CITY OF PORTLAND, MAINE

PLANNING BOARD

AGENDA
PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on Tuesday, December 11, 2018, Council Chambers, 2nd Floor of City Hall, 389 Congress Street. **Public comments will be taken for each item on the agenda during the estimated allotted time and written comments should be submitted to planningboard@portlandmaine.gov**.

AFTERNOON PUBLIC HEARING - 4:30 PM

1. ROLL CALL AND DECLARATION OF QUORUM

2. COMMUNICATIONS AND REPORTS

November 13, 2018 Minutes: Mazer moved and Stanley seconded a motion to approve the minutes.

3. REPORT OF ATTENDANCE AT THE MEETING HELD ON NOVEMBER 27, 2018

Workshop: Dundon, Mazer, Eaton, Silk, Smith and Stanley present; Whited absent.

Public Hearing: Dundon, Mazer, Eaton, Silk, Smith and Stanley present; Whited absent.

4. REPORTS OF DECISIONS AT THE MEETING HELD ON NOVEMBER 27, 2018

i. Level III Site Plan, Office building expansion, 90 Johnson Road, Transport Leasing Corp, Applicant. Mazer moved and Stanley seconded a motion to waive the technical standard for the public transit shelter given the proximity of shelters on Jetport Boulevard. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to approve the site plan ordinance with thirteen (13) conditions of approval. Vote: 6-0, Whited absent.

ii. Confirmation of Waiver of Joint Meeting with Westbrook, Amended Subdivision Plan, Dirigo Center Developers, LLC, Applicant. Stanley moved and Silk seconded a motion to waive a joint meeting with Westbrook. Vote: 5-0, Mazer recused and Whited absent.

iii. Zoning Amendments, Marijuana Zoning, City of Portland, Applicant. Mazer moved and Stanley seconded a motion to find the proposed text amendments consistent with the comprehensive plan and to recommend adoption to the City Council. Vote: 6-0, Whited absent.

iv. Level III Site Plan, 400 West Commercial Street, Canal Landing, LLC. Applicant. Mazer moved and Stanley seconded a motion to waive the technical standard for the stormwater flooding standard of the Technical Manual and Chapter 500 based upon the capacity of the receiving body, the Fore River. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to waive the technical standard for bicycle parking due to the parking provided at Building D along West Commercial Street. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded the motion to find the proposed marine repair building and proposed building height of 55' meet the criteria of Section 14-320 and 14-474. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to approve the site plan, shoreland zoning, and amended site location of development application with eight (8) conditions of approval. Vote: 6-0, Whited absent.

v. Level III Site Plan, 325 St. John Street, Dunkin Brands, Inc., Applicant. Mazer moved and Stanley seconded a motion to waive the parking aisle widths to allow for widths shown on site plan. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to waive the driveway separation (one way-circulation) standard. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to waive the requirement for brick to allow the existing concrete sidewalk tp remain on St. John Street. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to find the proposed drive-through to meet the standards of Section 14-474 and 14-183, subject to two (2) conditions of approval. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to approve the Traffic Movement Permit with three (3) conditions of approval. Vote: 6-0, Whited absent. Mazer moved and Stanley seconded a motion to approve the site plan with 9 conditions of approval. Vote: 6-0, Whited absent.

5. NEW BUSINESS

i. Map Amendment Rezoning; 250 Canco Road; City of Portland, Applicant. (4:30 - 5:00 p.m. estimated time) The Planning Board will hold an afternoon public hearing to consider a rezoning of approximately 78,000 sf of land from the C50 contract zone (with an underlying zone of IL lot impact industrial) to IM moderate impact industrial zone. The City owned property serves as the municipal facility for the Departments of Public Works and Parks, Recreation, and Facilities. The City acquired an adjoining parcel, which was in the conditional zone, and seeks to have the entire city property within the one industrial zoning designation of IM. The proposal is subject to review and a recommendation by the Planning Board.

ii. Conditional Use and Administrative Authorization Application for a Used Car Dealership; 965R Forest Avenue, Raceway Auto Care Inc., Applicant. (5:00 - 5:45 p.m. estimated time) The Planning Board will hold an afternoon public hearing on a Conditional Use and Administrative Authorization site plan application for a proposed used-car dealership at 965R Forest Avenue. Currently the Raceway Auto Care is an auto body repair shop, seeking to add auto sales. The property is in the B-2 zone and auto sales are a conditional use.

iii. Amendments to the Implementation Guidelines, Regulations, and Agreements for Chapter 14, Division 30, Affordable Housing, Portland Planning and Urban Development, Applicant. (5:45 - 6:30 p.m. estimated time) The Planning Board will hold an afternoon public hearing on proposed amendments to the Inclusionary Zoning Guidelines, Regulations, and Agreements to amend regulations included, but not limited to, maximum sale price calculation, restricted period, utilities, gross income, asset limitation test and a correction to the Workforce Housing Agreement, to better implement the Ordinance. The Planning Board will consider adoption of the proposed regulatory changes.

6. EVENING WORKSHOP - 6:30 PM

i. Potential Changes to the Dimension and Use Standards in the B-2, B2-b and/or B-2c zoning districts, Portland Planning and Urban Development Department, Applicant. The Planning Board will hold a workshop on potential changes to the B-2, B-2b and/or B-2c zoning districts' dimensional and use standards to modify the conditions under which drive through uses and structures would be permitting.

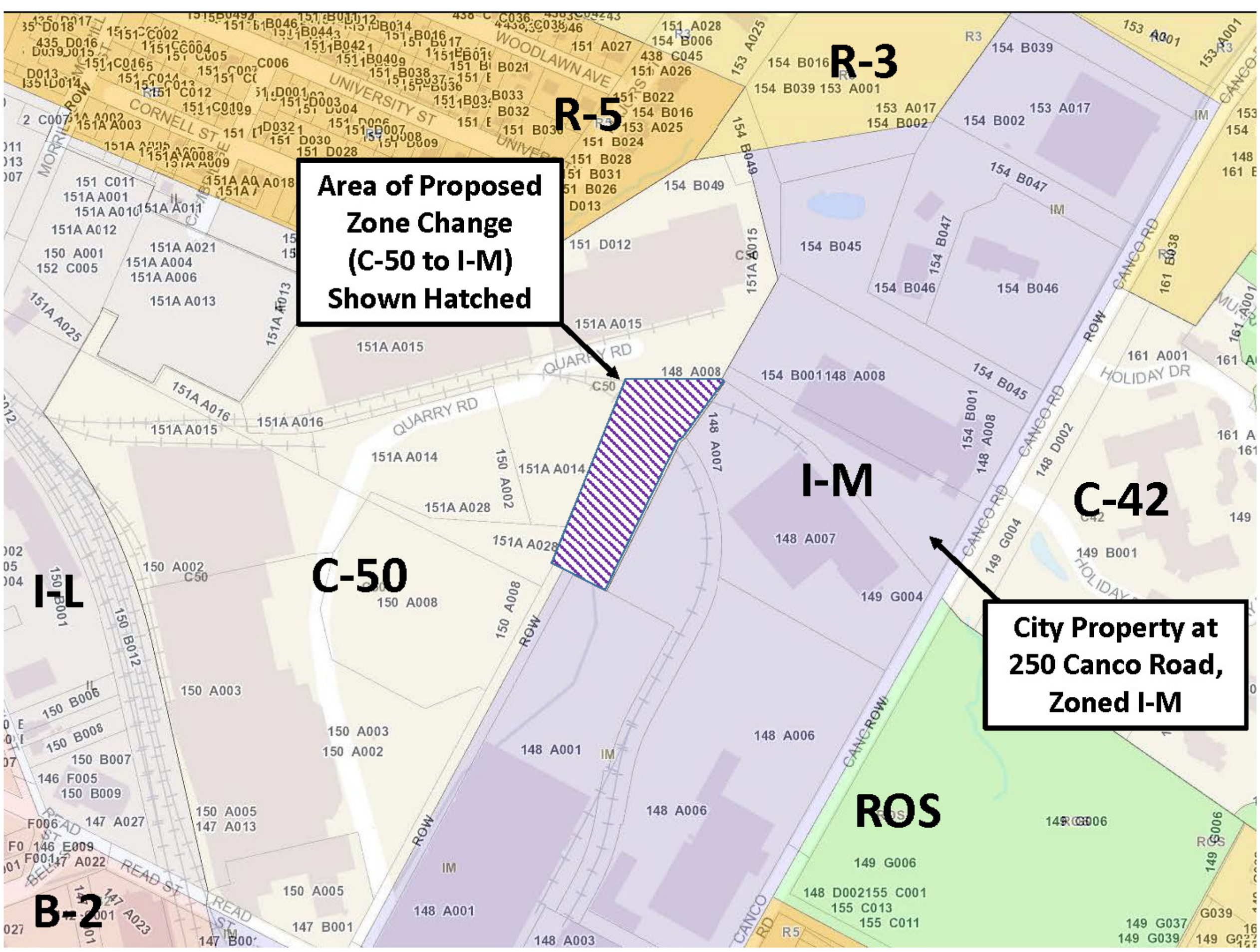
PLANNING BOARD REPORT
PORTLAND, MAINE
250 Canco Road
Rezoning
ZN-000377-2018
Applicant: City of Portland

Submitted to Portland Planning Board Public Hearing Date: December 11, 2018	Prepared by: Christian Roadman Date: December 7, 2018

I. Introduction and Project Summary

The City of Portland seeks to rezone approximately 78,000 square feet of land from the C-50 contract zone (with an underlying zone of I-L low impact industrial) to I-M moderate impact industrial. The City acquired the C-50-zoned land in question as part of a land swap. It is adjacent to City-owned property at 212-250 Canco Road, which houses municipal facilities for the Departments of Public Works and Parks, Recreation, and Facilities. The City seeks the rezoning for two reasons. Rezoning would allow the contiguous City property that includes the two departments to fall under one zoning designation, and I-M designation allows open air storage (the I-L low impact industrial zone does not). The City of Portland would like to place a pole barn with one open side within the area proposed for rezoning.

The proposed rezoning will extend the I-M zone which is located along the westerly side of Canco Road. It will be buffered by land remaining in the C-50 zone. The Planning Board is being asked to consider this zoning map change without the benefit of a workshop. Planning staff held the required neighborhood meeting on November 14 2018, and sent notice of the Public Hearing to property owners within 1000 feet of the proposed rezoning. A legal advertisement ran on December 2 and December 3.

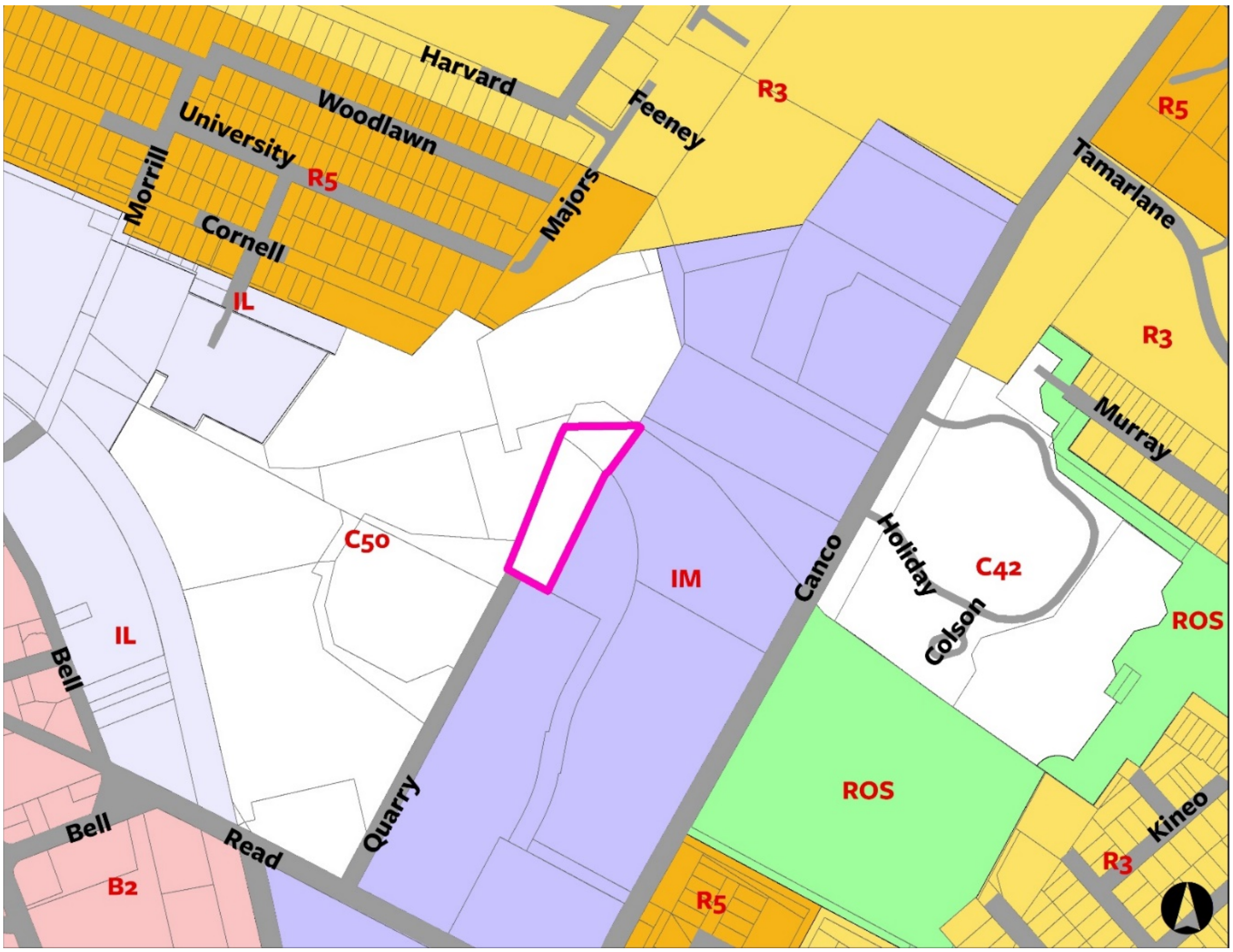


II. PUBLIC COMMENT / NEIGHBORHOOD MEETING

The Planning Department held a neighborhood meeting at 250 Canco Road on the evening of November 14, 2018 (attachment 1). Six individuals attended, generally seeking clarity regarding the proposed rezoning and its potential impacts. One attendee informed planning staff of existing problems with stormwater runoff they would like to see addressed, as well as concern regarding increased truck traffic on Quarry Road. Staff anticipate that these concerns will be adressed as part of a related site plan application review.

Planning staff received an e-mail comment (attachment PC-1) expressing opposition to the zone change if it is intended to facillitate placement of a homeless shelter. The intention for the land in question is storage and operations for the Departments of Public Works and Parks, Recreation, and Facilities.

III. ZONING ANALYSIS



Zoning context of the 212-250 Canco Road property. The area proposed for rezoning is outlined in pink.

