valuable city council and citizen involvement time!

At the same time, I would put signs and a trash can at the entrance most used by the neighborhood, the entrance on James Street.

Thanks for listening  
Ben Shambaugh

Feb 11, 2014 02:13:51 PM, shambaugh@gwi.net wrote:

>

Thanks Jeff. I just ran into our mutual friend Norm Buttrick who gave me the gist of what you said. Thank you for your care and oversight of the forests of Portland! I would enjoy a walk through with you some time. Let's try to find a time that works.

>

>

All the best,  
Ben Shambaugh  
761-1569

on Feb 10, 2014, Jeff Tarling <JST@portlandmaine.gov> wrote:

>

>

Hi Ben -

First, thanks for visiting 'Mayor Baxter Woods' so frequently, that is exactly the intent of Percival Baxter

<https://mail.google.com/mail/u/0/?ik=5cb7043df0&view=pt&search=all&permthid=thread-f%3A1622383044896611723&simpl=msg-f%3A1622383044896611723>

1/3

1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an ideal

and role of having a forest in the city.

In the past few weeks Forestry crews have been removing invasive Norway Maple trees in Baxter Woods. Our top two primary goals in managing the trees at Mayor Baxter Woods is safety and keeping the woods as 'natural' as possible. The tree removal mentioned targeted Norway Maples as they will tend to overtake or out compete the native Red & White Oaks, Yellow Birch and Beech trees. (They likely seeded into the park from trees planted along Stevens Avenue.)

Recently in January the students at McAuley High School began working on a survey for Hemlock Woolly Adelgid another exotic pest from 'away' that threatens our native Hemlock trees which make up the largest tree type in the woods. Unfortunately the pest was found the first day. Thus our work at removing the Norway Maples to remove the seed source to hopefully keep the Norway Maples from spreading into new areas if we loose our Hemlocks.

I would be glad to meet you at the park someday for a walk. Also attached some Baxter maps & information. The first one is the View of Deering from 1886 where you can see the old 'Forest Home', the 1932 map of the woods, 'Forest Home', our recent brochure of the park.

Thanks,

>Jeff Tarling

Info on Norway Maples -  
[http://www.na.fs.fed.us/fhp/invasive\\_plants/weeds/norway-maple.pdf](http://www.na.fs.fed.us/fhp/invasive_plants/weeds/norway-maple.pdf)

>

>>>> Cheryl Leeman <cal4161@yahoo.com> 2/7/2014 7:43 AM >>>

Good morning, Ben. thank you for your thoughtful comments regarding Baxter Woods. It is indeed one of the jewels of the city's park system By copy of this email, I am asking Jeff Tarling, City Arborist to respond to your concerns. Appreciate hearing from you. Best, Cheryl

>

>

On Wednesday, February 5, 2014 6:38 PM, Ben and Shari Shambaugh <shambaugh@gwi.net> wrote:

>

>Dear Cheryl,

Thank you for your continued great work on behalf of all of us!

I am writing with a question about Baxter Woods. Like many in Deering, I am in Baxter Woods not once but several times a day with my dog (walking or today on cross-country skis!). It is a treasure for the neighborhood and the city and for me a place of spiritual solace and connection with nature, neighbors, and new friends. I am pleased that Baxter woods is well cared for, with bridges, paths, and recently sand added when walkways were icy.



1/11/2019

City of Portland Mail - Fwd: Re: Yes to dogs in the woods - an ideal

My question is about a series of tree cutting over the past few weeks. I understand needing to thin for the health of the woods. This, however, seems excessive and contrary to Mayor Baxter's intention for this special place. I have looked and have found no notice or other explanation, only more and more red dots - an ominous portent of more cutting to come. Do you know what is planned? Is there anyway that this could be shared with the users of the park?

Thank you much. Hope to see you around.

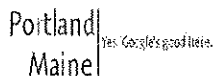
Ben Shambaugh  
147 Clinton Street  
761-1569  
(You may remember me as the dean from St. Luke's Cathedral)

>Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

>  
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1/11/2019

City of Portland Mail - Fwd: WHAT?!! no dogs off leash in Baxter Woods! What would Gov. Baxter say?



Jeff Tarling <jst@portlandmaine.gov>

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**Fwd: WHAT?!! no dogs off leash in Baxter Woods! What would Gov. Baxter say?**

1 message

Jeff Tarling <JST@portlandmaine.gov>  
To: jst@gapps.portlandmaine.gov

Fri, Jan 11, 2019 at 11:41 AM

>>> Bonnie Washuk <bwashuk@sunjournal.com> 4/23/2014 12:06 PM >>>

Hi Jeff, After reading today's story in the Press Herald I emailed Leslie Bridgers. She gave me your contact email.

Like a lot of people, I take my dog, a black lab named Lucy, to Baxter Woods 3 or 4 times a week. Before I let her off leash I spent many hours training her. She's good with recall now, helped my the fact I always have treats in my pocket. (Lucy loves to eat.)

I do plan to speak or oppose plans to no longer let dogs off leash in Baxter Woods. Remembering how the late Gov. Baxter LOVED dogs, I'm guessing he would not approve of banning off-leash dogs.

I'm usually in and out of there in 20 minutes, quick, but I really love the ability to enjoy nature so close to home. The woods is very well kept, I do my part to keep it that way. (pick up always).

It's a great resource to let Lucy sniff and run free. We both enjoy mingling with other dogs and dog owners. From what I observe, it is a community of responsible dog lovers.

That said, there's always room for improvement. Not everyone picks up after their dog, which is wrong.

One day there was a class from the school, I called Lucy, leashed her until the little ones passed. A few Somali students seemed scared even though Lucy didn't do anything and was on leash. Other students came up and asked if they could pet her, which they did. If it's a culture issue for immigrant students, maybe they could be taught that dogs are pets here.

Anyway, can you keep me informed of when any meetings will be held?

I will probably share my sentiments with Mayor Brennan and councilors.

Many thanks,

Bonnie Washuk Zaccaro and Rick Zaccaro, 22 Aiden Circle, Portland.

Home: 773-3243.

Like Page

Responsible Dog Owners of Baxter Woods Dogs

November 5, 2018 ·

Posting to you all from Sarah Maloney: Good morning RDOOBWD!! Saw your post about german shepard puppies playing...lately I've noticed on several occasions out-of-control dogs who's owners do nothing to control them. I am a dog person, but last week one lunged at me aggressively and attacked my dog, and this AM an owner with two dogs did nothing when his dogs ruthlessly hounded mine when he was headed in opposite direction- he had no voice control over the dogs, and one of them made a point to turn back to attack mine several times- another friend reported she was also scared by an aggressively behaving dog towards her last week...we need to make sure the woods stay safe for all, and being able to be leash free doesn't mean your dog can act all wild and crazy...if I post this I'll be a nag, but maybe you guys could put in a public service announcement for well-controlled and well-behaved dogs in the woods?? Thank you!!!

Liz Miraglia McGranahan Unfortunately that's the risk you take when taking dogs to unleashed dog parks, which Baxter Woods is not, by the way

2

Manage

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· Reply

· 10w

Responsible Dog Owners of Baxter Woods Dogs Liz, Baxter is indeed for unleashed dogs.

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· Reply

· 4w

Write a reply...

Jenny Siler Thank you Sarah Maloney!

Responsible Dog Owners of Baxter Woods Dogs

August 31, 2018

This from Jeremy, a fellow dog walker:

"I don't think there's anything that can be done but I'm noticing a fair amount of unfriendly leashed dogs in Baxter Woods. I appreciate that they're leashed but I'm constantly forced to grab my dog and leash him up so he doesn't get bit by a dog that probably shouldn't be taking walks in an off leash dog park."

[ DEAR WALKERS - I've heard this comment from a few people. First, be glad they're LEASHED. It's the unleashed ones with disagreeable owners that are worrisome. Yelling at them just makes it worse. Maybe first ask them to control their dogs, then asking that they be more considerate. READERS, HOW HAVE YOU HANDLED THIS SUCCESSFULLY?]

Gini Monsell I've heard this said by so many people, but Baxter woods is NOT an 'unleashed dog park'. We are lucky enough to be able to use it as such, but there are stipulations to the rule. Unleashed dogs MUST be within 50 feet of their owner and must be under STRICT voice control. If you are following these rules, one shouldn't have to 'grab my dog and leash him so he doesn't get bit.' Everyone in the neighborhood has the right to use that park. It is not intended for the use of unleashed dog walkers only. It is also for the local schools, walkers, bikers, cross-country skiers, etc. and they all have a right to enjoy it without being disturbed by off leash dogs and their poop. This "It's an unleashed dog park, don't come here if you don't like it" mentality is going to ruin it for us all one day. (I'm sure this comment won't win me any popularity contests in this group but oh well, its the truth lol).

5

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• Reply

• 19w

Judy Ann Haas Yes! My thoughts exactly. Well said.

1

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LikeShow more reactions

• Reply

• 19w

Gini Monsell \*\*\*Also: a dog with leash aggression towards a loose dog running up on them, doesn't mean the dog is unfriendly. Furthermore, some people keep their dogs leashed not because the dog is aggressive, but because they dog is a runner. Either way they still have a right to be there.

6

Manage

Like

• Reply

• 19w

Jeremy Conn I understand all these factors they weren't relevant to my experiences however

Manage

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• Reply

• 19w

Paula Gates I no longer live in Portland but when I did I was deeply grateful for a place like Baxter Woods. Having to call my dog in a couple of times during each walk seemed an acceptable price to pay for such a treasure of a place.

I have a pitbull and often called her in simply to allow others who seemed uncomfortable to be comfortable again...who wants to rock such a lovely boat

2

Manage

LikeShow more reactions

• Reply

• 19w

June Delano Many dogs (including mine) only bark aggressively when leashed. Hopefully, people will have patience (and remember that our wonderful pets are also territorial canines.)

1

Manage

Like

• Reply

• 19w

1 Reply

Mike Margate Been going there for years until recently. Went today and saw a sign for leashed dogs. When did that happen?

Manage

Like

• Reply

• 19w

Responsible Dog Owners of Baxter Woods Dogs Mike - Leashed or voice-controlled dogs has always been the rule. The signs are new.

Responsible Dog Owners of Baxter Woods Dogs

January 12, 2018 •

Spooky morning at Baxter! Plus lots of poop to pick up. Please, please pick up any you see, in addition to your own dog's. It's pretty disgusting to be dodging it on the path.

And my two dogs each brought me a dead squirrel within 5 minutes of each other. Thoughtful. They didn't have wounds but I'm thinking they froze to death and fell.

Dogs and hysteria

People, I think it's time to bring it down a notch. And especially, we should not be doing it in this forum. Keep in mind that we two-leggeds do a lot more damage to each other than the dogs



ever do.