In the City's Land Use Code, the purpose statement for I-L includes the following language:

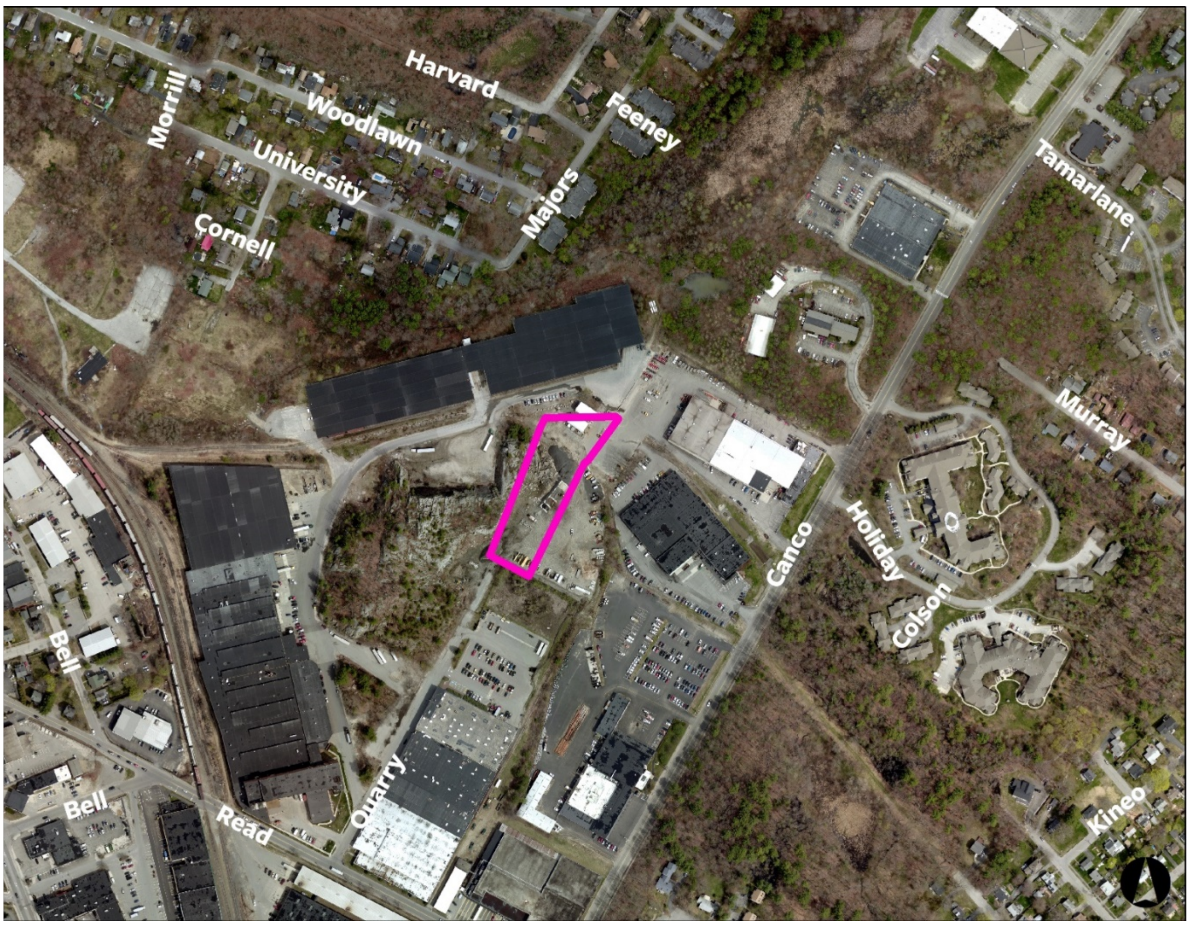
> "The low impact industrial zone is intended to provide areas in which low impact industrial uses and limited other uses serving employees and residents of the surrounding neighborhood will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H industrial zones, or will stand alone as a smaller scale industrial district."

Permitted uses in the I-L zone include "building contractors and outside storage of related construction equipment" as well as "distribution centers, warehouse and wholesale businesses under ten thousand (10,000) square feet," though outside storage associated with these uses is explicitly prohibited.

As its name indicates, the I-M moderate impact zone allows for more intensive uses and flexibility around them. The purpose statement for I-M includes the following language:

> "The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist. . . . The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery."

"Warehousing and distribution facilities, including outdoor storage" are specified permitted uses in the I-M zone.



Context of the area proposed for rezoning, which is outlined in pink. (Image: May 2018, Pictometry)

IV. PROPOSED DEVELOPMENT

The proposed zone change is spurred in part by intended improvements (attachments 2 and 3) by the City of Portland at the Public Works site. This will be reviewed by City staff as a separate level II site development application. The proposed improvements include:

- Redevelopment of the existing services yard to improve circulation
- Relocation of the two existing temporary salt sheds

- Construction of a 188' x 40' (6,720 square foot) pole barn
- Construction of a 120' x 80' (9,600 square foot) permanent sand and salt storage shed
- Fueling area consisting of two 20,000-gallon fuel and diesel tanks
- Construction of a 41-space parking lot for the Public Works Department
- Construction of supporting utilities and stormwater best management practices

While these proposed changes are all part of the same overall project, they will not all occur on the area proposed for rezoning. At present, planning staff understand that the proposed pole barn and fueling area / tanks are intended to be placed within the area under consideration for rezoning.

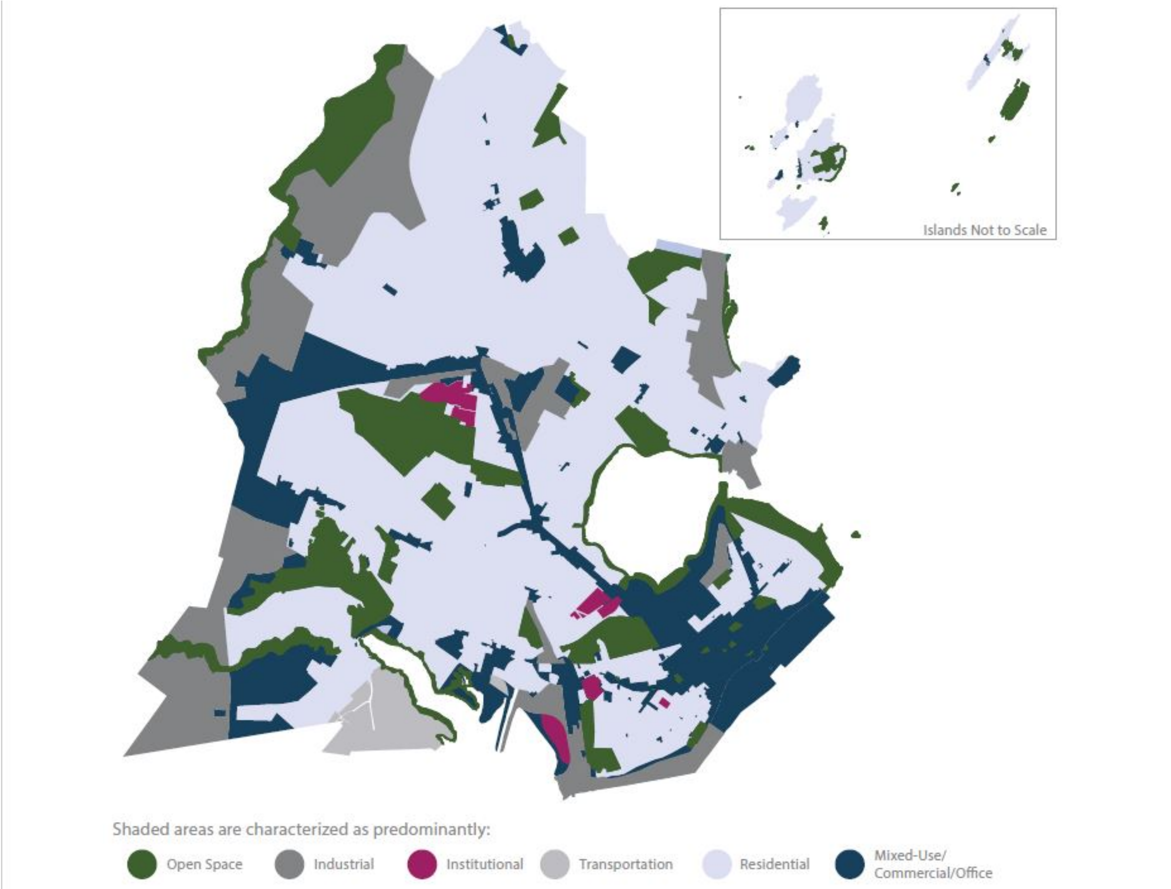
V. CONSISTENCY WITH CITY MASTER PLAN

The central vision of Portland's Plan 2030 is represented by the Venn diagram below demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure advancement of the vision as a unified concept.

The comprehensive plan includes the following relevant goal: "provide public safety, emergency response, and emergency management facilities and services that can effectively meet the needs of all residents." The plan also lists the following supporting strategies:

- Ensure transparency and access to City services and facilities for all residents
- Operate City facilities and services in an efficient and effective manner that is responsive to all segments of the community

In the Future Land Use section of the Comprehensive Plan, the area near 250 Canco Road is represented including industrial and mixed use/commercial/office (please see image below).



Land Use Context map from the City of Portland's comprehensive plan

VI. PROPOSED MOTIONS

1. Motion to Rescind C-50 Zoning

On the basis of materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, and the information provided in public hearing on December 11, 2018 for the application ZN-000377-2018, the Planning Board finds that rescinding the Conditional Rezoning #50 from the approximately 78,000 square feet of City-owned land located at 250 Canco Road **[is/is not]** consistent with the Comprehensive Plan for the City of Portland.

Therefore, the Planning Board **[recommends/does not recommend]** to the City Council that it rescind the Conditional Rezoning Agreement #50 from the approximately 78,000 square feet of City-owned land at 250 Canco Road.

2. Motion for Map Amendment

On the basis of materials submitted by the applicant, the City of Portland Zoning Code, Portland's Comprehensive Plan, public comment, and the information provided in public hearing on December 11, 2018 for the application ZN-000377-2018, the Planning Board finds that the proposed zoning map amendment to the I-M moderate impact industrial zone for approximately 78,000 square feet of City-owned land located at 250 Canco Road **[is/is not]** consistent with the Comprehensive Plan for the City of Portland.

Therefore, the Planning Board **[recommends/does not recommend]** to the City Council adoption of the zoning map amendment for a portion of the City-owned land at 250 Canco Road to the I-M moderate impact industrial zone.

REPORT ATTACHMENTS

1. Neighborhood Meeting Materials
2. Combined Site Plans
3. Level II Site Plan Cover Letter
4. Zoning Map Change Proposal Illustration

PUBLIC COMMENT

PC1. Nicole Castonguay 11-30-18

Neighborhood Meeting Certification

I, Christian Roadman, hereby certify that a neighborhood meeting was held on November 14, 2018 at 250 Canco Road at 6:00 PM for the proposed zone change of a portion of 250 Canco Road.

I also certify that on November 5, 2018, invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 1000 feet of the proposed industrial zone change.
2. Residents on the "interested parties" list.

Signed,

Christian Roadman
11/21/2018

Attached to this certification are:

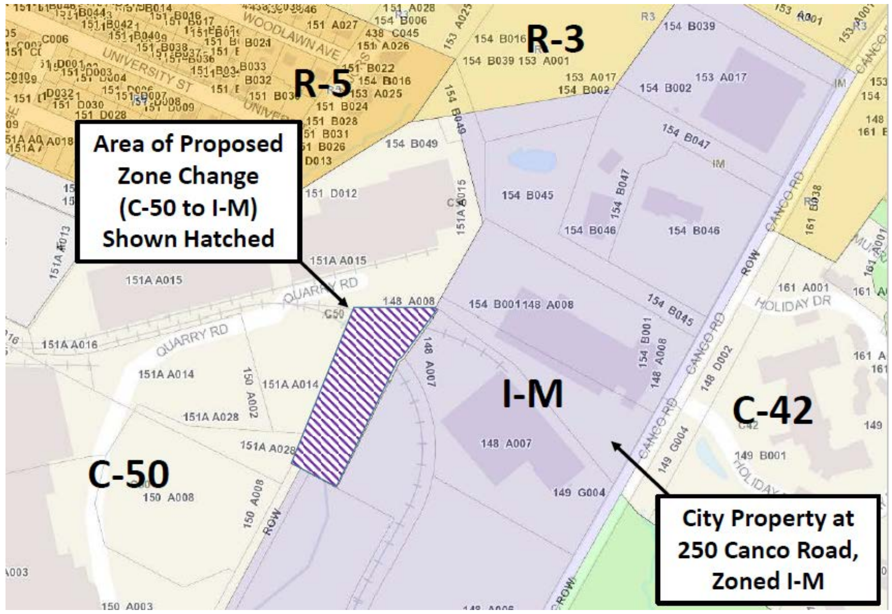
1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

Portland, Maine Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

To Properties Owners and Interested Parties:

RE: 250 Canco Road



The City of Portland has submitted an application to rezone approximately 78,000 square feet of land from the C-50 contract zone (with an underlying zone of I-L low impact industrial) to I-M moderate impact industrial zone at 250 Canco Road. The City-owned property serves as the municipal facility for the Departments of Public Works and Parks, Recreation, and Facilities. The City acquired an adjoining parcel, which was in the conditional zone, and
seeks to have the entire city property within the one industrial zoning designation of IM. The proposal is subject to review and a recommendation by the Planning Board.

Please join us for a neighborhood meeting to discuss the rezoning. The neighborhood meeting will be held:

Meeting Location: 250 Canco Road, Training Room (enter through the front door and go to the left)
Meeting Date: Wednesday, November 14, 2018
Meeting Time: 6:00 – 7:00 p.m.

(The City code requires that property owners within 500 feet (1000 feet for proposed industrial subdivision and industrial zone changes) of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.) If you have any questions, please contact Christian Roadman, Planner, at (207)874-8984 or e-mail at croadman@portlandmaine.gov

Note:
Under Section 14-32(c) and 14-524(a)d of the City Code of Ordinances, an applicant for a Level III development, subdivision or over five lots/units, or zone change is required to hold a neighborhood meeting within 30 days of submitting a preliminary application or 21 days of submitting a final site plan application, if a preliminary plan was not submitted. The neighborhood meeting must be held at least 7 days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to planningboard @portlandmaine.gov

Please Print

Neighborhood Meeting Sign-In Sheet

November 14, 2018
Proposed Project: Proposed Zone Change (C-50 to I-M) at 250 Canco Road

Consultant Team/Developer:

NAME:	E-MAIL:
Christian Roadman	
Barbara Barhydt	

PLEASE ADD to LIST FOR LII APPLICATION

Neighborhood Participants:

NAME:	E-MAIL:
GLENN KROLL	GSKROLL@ME.COM
SUSAN KROLL	SCKROLL@ME.COM
RAYMOND Brien	rbrien@brusco.com
A. Ascanio	~~Washington Ave.~~
Marie Ascanio	maa1239@gmail.com
ULA POLSKY	ulapolsky@gmail.com

→ & SAND/SALT Oper.

Neighborhood Meeting Minutes
Zone Change from Contract Zone 50 to Industrial I-M at 250 Canco Road

Date: Wednesday, November 14, 2018
Location: Department of Public Works Conference Room – 212 Canco Road
Time: 6:00 p.m.

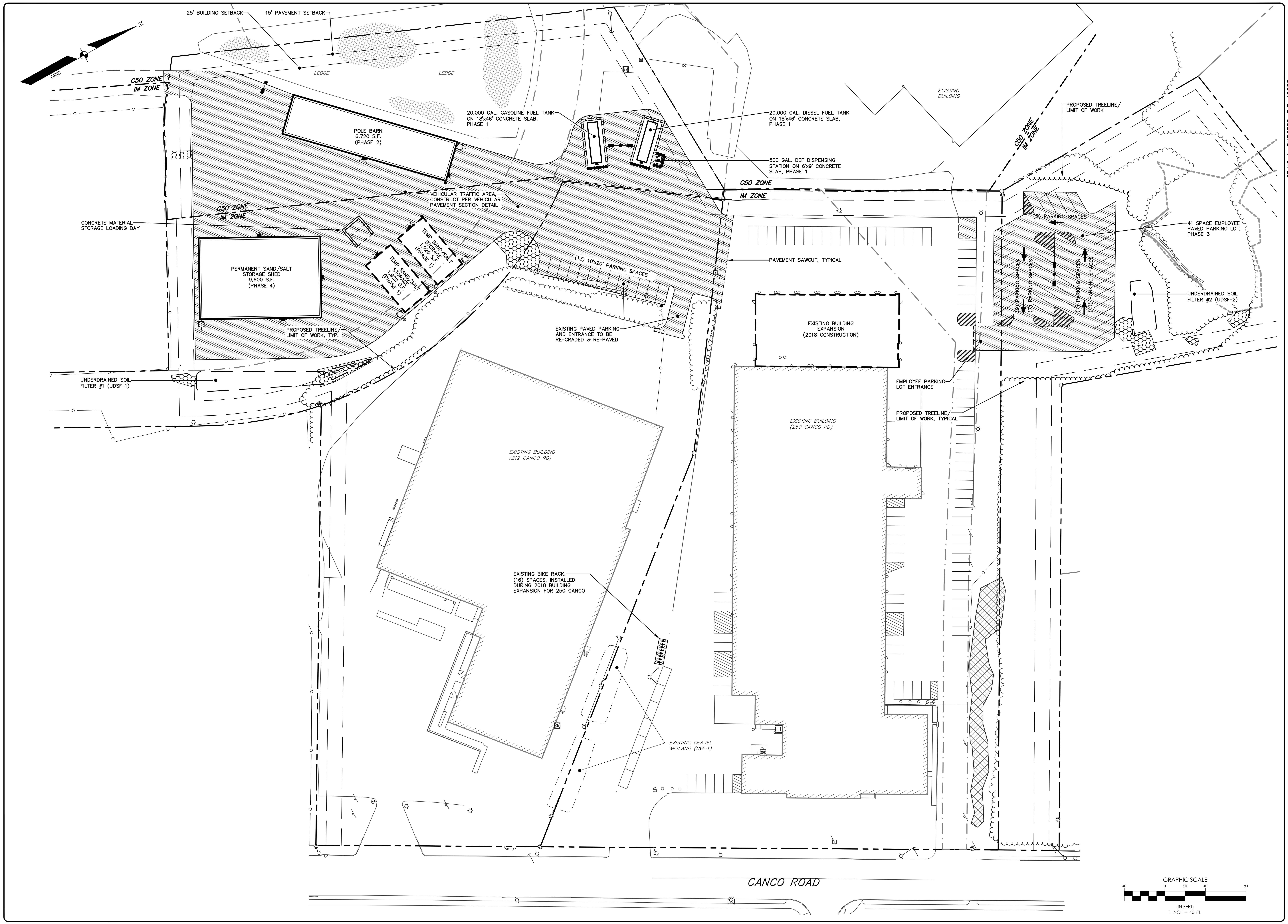
Christian Roadman, Planner with the Department of Planning and Urban Development, presented the City's proposal to rezone the rear portion of the City's property to IM. The city recently acquired a portion of the land held by the abutter and is seeking to include all of their holding in the one industrial zone. Christian also presented the conceptual plans from the Department of Public Works for the relocation of temporary salt sheds, construction of a pole barn, installation of fueling tanks, and some additional parking areas. A permanent salt shed is also being considered.

Questions and responses raised at the meeting:

- What is a pole barn?
  - An open sided structure on 1 side.
- Will salt and sand be stored in the pole barn?
  - It is intended for vehicles and some materials. Salt and sand will be stored in the temporary salt sheds.
- Will this area be paved? The abutting property owner noted that the parking lot for his business is often flooded and he is concerned with the additional impervious surface area. Wants to know what will be done for stormwater management.
  - The plans are being prepared by Sebago Technics and Lauren Swett, third party reviewing engineer will evaluate the plans. Christian asked for his contact information, so he can share the site plans with him when those are submitted and he will inform Lauren of his concerns.
- What will be the primary truck access for this site? Concerned with the increase in truck use of Quarry Road. DPW has been responsive and the trucks have slowed down since the abutter raised concerns, but he continues to be concerned about the increase in traffic going over to Read Street.
  - As part of the site plan review, we will seek information on the traffic use of the site and the impacts. The traffic review is conducted by a third-party engineer.
- Is the rezoning just for the parcel or is it larger?
  - Just the rear portion of the city-owned parcel.
- Is all of the purple on the zoning map city-owned land?
  - The purple is the land that is zoned IM, which includes both city and private land. Christian pointed out the parcels owned by the city.
- Will the ROS land be changing now or in the future?
  - There are no plans to change the zoning for the ROS land. Not only is it in the Recreation Open Space zone, but it is held by the Land Bank.

The meeting ended at 6:45 p.m.

Att. 2



CRAIG A. BURGESS, P.E. 12638

STATE OF MAINE
CRAIG A. BURGESS
No. 12638
PROFESSIONAL ENGINEER

11-01-18

DESIGNED	CHECKED
KJR	CAB

REV:	BY:	DATE:	STATUS:
A	CAB	11-01-18	CITY SUBMISSION

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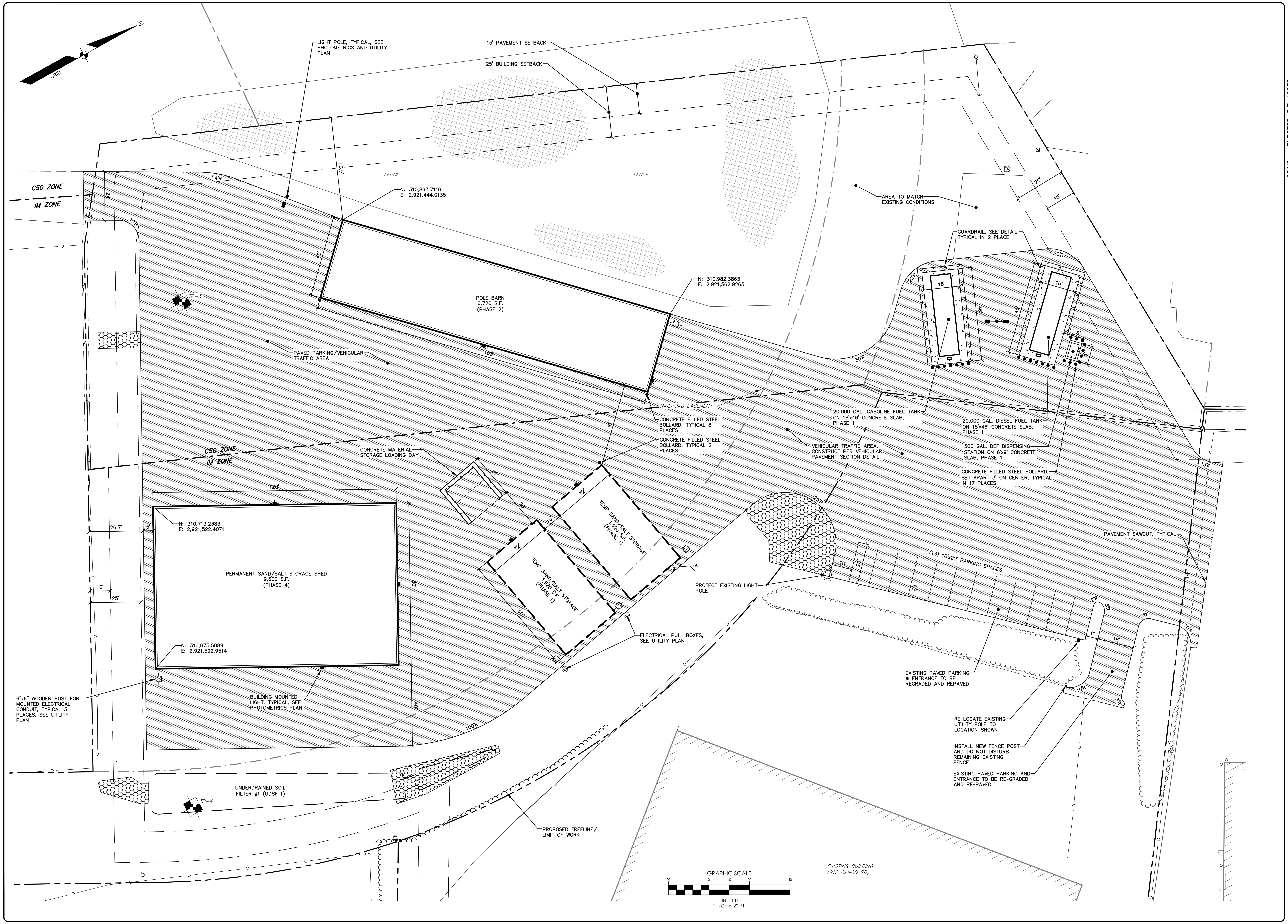
South Portland, ME 04106
Tel. 207-200-2100

OVERALL SITE PLAN
OF:
PORTLAND PUBLIC WORKS MASTER PLAN
212/250/256 CANCO ROAD
PORTLAND, MAINE 04103
FOR:
CITY OF PORTLAND
DEPARTMENT OF PUBLIC WORKS, 55 PORTLAND STREET
PORTLAND, MAINE 04101

PROJECT NO.	SCALE
15056	1" = 40'

SHEET 4 OF 20

15056 S.dwg, TAB:OAS



CRAIG A. BURGESS, P.E. 12638

STATE OF MAINE
CRAIG A. BURGESS
No. 12638
LICENSED
PROFESSIONAL ENGINEER
11-01-18

DESIGNED	CHECKED
KJR	CAB

REV:	BY:	DATE:	STATUS:
A	CAB	11-01-18	CITY SUBMISSION

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Suite 4A
South Portland, ME 04106
Tel. 207-200-2100

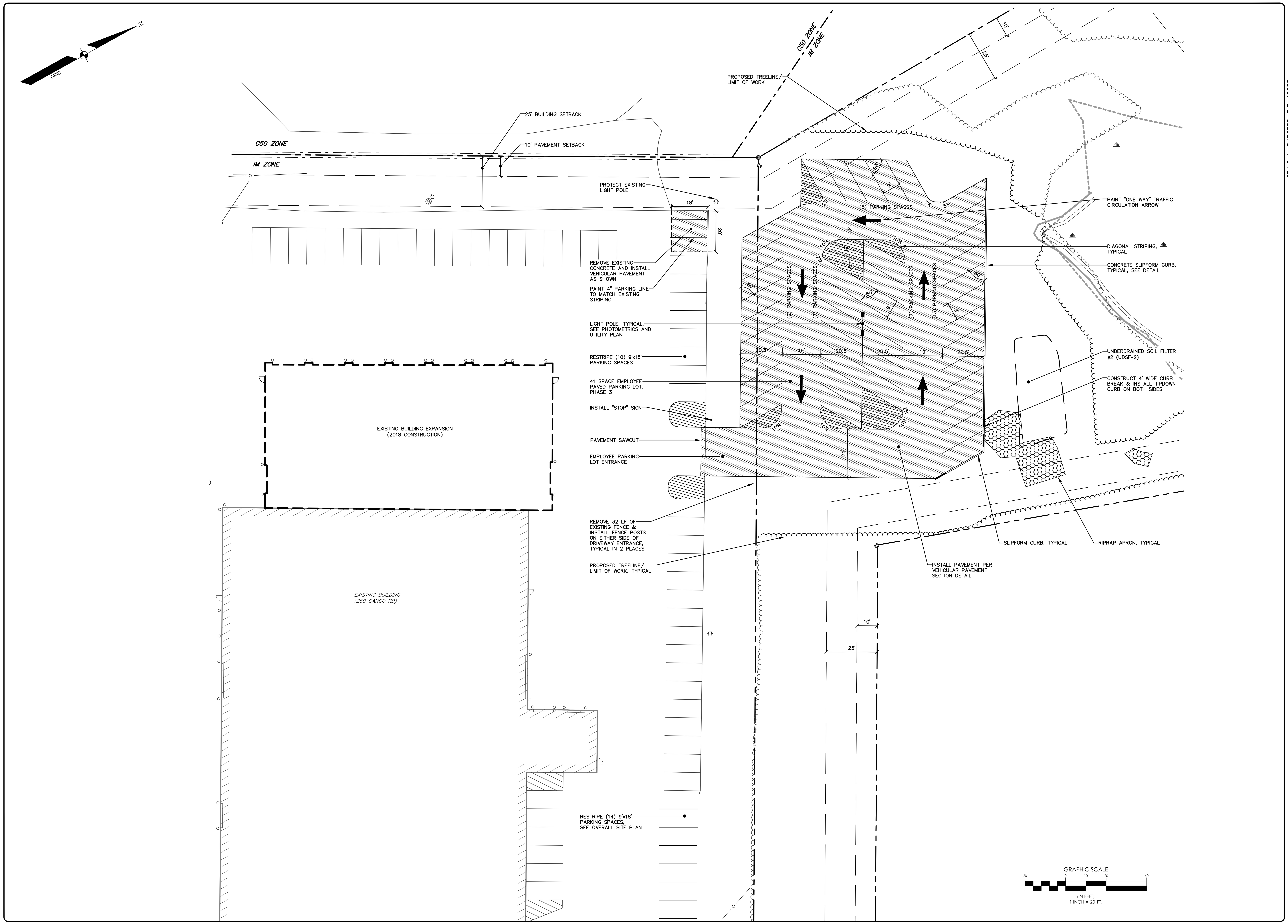
SITE PLAN

OF:
PORTLAND PUBLIC WORKS MASTER PLAN
212/250/256 CANCO ROAD
PORTLAND, MAINE 04103

FOR:
CITY OF PORTLAND
DEPARTMENT OF PUBLIC WORKS, 55 PORTLAND STREET
PORTLAND, MAINE 04101

PROJECT NO.	SCALE
15056	1" = 20'

15056 S.dwg, TAB: S1



CRAIG A. BURGESS, P.E. 12638

11-01-18

DESIGNED	CHECKED
KJR	CAB

REV:	BY:	DATE:	STATUS:
A	CAB	11-01-18	CITY SUBMISSION

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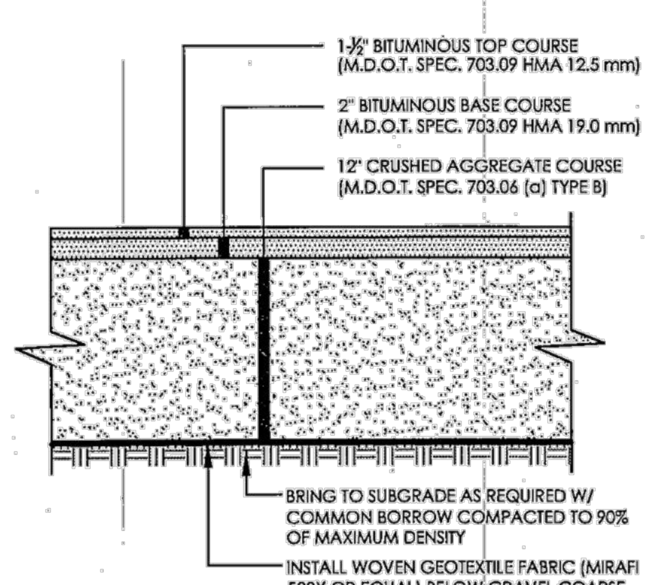
SITE PLAN
OF:
PORTLAND PUBLIC WORKS MASTER PLAN
212/250/256 CANCO ROAD
PORTLAND, MAINE 04103
FOR:
CITY OF PORTLAND
DEPARTMENT OF PUBLIC WORKS, 55 PORTLAND STREET
PORTLAND, MAINE 04101