We're all grateful for a respite from the world that's offered by Portland's parks. I'm in Baxter Woods frequently and find that HUMANS go there for community, and for their dogs. Over the years I've met a lot of nice people --and dogs-- and have made a few friends. 99% of the time all goes well and often dog owners will gently remind others of the need to pick up or to watch their dogs. Some of us control our dogs too much, others are more generous both with dogs and others. We humans all need to do a better job being responsible. Let's not make this another us-versus-them situation.

26 Feb 17 · 19 neighborhoods in General  
ThankReplyReply

Andrea Gaines  
Andrea Gaines, Deering Center · 26 Feb 17  
Thanks, Dawn. You speak very well to the issue.

Ron Harrity  
Ron Harrity, Deering Center · 26 Feb 17  
Respectfully, I can't think of a better use of this forum than to discuss our shared green spaces.

Robyn Brown  
Robyn Brown, Deering Highlands · 26 Feb 17  
This is the appropriate forum to serve as a reminder that there is a leash law in Portland. It is also required that you pick up after your dog.

Andy Graham  
Andy Graham, Rosemont · 26 Feb 17  
As has been stated before, Baxter Woods and Capisic Pond Park are two of the very, very few places that dogs can be off-leash legally in Portland.. Robyn, while there may be a leash law in Portland, dogs are allowed off-leash while under voice control in both of those places. There are many, many, many acres of public space available for you folks who are timid around dogs - please leave those of us who are responsible dog owners those few spots we have left. Help us police irresponsible dog owners, but don't insist on regulating every public acre in Portland.

Kevin T. Cole  
Kevin T. Cole, Oakdale / USM · 26 Feb 17  
Baxter Woods is a designated off-leash area. We still must pick up after our dogs.

Dawn Leland  
Dawn Leland, Rosemont · 27 Feb 17  
I could have stated my initial comment better -- discussion, yes, but not mean-spirited,

us-vs.-them comments that I felt were not productive.

Lorrie Ferrari

Lorrie Ferrari, Rosemont Triangle-27 Feb 17

I have always lived with dogs and never expected tax payers to provide for them - there are 2 dogs parks (I also don't use them but they do exist) and I don't feel that my dog or myself have the right to limit others enjoyment of public spaces because they are afraid of dogs and packs of dogs. Unfortunately "responsible" doesn't mean the same thing to everyone but I'm sure none of us wants our dog harmed or killed by a responsible dog owners dog

mary emmons

mary emmons, Valley-27 Feb 17

I was walking my 2 little dogs the other day (on leash and poop bags in hand) in the city. as I was walking by a gentlemen he tried to kick my dog which was doing nothing. As I have said portland is becoming very un friendly to dogs. He is very lucky I just called him alot of vulgar names. As a taxpayer in Portland and paying way too much in taxes etc . I find portland is not a nice place to live anymore. I respect people who dont like dogs but I also would like them to respect me and my dogs. As far as dog parks they are over crowded and dangerous for my little ones. We need more open spaces for our pets. As a TAXPAYER who pays alot I would like a little open space to let my dogs be free if only for a few minutes . I try to get to ocean ave once in awhile but it is hard for me to get there. Sooo respect goes 2 ways

Sarah Maloney

Sarah Maloney, Deering Highlands-27 Feb 17

Hello neighbors, I'm saddened by the comments in this feed and the un-neighborly feel of several of them- As a dog owner I greatly value Baxter Woods for what it offers me: a safe and beautiful space to allow my young dog to run free which aids greatly in his overall demeanor and my ability to own him and have him as a companion.. I also typically go between 6-7 AM or late in the day when no one is really there except the regulars. He is not aggressive towards anyone and ignores humans completely. I do understand however that this is not a DOG park, this is a city park, and perhaps it will become necessary at some point to create dog walking hours similar to Willard Beach and other shared human/dog spaces. One thing that would really help in the park is more containers to dispose of poop, IMO- I try to be hyper vigilant about where he goes and will frequently go off trail to tromp after his toileting to get it picked up- but it is a HUGE problem, agreed. I would hope as this discussion continues that this not become and us versus them between dogs and humans, again, it is a city park and as a dog owner in the neighborhood I thank my lucky stars it exists and would hate for it to go away.

Kevin T. Cole

Kevin T. Cole, Oakdale / USM-27 Feb 17

My sympathy for those with an irrational fear of dogs was destroyed when I was physically assaulted and injured by a person with such a fear. It's really a mental health issue and should be treated as such.

The only reason there is a taxpayer cost for dogs is because our city has decided to have a leash ordinance, which resulted in demand for creation of off-leash areas and dog parks. When I was a child in Portland, neither existed. Dogs roamed free. The biggest issue with that seemed to be that dog poop showed up on lawns--big deal. Now, the only place in Portland where I am allowed both to let my dog run free and to smoke a cigar is the forest behind Evergreen Cemetery.

Portland has changed a lot.

Bringfido.com

Baxter Woods

555 Stevens Ave, Portland, ME, US, 04103-0000

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Or call (207) 874-8801 for more information.

Description

Baxter Woods is a forested retreat in the midst of residential neighborhoods where you and your dog can enjoy a stroll along the primary or secondary trails. Dogs must be leashed at all times and humans must clean up after their dogs.

Reviews

BringFido Traveler Rating

Baxter Woods has received a rating of 4.0 out of 5 bones by 1 dog owner on BringFido.

Gwen

More than one year ago.

We like it!

This park has a bunch of trails and an open space for dogs to romp. It is off leash, but make sure dogs are close when there are small children around as kids love running up to try to pet

my dog and I have to tell them not to. During the week it is pretty quiet and that's when I usually go.

Gayl Anglin

December 10, 2018 ·

Dear People that walk your dogs in Baxter Woods:

PLEASE put them on a leash. This morning was the second time in a month that I became part of an improptu dog rescue of someone's baby that took off on a wild run. And while I get that they may "never do this," all it takes is one time for them to get hit by a car. The dog this morning barely missed getting hit, save for me running out into the street to wave my arms frantically at the car who slowed and swerved at the last minute. This is an urban park and your babies need to be on leash.

Signed: Your neighbor and fellow dog lover

1515

7 Comments

Like

Share

Comments

Margie Arnett

Margie Arnett People refusing to use leashes drive me NUTS!

Manage

Like

· 5w

Alicia Hicks Olsen

Alicia Hicks Olsen First rule of owning a dog. Never say never. They will prove you wrong.

Manage

LikeShow more reactions

· 5w

Kayla Cavallaro

Kayla Cavallaro YES. omg YES

Manage

LikeShow more reactions

· 5w

Christine Lashua

Christine Lashua Hi, can you set it up so that I can share this. So important.

1

Manage

LikeShow more reactions

· 5w

Gayl Anglin

Gayl Anglin Yes!

Manage

LikeShow more reactions

· 5w

Penny Von Helmolt

Penny Von Helmolt Good work as usual Gayl. I remember you crawling on the 10 Freeway in LA- rescuing a poor little fellow. Bravo!

1

Manage

LikeShow more reactions

· 5w

Gayl Anglin

Gayl Anglin Ha. Those were the (crazy) days.

Responsible Dog Owners of Baxter Woods Dogs

June 13, 2018 ·

Does anyone know details of a rumored "bike camp" that may include Baxter Woods?

New signs are there at entrances. Oddly they do NOT include any "no smoking" notice. Again today we spotted a young woman smoking and politely said to her that it was not allowed. She kept on walking. What is it about timber and dry leaves that smokers don't get?

Responsible Dog Owners of Baxter Woods Dogs

June 4, 2018 ·

Does a poop bag in COLOR left on the path for a walker's return-trip pickup, more incline you to take it to the trash? Just wondering.

Also, found leash. \*\* Not- purple poop bag was pictured under this post\*\*

my note

Responsible Dog Owners of Baxter Woods Dogs

May 18, 2018 ·

Rochelle sent this 5/15:

This morning we noticed a Maillard duck family with very new tiny ducklings in Baxter pond [near Forest Av.]. They are very vulnerable in that small pond and helpless if dogs go after them. I'm hoping you can post something letting people know about them so they don't allow their dogs to harass them. Last spring, I witnessed people laughing while their dogs swam around chasing ducks in that pond.

I know someone else who witnessed teenage boys throwing things at them early this evening. She has called Maine Audubon about it.

Anyway thanks for listening and I hope you have time to ask people to keep their dogs out of the pond.

5/18: Unfortunately, I think they have already been eaten. We checked on them this morning. Dad was alone and then flew away while we walked around the pond looking for mom and babies.

Responsible Dog Owners of Baxter Woods Dogs What time was it that you saw these critters? Would love to time my walks to see them (dogs on leash of course).

Manage

Like · Reply · 34w

Liam Sullivan

Liam Sullivan I saw the 10 baby ducks tonight around 6pm with the mother duck. They are pretty amazing creatures and we are lucky to have them in our neighborhood

1

Manage

Like · Reply · 34w

Responsible Dog Owners of Baxter Woods Dogs

Responsible Dog Owners of Baxter Woods Dogs Oh good!

Manage

Like · Reply · 34w

Liam Sullivan

Liam Sullivan Update: Asher and I saw the ducklings this morning with what I am assuming are their parents; 1 duck and 1 drake. They look like they are healthy, growing and noticeably a lot more independent, but I only counted 8 ducklings today. Okay; back to work!

Responsible Dog Owners of Baxter Woods Dogs

March 19, 2018 ·

Way too much poop on the path, folks. Watch what your dog is doing!

How much more trouble would it be to just type two letters "th" instead of ' ' ?

Responsible Dog Owners of Baxter Woods Dogs

Responsible Dog Owners of Baxter Woods Dogs Of course the problem is how police are distributed in the community-- dog poop isn't high on the list. The park rangers do come in periodically but there aren't enough of them either to be everywhere, all the time. Just reality in what is not a police state. Luckily, emergency calls (see previous post) do get a quick response.

1

Manage

Like · Reply · 43w

Debra Ann Flynn

Debra Ann Flynn if people truly got fined for not watching their loose dogs, having no control of them in attack mode or for their waste I think all the parks would be better :)

Responsible Dog Owners of Baxter Woods Dogs



March 11, 2018 ·

Someone added a smile to the snowperson! Good idea. Except that another storm is due Tuesday. No smile for that. A few determined daffodils are peeking through the melted areas elsewhere.

A sudden flurry of people occurred, some having forgotten the time changeover. Two girls had to be told (nicely) not to smoke in the woods. Fire's unlikely now but the place is full of pine pitch AND smoking in parks is illegal.

A person came with a small female dog in heat, running loose, causing a brief rumble among the males. A couple people pointed out it's not a great idea to bring her loose like that, both for the dog's safety and to avoid a fight. Owner just ignored it all and walked on.