PROJECT NO.	SCALE
15056	1" = 20'

SHEET 6 OF 20

15056 S.dwg, TAB:S2

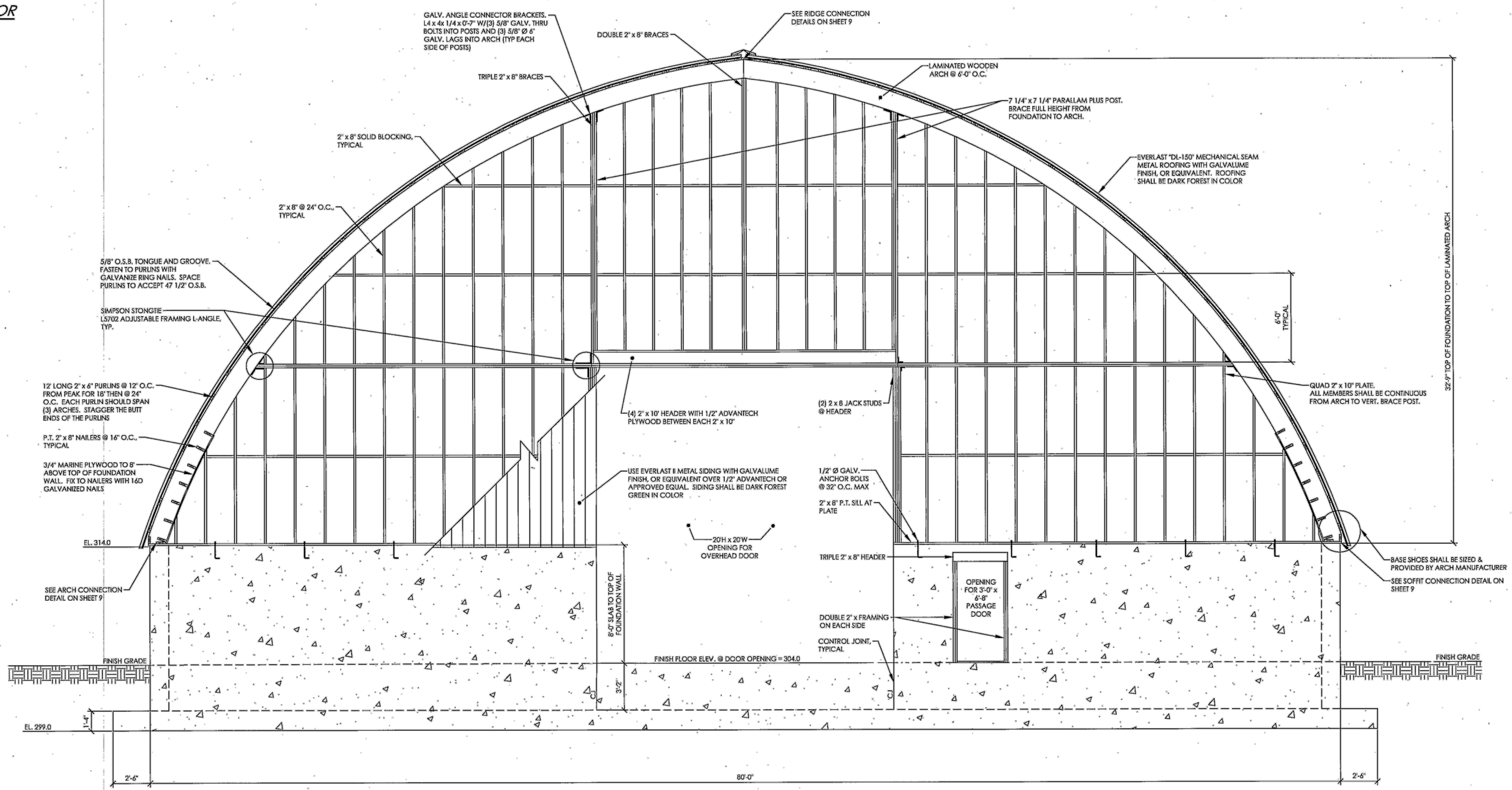


NOTES:

1. COMPACT GRAVEL COURSE TO 95% OF MAXIMUM DENSITY USING HEAVY ROLLER COMPACTION.
2. CONTRACTOR SHALL SET GRADE STAKES MARKING SUBBASE AND FINISH GRADE ELEVATIONS FOR CONSTRUCTION REFERENCE.

TYP. SECTION- BUILDING FLOOR

NOT TO SCALE



TYPICAL FRAMING SECTION

SCALE: 1/4" = 1'-0"

DESIGNED	CHECKED
KJR	CAB

REV:	BY:	DATE:	STATUS:
1	CAB	11/01/18	CITY SUBMISSION

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Suite 4A
South Portland, ME 04106
Tel. 207-200-2100

SAMPLE SAND & SALT SHED ELEVATION

OF:
PORTLAND PUBLIC WORKS MASTER PLAN
212/250/256 CANCO ROAD
PORTLAND, MAINE 04103

FOR:
CITY OF PORTLAND
DEPARTMENT OF PUBLIC WORKS, 55 PORTLAND STREET
PORTLAND, MAINE 04101

PROJECT NO.	SCALE
15056	AS SHOWN

15056 ELEV.dwg, TAB:ELEV

SEBAGO TECHNICS

Att. 3

October 30, 2018
15056

Desiree Kelly, City Planner
City of Portland
389 Congress Street
Portland, ME 04101

<u>Application for Level II – Site Plan Permit</u>
<u>Portland Public Works Department, Master Plan Development</u>

Dear Ms. Kelly:

On behalf of the City of Portland's Public Works Department, we have prepared this application for Level II – Site Plan Permit approval in the Industrial Moderate Impact (IM) and Conditional Industrial – Low Impact (C50) Zones. The application will permit Master Plan Development improvements at the Public Works Department site located along Canco Road in Portland.

A zoning map amendment is proposed to put all of the city's land into the Moderate Industrial zone, and to remove the Conditional Industrial – Low Impact (C50) Zone from the parcel(s). The City of Portland is coordinating the zoning map amendment concurrently with the Master Plan Development.

Project Introduction:

Proposed improvements at the Portland Public Works Department site for the master plan development include:

- Complete redevelopment of the existing services yard to improve vehicular circulation;
- Relocation of the two existing temporary salt sheds;
- Construction of a 188' x 40' (6,720 square foot) pole barn;
- Construction of a 120' x 80' (9,600 square foot) permanent sand and salt storage shed;
- Fueling area consisting of two (2) 20,000-gallon fuel and diesel tanks;
- Construction of a 41-space parking lot for the Public Works Department (250 Canco Road); and
- Construction of supporting utilities and stormwater management best management practices (BMPs)

Existing facilities onsite include the Portland Public Works Department and the Parks & Recreation Department buildings, which are located at 250 and 212 Canco Road, respectively. The entire site is made up of five (5) contiguous parcels totaling roughly 14.94 acres in size. Current development includes approximately 9.04 acres of impervious area and 1.75 acres of landscaped area, for a total development footprint of 10.79 acres. Proposed development of the site will result in an increase of 0.43 acres of impervious area and 0.78 acres of landscaped area, yielding a total of approximately 9.47 acres of impervious area and 12.00 acres of developed area across all five (5) parcels. Landscaped areas will consist of vegetated sideslopes, shallow swales for stormwater conveyance, and stormwater best management practices (BMPs) for stormwater detention and treatment.

Land uses will remain consistent with existing conditions, and covered storage will be provided in the Conditional Industrial – Low Impact (C50) Zone. A Level II– Site Plan Permit is being submitted because improvements will create less than 20,000 square feet of new building area in the IM Industrial Zone. The project qualifies for a Stormwater Law permit which can be reviewed and approved by the City of Portland through their delegated authority status. Stormwater management controls are designed in general conformance with MDEP's Basic, General (Redevelopment), and Flooding Standards in Chapter 500.

Project Location:

The property is located at 212 and 250 Canco Road, which is roughly 0.3 miles northwest of the Canco Road and Read Street intersection. Land in the vicinity of the project site is predominantly developed for industrial uses. The existing facility is bound by a residential neighborhood to the north, industrial and commercial uses to the south and west, and Canco Road to the east.

Site and Regulatory History:

In 2017, the City acquired the former Seltzer and Rydholm property located at the 250 Canco Road property. The property includes a large building that is occupied by Public Works for equipment storage and general operations. Additionally, the City purchased the abutting Nelson & Small building/parcel at 212 Canco Road that is occupied by other City Departments, including Parks, Recreation and Trades.

Prior to 1975, westerly portions of the subject parcels were disturbed for a quarry operation as evident with the exposed ledge face. The two existing buildings onsite were built around 1960 and the building at 250 Canco Road was expanded in 1984. The addition and associated pavement at that time resulted in the clearing of roughly 0.93 acres of forested area. The 1984 addition, associated paved areas, and proposed increase in impervious area for this project, which is 0.43 acres, yields a combined total of 1.89 acres of new impervious since 1975. The increase in impervious area since 1975 and the proposed addition of impervious area will remain under the standard threshold of 3 acres, as defined by the Maine Department of Environmental Protection (MDEP), thus the project does not trigger review pursuant to Site Location of Development (Site Law).

More recently, the City of Portland received local Site Plan approvals for construction of two temporary salt sheds at 212 Canco Road in 2015, a wash bay addition at 250 Canco Road in 2017, and a building expansion at 250 Canco Road in 2018. The salt shed project also involved construction of a gravel wetland for treatment of runoff from new and existing disturbed areas. Construction of the wash bay addition never materialized with development of the building program at 250 Canco Road.

Schedule:

Site construction is expected to commence in spring of 2019 upon receipt of local approvals for the Site Plan and Stormwater Law applications. Portland Public Works is hopeful to complete the permitting process through the City during the 2018-2019 winter to allow for a spring start and use of the facility by summer/early autumn 2019. The previous approval for the 250 Canco Road expansion is incorporated into the plan set for the master plan development.

Traffic:

A traffic impact study was performed in 2018 by William Bray, PE, of Traffic Solutions to evaluate existing traffic conditions in the general vicinity of the facility, and to determine peak trips resulting from redevelopment of 212 and 250 Canco Road. The study determined that a traffic movement permit was not triggered with less than 100 peak hour trips estimated in the morning and afternoon.

Facility improvements for the master plan development will have a negligible impact on traffic conditions. The new fueling area will serve vehicles from the Portland Public Works, Parks, Forestry, Trades and Horticulture Departments. Traffic conditions associated with these Departments were identified in the 2018 study. The City's fire apparatus will also fuel at the site on an as-needed basis. School buses will continue to fuel at the Metro on St. John Street.

Stormwater Management:

Construction of two underdrained soil filters are proposed for general compliance with MDEP's Chapter 500 regulations, which have been adopted by the City of Portland. The stormwater management plan also incorporates the existing gravel wetland for treatment of runoff from areas to be redeveloped.

Closure:

On behalf of the City of Portland Public Works Department, we look forward to working with City staff on the permitting of this project. As you consider the application, please contact us with any questions or requirements for additional information.

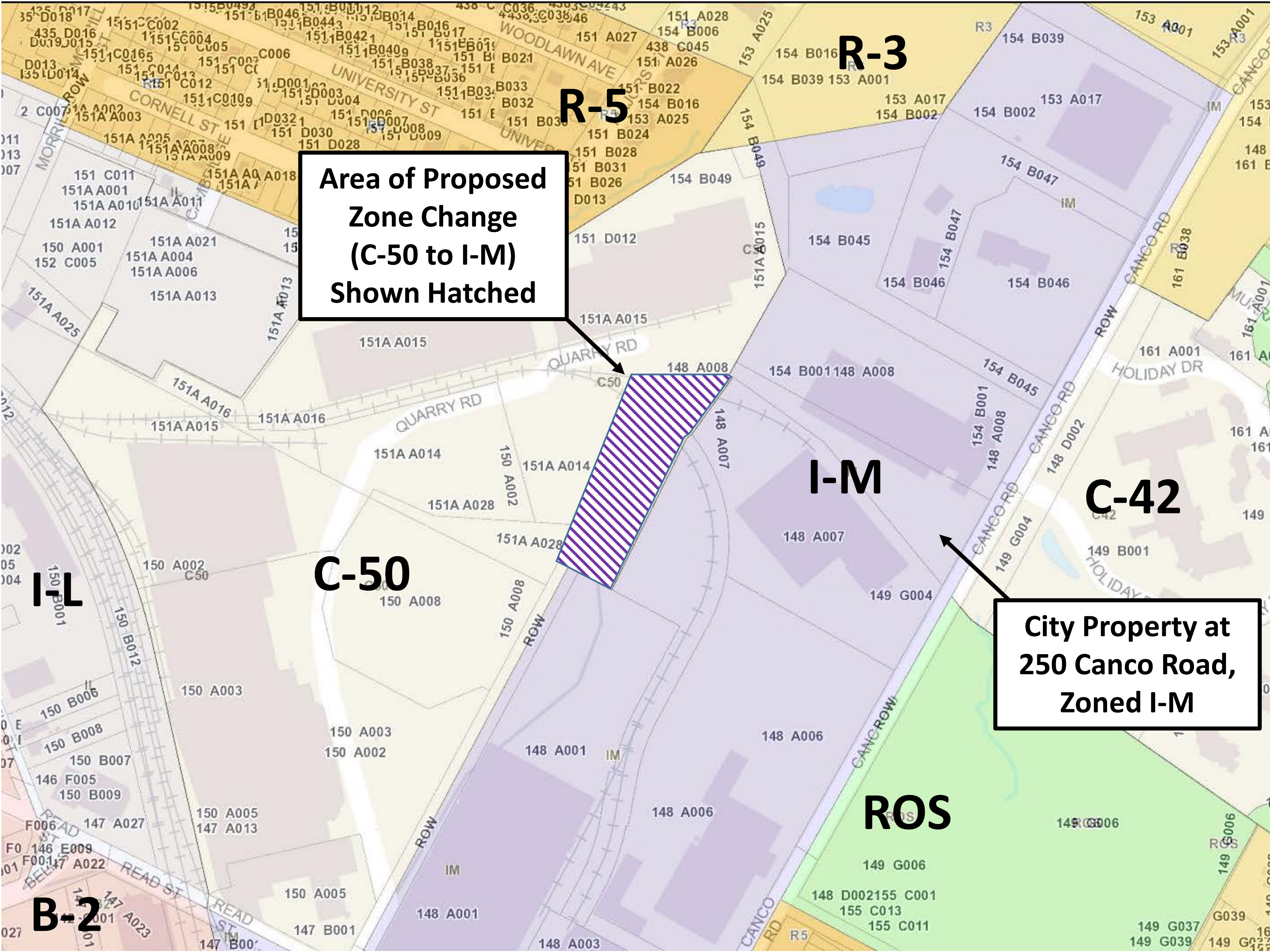
SEBAGO TECHNICS, INC.

Sincerely,

Craig Burgess

Craig A. Burgess, P.E.
Project Manager

CAB



Area of Proposed Zone Change (C-50 to I-M) Shown Hatched
City Property at 250 Canco Road, Zoned I-M
R-3
R-5
I-M
C-42
C-50
I-L
ROS
B-2
QUARRY RD
CANCO RD
HOLIDAY DR
WOODLAWN AVE
UNIVERSITY ST
CORNELL ST
READ ST

Planning Board Meeting re: Canco Rd.

Nicole Robitaille <nicolecrobitaille@gmail.com> Nov 30, 2018 10:13 PM

Posted in group: **Planning Board**

This email is in regards to an application to rezone approximately 78,000 square feet of land from the C-50 contract zone (with an underlying zone of I-L low impact industrial) to I-M moderate impact industrial zone at 250 Canco Road. The City-owned property serves as the municipal facility for the Departments of Public Works and Parks, Recreation, and Facilities. The City acquired an adjoining parcel, which was in the conditional zone, and seeks to have the entire city property within the one industrial zoning designation of IM. The proposal is subject to review and a recommendation by the Planning Board.

If this is for a homeless shelter I am 100% absolutely opposed to this zoning change.

I live nearby along the railroad tracks and do not want people wandering into my yard.

Sincerely,
Portland Resident
Nicole Castonguay

PLANNING BOARD REPORT
PORTLAND, MAINE

Pre-owned Automobile Dealership
Conditional Use and Administrative Authorization Review
Raceway Auto Care Inc., Applicant
CU-000126-2018 and AA-000384-2018

Submitted to: Portland Planning Board Public Hearing Date: December 11, 2018	Prepared by: Shukria Wiar, Planner Date: December 7, 2018

I. INTRODUCTION

Planning Board approval is requested for a Conditional Use and Administration Authorization site plan for the proposed used car dealership on the rear portion of 965R Forest Avenue. Currently the business' use is an autobody repair and they are seeking to add to add the use of auto sales. The site is .29 acre (13.000 sq ft) and covered by occupied buildings for about 2/3 of the area. The site includes two autobody operations, Progressive Auto Body and Auto Sales and Rice Auto Body, a trophy shop and this mechanic shop at the rear.

The overall site has approximately 80 feet of street frontage on the east side of Forest Avenue and backs onto an industrial site. The frontage is almost completely taken up with existing buildings and drive access, so the proposed use will be at the rear of the site.

The site is located in a B-2 Community Business Zone, where automobile dealerships are listed as a conditional use and therefore are reviewed by the Planning Board. Staff recommended this be brought directly to a Planning Board hearing due to the nature of the site, its separation from the street, and the small scale of the proposed use.

A total of 120 notices of the public hearing were sent to property owners within 500 feet and to interested citizens. A notice was published in the December 3rd and 4th editions of the *Portland Press Herald*. The applicant is not required to hold a neighborhood meeting for this proposal.

II. REQUIRED REVIEWS

Waiver Requests – The project does not require any waivers.	
Review	***Applicable Standards***
Conditional Use in the B-2 zone	Section 14-183 (a)
General Conditional Uses	Section 14-474
Administration Authorization	Section 14-523 (c)

III. PROJECT DATA:

Existing Zoning	B-2 Business
Existing Use	Automobile Mechanic Services
Proposed Use	Automobile Sales
Previous (Legal) Use	Commercial

Required Minimum Lot Area:	10,000 SF
Proposed Lot Area:	13,000 SF
Required parking:	not specified in ordinance
Proposed parking:	Five spaces for employees and customers, up to six vehicles display spaces
Existing Driveways:	1
Proposed Driveways:	1

IV. EXISTING CONDITIONS

The L-shaped parcel is located behind commercial businesses along Forest Avenue, and includes the existing Raceway Auto shop owned by the applicant. The main access is via the drive which is approximately 28 feet wide, which all four businesses use it for common access.

The majority of the site is paved or developed, with the vehicle display area behind a building on an open graveled part of the site. The area is currently used for parking by the commercial uses on the site. Two dumpsters, one for Raceway Auto and the other for Progressive Auto Body and Auto Sales, are located at the corner of the Raceway Auto building nearest the railway line and existing vegetation exisits between the dumpsters and the abutting property line.

V. PROPOSED DEVELOPMENT

No site improvements are proposed. According to the applicant, the cars for sale are mainly for current clients of the autobody. The applicant is seeking to have four to six vehicles for sale.

VI. PUBLIC COMMENT

The Planning office has not received any public comments on this project.

VI. RIGHT, TITLE AND INTEREST

The applicant submitted a lease agreement and permission letter from the owner (Attachment C).

VII. STAFF REVIEW

A. ZONING ASSESSMENT

The site is located in the B-2 Community Business zone where automobile dealerships are permitted as a Conditional Use. The site is within a long band of B-2 on the east side of Forest Avenue and abuts the Light Industrial zone to the rear of the site. The project was reviewed for zoning and the assessment of the proposal against the applicable conditional use standards is below.

B. CONDITIONAL USE REVIEW *(Section 14-183)*

Section 14-183. Conditional uses of the B-2 zone identifies auto dealership as a conditional business use if they meet the following requirements, and *"the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses"*. The applicant has submitted a conditional use application (Attachment B) and an analysis of how the proposal complies with the conditional use standards in Attachment D. Section 14-183 specifies (in relation to automobile dealerships):

> *In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:*

The requirements taken from Section 14-183 (a) are in italics below, together with a staff comment in respect of the proposals.

1. *Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services of goods available on the premises.*

   Staff comment: The applicant is not proposing any signs as part of the current applications. There is an existing free-standing signage along Forest Ave.

2. *Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.*

   Staff comment: The existing driveways meet this requirement. The driveway is located approximately 150 feet away from an intersection.

3. *A landscaped buffer, no less than five (5) feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual.*

   Staff comment: The cars will be displayed behind the main building and the display area does not front along Forest Avenue. The overall site has approximately 80 feet of frontage, which is primary an open curb cut for the multiple businesses. The applicant leases the rear portion of the site and does not control the street frontage.

C. CONDITIONAL USE REVIEW *(Section 14-474) -*

Section 14-474(c)(2) *Standards. The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. The Board shall find that this standard is satisfied if it finds that:*

a. *The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and*

   Staff comment: The proposed used car dealership is located on Forest Avenue along a straight stretch of single lane traffic with good visibility. The proposal will be served by an existing shared driveway, which does not have high trip generation and has limited loading and servicing. The Traffic Engineer, Tom Errico, has confirmed the project is acceptable overall and does not have any concerns regarding these aspects of the proposal (Attachment 1). He does request the parking area be marked; the parking spaces can be tandem parking. The Fire Prevention officer has reviewed the new use of dealership and is okay with the project "as long as vehicle storage doesn't block access to Rice Auto and Progressive Auto. We would request all vehicles be parked along the building" (Attachment 2). He requests that the travels ways be cleared at all times.

b. *The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and*

Staff comment: There is an existing autobody service and any work on the vehicles will be performed inside the existing body shop.

c. *The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.*

Staff comment: The use as proposed is understood to be low intensity and the applicant has not proposed any new signs nor new lighting. Members of the public will be visiting the site and potential impacts of this activity are limited by the proposed hours of operation (weekdays- 9am to 5:30pm, Saturday- 9:00am to 12:00pm, Sunday- closed). The cars will be displayed at the rear of the building and out of view from the public.

D. SITE PLAN

The proposed site plan has been reviewed by staff for conformance with the applicable review criteria under Section 14-523 (c) Standards, which states:

Administrative Authorization. Administrative Authorization means the Planning Authority may grant administrative authorization to exempt a development proposal from complete or partial site plan review that meets the standards below, as demonstrated by the applicant.

Below are the site plan criteria for an administrative authorization and the assessment of compliance with the criteria:

CRITERIA FOR AN ADMINISTRATIVE AUTHORIZATION		Applicant's Assessment		
		Y (yes)	N (no)	N/A
a)	Is the proposal within the existing structure?	x		
b)	Are there any new buildings, additions, or demolitions?		x	
c)	Is the footprint increase less than 500 sq. ft.?			x
d)	Are there any new curb cuts, driveways or parking areas?		x[1]	
e)	Are the curbs and sidewalks in sound condition?	x		
f)	Do the curbs and sidewalks comply with ADA?			x
g)	Is there any additional parking?		x	
h)	Is there an increase in traffic?		x	
i)	Are there any known stormwater problems?		x	
j)	Does sufficient property screening exist?			x
k)	Are there adequate utilities?	x		
l)	Are there any zoning violations?		x	
m)	Is an emergency generator located to minimize noise?			x
n)	Are there any noise, vibration, glare, fumes or other impacts?		x	

[1] Parking Requirements: The ordinance does not specify minimum vehicle parking provision for this use. The proposed layout provides five spaces for customers and employees, and up to six display spaces. The parking spaces will need to be marked either by striping or guardrails and require that all vehicles be parked along the building in order block access to Rice Auto and Progressive Auto; a suggested condition of approval:

That the applicant shall be responsible for maintaining travel lane/parking aisle widths for their portion of the site.

VIII. STAFF RECOMMENDATIONS

Staff recommends that the Planning Board approve the Auto Dealership conditional use and site plan with the proposed conditions of approval.

IX. PROPOSED MOTIONS FOR THE PLANNING BOARD'S CONSIDERATION

A. CONDITIONAL USE AND SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on December 11, 2018 for applications CU-000126-2018 and AA-000384-2018, relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the proposed conditional use for Auto Dealership at 965R Forest Avenue in the B-2 zone [does / does not] meet the standard s of Section 14-474 and the standards of Section 14-183 for the B2 zone, subject to the following conditions:

1. That the applicant shall obtain a license from the State of Maine Bureau of Motor Vehicles prior to the start of car sales from this site.

2. That the applicant shall mark the parking spaces and be responsible for maintaining travel lane/parking aisle widths on their portion of the site.

3. That the display area shall be striped for a maximum of six (6) vehicles.

ATTACHMENTS

Report Attachments

1. Traffic Engineering Reviewer, Tom Errico, 12.04.2018
2. Fire Prevention, Robert Thompson, 11.26.2018

Public Comments- none

Applicants submittal

A. Administration Authorization Application
B. Conditional Use Application
C. Lease Copy
D. Letter with Conditional Use analysis

Plans

Plan 1. Proposed Site Plan (Aerial)
Plan 2. Dealership Plot Plan

Att. 1

Portland Maine Yes. Google's good here.

Shukria Wiar <shukriaw@portlandmaine.gov>

965R Forest Avenue - Traffic Comments

Tom Errico <thomas.errico@tylin.com> Mon, Dec 3, 2018 at 4:19 PM
To: Shukria Wiar <shukriaw@portlandmaine.gov>

Hi Shukria – I have reviewed project details and recommend that parking spaces be marked. I would also note that I support tandem parking spaces given the land use and ability to manage vehicle movements.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
T·Y·LIN INTERNATIONAL
12 Northbrook Drive
Falmouth, ME 04105
+1.207.781.4721 main
+1.207.347.4354 direct
+1.207.400.0719 mobile
+1.207.781.4753 fax
thomas.errico@tylin.com
Visit us online at www.tylin.com
Twitter | Facebook | LinkedIn | Google+

"One Vision, One Company"

Portland Maine Yes. Google's good here.

Shukria Wiar <shukriaw@portlandmaine.gov>

965 R Forest Ave

Robert Thompson <rmt@portlandmaine.gov> Mon, Nov 26, 2018 at 7:40 AM
To: Shukria Wiar <shukriaw@portlandmaine.gov>

Hi Shukria,

We don't have a concern with six cars, as long as vehicle storage doesn't block access to Rice Auto and Progressive Auto. We would request all vehicles be parked along the building.

Thank you,
Mike
[Quoted text hidden]
--
Robert M. Thompson
Division Fire Chief
Portland Fire Department
(207) 874-8400
rmt@portlandmaine.gov

Att. A

CITY OF PORTLAND
PLANNING AND URBAN DEVELOPMENT

Administrative Authorization Report

PLAN NUMBER: AA-000384-2018 12/6/2018

Address: 961 FOREST AVE **CBL:** 142 B001001

Description: Addition of auto sales.

Criteria for an Administrative Authorization: (See section 14-523 (4) on page 2 of this application)	**Applicant's Assessment**	**Planning Division Use Only**
Is the proposal within existing structures?	Yes	
Are there any new buildings, additions or demo	No	
Is the footprint increase less than 500 sq ft?	Yes	
Are there new curb cuts, driveways parking areas	No	
Are the curbs and sidewalks in sound condition?	Yes	
Do the curbs and sidewalks comply with ADA?	N/A	
Is there any additional parking?	No	
Is there an increase in traffic?	No	
Are there any known stormwater problems?	No	
Does sufficient property screening exist?	Yes	
Are there adequate utilities?	Yes	
Are there any zoning violations?	No	
Is an emerge generator located to mini noise?	N/A	
Are noise, vibration, glare,fumes or impacts?	No	

The Administrative Authorization for the Addition of auto sales.

NONE -

Att. B

Portland, Maine   Yes. Life's good here.

Planning & Urban Development Department

CONDITIONAL USE APPLICATION FOR PLANNING BOARD REVIEW Submit each Tab as one PDF file and bookmark the items as noted below Please confirm by electronically checking the boxes to the left	
Conditional uses are listed in the Zoning Ordinance for each zone and these proposed uses must address the criteria contained in Section 14-474 in the written application. In addition to the criteria in Section 14-474, each application must address any applicable conditional use standards contained in the applicable zone for the proposed use.	
CONDITIONAL USE AND SUPPLEMENTAL DOCUMENTATION, AS APPLICABLE	
TAB 1 – GENERAL APPLICATION DOCUMENTS	
Checklist	**Items to be Provided**
Yes NA Plan ✓	PROJECT DESCRIPTION • Cover Letter with detailed project description
Yes NA Plan ✓	COMPLETED CHECKLIST - CONDITIONAL USE
Yes NA Plan ✓	RIGHT, TITLE AND INTEREST • Deeds, leases, or purchase and sales agreements
Tab 2 – CONDITIONAL USE STANDARDS AND CRITERIA	
Checklist	**Items to be Provided**
Yes NA Plan ✓	TRAFFIC • Address volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the zone
Yes NA Plan ✓	ENVIRONMENTAL IMPACTS • Address use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter.
Yes NA Plan ✓	DESIGN AND OPERATION • Address the design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generations, arrangement of structures, and materials storage will not have a substantially greater effect; impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.
Yes NA Plan ✓	ZONE SPECIFIC CRITERIA • Cite and address zone specific conditional use standards for the proposed use.

Att. C

Standard Form Lease

955 Forest Ave Portland Maine

LEASE made this May 1, 2018 by and between Income Property Management ("Landlord"), with a place of business at 200 Anderson Street Portland Maine 04101 and John & Rhonda Searles D/B/A Raceway Auto____________________.
(Tenant") with a place of business at 965 R Forest Ave Unit #6 Portland Maine.

WITNESSED:

1. PREMISES LEASED. Landlord does hereby lease to Tenant, and Tenant does herby lease from Landlord, approximately ~~700~~ 800 square feet of space at 965R Forest Ave Portland Maine 04103 unit #6_ ("Leased Premises") and Located in Cumberland County, together with the right to the nonexclusive Use in common with others of all such parking areas, driveways, corridors, Sidewalks and loading facilities and other common areas, and facilities as may Be designated by the Landlord.

2. TERM. The term of this Lease shall be for _One (1) Year commencing On 5/1/18 and Terminating on 4/30/19.

3. RENT. Tenant covenants and agrees to pay a monthly rent in the amount of $695.00 on the FIRST day of each month during the term of said lease, without setoff or deduction.

   Tenant agrees to pay the rent on the First day of each Month and a $5.00 per day Late Fee after the Fifth Day and other charges covered under this agreement to Landlord.

(a) Triple Net Expenses are included in Rent.

(b) RENT COMMENCEMENT _5/1/18____________

(c) SECURITY DEPOSIT. Tenant shall deposit with Landlord the sum of $0.00 which deposit will represent the Security Deposit due under the Lease. Said deposit will be returned to Tenant without interest at the end of the lease term, provided the premises are left in good repair "broom clean" and provided the Tenant has not been in default of the Lease.