Responsible Dog Owners of Baxter Woods Dogs

March 10, 2018 ·

Dogs found a newly killed squirrel on the path. They were curious. I took it and stashed it under some logs. Then Joe ran back, dug it out, and went to a new location and dug a new hole, dropped in the squirrel, and covered it, using his nose in lieu of the missing front leg. Then he came back to me. What IS that? Reverence for the dead? Saving for a snack later? A commentary on my choice of burial?

# Complaints rising over unleashed dogs in Portland's Baxter Woods

[pressherald.com/2014/04/23/a\\_controversy\\_unleashed\\_/](http://pressherald.com/2014/04/23/a_controversy_unleashed_/)

By Leslie Bridgers

April 23, 2014

It takes only a short stroll into the trees from the entrance on Stevens Avenue to see who rules Portland's Mayor Baxter Woods.

On Tuesday afternoon, dozens of dogs romped through the park, some sprinting down the trails, a few fetching balls in a field and others ambling by their owners' sides – almost every one without a leash.

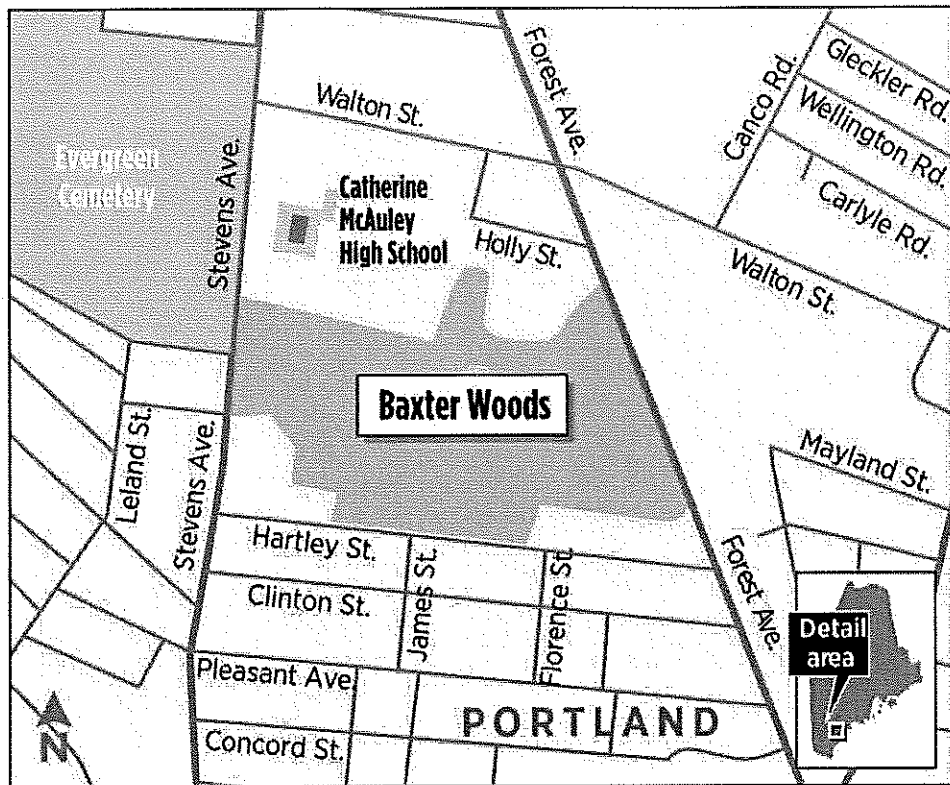
## Additional Photos



Moriah Duval of Portland walks her dog Penelope, center, and a friend's pooch, Kyra, during a visit to Mayor Baxter Woods in Portland on Tuesday. Dogs are allowed off-leash in the park if they're under voice control, but some visitors to the woods complain about the effect loose dogs can have on children and others. Shawn Patrick Ouellette/Staff Photographer



Tammy Riley of Portland walks her dogs Noelle, left, and Sophie off leash during a visit to Baxter Woods on Tuesday. City officials say they want to balance the needs of all of the park's users. Shawn Patrick Ouellette/Staff Photographer



STAFF GRAPHIC | MICHAEL FISHER

Dogs may not rule for long, however.

Complaints that loose dogs have chased and frightened children, among other things, have thrust the popular park into the recurring conflict between dog owners who want their pets to run free and people who, for various reasons, prefer them on a short leash.

The city is about to post signs and hold a meeting to warn dog owners to be respectful of other park users. If those efforts don't work, the signs warn, the city could require leashes in Baxter Woods.

While officials hope to avoid it, similar conflicts have escalated into culture clashes over dogs' access to beaches, parks and other public areas, dividing neighborhoods and communities in southern Maine, including in Portland and South Portland.

Most recently, dog owners in Scarborough forced a special election to overturn leash rules adopted to protect shorebirds such as piping plovers, one of which was killed by an unleashed dog on Pine Point Beach last summer.

The number of dogs in Baxter Woods has been on the rise since Portland banned dogs from Western Cemetery in 2001, the outcome of an early and bitter clash between pet owners and those who felt overwhelmed by loose dogs.

The number of complaints about dogs in Baxter Woods has risen, too, said Jeff Tarling, the city's arborist.

Dogs are allowed off-leash in the park if they're under voice control, Tarling said, but people's definitions of voice control vary. City code says an off-leash dog in Baxter Woods, or any other public area where leashes are not required, must be within 50 feet of its owner and immediately return to the owner's side when called.

Although dogs that use the trails regularly far outnumber the people who are opposed to them running loose, Tarling said, everyone should be able to enjoy the park peacefully.

"We're just looking at this to be so that all visitors have the same experience," he said.

Within the next month, the city plans to post signs at the park's four entrances and hold a public meeting to make dog owners more aware of the effect their animals can have on other people in the park.

That includes Yael Ashtari's 4-year-old daughter, who has been scared of dogs since she was bitten by one.

"The dogs eagerly sniff, lick, jump and prod. I am forced to quickly pick up my daughter as she freezes in fear and hides behind me," Ashtari wrote in a letter to the city in August.

Robin Lea, a sixth-grade science teacher at Lincoln Middle School, wrote to Tarling this month, saying she had taken students to nearby Baxter Woods "and once again encountered the problem of many off-leash dogs."

Lea said her immigrant and refugee students are particularly scared of the dogs – presumably because they're not familiar with them as pets. Many Muslims consider dogs unclean and avoid them.

Despite Lea's instructions for her students to be still, she said, "most run in fear and the dog chases them thinking it is a game."

And that could cause more than tears.

Two years ago, Tarling said, a middle school student who was running through the woods with the cross-country team was bitten by an unleashed dog.

There's no mention of dogs in the terms laid out by Percival Baxter in 1946, when he conveyed the 30-acre park to the city in honor of his father, James Phinney Baxter, a former Portland mayor. Rather, he deemed it a place for recreation and education, as well as a sanctuary for birds.

"There's no question it's probably not a place that birds are going to find inviting right now," Tarling said.

Before requiring leashes for dogs in the woods, he said, the city will try to educate dog owners and balance the needs of the park's various users. He hopes people will start policing themselves.

Baxter Woods is not yet a battleground similar to Scarborough's beaches, but David Victor can see the same thing happening if the city considers a leash requirement.

"People would come out," he said. "It would be like Scarborough."

Victor has been bringing his black Lab, Lily, to Baxter Woods twice a day for 10 years. Because of her taste for other dogs' excrement, he keeps her on a leash. But that doesn't mean he's fine with a leash requirement.

He fears that people who want to let their dogs run loose would stop coming, and the character of the park, as a place for dog owners to meet and mingle, would change completely.

"There's community here," he said.

*Leslie Bridgers can be contacted at 791-6364 or at: [\[email protected\]](#)[\[email protected\]](#)Twitter: [@lesliebridgers@lesliebridgers](#)*



# Friends of Mayor Baxter Woods (BW) Leash Law Proposal Responses

The Friends of Mayor Baxter Woods group is submitting this document to provide new information to Councilors and City Staff regarding the City's leash law proposal, and in particular, our responses to the reasons why City Staff is asking Council to revise the leash laws in the City Code only for BW. We ask you to review the data we have collected, and to consider the gathering of more information to determine what is actually happening in BW before the proposed ordinances changes are enacted into law.

## Table of Contents

- Page 2:** Executive Summary that includes our suggestions to modify the City's leash law proposal
- Pages 3 – 12:** Full Responses to City's leash law memo and reasons cited by City Staff for leash law
1. Complaints: Pages 3-4
  2. Bird Habitat: Pages 5-8
  3. Other Places to walk dogs off-leash: Pages 8-9
  4. Deed Issues: Pages 10-12
- Page 12:** Our Final Thoughts & Suggestions
- Pages 13 – 15:** Summary Bird Count Data compiling the City's reports and relevant eBird.com data

## References

1. Please refer to the 33-page document packet handed out at the 1/15 S&T Comm. Mtg. that includes: Our Case for more study of BW; a PowerPoint Slide Deck; the Deed; our essay about Gov. Baxter, 1946 Press Herald articles about BW; supporting documents on the bird counts/comparison charts, our request for a delay in the process, and our presentation at the 1/15 Committee Meeting
2. Visit our Friends Group's website at [www.baxterwoodsfriends.com](http://www.baxterwoodsfriends.com) for more information about Mayor Baxter Woods, Gov. Baxter and his legacy, and the City's leash law proposal.
3. Gov. Baxter's book "My Irish Setter Dogs" can be accessed here:  
<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t88g98v5n&view=1up&seq=1>  
Our essay about Gov. Baxter and his Legacy: <https://www.baxterwoodsfriends.com/baxters-deed.html>
4. The City's leash-law documents (Memos, the Management Plan, FFMB, etc.) for the 1/15/20 S&T Comm. meeting: <https://portlandme.civicclerk.com/Web/Player.aspx?id=1203&key=-1&mod=-1&mk=-1&nov=0>,  
7/18/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=95&key=-1&mod=-1&mk=-1&nov=0>,  
4/4/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=92&key=-1&mod=-1&mk=-1&nov=0>
5. Journal of the American Medical Association study on senior injuries related to leashed dog walking:  
<https://www.mnn.com/family/pets/stories/seniors-dog-walking-study-tips-avoid-fall>
6. Reporting on ticks and tick borne diseases: <https://www.pressherald.com/2020/01/03/tick-borne-illnesses-lyme-anaplasmosis-increased-in-maine-in-2019/>

## **Executive Summary – Friends Group Responses to the City’s Baxter Woods (BW) Leash Law Proposal**

The Friends of BW kindly asks City Council to delay the final vote on this proposal so that City Staff, in collaboration with our group and other members of the community, can collect all the data, work on strategies to identify and resolve issues, and produce a workable and acceptable plan for Council to consider. We pledge to work in consort with City Staff, offering a committed group of volunteers to assist in collecting data. It is our belief that together we can come up with a better proposal, one that will be accepted by the entire community that reflects collaboration rather than conflicting presentations.