4. REASE ESTATE TAXES. Are included in rent.

5. MAINTENANCE OF COMMON AREAS. Are handled by Landlord and Build to tenant.

6. UTILITES. Utilities, used or consumed on the Leased Premises including, but Not limited to, gas steam, hot water, electricity, oil, rendered or supplied upon or in connection with the Leased Premises are paid by tenant.

7. USE OF LEASED PREMISES. It is understood and agreed by Tenant that the Leased premises shall be used and occupied by Tenant only for the purpose(s) of

____.

7. MAINTENANCE AND REPAIR. Tenant shall at all times maintain the leased Premises in the same order and repair as they are in at commencement of term, Except as specifically set forth by the Landlord. (ALL DAMAGE TO FACILITY BY TENANT SHALL BE REPAIRED AND DIRECT BILLED TO TENANT DURING THE LEASE TERM.) Tenant shall be responsible for all plate glass. All improvements made by tenants shall remain the property of the tenants weather or not attached to the leased premises and may be removed at the termination of the lease at tenants expense, with the repair of the leased space required.

8. SIGNS: Signage to be installed on building if any by Landlord to complex and Local ordinance standards and size and reimbursed directly by tenant if applicable

9. INSURANCE. Landlord shall maintain a policy of Fire and extended coverage Insurance on the leased premises in such amounts and with such companies as shall from time to time be satisfactory to Landlord.

(a). TENANT shall maintain a policy of public liability insurance insuring Landlord and Tenant, said policy to be in such amounts and with such companies as shall from time to time be satisfactory to Landlord, but in no event having a combined single limit of less than $1,000,000.00 (Tenant shall supply Landlord with a certificate of insurance and showing Landlord and Tenant insurance in sufficient amounts.

(b) Insofar as and to the extent that the following provision my be effective without Invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the State of Maine (even though extra premium my result there from) Landlord and Tenant mutually agree, to extent of the insurance coverage only, that with respect carried by them, respectively, the one carrying such insurance then suffering aid loss released to other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. In the event that extra premium is payable by either party as a result of this provision, the other party shall reimburse the party paying such premium the amount of such extra premium. If at the written request of on party, this release and non-subrogation provision is waived, then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective. but nothing contained in the Paragraph shall be deemed to modify or otherwise effect release elsewhere herein contained of either party for claims.

10. INDEMNIFICATION. Tenant hereby agrees to indemnify and hold Landlord Harmless from and against any and all claims for injury to persons or damage to property in or about the Leased premises arising in any way from the use or condition of the Leased premises, and against any costs or damages which Landlord may incur by reason of the assertion of any such claims. etc., designated by such terms under any laws ordinances or regulations, whether federal state or local. Tenant further agrees to (a) hold harmless and (b) indemnify Landlord from and against any and all claims, loss, injury, harm, costs, damages and expenses, including reasonable attorney's fees, which may arise in the event that tenant fails to comply with any of the provisions contained in this paragraph. The terms of the paragraph shall expressly survive the expiration or earlier termination of this lease

(b) Tenant hereby agrees not to handle, store or dispose of any hazardous or toxic Waste or substance upon the premises which is prohibited by federal, state or local statutes, ordinances, or regulations. Tenant hereby covenants to indemnify and hold Landlord, its successors and assigns, harmless from any loss, damage, claims, costs, liabilities including reasonable attorneys fees or cleanup costs arising out of Tenant's use, handling, storage or disposal of any such hazardous or toxic wastes or substances on the premises.

11. ASSIGNMENT AND SUBLETTING. Tenants shall not assign this lease or sublet the leased premises or any part thereof, except with written permission from Landlord. Such permission shall not be unreasonably withheld.

12. DAMAGE OR DESTRUCTION BY FIRE, EMINENT DOMAN OR CASUALTY.
In the event that the Leased Premises or any part thereof shall be taken by eminent domain or shall be so damaged or destroyed by fire or unavoidable casualty, that the Leased Premises are thereby rendered wholly untenable the lease shall be terminated.

13. TENANTS'S PROPERTY. All merchandise, furniture, fixtures, effects and Property of every kind, nature, or description of Tenant and of all persons claiming through or under Tenant which may be the Leased premises during the term or any occupancy by Tenant thereof shall be at the sole risk and hazard of Tenant and if the whole or any part thereof shall be destroyed or damaged by fire. Water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes and roof leakage or from any other cause, no part of said loss or damage is to be born by Landlord.

14. DEFAULT. If tenant shall neglect or fail to make any rental payment within five (5) days after its due date, or if Tenant shall fail to cure (or to commence to cure) a default in the performance of any of the other of the Tenant's covenant's agreements or obligation within thirty (30) days after date of notice of such default by Landlord (or having commenced to cure), if Tenant shall be in default in the performance or observance of any covenant, agreement, or condition in this Lease contained on its part to be performed or observed other than obligation to pay money, and shall not cure any such default as provided herein, Landlord may, at its option, without waiving any claim for damages for breach of this Lease, at any time thereafter. Cure such default for account of Tenant; any amount paid or any liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant, and Tenant agrees to immediately reimburse Landlord therefore, including reasonable attorneys fees as additional rent, or save Landlord harmless there from. In addition in the event of and unsecured default the Landlord may declare this lease in default in the terms of this lease and Landlord may terminate this lease and the Tenant shall thereupon immediately vacate the premises. Tenant shall be responsible for in addition to the Landlords lost rent, all expenses incurred by Landlord in eviction Tenant, Including but without limitation including reasonable attorneys fees and reasonable brokers fees and any monies collected from departing tenant.

15. LANDLORD'S ACCESS. Landlord and Landlord's agents shall have the right to Enter the Leased Premises at reasonable times for the purpose of inspection the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, and improvements.

16. HOLDING OVER. If the Lessee retains possession of the Premises or any part Thereof after the termination of the term the Lessee shall pay the Lessor rent at double the monthly rate specified in Paragraph #3 for the time the Lessee thus remains in possession of the premises, or turns into a new one year lease at Landlords sole discretion.

17. SUBORDINATION. Tenant agrees that this lease is, and shall be subordinate to All of Landlords mortgages on the premises whether new, or existing, hereafter placed on the premises in the future. And agrees to execute subordination and attornment agreements in the future, at the request of the Landlords mortgage holder, such cooperation is to be at no cost to Tenant or Landlord. Landlord agrees that provide that so long as tenant subordinates to mortgage and not in default under this lease then tenant may not be disturbed even in foreclosure.

18. PARKING: - will be provided in the parking lot adjoining the premises For use by Lessee and its employees and invites. All parking is controlled by Landlord.

WITNESS the execution hereof, under seal, in any number of counterpart Copies, each of which counterpart copy shall be deemed an original for all purposes, as of the day and year first above written.

IN CONSIDERATION of the sum of One Dollar ($1.00) and other valuable considerations, the receipt of which I hereby acknowledge

I John C. Searles of 61 Longfellow St West, ME 04092

I ________________, of ________________.

Do hereby personally and individually guarantee the full and faithful performance Of all conditions aforementioned imposed upon the Lessee in the foregoing lease.

John C. Searles
Witness

Landlord
By ________________

Tenant
By John C. Searles

Witness

By ________________

By ________________

Att. D

May 17, 2018

Ms. Barbara Barhydt
Mr. Tuck O'Brien
City of Portland Planning Authority
4th Floor, city Hall
389 Congress St.
Portland, ME 04101

Re: Raceway Auto Care Inc.
965R Forest Ave.
Portland, ME

Auto Sales (Proposed use)
Building is same 20' x 40.' Now Auto Service
800 square feet with no needed changes
5,240 square feet current parking

Tab #2

1. No changes in vehicle traffic, hours of operation, expanse of pavement, number of parking spaced will be the same that would normally occur.
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage, disposal, emissions to the air, odor, lighting or litter.
3. The design and operation of the proposed use landscaping, screening, signs, loading, deliveries trash or waste generation, arrangement of structures and materials storage will not change or have an impact on surrounding properties. The parking will be the same as you see on the dealership plot plan.

Raceway Auto Care has been located at 965R Forest Ave. Portland, ME since January 2009, and nothing will change.

I look forward to working with the planning staff in the review of this proposed use. Please feel free to contact me to discuss any questions or concerns you may have.

Sincerely,
Raceway Auto Care Inc.
John C. Searles *President* 50% stockholder
Rhonda L. Searles *Treasurer* 50% stockholder

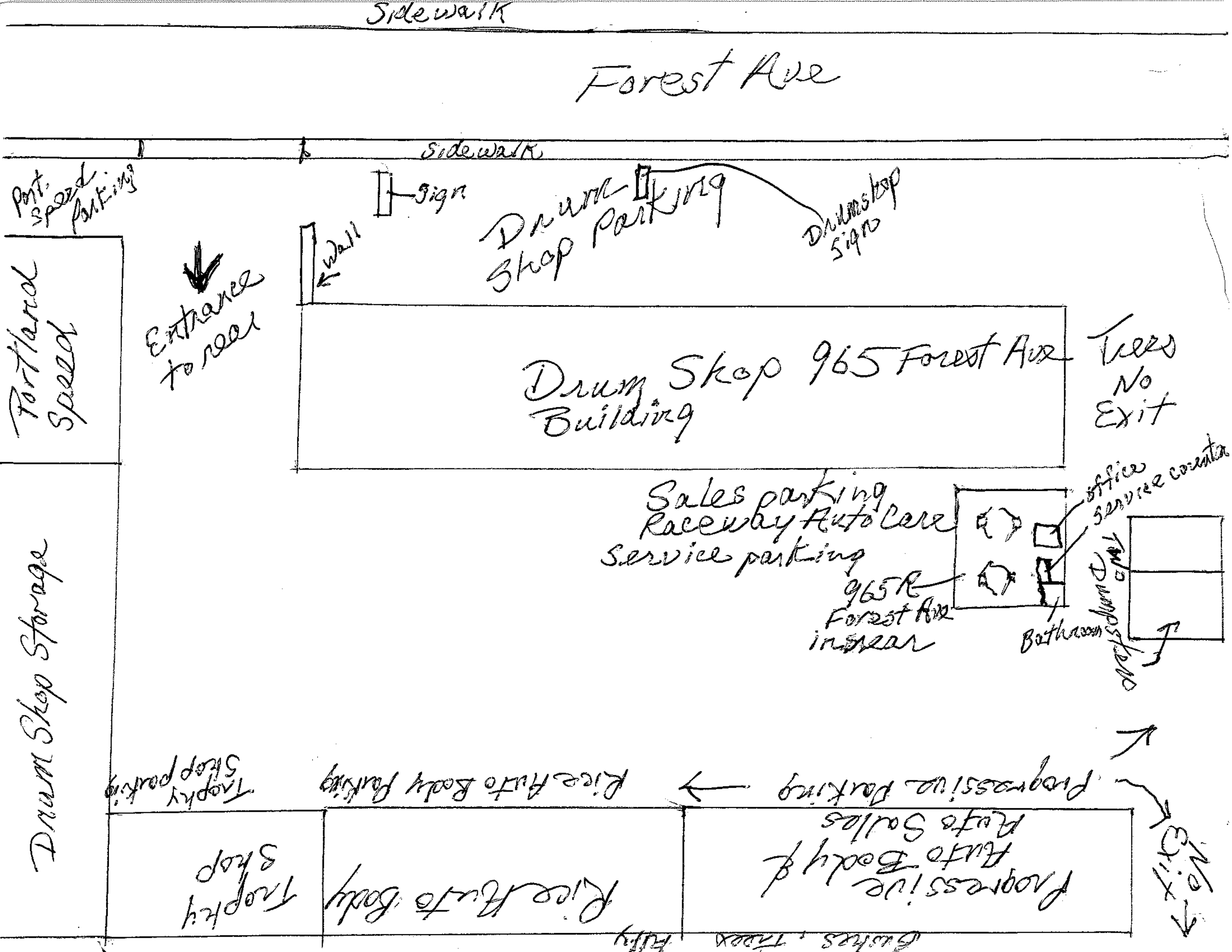
Signed,
John C. Searles

John C. Searles

Rhonda L. Searles

Rhonda L. Searles

Proposed Site
Luis's Arepera & Grill
302
Portland Speed
Forest Avenue Veterinary Hospital
965 Forest Avenue
Entrance
Walton St
Photo Market
Maelily Ryleigh's
Handmade Desserts
Trophy Shop
Rice Auto Body
Progressive Auto Body and Auto Sales



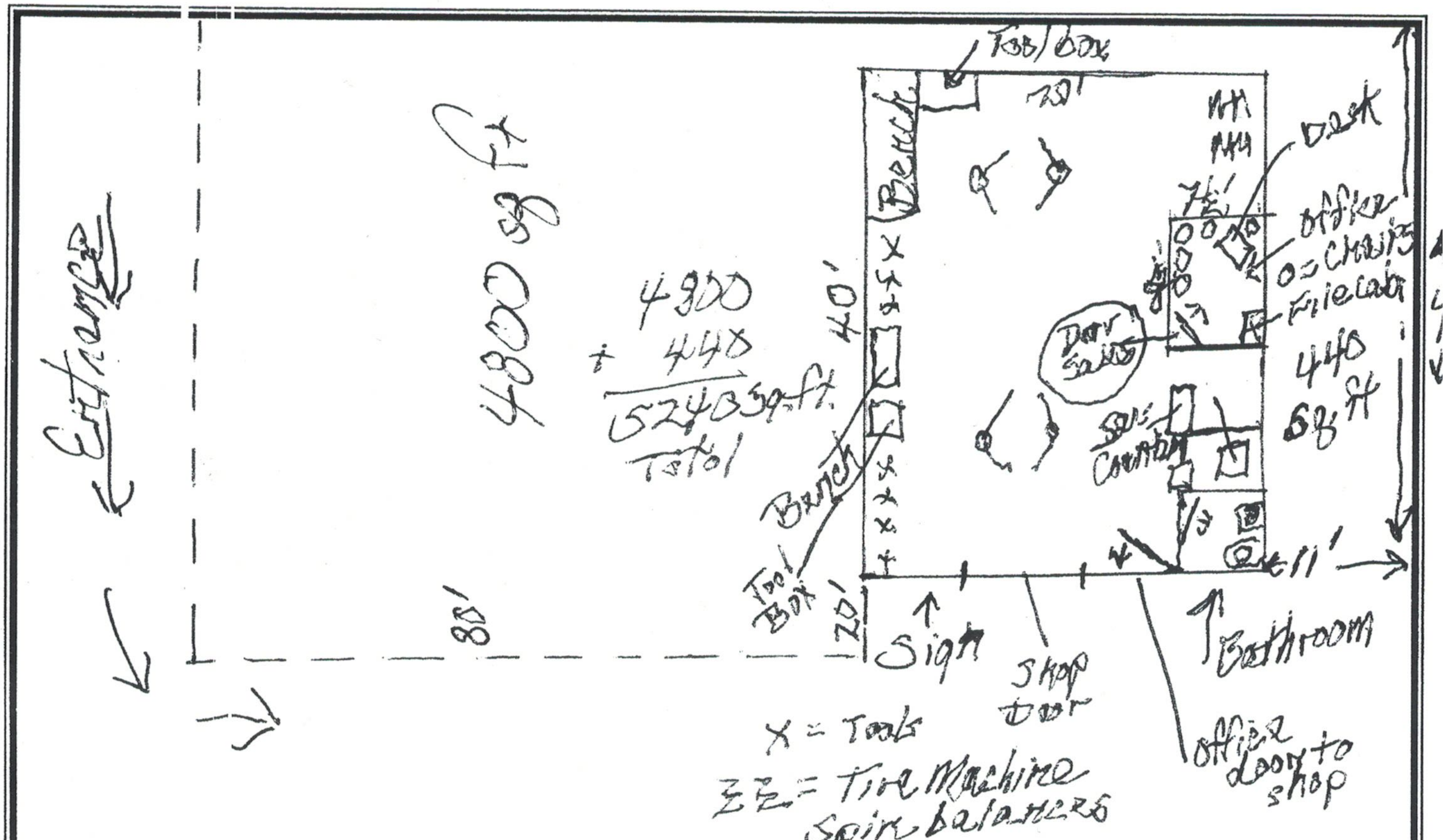
Sidewalk
Forest Ave
Sidewalk
Port. speed parking
sign
Drum Shop Parking
Drumshop sign
Wall
Entrance to rear
Portland Speed
Drum Shop 965 Forest Ave
Building
Trees
No Exit
Sales parking
Raceway Auto Care
Service parking
965 R
Forest Ave
in rear
office
service counter
Bathroom
Two Dumpsters
Drum Shop Storage
Trophy Shop parking
Rice Auto Body Parking
Progressive Parking
Trophy Shop
Rice Auto Body
Progressive Auto Body &
Auto Sales
No Exit
Bushes, Trees
Fifty

Dealership Plot Plan

Dealership Name: Raceway Auto Care Inc.