### **A. CITY’S REASONS FOR THE LEASH LAW & OUR RESPONSES**

#### **1. Complaints against off-leash dogs – Pages 3-4**

- We recognize issues exist (everywhere); request delayed leash law; collect data, develop plan
- Most complaints internal to City Staff, from years back, no City enforcement/education efforts
- Staff ignored 430+ surveyed by Friends group (98% support daily off-leash hours)

#### **2. Bird Habitat impacted by off-leash dogs – Pages 5-7**

- No evidence of any “negative impact” by dogs, conjecture only; bird population is healthy
- City Memo and presentations misrepresent information from its Management Plan
- City did not follow their own Management Plan’s guidance – “Societal Considerations”
- City’s Management Plan lists natural reasons why BW is not a suitable habitat for nesting birds

#### **3. Other “more appropriate” places in Portland to walk dogs off-leash – Pages 8-9**

- The health of our established community in BW will be negatively impacted by the leash law
- What about the other places? They are all less safe, less accessible and further away than BW
- City says BW “sanctuary” should be “on-leash”; Robinson Woods & other places allow off-leash

#### **4. City may be in violation of the 1946 BW Deed – Pages 10-15**

- City did believe it was out of compliance initially. Does it still?
- What was the intent of the words in the 1946 Deed? Gov. Baxter’s actual words as a guide
- Again - the actual bird count data show that BW is a fine “sanctuary for wild birds” already!
- If leash-law passes as it stands now, then the City WILL be out of compliance with the Deed

### **B. THE CITY’S LEASH LAW PROPOSAL & OUR SUGGESTED MODIFICATIONS**

#### **1. On-leash only from April 1<sup>st</sup> through July 31 annually**

- Strike this section or amend to annual off-leash hours (See 2.), bird populations are healthy

#### **2. Off-leash hours from August 1<sup>st</sup> to March 31<sup>st</sup> annually (off-leash 5am-9am and 3pm-10pm)**

- Suggest amending this section; add 2 hours of off-leash hours as follows: 5am-10am, and 2pm-10pm off-leash hours to accommodate night workers, elderly walkers and stay-at-home parents

#### **3. Establish 5.5 acre “Bird Habitat Restoration Area” (BHRA) in NW corner of BW (fenced and log/brush\_barrier)**

- This section, if enacted as drafted will put the City in the position of being out of compliance with the Deed – where BW is not “kept in a natural wild state” as required in the Deed
- Additional compliance issues - pedestrians “undisturbed”, “no fancy works”, no “landscaping”
- At a minimum, the BHRA should be delayed until the five-building construction project immediately adjacent to the proposed BHRA is completed.
- See Pages 10-12 for more information on the Deed and Gov. Baxter’s timely, written guidance

## **Friends of Baxter Woods – Responses to the Parks Department’s Reasons for the leash law**

In its Memo dated December 2019 – the City presents four “reasons” for its BW leash law proposal, and seeks enactment of the ordinance by April 1, 2020. Below is our feedback to those reasons – none of which we believe rise to the level of requiring the changes to City Code that Staff are seeking.

Further, we also believe this is an unnecessarily quick turn-around time for City Council to review the data presented and consider whether there truly is a justification for this action right now. City Staff noted at the 1/15 S&T Committee meeting this is not an emergent situation requiring expedited action by the Council. We contend the City does not make its case for the ordinance changes. More data should be collected, and the current proposal be put on hold until all of the relevant data is gathered and considered ahead of any ordinance changes being made to the City Code. Here are our responses to the City’s reasons as listed in the December 2019 Memo.

### **1. COMPLAINTS AGAINST OFF-LEASH DOGS**

The first reason for enacting the new leash law (cited by City Staff) is based entirely on complaints about “packs” of unruly dogs.

**A. We are ready to work together to identify the issues at hand!** We recognize that some situations around dogs create anxiety for people, and to that end, the Friends of Mayor Baxter Woods is ready to work with City Staff and the community to gain a better understanding about why some people avoid BW because of the long time (>65 years!) off-leash dog activity there. The Friends of Baxter Woods group kindly requests that Council grant it more time to work with all affected parties (teachers, kids, daycare operators, etc.) at determining what the problems truly are, and to work together to develop a plan that resolves all the perceived issues. We therefore ask for a delay in the implementation of the proposed leash law so that City Staff, our group and others can coordinate the collection of data (interviews, surveys, monitoring, etc.) and put a plan into action. The City has a resource in our Friends group of hundreds of potential volunteers, who are people committed to making BW a safe and welcoming place for everyone.

**B. Complaints** - Were daycare and school groups really “turned back” from BW because of “unruly dogs”? (*City Memo – p.2*), or did something different happen? Our group has communicated with staff from local Daycare Centers and a Lincoln Middle School teacher, all who visit BW with students – none of whom have ever been “turned back” or denied access to BW by dogs! This alarming accusation made in the City’s memo is not supported in any of the complaints – whether prior to or after the leash law was initially proposed. Our interactions with educators and daycare operators - who regularly use BW without incident and love the park setting, report having positive interactions between their kids and dogs. The science is clear on how dogs have a therapeutic effect on most people, and can enhance the overall educational and developmental experiences of children. We believe this is something to build on and develop, not limit, restrict or rescind.

One Lincoln Middle School teacher we contacted, who wished to remain anonymous regarding her original complaint from 2013 about dogs interrupting her classes’ visits to BW, never intended for the City to enact a leash law in BW because of her complaint. Rather, she hoped that City Staff would help get the word out to BW dog owners to help steer their dogs away or leash pets during her class’ visits to BW. **This is something that our group would love to work on with educators and others.** We strongly believe that together we can effectively resolve any issues identified without a change to the City ordinances. We are eager to work with City Staff (Parks Department, Portland Schools, etc.) to establish an effective policy that will allow all BW Park users to feel safe and still enjoy all the forest has to offer.

Outreach to the Police Department recently disclosed that the PPD has no record of any problems in BW. Even Parks Staff admits that no tickets or citations have been issued in BW for any dog -

related violations in many years. **If BW has been this unsafe place, where unruly dogs are repeatedly threatening children – surely the City would have acted in some way to protect its citizens – long before seeking a change to the City Code leash law ordinance.** However, in fact – City staff has done little or nothing to change behaviors in BW, other than place a few signs asking for dog-owners to be respectful of others who use BW.

Did the City boost enforcement in BW or monitor activity in any way? The answer is **NO!**

Did the City host a public forum to educate the users of BW about the issues? **NO!**

Did the City meaningfully inform the community about the supposed public safety issues? **NO!**

Did the City work with the users of BW in any way to problem-solve solutions prior to seeking a leash law ordinance change? Yet again, the answer is **NO!**

Regardless – we are ready to work with City Staff and all interested parties at identifying the issues that affect citizen's experiences in BW, and collaborating to determine the best course of action to resolve them. We want everyone to experience this unique park in Portland. We urge Councilors to make its decision on this leash-law proposal based on facts, a full understanding of the incidents, and the overall public benefit and general sentiments about citizen's perceived experiences. One group's views should not be discounted over the others. Councilors did not need to be presented with this frustrating, muddled, and inaccurate portrayal of BW – one that is reliant on errant assumptions, some alarmist language, and conflated or incomplete data to make its case. We can and should do better than this when impacting people's lives!

**C. Not a representative vote** – Despite repeatedly telling users that this proposal is not a popularity contest, City Staff (hypocritically and erroneously we add) notes in the proposal memo that:

*“Before a (leash law) policy change was first publicly proposed in March 2019, the majority of public comments have been opposed to the current permissive off-leash policy”. City Memo p. 1*

How could BW users have known to call the City to provide complimentary data (about off-leash dogs) when the proposal had not been publicly announced at the time? If this is not a popular vote, why does the City even make this assertion in its proposal memo?

Despite the City's intentions of proposing the leash law still being a secret, and with only inside individuals or the complainants themselves knowing about the coming initial leash-law proposal – even then there were still more positive comments about BW current policy when City Staff issued the initial proposal. A rudimentary review of the first PDF summary of communications received by the City (*a document not provided to the Committee on 1/15, but shared in July 2019*), prior to the initial proposal's roll-out in March 2019, reveals 32 communications about BW, breaking out as follows:

- 10 are indeed complaints about dogs in BW (4 internal from City staff or officials)
- 14 communications supporting the current off-leash dog walking policy
- 8 were general questions about BW signage, tree cutting, ducks in the pond, etc.

Therefore, by the numbers, **complaints were not the majority** of comments received by City Staff before the initial leash law proposal was released. As the City has acknowledged, after the proposal was released comments supporting the existing policy skyrocketed, with up to 98% supporting the current off-leash policy! Regardless of how many people have complained and how many people support the existing law – the VAST MAJORITY of citizens have stepped up to say the City's proposal is just not acceptable. We believe there should be further study about what is currently happening in BW, and a common-sense solution developed collaboratively to ensure all voices are heard and considered!

## 2. BIRD HABITAT IMPACTED BY OFF-LEASH DOGS

Next, the City contends that off-leash dog activity is having a “negative impact on ground-nesting and ground-feeding birds” in BW.

- A. **No documented evidence of the supposed “...negative impact...”**: The City memo misstates what the Management Plan actually says; the premise is that off-leash dogs are some sort of a “threat” to birds in BW. The Management Plan actually reads as follows (emphasis added),

*“Off-leash dogs are **likely** having a negative impact on ground-nesting and ground-feeding birds as well as the associated shrubs and small trees. A related concern is that **the high density of trails and foot traffic adds to wildlife disturbances whether or not dogs are leashed.**” Management Plan, p.6*

Unfortunately, in the Management Plan, there is NO evidence that dogs have harmed any birds, damaged any shrubs or trees, or even “likely” had a “negative impact” on the natural habitat of BW. The City’s assertion is just not supported anywhere in the Management Plan, or other City documents for that matter. We even Googled “dogs damage bird habitat”, and what comes up are reports of feral dogs harming habitats in Third World countries, where foraging for food affected some bird and mammal species. We suggest our domesticated, well fed and much loved family pets are not negatively affecting the bird population of BW. None of the pronouncements in the City’s Management Plan, memo or leash law proposal provides any evidence or observations to support the claims made. We are a neighborhood City Park with hundreds of pet cats nearby and many predator species often observed in BW. These are the real threat to birds in BW and elsewhere as cited in the City’s Management Plan, the BRI study and world-wide-web.

- B. **“likely having a negative impact...”** - Even so – when the draft Management Plan was released by the author, one member of the City Parks Staff requested that the word “likely” be removed from the report to indicate that (emphasis added) “off-leash dogs **are having** a negative impact...”. The e-mail below, secured by the Friends group via a Freedom of Access request in April 2019, illustrates this interaction between City Staff about the Management Plan and how it has been utilized by the City (emphasis added)...