Dealership Location (Physical Location) 985 R Forest Ave., Port., Me. 0410

Please us the area provided below to draw a layout of your facility. Include the dimensions of the office area, repair area, and the display area. Also indicate where the sign will be posted. If there are any other businesses operating at this same location, show their area as well.



① Maine state insp. licence

② Sales tax I.D.

③ Sellers Cert. Portland

Door to sales office 65.36 sq. ft.

4 Signs on Forest Ave.

PLANNING BOARD REPORT
PORTLAND, MAINE

Amendments to the Implementation Guidelines,
Regulations, and Agreement for Chapter 14,
Division 30 Affordable Housing

City of Portland, Applicant

Submitted to: Chair Dundon and Members of the Planning Board Public Hearing Date: December 11, 2018	Prepared by: Victoria Volent, Housing Program Manager Date: November 30, 2018

I. INTRODUCTION

Staff has identified areas for review regarding the Inclusionary Zoning Guidelines, Regulations and Agreement where amendments would either broaden markets, correct, clarify, add consistency, and/or strengthen the overall intent of the Affordable Housing Ordinance.

Proposed Amendments and Policy Suggestions:

1. Adjust the maximum sale price calculation of a low-income housing unit;
2. Redefine the term “Restricted Period” as found in the Workforce Housing Agreement;
3. Include language regarding utility costs into the Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing, and the Regulations for Owners of Workforce Homeownership Units;
4. Amend Inclusionary Zoning Guidelines and Regulations in which the term “adjusted gross income” appears to the term “gross income”;
5. Amend Inclusionary Zoning Guidelines and Regulations to include the phrase “the city reserves the right to place an asset limitation test for eligibility”;
6. Amend the reference to Section 14-483 (Housing Preservation and Replacement) to Section 14-484 (Affordable Housing) in the Workforce Housing Agreement

II. PROPOSED AMENDENTS AND POLICY SUGGESTIONS

1. Maximum Sale Price Calculation

During the June 12 meeting of the Planning Board, the calculation of the maximum sale price of a workforce unit was reduced from 30% of 120% AMI to 30% of 110% AMI. This amendment was recommended to broaden the market of income qualified households eligible to purchase the maximum priced workforce housing unit. In hindsight, the maximum sale price of a low-income unit should also have been similarly recommended for reduction from 30% of 100% AMI to 30% of 90% AMI to broaden the market of income qualified households eligible to purchase the maximum priced low-income housing unit. Low-income deed restricted units are created when a developer applies the density bonus from the chart in Division 30, Section 14-488 (a) Density, parking and dimensional bonuses and reductions.

Staff recommends adding language in the *Inclusionary Zoning Implementation Guidelines for Developers of Workforce Housing* to reflect the calculation of the maximum sale price of low-income units from 30% of 100%AMI to 30% of 90% AMI.

Please see the following attachment for red lined version of the proposed change:

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing; Attachment 2
Regulations for Owners of Workforce Homeownership Units Attachment 3

2. Restricted Period

Within the Workforce Housing Agreement, under Section 5, *Notice to the City: Procedure for Sale; City's Option to Purchase*, subsection D defines "Restricted Period" as "at least 180 days following the City's Notice of Determination". The Notice of Determination is the date the City communicates to the developer the maximum allowable sale price of the workforce home ownership unit(s).

Developers of home ownership units are interpreting the phrase "at least" to mean "no more than". Subsequently they are requesting the right to market workforce units to non-qualified buyers at the end of 180 days. During those 180 days, workforce units are not necessarily listed for sale or even identified as Workforce Housing in advertising material. To provide the necessary time to publically notify and properly market units, staff recommends amending the definition of "Restricted Period" to end "365 days following issuance of the certificate of occupancy".

Please see the following attachment for red lined version of the proposed change:

Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions, and Option to Purchase Attachment 1

3. Utilities

The cost of utilities is included when calculating housing expenses for rental units within the City's *Inclusionary Zoning Guidelines and Regulations*. However, utility costs are not factored into housing expenses within the equivalent supporting documents for home ownership housing. This discrepancy should be corrected. The traditional (and HUD) definition of affordable housing is housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities. A distinction between rental and ownership housing is not expressed nor implied. Utilities include electricity, heat, hot water, cooking energy, sewer, water, and trash collection.

Staff recommends including utilities costs as a housing expense in the *Inclusionary Zoning Implementation Guidelines for Developers of Home Ownership Housing* ,and the *Regulations for Owners of Workforce Homeownership* Units, and including the sentence "Utilities that effect the maximum allowable sale price include electricity, heat, hot water, cooking energy, sewer, water, and trash collection" in the *Inclusionary Zoning Implementation Guidelines for Developers of Home Ownership Housing*, and *Regulations for Owners of Workforce Homeownership Units.*

Please see the following attachments for the red lined version of the proposed change:

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing; Attachment 2
Regulations for Owners of Workforce Homeownership Units Attachment 3

4. Gross Income

References to adjusted gross income in the city's workforce housing material are incorrect. Eligibility for workforce housing is determined by a household's gross income – not adjusted gross income. The Income Limit guidelines published annually by HUD define income as salary and wages received less income exclusions. Example of income exclusions include foster care payments, student aid, and adoption assistance payments. Income exclusions are not to be confused with IRS income deductions (e.g. healthcare costs, mortgage interest, job-related expenses) which, when deducted from gross income, equals a household's adjusted gross income.

Staff recommends amending the term "adjusted gross income" to "gross income" within the city's Inclusionary Zoning Guidelines and Regulations. The term "exclusions" shall mean the list of income sources that qualify for exclusions under Part 5 (Section 8) *Income Inclusions and Exclusions* provided by the U.S. Department of Housing and Urban Development.

Please see the following attachments for red lined version of the proposed change:

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing; Attachment 2
Regulations for Owners of Workforce Homeownership Units; Attachment 3
Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing; Attachment 4
Regulations for Owners of Workforce Rental Units Attachment 5

Please see the following for HUD Part 5 Income Inclusions and Exclusions

Part 5 (Section 8) Income Inclusions and Exclusions Attachment 6

5. Asset Limitation Test

Portland does not conduct an asset limitation test for determining household eligibility for affordable housing. The City however does reserve the right to perform an asset test to help determine a household's income. An asset limitation test is similar to an asset test in that both may be used to determine household eligibility for affordable housing. An asset test determines a household's <u>income</u> (i.e. earnings) derived from assets held by the household (e.g. interest, dividends or returns from stocks, bonds, mutual funds, money market accounts, certificates of deposit, or other financial instruments). An asset limitation test considers the net <u>value</u> of those assets.

An argument for imposing asset limitations relies on the belief that households should not qualify if they have the means to purchase a unit at market price. The opposite argument supports the need for households to maintain liquid assets as a necessary safety net to ensure a home is not lost to major repairs or medical bills, and restrictions on assets provide no incentive towards saving, and perhaps encourages "spending down".

Staff recommends amending the Inclusionary Zoning Guidelines and Regulations to include the phrase "the city reserves the right to place an asset limitation test for eligibility" to serve as a placeholder until a later date when a broader discussion and determination may occur.

Please see the following attachments for red lined version of the proposed change:

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing; Attachment 2
Regulations for Owners of Workforce Homeownership Units; Attachment3
Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing; Attachment 4
Regulations for Owners of Workforce Rental Units Attachment 5

6. Correction to Workforce Housing Agreement

The Workforce Housing Agreement contains a clerical error in Section 6 Determination of Maximum Allowable Price. A reference is made to Section 14-483 (Housing Preservation and Replacement) that should be Section 14-484 (Affordable Housing). Staff recommends editing the reference to Section 14-483 with the reference to Section 14-484.

Please see the following attachments for red lined version of the proposed change:

Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions, and Option to Purchase Attachment 1

III STAFF RECOMMENDATION

The staff recommends Planning Board adoption of the proposed text amendments.

IV MOTION FOR THE BOARD TO CONSIDER

On the basis of the material provided in this report, a review of applicable policies, and other information, the Planning Board finds:

The proposed text amendments to Division 30 Affordable Housing, Section 14-485, the Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions, and Option to Purchase, the Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing, the Regulations for Owners of Workforce Homeownership Units, the Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing, and the Regulations for Owners of Workforce Rental Units **[are or are not]** consistent with the provisions found in Division 30 Affordable Housing, Section 14-485 and **[recommends or does not recommend**] adoption of the proposed amendments.

Attachments:

1. Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions, and Option to Purchase
2. Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing
3. Regulations for Owners of Workforce Homeownership Units
4. Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing
5. Regulations for Owners of Workforce Rental Units
6. Part 5 (Section 8) Income Inclusions and Exclusions

ATTACHMENT 1

WORKFORCE HOUSING AGREEMENT,
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND OPTION TO PURCHASE

This Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions and Option to Purchase ("Agreement") is entered into by and between the **CITY OF PORTLAND**, a public body corporate and politic with a mailing address of 389 Congress Street, Portland, Maine 04101 ("City") and **______________________,** a Maine __________________ with a mailing address of _________________________ ("Developer").

W I T N E S S E T H

WHEREAS, the City has established a workforce housing requirement (the "Workforce Housing Ordinance") in the Affordable Housing provisions of its Land Use Ordinance (Portland City Code §§ 14-484 to 488), and related regulations promulgated by the City's Planning Board, which is intended to encourage production of housing that is affordable for households with moderate income; and

WHEREAS, Developer owns property located on ________________, in the City of Portland, Maine, which property is more particularly described in Exhibit A, attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer plans to construct a multi-family development project consisting of _______________________ home ownership units on the Property (the "Development"); and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer has agreed and hereby agrees to certain restrictions on the resale of the Property, including restrictions on the price for which certain units within the Development may be sold, the parties who may purchase units within the Development, occupancy restrictions, and the grant of an option to purchase certain units within the Development to the City, all on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S. § 121 et seq.; and

WHEREAS, on ______, 201_, the City's Planning Board approved the Development, on the condition that Developer provide ____ affordable home ownership units with a combined total of ____ bedrooms on site in accordance with the Workforce Housing Ordinance (the "Workforce Units"); and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer hereby agrees to certain restrictions on the sale of the Workforce Units on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S.A. Sec. 121 *et seq.*;

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, the City and the Developer hereby agree as follows:

1. **Parties' Intent**. The terms and conditions contained herein have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of Developer and the City set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for moderate-income people in the City of Portland. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Workforce Units by making the Workforce Units affordable to moderate income families who, without such provisions, would be unable to afford property in the City similar to the Workforce Units.

2. **Enforceability of Covenants**. The covenants and restrictions 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. The covenants set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer and shall survive 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. **Transfer to Qualified Buyer**. Except as may be set forth herein, Developer may sell, transfer, or otherwise dispose of a Workforce Unit only to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth below, shall be ***null and void***. For purposes hereof, the parties agree that the term "**Qualified Buyer**" means a moderate-income person or household with a gross income not exceeding 120% of the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size as calculated by the City and which person or household must intend to and in fact occupy the Workforce Unit as their primary residence on a continuing basis. A Qualified Buyer shall occupy the Workforce Unit as its primary residence. Workforce Units may not be rented out by the Developer, or subletted by a Qualified Buyer, for short or long-term periods during the term of this Declaration.

4. **Transfer to Owner's Heirs**. If the Developer or any subsequent owner should die still owning a Workforce Unit, then upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of such owner (or the last surviving co-owner if the Workforce Unit was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Workforce Unit to one or more of the following:

A. the spouse of the deceased owner (in cases where such spouse was not a joint tenant with owner); or

B. the child or children of the deceased owner; or

C. member(s) of the deceased owner's household who have resided in the Workforce Unit for at least three years prior to the owner's death.

Any subsequent transfer by a transferee under A, B, or C, above, shall be subject to the terms of this Agreement.

5. **Notice to the City; Procedure for Sale; City's Option to Purchase**.

A. In each instance that Developer intends to effect a sale, transfer or disposition of the a Workforce Unit to a third party, then prior to listing a Workforce Unit for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of a Workforce Unit, Developer shall first give the City written notice of such intent (the "**Notice of Intent**") addressed to the City at the address set forth below or at such other address as the City shall provide to Developer by written notice.

B. Within ten (10) days of receiving the Notice of Intent, the City shall determine (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) Developer's **"Maximum Allowable Price"** as determined under Section 5, below. The City shall communicate the results of such determinations to Developer within said ten (10) day period (the "**Notice of Determination**").

C. Developer shall market Workforce Units to Qualified Buyers at a price not to exceed the Maximum Allowable Price. The City shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The City shall have ten (10) days from the date it receives all information about a prospective buyer necessary to determine if Developer's prospective buyer is indeed a Qualified Buyer hereunder. Developer shall contractually require such potential buyers to provide the City with whatever reasonable information the City requests in order to make the determinations required under this subsection. To the extent permitted by law, all information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the City. The Qualified Buyer shall sign, acknowledge and agree to be bound by the terms and conditions of this Workforce Housing Declaration of Covenants, Conditions, Restrictions and Option to Purchase for Owner Occupied Units in substantially the same form as that attached hereto as **Exhibit B** (the "Buyer's Agreement") and, as part of the purchase of any of the Workforce Units, shall assume, in writing, all of the obligations of the "Developer" hereunder with respect to said Workforce Unit. The Buyer's Agreement shall be recorded in the Cumberland County Registry of Deeds concurrently with the deed from the Developer conveying the Workforce Unit. The Developer shall not be liable for the Qualified Buyer's performance of its obligations under the Buyer's Agreement.

D. In the event that Developer is unable to find a ready, willing and able Qualified Buyer after marketing any Workforce Unit for at least ~~180~~365 days (such period being the "**Restricted Period**") following issuance of the certificate of occupancy~~City's Notice of Determination~~, the Developer then shall notify the City that it wants to market that Workforce Unit to non-Qualified Buyers. Developer grants to City the option to purchase the particular Workforce Unit after the expiration of the Restricted Period on the terms set forth below

(i) Developer must establish, to the City's reasonable satisfaction, that Developer made good faith efforts to market the Workforce Unit for the entire Restricted Period for sale to Qualified Buyers at a price not in excess of the Maximum Affordable Price;

(ii) Upon a determination by City of such marketing efforts, which the City shall make within ten days after the last day of the Restricted Period, the City has thirty (30) days to decide if it will exercise its option to purchase the Workforce Unit for the Maximum Allowable Price.

(iii) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Developer. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Workforce Unit to Qualified Buyers shall cause the City's option to expire.