**From:** [Joe Dumais](#)  
**Sent:** Thursday, February 15, 2018 8:52 AM  
**To:** [Jeff Tarling](#)  
**Cc:** [Ethan Hipple](#)  
**Subject:** Re: Management plan draft

*I read the whole thing, let's make some signs and require dogs to be on leash April 1 through July 30 as prescribed on the bottom of page 54. **We should go in saying year round then negotiate the limited restriction. (or not)** because they are going to go nuclear when we do this. I do wish he would not say "likely having an impact" and would say are definitely having an impact, can you get him to change that, he says it a couple times.*

*This is great stuff, good luck with implementation. (I'm not being sarcastic here, I mean it)*

*Saw two typos pg 6, sort should be short, & page 16, ever should be never.*

The word “likely” as written in the Management Plan is important, because it shows that the author/forester was not certain himself if dogs were truly having a negative impact on BW. That is why he advised the City to conduct further study to confirm if his assertion was indeed correct. **The City has done no further analysis or study of this in any way** as illustrated below.

**C. City did not adhere to the Management Plan's suggestions & there was no user input...**

- 1. A full-time leash-law?** A full time (24/7/365) leash-law was not something suggested in the Management Plan, but it was the very first thing City Staff initially proposed at the 4/4/2019 Parks Commission meeting. Then, only after it was urged to do so by the Commission Chair did City Staff then draft and submit the "compromise" proposal for consideration by the Parks Commission at the 7/18/19 meeting. That second version of the proposal was amended again, to include user suggestions of an earlier start time to off-leash activity in the afternoons, but other suggested amendments (a later end time for off-leash activities in the morning and off-leash allowed in the 4-1 – 7/31 period) were either ignored by City Staff or were subverted inappropriately by the Commission Chair.
- 2. Commission vote:** Although the revised proposal passed by a 10-1 vote at the 7/18/2019 meeting – the final vote was taken out of order and was therefore rendered meaningless. In the midst of the Commission's deliberations the Chair interrupted a Commissioner, who held the floor, and who we have confirmed was in the process of further amending the proposal (to remove the April 1 – July 31 full-time on-leash requirement – much to our delight). Our enthusiasm was quashed though – as the Chair cut-off the Commissioner and quickly redirected to a vote on the proposal as amended – resulting in the 10-1 vote, with the interrupted Commissioner being the sole "No" vote. The "compromise" proposal (a compromise only with itself), was therefore not even fully heard by the Parks Commission, and certainly wasn't done in consultation with the actual users and caretakers of Baxter Woods.
- 3. Presentation:** While our group appreciated being allowed to present at the 1/15/2020 S&T Committee Workshop, this was the first time we were given a voice in this entire process. Back in May 2019, when we met with Staff to learn about the "compromise" proposal – we were told we could make a presentation at the 7/18 meeting if we met certain criteria. Despite jumping through several hoops to be allowed to make a brief presentation, we were denied the opportunity to speak beyond our individual three minutes of public comment, even when we requested additional time for one individual to speak, if others gave up their 3 minutes of public comment time. City Staff denied us this reasonable request as well. The City has excluded our unified voices and denied the Commission an opportunity to hear our point of view and witness the evidence we have collected. Is it not clear why this process has been perceived as anti-democratic by a majority of the 250+ citizens on our e-mail list, who are consistent BW caretakers?
- 4. Shut out:** From the outset the actual daily users of BW were shut out of this process. We were not consulted with or even appraised of the City's desire to enact a leash law, or that the City had even contracted with a consultant to develop a Management Plan for Baxter Woods. We first learned of all this in late March 2019, just weeks prior to the first Commission meeting on 4/4. Perhaps most discouraging, the Management Plan included a section suggesting a public review of the plan before it was finalized:

**Societal Considerations**

Public forest management should include opportunities for members of the public to ask questions about and provide comments on draft plans before they are finalized. **Management Plan, p. 34**

The City ignored this consideration of it' own Management Plan, never consulting with the users of BW until the "compromise" leash proposal had already been developed in May 2019 – over one year after the Management Plan had been finalized and the initial proposal published.



5. **The meeting:** In its memo City Staff says it met with BW users, but that was only after the initial proposal was published. The request for a meeting went to one user of Baxter Woods (who runs a BW Facebook Page on social media), who graciously invited a second user to attend. That meeting took place on 5/31/19 and was more a one-way communication than a collaboration or problem-solving session. City Staff was not interested in or receptive to any suggestions our user group offered at the meeting, and discounted all of our requests.

D. **What does the Management Plan really say?** Back to the purported “likely negative impact” off-leash, dogs may have on the BW habitats. The Management Plan actually does say a few things.

1. **No ground cover/under-growth:** A deeper review of the forest analysis in the Management Plan reveals the true reasons why Baxter Woods is not a suitable/preferred habitat for forest birds. One reason is that 81% of BW acreage (24 of the 30 acres) has little or no undergrowth due to the Hemlock/Pine/Oak high canopy blocking sunlight from reaching the lower canopy and ground level.

*“Nearly all stands have moderate to full canopy cover of mature trees...which limits the light available for forest regeneration. While attractive from a visual perspective, the lack of understory cover **limits the habitat for species that nest and forage in the lower canopy layers.** Old field, shrub, and young saplings, and important habitat type for some species, represent less than 3% of the area (in Baxter Woods).” **Management Plan, p. 25***

2. **BW size diminishes the habitat:** As reported in the Management Plan and the Audubon Forestry for Maine Birds (FFMB) manual (see the City’s documents linked at p.1), the key forest birds to watch for locally likely prefer nesting and foraging in larger forest blocks >250 acres in size. BW, a forest of just 30 acres is too small in size for the key species.

*“This stand provides habitat values of mature mixed hardwood-conifer forest, but has a minimal understory and ground cover layers favored by some species, and **(bird) species characteristic of larger forest blocks are unlikely to nest here.**” **Management Plan, p. 43***

3. **The shape of BW even diminishes the habitat:** The City’s own documents clearly show that the context of forest shape and landscape impacts the habitat for forest bird species:

*“The size and shape of a forest block matters to many bird species. A long, thin block of forest has less interior and more edge compared to a square block, and many birds are sensitive to these features. **Wood thrush, tanagers and ovenbirds prefer forest interior and avoid edges.**” **FFMB, p. 70***

BW is approximately 10 acres (L) x 3 acres (W), running between Hartley Street and the sprawling 100+ unit Motherhouse Complex (under construction) and the 200 unit/11 story Deering Pavilion apartment building. This narrow woodland park provides little “interior” forest that most wild bird species prefer. All of BW is essentially dangerous edge forest where wild birds are at more risk from their common predators – cats, hawks, owls and even raccoons or squirrels who will raid nests. Lastly – other than in the City’s Management Plan, dogs are not mentioned in any of the City’s other reference documents as a threat to forest birds. The two studies referenced in the BRI document (one from Australia and the second from Great Britain) conclude that dogs are no more of a risk to wild birds than human activity, such as bird watching. There is just no evidence indicating that domestic dogs (cats are a whole other matter) are a serious or even recognized danger to wild, forest bird populations.

### 3. THERE ARE “MORE APPROPRIATE” PLACES TO WALK DOGS OFF-LEASH

The City contends there are other “**more appropriate locations**” where people can walk their dogs off-leash in Portland.

**A. Our community** - While we agree there are other places to walk dogs off-leash in Portland, BW is where we have built our community and established our club so to speak of active walkers, runners and riders. Foremost, BW is where we have developed friendships, fostering relationships over years that transcend our dog’s lives, the lives of family-members, and even our own lives. We take care of each other, our families and our pets. We celebrate one another and we have mourned the passing of dear friends. You cannot just recreate or relocate to a different place in the City, the kinship and community we have developed in BW! The City should not force us to relocate to other places unless there is an urgent public need or crisis at hand.

In fact, many of BW Seniors face significant safety hazards by being tethered to their dogs during walks – especially in the icy winter months. Most relevant to our situation, a comprehensive, up-to-date investigation into fracture risk in older adults who use leashes when walking dogs has shown that fractures related to walking dogs on leash have more than doubled between 2004 and 2017 in patients 65 and older, with hip and upper extremity breaks being the most common . (Kevin Pirruccio; Yeo Myoung Yoon; Jaimo Ahn, MD; JAMA Surgery, 2019).

Research by the National Institutes on Aging has linked social isolation and loneliness to higher risks for a variety of physical and mental conditions, including high blood pressure, heart disease, obesity, weakened immune system, anxiety, depression, cognitive decline, and even death. BW’s dog-walking community is an essential aspect of life for many of Portland’s adults, offering an opportunity to meet and socialize within their local community. (National Inst. Of Health, 2019)

**B. What about all those other places the City says we can go to walk our dogs off-leash in Portland?** Speaking just to the acreage and aesthetics of BW – it is unlike any other park in Portland. Easily accessible to thousands of people in the third-densest zip code in Maine, the wide and relatively flat central trails of BW naturally accommodate many: elderly walkers, the handicapped, strollers, bicyclists, XC skiers/runners and snowshoers. There is also a gentle slope from Stevens to Forest Ave. for a bit of an uphill climb or downhill run or both if you make the full circuit. BW is big enough to find solitude if desired on the secondary trails, but small enough to run into friends for communing and connection. BW also has ample parking, again with easy access to the trails for elderly walkers or the disabled.

While the City notes in its memo there are 495 acres of City space for off-leash walking, it does not say that just 200 acres are woodland forest spaces like BW. Here is a table of the forest/woodland areas where off-leash dogs are allowed that shows the other locations do not compare:

| City Woodland Parks        | Acreage   | Notes about the Parks                                                                      |
|----------------------------|-----------|--------------------------------------------------------------------------------------------|
| Evergreen Cemetery Woods   | 100       | Ticks, Steep, <b>Rough, Steep Terrain</b> , Limited Parking                                |
| Presumpscot River/Oat Nuts | 40        | Ticks, Steep, <b>Rough/Steep Terrain</b> , Limited Parking                                 |
| Canco Woods Park           | 10        | Ticks, Steep, <b>Rooted Terrain</b> , No Parking, Small                                    |
| Riverton Trolley Park      | 20        | Ticks, <b>Very Steep, Rough Terrain</b> , Safety concerns                                  |
| Virginia Woods/Landfill    | 30        | Ticks, <b>Rooted Terrain</b> , No Parking, Pollutants, Safety Concerns                     |
| Hall School Woods          | 5         | Steep, <b>Rough/Steep Terrain</b> , Small, No Parking                                      |
| Pine Grove Park            | 5         | Steep, <b>Rough Terrain</b> , Small, No Parking                                            |
| <b>Baxter Woods</b>        | <b>30</b> | <b>Minimal Ticks*/Fleas, Level Trails, No Roots, Ample Parking, NO Safety Concerns Now</b> |

\*Please note that ticks are rarely seen in BW, most likely due to the lack of understory. In 2019, the Maine Center for Disease Control and Prevention reported a record number of Lyme disease cases. As the Director of the Maine CDC noted in a press release:

“Lyme disease and other tickborne diseases (e.g., anaplasmosis and babesiosis ) are on the rise, so Mainers need to proactively protect themselves.” **Portland Press Herald, 1/3/2020**

All alternative sites recommended by the City are known for having abundant tick populations, and we are very concerned about being forced to walk in these habitats.

- C. Other off-leash sites - an apples-to-oranges comparison:** BW 30 acres accounts for approximately 15% to 20% of the available woodland acreage – but BW is by far the hands-down best place for walking dogs off-leash in the Portland, ME. The City's assertion that we can go elsewhere does not take into account that all other dog parks or off-leash areas are just not up to the quality of BW. Some of the issues identified above apply to other parks as well – see our PowerPoint for pictures and more info. Comparing BW to all locations and acreage just doesn't make sense – since most of the acreage sighted by the City is not woodland/forest space like BW, and most of it is miles away from our Deering Center neighborhood. The other places are not as accommodating to our elderly population. Our large group of Deering Center Seniors who frequent BW – typically during the late morning and early afternoon hours - are an inspiration to us “late-boomers” who hope to be as active and vibrant in our senior years. The leash law will be a severe disruption to the lives of many of Portland's most vulnerable midday-walkers!
- D. Does BW need to be a managed as a wildlife or conservation preserve?** In its December 2019 Memo the City contends that BW is a stand-alone wildlife sanctuary in Maine that allows off-leash dog activity. This is not the case, as Robinson Woods, one of the preserves cited by the City does allow off-leash walking as noted at its website (link below):

**\*NOTICE FOR DOG OWNERS**

Please keep dogs within sight at all times and remove all dog waste. Please keep dogs out of sensitive habitat areas. Reminder: Maine Law requires dog license and rabies tag on collar at all times.

**\*\*NOTICE FOR DOG OWNERS:** Off-Leash use is regulated on this property. **Dogs are allowed off-leash at Robinson Woods II Pond Trail before 10am daily. Dogs are allowed off-leash at Robinson Woods I after 4pm daily (3pm daily during standard time – November – March).** Dog waste bags are available at the kiosk at Shore Rd. Please clean up after your dog. Please do not allow dogs to swim in ponds or streams. <https://www.capelandtrust.org/properties-trails/property/robinson-woods-preserve/>

While Robinson Woods allows year-round off-leash dog activity, the City's leash law proposal for BW would only allow off-leash walking for 8 months of the year – much more restrictive and certainly not one that is “innovative” or “stand-alone” (City Memo p. 5), or again, collaborative.

Once more, we are ready and willing to work with the City on making BW welcoming to all who may not feel it is to their enjoyment now. We seek a stay or delay on enactment of the leash law, until a more reasonable, workable and less disruptive proposal is developed collaboratively – so all voices can be heard. We are a group of citizens who hold annual clean ups, and a group who wants to be a part of the solution, to help!

#### 4. CITY MAY BE IN VIOLATION OF THE 1946 DEED

In its initial proposals, City Staff contended that it was out of compliance with the 1946 Deed, asserting that BW was not being preserved "...as a sanctuary for wild birds."

- A. The City has said it is not compliant with the Deed.** While it did not clearly make this argument in its December 2019 Memo to the Council, City Staff did make the assertion that it was out of compliance with the Deed in its presentation to the S&T Committee on 1/15/2020, and in its prior two leash law memos issued in March and July 2019. In its current Memo the City does mention the Deed on 3 occasions, finally alluding that it would be "better in compliance" with the Deed if the leash law were to be enacted.

As we have said before - we disagree with both contentions City Staff have made, that it is currently out of compliance, and that it will be in better compliance with the Deed if the leash law is passed. We further argue that should the leash law pass as currently proposed –the City will become out of compliance with the Deed for several reasons as detailed below.

- B. What did the Deed mean to Gov. Baxter and the City in 1946?** As a land grant contract, we believe the 1946 Deed must be considered in context to the times when the Deed was written. It should honor the express written intent of Gov. Percival Baxter as publicly communicated to the City and people of Portland upon the presentation of BW to City officials in April 1946. What did Gov. Baxter mean by a "sanctuary for wild birds" in the 1946 Deed? It is clear that he meant to preserve BW as a place where there was to be NO HUNTING, and where birds and other wildlife could live in a natural state, undisturbed by the City commotion and development outside the confines of the park. The historical definition from the time is here:

*"It has long been recognized that refuges and sanctuaries, in which no shooting is permitted at any time, are needed as resting places for game birds. Moreover, with the constantly increasing use of the land for lumbering, grazing, agriculture or settlement, it becomes a pressing necessity to set aside portions as "wilderness areas" in which all wildlife may work out its natural balance under the closest approach to undisturbed conditions..." Compton's Encyclopedia - Vol. B, p.208 (1957)*

To gain a better understanding of what Gov. Baxter's intents were for his gift of BW to the City and the 1946 Deed – we have timely documents available and newspaper articles from the day to guide us (*see 33 pg. document, p.7*). This is how the City received BW as a gift, how the City has historically managed BW as a park and City property since 1946. We contend that since 1946 the City has generally taken care of BW how Gov. Baxter intended. Only a few times over the years has the City stepped across a line on projects inside the boundaries of BW, but for the most part it has been prudent and well in compliance with the BW Deed.

**What do we know about Gov. Baxter and off-leash dogs?** We know that he took his dogs everywhere he went, and always off leash. That included to Bowdoin College – from the dorm, to his classrooms, and even the chapel for Sunday services or convocations. Later he took his off-leash dogs (plural) to the Governor's Mansion and the State Capitol Building in Augusta. He also traveled extensively and took his dogs with him abroad and to U.S. cities such as New York and Philadelphia – always off-leash. Gov. Baxter believed dogs had "rights" like humans and should be allowed to run free with their humans. We believe Gov. Baxter would oppose the leash law being proposed by the City.

In his book "My Irish Setter Dogs", Gov. Baxter documented many stories about his dogs and their daily life, including many off-leash romps in the "Woods". It is clear to us that by naming "Mayor Baxter Woods" a "Woods" in the 1946 Deed – clearly exemplifies Gov. Baxter's intent that BW be a place where off-leash dogs would be welcomed forever.

- C. What about the birds?** Clearly, Gov. Baxter honored birds and wanted them to be safe in BW. We contend that they are and always have been, and that our off-leash, well fed, cared for and loved, domesticated dogs pose little or no risk to forest birds, song birds or any other birds in BW.

To rebut the City's assertion that the bird population of BW is impaired - please consider the eBird data and BRI comparisons we have provided (*see pages 13-15 in this document*). Using data contracted for by City Staff (utilizing over \$10,000 in Motherhouse developer funding), we feel the data shows that BW is already a thriving bird sanctuary, and well in line with the species observed at other parks in Portland and outside the City – whether dogs visit them or not. We have normalized the data to show information for 20 species of forest bird identified in Audubon's FFMB as referenced in the City's Management Plan. Here is a summary of the bird study and eBird data we have compiled for the 20 species at four local forest areas (see p.13 for details).

| <b>Audubon's FFMB - 20 Forest Birds Watch List</b><br>(See p.13 for details) | <b><u>Gilsland Farm-Audubon</u></b><br><b>50 acres/ No Dogs</b><br>(eBird, FFMB) | <b><u>Baxter Woods</u></b><br><b>30 acres / +Dogs</b><br>(BRI Study/eBird) | <b><u>EvergreenCem. - Ponds</u></b><br><b>100 acres / +Dogs</b><br>(eBird Data only) | <b><u>Hinckley Woods</u></b><br><b>50 acres / +Dogs</b><br>(eBird data only) |
|------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>Forest Bird Species Observed</b> (BRI Study – late June – early Oct):     | <b>16 species by 3570 eBird Observers</b><br>(all seasons)                       | <b>11 species by 36 Observers</b> (Study – late June - Oct only)           | <b>17 species by 529 eBird Observers</b>                                             | <b>18 species by 418 eBird Observers</b>                                     |
| <b>Nesting Forest Birds Observed:</b>                                        | <b>4 regular nesters</b><br>7 occasional nester<br>9 never nesters               | <b>3 nesting species obs</b><br>No data –Occasional and Never nesters...   | No data – Regular/ Occasional and Never nesters...                                   | No data – Regular/ Occasional and Never nesters                              |

Variations in the data show the following:

- BW has 3,534 fewer observers than Gilsland Farm, or just 1% of Gilsland's observers
- Despite having only 36 observers, BW still has 11 of the 20 key species documented, with 3 actually observed nesting by the BRI observers in June/July 2019.
- If 3,500 more observers visited BW, how many more bird species would be observed?
- No bird study was completed in BW during the busiest (April – June) period in 2019, we contend depressing the full count of key species observed in BW
- Audubon's Gilsland Farm has 16 of the 20 key species observed, with 4 nesting regularly (just 5 more observed than BW, and only 1 more nesting species) – and no dogs EVER!
- More of the key species have been observed at Evergreen-Ponds and Hinckley Park (where off-leash dogs are allowed), than at Gilsland Farm – with just 1/7<sup>th</sup> the observers at those dog-friendly places
- These bird counts clearly refute the assertion that dogs hamper bird observations in the Woods, or negatively impact the habitats for wild forest birds!

The City's Bird Survey report admittedly missed the busiest part of the spring/summer nesting season, the three months from April through June. We contend before making any ordinance changes the City should first conduct the April - June bird count and collect the data. Only after the City has the full set of data and the accurate count of bird species and nesting species in BW should the leash law proposal be considered. We predict if surveyed properly the data will show that BW bird counts for the key forest birds will mirror those of Gilsland Farm and other local birding hotspots. We further contend the full collection of data will demonstrate that off-leash dogs do not detract from the number of bird species observed, and that BW is a fine "sanctuary for wild birds" as it currently exists.

- D. The City will be out of compliance with the Deed** – If the proposed ordinance is passed, we contend the City's proposal to erect a fence or develop landscaping around the "Bird Habitat Restoration Area" in the northwest corner of BW is itself a clear violation of the Deed. In his letter

to the City that accompanied the 1946 Deed (gifting BW to the people of Portland) Gov. Baxter wrote (emphasis added),

*“The conditions imposed upon this gift are simple and understandable. I want it to remain in its natural wild state for the use of pedestrians only, without what may be called “landscaping”. (And) there should be no fancy work of any kind. I want it to remain about as it is now...so that people undisturbed may enjoy its simplicity, its beauty and it’s quiet...”*. **Portland Sunday Telegram, 4/14/1946 p. 1a and 2a**

Clearly erecting fencing and blocking off trails through brush piles, equate to “fancy work” and inappropriate “landscaping” that do not comport with the “wild natural state” requirement of the Deed. Fencing and landscaping are also most assuredly “disturbances” to pedestrians, another violation of the Deed. We believe the City is not now in violation of the BW Deed, but for these reasons and the above – if the ordinance change is enacted as it is currently worded, the City will become out of compliance with the Deed.

We therefore urge Councilors to vote no on this proposal as it is currently drafted. We also ask that Council request City Staff to work more closely with the Friends and other local groups to collect more data about BW before any restrictions to off-leash dog walking are considered. **The time to collect data is BEFORE the leash law is passed – NOT AFTER.**

## OUR FINAL THOUGHTS AND SUGGESTIONS

The Friends of BW kindly ask City Council to **delay the implementation of this proposal for one-year**, so that City Staff, in collaboration with our group and other members of the community, can collect data, work on a strategy for resolving the issues identified and present a more workable and viable plan to Council.

**Missing data:** As key April – June data is missing from the City’s analysis of bird populations, we request that this survey data be collected to complete the annual bird survey before the Council votes on the leash law proposal. In addition, the City has no data on park usage, visit timing or visit types. We offer to work with City Staff to collect the information needed for Council to be truly “informed” and make a sound decision about BW – only after it receives this information.

**The Management Plan:** The City did not follow the Management Plan’s suggestion for user input, and ignored the advice in the plan to collect data. Open the process up to citizen input.

**The Deed:** If the proposal is enacted as it currently stands, the City will be out of compliance with the “natural wild state” requirement of the Deed, and furthermore dishonoring the express written wishes of Gov. Percival Baxter!

We pledge to work in consort with City Staff and offer a committed group of volunteers to assist in collecting data and developing the plan. It is our belief that together we can come up with a better proposal, one that will be acceptable to the whole group as a true compromise. We ask you to please not take a vote on and implement this proposal before gathering and considering all relevant data!

Short of a delay in implementation, we ask that the following changes be made to the proposal:

1. The 4/1 through 7/31 full time leash law (24/7 on-leash only) be removed from the proposal
2. Off-leash hours be amended to go from 5am-10am, and 2pm-10pm (10am-2pm on-leash only)
3. Establishment of the Bird Habitat Restoration Area be removed from the proposal

Thank you!



## Bird Count Data (Baxter Woods and other forests with off-leash dogs vs. Audubon's Gilsland Farm)...

This table summarizes the City's Biodiversity Research Institute (BRI) Study and eBird (eB) data for Baxter Woods (BW) and three other local forest areas. Three areas welcome off-leash dogs: BW, Evergreen Cemetery—Ponds (EC-P), and Hinckley Woods (HW). The fourth, Audubon's Gilsland Farm (GF) has not allowed any dogs on its property since the 1980's. Our focus at these four locations is on 20 species of forest birds identified in Audubon's Forestry for Maine's Birds (FFMB) Manual, as referenced in the City's Management Plan (p. 50). It is our position that the key variance in the data relates to the number of observers documented – with 35 eBird observers for BW, versus GF's 3,570 observers and roughly 500 each at EC-P and HW. It is well understood that with increased observers more species will be observed over time at any location. We therefore contend City Staff has wrongfully concluded that Baxter Woods is deficient as a "sanctuary for wild birds". The data below shows it is evident that BW is already a healthy and thriving sanctuary for wild birds! The collection of new data in the spring and early-summer season, we contend will show the actual bird population in BW is comparable to the other locations, and will demonstrate that dogs are NOT having a "negative impact" on the natural habitat of Mayor Baxter Woods.

| <b>Audubon's FFMB - 20<br/>Forest Birds Watch List...</b> | <b><u>Gilsland Farm</u><br/>50 acres/ No Dogs<br/>(eBird, FFMB)</b>       | <b><u>Baxter Woods</u><br/>30 acres / +Dogs<br/>(BRI Study/eBird)</b>        | <b><u>Evergreen- Ponds</u><br/>100 acres / +Dogs<br/>(eBird Data only)</b> | <b><u>Hinckley Woods</u><br/>50 acres / +Dogs<br/>(eBird data only)</b> |
|-----------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>Forest Bird<br/>Species Observed:</b>                  | <b>16 species by<br/>3570 Observers</b>                                   | <b>11 species by<br/>36 Observers</b>                                        | <b>17 species by<br/>529 Observers</b>                                     | <b>18 species by<br/>418 Observers</b>                                  |
| # Canada Warbler                                          | 1                                                                         |                                                                              | 1                                                                          | 1                                                                       |
| * Chestnut-sided Warbler                                  | 1                                                                         | *1(BRI) +3 (eB) = 4                                                          | 1                                                                          | 2                                                                       |
| ^ Mourning Warbler                                        |                                                                           |                                                                              |                                                                            | 1                                                                       |
| ^ Black-throated Blue<br>Warbler                          | 1                                                                         | 1(BRI) + 1(eB) = 2                                                           | 1                                                                          | 1                                                                       |
| ^ Bay-breasted Warbler                                    | 1                                                                         | 2 (BRI)                                                                      | 1                                                                          | 1                                                                       |
| * Black-throated Green<br>Warbler                         | 1                                                                         | *10(BRI)+1(eB)=11                                                            | 1                                                                          | 1                                                                       |
| ^ Blackburnian Warbler                                    | 1                                                                         |                                                                              | 2                                                                          | 1                                                                       |
| ^ Magnolia Warbler                                        | 1                                                                         | 0(BRI) + 1 (eB)= 1                                                           | 1                                                                          | 3                                                                       |
| ^ Yellow-bellied Sapsucker                                | 1                                                                         | 1 (BRI)                                                                      | 1                                                                          | 1                                                                       |
| # Scarlet Tanager                                         | 3                                                                         | 0(BRI) + 1 (eB)= 1                                                           | 2                                                                          | 1                                                                       |
| * Ovenbird                                                | 1                                                                         | 0(BRI) + 1 (eB)= 1                                                           | 1                                                                          | 2                                                                       |
| ^ Woodthrush                                              | 1                                                                         |                                                                              | 1                                                                          | 1                                                                       |
| # Northern Flicker                                        | 1                                                                         | 2(BRI) + 1(eB)= 3                                                            | 3                                                                          | 1                                                                       |
| ^ Veery                                                   |                                                                           |                                                                              | 1                                                                          | 1                                                                       |
| # Woodcock                                                | 1                                                                         |                                                                              | 1                                                                          | 7                                                                       |
| * Eastern Pee-Wee                                         | 1                                                                         | *3(BRI)+1 (eB)= 4                                                            | 1                                                                          | 2                                                                       |
| # Northern Parula                                         | 1                                                                         | 0(BRI) + 1 (eB)= 1                                                           | 2                                                                          | 1                                                                       |
| ^ Black-sided Woodpecker                                  |                                                                           |                                                                              |                                                                            |                                                                         |
| ^ Boreal Chickadee                                        |                                                                           |                                                                              |                                                                            |                                                                         |
| ^ Olive-sided Flycatcher                                  | 1                                                                         |                                                                              | 2                                                                          | 1                                                                       |
| <b>TOTAL Species Observed</b>                             | <b>16 species/18 count</b>                                                | <b>11 spec/ 31 count</b>                                                     | <b>17 species/ 21 count</b>                                                | <b>18 species/ 29 count</b>                                             |
| <b>Nesting Forest Birds<br/>Observed:</b>                 | <b>* 4 common nesters<br/># 7 occasional nester<br/>^ 9 never nesters</b> | <b>* 3 actual nesting birds<br/>#,^ No data occasional<br/>/never nester</b> | <b>*,#,^ No data for<br/>reg./occasional/never<br/>nester</b>              | <b>*,#,^ No data for<br/>reg./occasional/never<br/>nester</b>           |

\* = Observed nesting in Baxter Woods (2019) by BRI (3 species)// Common nesters at Audubon's GF per the FFMB (4 species)

# = 7 species - occasional nesters at Audubon GF – and we assume all the other locations as well – no data available online...

^ = 9 species - never observed nesting at GF per J. Witham, 2016 - See the City's Management Plan and FFMB. No other data...

## Baxter Woods Portland, ME

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### Mayor Baxter Woods

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**70 Species** | 35 Checklists Updated 11 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME           | COUNT | DATE        | BY            |
|---|------------------------|-------|-------------|---------------|
| 1 | Hairy Woodpecker       | 1     | 9 Dec 2019  | Erin Barber   |
| 2 | Black-capped Chickadee | 3     | 9 Dec 2019  | Erin Barber   |
| 3 | Carolina Wren          | 2     | 9 Dec 2019  | Erin Barber   |
| 4 | American Goldfinch     | 2     | 9 Dec 2019  | Erin Barber   |
| 5 | Rock Pigeon            | 8     | 22 Nov 2019 | Doug Hitchcox |

Evergreen Cemetery BACK COVE

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Recent Visits

9:37 AM 1/10/2020

## Gilsland Farm (Audubon HQ – no dogs allowed at all) in Falmouth, ME

My Home x Agendas & Minutes Center | Port x DU A rare serious post from me...ab... x Gilsland Farm Audubon Center | x +

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### Gilsland Farm Audubon Center

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**258 Species** | 3570 Checklists Updated 8 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME           | COUNT | DATE       | BY         |
|---|------------------------|-------|------------|------------|
| 1 | Mourning Dove          | 6     | 7 Jan 2020 | Turk Duddy |
| 2 | Downy Woodpecker       | 2     | 7 Jan 2020 | Turk Duddy |
| 3 | American Crow          | 1     | 7 Jan 2020 | Turk Duddy |
| 4 | Black-capped Chickadee | 2     | 7 Jan 2020 | Turk Duddy |
| 5 | Tufted Titmouse        | 3     | 7 Jan 2020 | Turk Duddy |

Portland Country Club

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Recent Visits

9:51 AM 1/10/2020

## Evergreen Cemetery in Portland, ME

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### Evergreen Cemetery--ponds

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**157** Species | 529 Checklists Updated 7 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME     | COUNT | DATE        | BY              |
|---|------------------|-------|-------------|-----------------|
| 1 | Mallard          | 7     | 22 Oct 2019 | sophia r        |
| 2 | Hooded Merganser | 1     | 22 Oct 2019 | kieran r        |
| 3 | Great Blue Heron | 1     | 22 Oct 2019 | sophia r        |
| 4 | Downy Woodpecker | 1     | 20 Oct 2019 | Peter Carpenter |
| 5 | Blue Jay         | 2     | 20 Oct 2019 | Peter Carpenter |

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## Hinckley Park in South Portland, ME

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### Hinckley Park, South Portland

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

**159** Species | 418 Checklists Updated 12 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

|   | SPECIES NAME           | COUNT | DATE        | BY              |
|---|------------------------|-------|-------------|-----------------|
| 1 | Herring Gull           | 1     | 25 Nov 2019 | Donald Thompson |
| 2 | Downy Woodpecker       | 1     | 25 Nov 2019 | Donald Thompson |
| 3 | American Crow          | 3     | 25 Nov 2019 | Donald Thompson |
| 4 | Black-capped Chickadee | 7     | 25 Nov 2019 | Donald Thompson |
| 5 | Tufted Titmouse        | 5     | 25 Nov 2019 | Donald Thompson |

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South Portland

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Recent Visits

9:40 AM 1/10/2020

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 CHAPTER 12  
RE: REPEAL OF SINGLE-USE CARRY-OUT BAGS ORDINANCE**

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

*1. That Sections 12-230 to 12-237 of Chapter 12 of the  
Portland City Code are hereby amended to be struck in their  
entirety:*

**Art. I. In General, § 12-1--12-15**

**Art. II. Garbage and Solid Waste Removal/Recycling, §§  
12-16--12-45**

**Art. III. Health Nuisances, §§ 12-46--12-60**

**Art. IV. Public and Private Dumps, §§ 12-61--12-74**

**Art. V. Junked Motor Vehicles, §§ 12-75--12-99**

**Art. VI. Solid Waste Disposal, §§ 12-100--12-119**

**Art. VII. Rendering Wastes, §§ 12-120--12-205**

Div. 1. Generally, §§ 12-120--12-149

Div. 2. Waste Transportation Licenses, §§ 12-150--12-199

Div. 3. Construction and Operation of Rendering Facilities,  
§§ 12-200--12-209

**Art. VIII. Polystyrene and Plastic, §§ 12-210--12-229**

Div. Polystyrene §§ 12-211--12-219

Div. Plastic §§ 12-220--12-229

~~**Art. IX. Waste Reduction, §§ 12-230--12-237**~~

**Art. X. Abandoned Bicycles, §§ 12-238--12-241**

...

~~**ARTICLE IX. WASTE REDUCTION**~~

~~**Sec. 12-230. Findings; purposes.**~~

~~The city council hereby finds as follows:~~

~~(a) The City Council has a duty to protect the natural  
environment and the health of its citizens and  
visitors; and~~

- ~~(b) The use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and~~
- ~~(c) Despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled; and~~
- ~~(d) Numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains, and endangering wildlife; and~~
- ~~(e) The City of Portland's taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and~~

~~The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy landfill) and supports efforts to achieve State recycle goals; and~~

- ~~(g) From an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping; and~~
- ~~(h) Whereas the City Council of the City of Portland aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and~~
- ~~(i) Evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as those business are defined in this Ordinance; and~~
- ~~(j) Studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags; and~~



~~(k) The City Council of the City of Portland believes that residents and visitors should use reusable bags and that prohibiting the free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and~~

~~(l) It is in the best interests of the health, safety and welfare of citizens and visitors of Portland to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Ordinance.~~

## **~~12-231. Definitions.~~**

~~As used in this Ordinance the following terms have the following meanings:~~

~~*Single-use carryout Bag.* Single-use Carryout Bag means a bag other than a Reusable bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs.~~

~~*Produce bag or Product bag.* The terms produce bag or product bag mean any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.~~

~~*Reusable Bag* means a bag that is:~~

~~(a) Designed and manufactured to withstand repeated uses over a period of time;~~

~~(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;~~

~~(c) That is at least 2.25 mil thick if made from plastic;~~

~~(d) Has a minimum lifetime of 75 uses; and~~



~~(e) Has the capability of carrying a minimum of 18 pounds.~~

~~Store. The term Store means any of the following retail establishments located within the City of Portland:~~

~~(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.~~

~~(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.~~

~~Store does not mean:~~

~~Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business' gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.~~

## **~~12-232. Single-Use Carryout Bag~~**

~~(a) No Store shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.~~

~~(b) A Store may make available for sale to a Customer a Single-Use Carryout Bag for a minimum charge of five cents (\$0.05).~~

~~(c) All monies collected by a Store for Single-Use Carryout Bags under this Chapter may be used by the Store for any lawful purpose.~~

~~(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.~~

~~(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless~~

~~the amount of the sale of the Single-Use Carryout is separately itemized on the sale receipt.~~

- ~~(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection (b).~~

#### **~~12-233. Exemptions.~~**

~~A Store shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety.~~

#### **~~12-234. Record Keeping and Inspection.~~**

~~Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout Bag, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information including incomplete records or documents to the City shall be a violation of this Article.~~

#### **~~12-235. Violations and enforcement.~~**

~~— The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.~~

~~— Violations of this Article shall be punishable by fines as follows:~~

- ~~(a) A fine not exceeding \$250 for the first violation in a one-year period;~~
- ~~(b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.~~

#### **~~12-236. Effective Date~~**

~~—The provisions of this ordinance shall become effective on April 15, 2015.~~

**~~12-237. Severability.~~**

~~—If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.~~

Editor's Note: By Order 168-19/20 approved as an emergency on April 6, 2020, Sections 12-230 to 12-237, Article IX Waste Reduction, which regulated the distribution of single use carry-out plastic bags, were repealed. The ordinance was repealed in light of LD 1532 Public Law Chapter 346 becoming effective on April 22, 2020. This state law imposed state-wide prohibitions on the distribution of single-use carry-out bags and was expressly intended by the Legislature to "occupy the field" with respect to regulation of single-use bags in Maine, expressly rendering void all local regulation of such bags.

## MEMORANDUM

**TO:** Troy Moon, Sustainability Coordinator

**FROM:** Jennifer L. Thompson, Associate Corporation Counsel

**DATE:** March 9, 2020

**RE:** Portland's Single Use Bag Ordinance

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As you know, in June 2019 the Governor approved an amendment to state law aimed at reducing the use of single-use carry-out bags. That statute, a copy of which is attached, goes into effect on April 22, 2020. Although a number of municipalities, including the City of Portland, have adopted ordinances in recent years regulating single use bags at the local level, the new state law is intended to make more uniform the regulation of single-use carry-out bags, statewide. Consistent with that objective, Section 5 of the state law provides:

5. Preemption. To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carryout bags at retail establishments beginning April 22, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning April 22, 2020, any ordinance or regulation that violates this subsection is void and has no force or effect.

In light of this stated intent to “occupy the field” and language making it clear that any local ordinance intending to regulate single-use carry-out bags will automatically be deemed void and of no force or effect, this office is recommending that the Council affirmatively repeal the City’s ordinance (Sections 12-230-12-237). By repealing and removing those sections from the City’s Code (which will be rendered void as of April 22, 2020), the City can avoid confusion on the part of local retailers and shoppers as to their obligations and ensure that the City’s Code is current and contains only those ordinances that remain in force and effect.

## STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 1115 - L.D. 1532

## An Act To Eliminate Single-use Plastic Carry-out Bags

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 38 MRSA §1605**, as repealed and replaced by PL 1991, c. 475, §1, is repealed.

**Sec. 2. 38 MRSA §1611** is enacted to read:

**§1611. Plastic bag reduction**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable, and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified.

B. "Point of sale" means a check-out stand, cash register or other point of departure from a retail establishment.

C. "Post-consumer recycled material" means a recycled material that if not recycled would otherwise have been destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused in, an original manufacturing and fabrication process.

D. "Recycled paper bag" means a paper bag that:

(1) Is 100% recyclable; and

(2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds.

E. "Restaurant" means an establishment that sells prepared food directly to the consumer.

F. "Retail establishment" means a store, a restaurant or a temporary business.

G. "Reusable bag" means a bag with handles that:

- (1) Is designed and manufactured to withstand a minimum of 75 repeated uses;
- (2) Is machine washable or made from a material that can be cleaned and disinfected regularly;
- (3) If made from plastic is at least 4 mils thick; and
- (4) Has the capability of carrying a minimum of 18 pounds.

H. "Single-use carry-out bag" means a bag that is made of plastic, paper or other material provided by a retail establishment at the point of sale for the purpose of transporting merchandise away from the retail establishment and that is not a recycled paper bag or a reusable bag.

I. "Store" means a retail store that engages in the retail sale of merchandise, including food, goods, products and clothing. "Store" includes grocery stores primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and convenience stores engaged in the sale of a limited line of goods, including milk, bread, soda and snack foods, and prepared foods intended to be consumed off the premises.

J. "Temporary business" means a seasonal or nonpermanent retail establishment such as a farmers' market or fair that sells merchandise including food, goods, products or clothing.

**2. Prohibition; exemptions.** This subsection governs the use of single-use carry-out bags.

A. Except as otherwise provided in this subsection, beginning April 22, 2020, a retail establishment may not provide a single-use carry-out bag to a customer at the point of sale or otherwise make single-use carry-out bags available to customers.

B. The prohibition in paragraph A does not apply to:

- (1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store;
- (2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag;
- (3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants;
- (4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses;
- (5) Newspaper bags;



(6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste;

(7) Bags used to contain live animals, such as fish or insects sold in pet stores;

(8) Bags used for vehicle tires;

(9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment;

(10) Bags used by a hunger relief organization such as a food pantry or soup kitchen to distribute food directly to the consumer at no charge;

(11) Bags that customers bring to the retail establishment for their own use or for carrying away from the retail establishment goods that are not placed in a bag provided by the retail establishment.

C. A retail establishment may make single-use carry-out bags made of plastic that are exempted in paragraph B available to customers to bag products within the retail establishment other than at the point of sale only if the retail establishment:

(1) Locates inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and

(2) Ensures that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics.

**3. Recycled paper bag fees and reusable plastic bag fees; exemptions.** This subsection governs fees assessed on recycled paper bags and on reusable bags made of plastic.

A. Beginning April 22, 2020 a retail establishment may use a recycled paper bag or a reusable bag made of plastic to bag products at the point of sale as long as the retail establishment charges a fee of at least 5¢ per bag.

(1) All amounts collected pursuant to this paragraph are retained by the retail establishment and may be used for any lawful purpose.

(2) A retail establishment may not rebate or otherwise reimburse a customer any portion of the fee charged pursuant to this paragraph.

B. The requirement to charge a fee under paragraph A does not apply to:

(1) Stores at which less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area;

(2) Restaurants; or

(3) Hunger relief organizations engaged in distributing food directly to consumers at no charge.

A retail establishment exempt from charging a fee under this paragraph may charge a fee for a recycled paper bag or a reusable bag made of plastic.

**4. Violations.** A retail establishment that violates a provision of this section is subject to civil penalties under section 349.

**5. Preemption.** To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carry-out bags at retail establishments beginning April 22, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning April 22, 2020, any ordinance or regulation that violates this subsection is void and has no force or effect.