(iv) The City shall consummate its purchase of a Workforce Unit pursuant to this paragraph within thirty (30) days of the date of service of the Notice to Exercise (the "City Closing Period"). Developer shall cooperate fully in City's efforts to acquire the Workforce Unit and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Workforce Unit within the City Closing Period for any reason other than liens voluntarily placed on the Workforce Unit by Developer, then Developer shall immediately be free to sell the Workforce Unit to a non-Qualified Buyer.

E. If the City decides not to exercise its option to purchase a Workforce Unit (including as a result of a failure to give a Notice to Exercise), Developer shall be free to sell that Workforce Unit to a non-Qualified Buyer at any such agreed sale price ***provided however***, that to the extent the agreed sale price exceeds the Maximum Allowable Price (as determined pursuant to Section 6 below), then any amount between the actual sale price and the Maximum Allowable Price (the "**Excess**") shall be paid to the City at the time of the closing on the sale of the Workforce unit, and such Excess is to be set aside for affordable housing purposes by the City. Upon the payment of the Excess, if any, Developer and Developer's heirs, successors and assigns, shall thereafter be free to sell the Workforce Unit free of the terms and conditions of this Agreement, which shall be deemed terminated as to such Workforce Unit.

F. At the request of Developer, and provided there has been full compliance by Developer with the terms of this Agreement, the City shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of a Workforce Unit which results in the release of the Developer and the Workforce Unit from the terms of this Agreement.

6. **Determination of Maximum Allowable Price**. The Maximum Allowable Price for purposes of this Agreement shall be the highest price affordable to a **moderate** income person or household as determined by the City pursuant to the definition of "affordable" contained in Division 30 (Section 14-48~~3~~4 et seq.) of the City's Land Use Ordinance and under the implementing regulations adopted in accordance with such Ordinance by the Portland Planning Board as of the month in which the Developer signs any purchase and sale agreement with a Qualified Buyer, another buyer (as permitted under this Agreement) or the City (pursuant to the City's exercise of its option).

7. **Construction and Duration**. The covenants contained herein shall run with the Property and shall be perpetual. Developer covenants and agrees for him/her/its self, his/her/its heirs, personal representatives and assigns that the rights and restrictions contained herein shall be for the benefit of the City, its successors and assigns, and shall be binding on all future purchasers of a Workforce Unit in the Development. Developer and the City agree and intend that this Agreement and the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. § 121 and satisfy the provisions of Section 14-484 to 488 of the City's Workforce Housing Ordinance.

8. **Applicability of This Agreement to Mortgagees**. Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall not apply to the following types of transfers of a Workforce Unit:

A. Transfers by the Developer to a mortgagee in lieu of foreclosure;

B. Transfers by a mortgagee immediately following a transfer to such mortgagee by deed in lieu of foreclosure;

C. Transfers by a mortgagee of Developer pursuant to and as a result of a foreclosure judgment and sale;

D. Transfers by a mortgagee immediately following a transfer to such mortgagee as a result of a foreclosure; or

E. Transfers by the transferee of any transfer described in subsection C above which results from a mortgage servicing relationship between a servicing lender and a governmental entity serving as a secondary market mortgage purchaser;

provided, however, that this Agreement shall apply in full to all subsequent transfers of a Workforce Unit not described in subsections A through E of this Section 8, and any such subsequent transferees shall own a Workforce Unit as an "Owner" subject in all respects to all of the terms and conditions of this Agreement. The provisions in this paragraph shall apply in the same manner to all subsequent holders of mortgages on the Property.

9. **Other Requirements Incorporated into this Agreement**. In addition to the above restrictions, the Workforce Units shall be subject to the standards applicable to "Workforce housing unit for sale" set forth in Division 30, Section 14-484 et seq. of the City's Workforce Housing Ordinance and applicable regulations, including without limitation, that preference shall be given first to individual Qualified Buyers who have not previously owned and occupied a residence, next to current residents of the City of Portland who have lived in Portland as their primary residence for the past two years, next to previous residents of the City of Portland who have been displaced within the past 12 months prior to the Workforce Unit becoming available, next to full time employees of the City, and finally, all others all as designated by the City in regard to the Developer's sale of the Workforce Units.

10. **Disbursement of Insurance and Eminent Domain Proceeds**. In the event Developer receives proceeds as a result of a complete eminent domain taking of a Workforce Unit, Developer and the City shall share in such proceeds such that Developer shall receive an amount equal to no more than the Maximum Allowable Price as determined under Section 6 above, with the City receiving the balance of the proceeds, if any.

If a partial eminent domain taking occurs or if Developer receives any insurance proceeds as a result of any casualty loss to a Workforce Unit, then the parties shall share in the proceeds on a pro-rata basis, with Developer receiving a percentage of the Maximum Allowable Price based on the diminution of value of any Workforce Unit, with the City receiving the balance of the proceeds, if any.

11. **Miscellaneous**. Any sale or transfer conducted contrary to the terms and conditions contained herein shall be null and void. All sales or transfers of the Workforce Units shall be subject to all terms and conditions contained herein.

If any portion of this Agreement is declared unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforcement of the remaining provisions hereof.

Notices hereunder shall be in writing and, sent by first class mail, certified, return receipt requested, or by nationally recognized overnight courier services addressed to the recipient at the address set forth below:

If to the City at 389 Congress Street, Portland, Maine, 04101
attention Housing and Community Development Office, with a copy to the Office of the Corporation Counsel

If to the Developer, at ________________________________

If the Developer shall change addresses, it shall give notice of the new address in the manner provided in this paragraph.

IN WITNESS WHEREOF, this Affordability Agreement and Declaration has been duly executed by the Developer and City as of _______________, 2018.

CITY OF PORTLAND

___________________________ By:______________________________

Witness Name: Jon P. Jennings

Its City Manager

State of Maine

Cumberland, ss. _____________, 2018

Personally appeared the above named Jon P. Jennings, City Manager of 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)

DEVELOPER:____________________________

______________________________ Witness

By: ____________________________________
Name: _________________________________
Its: _______________________________

State of Maine
Cumberland, ss. _____________, 2018

Personally appeared the above named _______________ (of _______LLC a Maine Limited Liability Company), and acknowledged the foregoing instrument to be his/her free act and deed in his said capacity (and the free act and deed of said _________, LLC.)

Before me,

____
Notary Public/Attorney-at-Law

____
(Print or type name)

.

<u>EXHIBIT A</u>
PROPERTY DESCRIPTION

EXHIBIT B

RECEIPT OF WORKFORCE HOUSING AGREEMENT,
DECLARATION OF COVENANTS, RESTRICTIONS,
AND OPTION TO PURCHASE FOR
____________________[Unit Number and Property Address]

I/We ____(insert names) hereby acknowledge and agree that I am/we are in receipt of a copy of the Workforce Housing Agreement, Declaration of Covenants, Restrictions and Option to Purchase for ____ [Property Address] between the City of Portland and _________________________ [Developer] which was recorded at the Cumberland County Registry of Deeds on __________[date] at Book ____________ and Page ______ (the "Covenants"). I/We acknowledge and agree that the Covenants are binding upon our unit identified as Unit No. ______ at ____ (insert address) (the "Workforce Unit") and that as owner(s) of the Workforce Unit, I am/we are bound by the all of the terms and restrictions on the sale and occupancy as set forth in the Covenants. Such terms and restrictions of the Covenant include but are not limited to: restrictions on; owning other residential real estate; prohibitions on renting out the Workforce Unit for short or long term periods to other households; mandatory certification that the Workforce Unit is the primary residence; and requirements that; the owner(s) is a/are permanent resident(s) of the United States.

ACKNOWLEDGED AND AGREED TO ON THIS __________ DAY OF

________________, 20____.

WITNESS:	OWNER(S):
___________________________________	______________________________
(Signature)	(Signature)
___________________________________	______________________________
(Print Name)	(Print Name)
___________________________________	______________________________
(Signature)	(Signature)
___________________________________	______________________________
(Print Name)	(Print Name)

[Buyer Acknowledgment]

ATTACHMENT 2

Portland, Maine — Yes. Life's good here.

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements set aside a portion of the project as Workforce Housing.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) of the units in the project shall meet the definition of Workforce Housing Unit for sale. The number of units required is rounded down to a whole number whether the Workforce Unit is provided on- or off-site. A fractional fee-in-lieu would result when the calculation of a project's inclusionary obligation results in a fractional unit. The fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a 19 unit project that provides one Workforce Unit would also pay 90% of the fee-in-lieu If a Developer prefers to pay a fee-in lieu of each Workforce Unit, the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) Workforce Units and a fractional obligation of 60% as a fee-in-lieu. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the sale of Workforce Units will be restricted to households at or below 120% of the area median income (AMI). In order to most effectively target this income level, and based on national best practices, these calculations allow for an "affordability window" of between 110% and 120% AMI. The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the

Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their ~~adjusted~~ gross income. The City will use a process similar to what HUD recommends for the HOME program to determine ~~adjusted~~ gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to perform an asset limitation test for eligibility.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Regulations.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 110% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
    - (Household's 110% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
    - ((Household's 110% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, ~~and~~

insurance, and utilities.

- Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
   - It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale price of a Workforce Unit.

5) Interest rates for the calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed

The maximum allowable sale price at the initial sale of a Low-Income Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 90% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
   - (Household's 90% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
   - ((Household's 90% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) Follow steps 3 through 5 as outlined above.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Utilities that effect the maximum allowable sale price include electricity, heat, hot water, cooking energy, sewer, water, and trash collection

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Phasing

Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, Workforce Units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

Integration of Units

Workforce Units are encouraged to be integrated with the rest of the development, should use a common entrance, and should provide no indications from common areas that these units are Workforce Housing Units.

Size and Bedroom Count

Workforce Units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

Kitchen

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
  - Studio – 4 linear feet
  - 1BR – 6 linear feet
  - 2BR – 8 linear feet
  - 3BR – 10 linear feet

Bathroom

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

Flooring

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)
All bedrooms shall have at least one closet including at least one closet for a studio All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability
10%	Longest term permitted under federal, state, and local laws and ordinances.
25%	30 Years
50%	20 Years
100%	10 Years

For Workforce Homeownership Units the reduced terms of affordability will apply to the minimum 10% of units required. The additional Workforce Units proposed above 10% shall be affordable at the initial sale with no restrictions placed on subsequent sales of the unit. For example, if a homeownership project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than four (4) units would have a 30 year term of affordability while the remaining six (6) Workforce Units would be restricted only for the initial sale. Sales must be made through an arm's length arrangement as discussed in greater detail under the Non-Eligibility/Disqualification section below.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce Units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer
2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
4) Persons employed full time by the City
5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.

In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and sale price are subject to review and final approval by the City.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e) 4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay 2.5 times the current rate as established by the City.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units that are run- down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring and fixtures, kitchen/bath countertops, fixtures, and cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities such as air conditioning, dishwasher or washer and dryer are provided for the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. If the inclusionary obligation results in a fractional unit, then the fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a project creating 26 units of on-site market rate housing would be required to provide two (2) off-site Workforce Units and a fractional obligation of 60% as a fee-in-lieu.

Developers of condominium projects providing off-site Workforce Units may choose to provide the off-site Workforce Units for rent at 100% AMI with City approval. The City will only grant approval if there is a management plan in place that provides for stable and capable long term management of the Workforce Units by the developer or agreed upon third party. These units will have the same restrictions typical of Workforce Rental Units.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

ATTACHMENT 3

Portland, Maine — Yes. Life's good here.

Regulations for Owners of Workforce Homeownership Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the maximum allowable sale prices for Workforce Units will be restricted to households at or below 120% of the area median income (AMI). In order to most effectively target this income level, and based on national best practices, these calculations allow for an "affordable window" of between 100% and 120% AMI. The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be comprised of permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their ~~adjusted~~ gross income. The City will use a process similar to what HUD recommends for the HOME program to determine ~~adjusted~~ gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/OneBed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/OneBed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to perform an asset limitation test for eligibility

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Guidelines.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/OneBed	Two-Bed	Three-Bed	Four-Bed

Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 110% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.

    - (Household's 110% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:

    - ((Household's 110% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, ~~and~~ insurance, and utilities~~.~~

    - Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal to or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment. o It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale

price of a Workforce Unit.

5) Interest rates for the calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.

The maximum allowable sale price at the initial sale of a Low-Income Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 90% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.

- (Household's 90% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:

- ((Household's 90% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) Follow steps 3 through 5 as outlined above.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Utilities that effect the maximum allowed sale price include electricity, heat, hot water, cooking energy, sewer, water, and trash collection

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Alterations to a Workforce Unit's Floorplan

The basic floor plan of a Workforce Unit may not be altered without the written approval of the City. Workforce Units shall not decrease in size or total number of bedrooms.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Resale of Workforce Units

Once an Owner decides that they would like to sell a Workforce Unit they will need to notify the City in writing. The City will then confirm the Unit's maximum allowable sales price. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their representative.

If multiple offers are received during the marketing process the preferred households identified by the City will be given preference to purchase the Workforce Unit. The Owner and/or their agent shall keep records of all interested parties, the parties' eligibility, preference status, offers received, and any subsequent negotiations. The Owner and/or agent will provide these records to the City as requested.

In the event that the Owner is unable to find a ready, willing, and able Eligible Household for the property after reasonable efforts have been made to market the property for at least 180 days, then the Owner may notify the City in writing that it wants to market the unit to noneligible households. The City will be given the option to purchase the Property after the 180 day period on the terms set forth below:

1) The Owner must establish, to the City's reasonable satisfaction that the Owner made good faith efforts to market the Property for the entire 180 day period for sale to Eligible Households at a price not in excess of the maximum allowable sales price but did not receive any reasonable offers from Eligible Households. The City shall determine if reasonable efforts have been made within ten (10) working days after the last day of the 180 day period and once the City has received to its satisfaction all relative information from the Owner related to its marketing efforts and interaction with interested parties. 2) Upon a determination by the City of such marketing efforts, the City has thirty (60) days to decide if it will exercise its option to purchase the Property for the maximum allowable sales price.

3) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Owner. Failure to provide a Notice to Exercise within thirty (60) days of the determination that good faith efforts have been made to market the Property to Eligible Households shall cause the City's option to purchase to expire.
4) The City shall consummate its purchase of the Property within sixty (90) days of the date of service of the Notice to Exercise (the "City Closing Period"). The Owner shall cooperate fully with the City in the City's efforts to acquire the Property and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Property within the City Closing Period for a reason other than liens voluntarily placed

on the Property by the Owner, then the Owner shall immediately be free to sell the Property to a non-Eligible Household.

If the City decides not to exercise its option to purchase (including as a result of a failure to give a Notice of Exercise), the Owner shall be free to sell the Property to a non-Eligible Household at any such agreed sale price **provided however**, that to the extent the agree sale price exceeds the maximum allowable sale price, as determined by the City, then any amount between the actual sale price and the maximum allowable sale price (the "Excess") shall be paid to the City at the time of the closing on the sale of the Property, and such Excess is to be paid into the City's Housing Trust. Upon payment of the Excess, if any, the Owner and the Owner's heirs, successors and assigns, shall thereafter be free to sell the Property free of the terms and conditions of the AHA, which shall be deemed terminated.

If the Owner is able and willing to sell their Workforce Unit to a non-Eligible Household the sale must be made through an arm's length arrangement. The Owner may not sell the Unit to an employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law.

At the request of the Owner, and provided there has been full compliance by the Owner with the terms of the AHA, the City shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of the Property which results in the release of the Owner and the Property from the terms of the AHA.

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer
2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
4) Persons employed full time by the City
5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.
In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, then prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. The City will provide final approval of whether or not a household meets the eligibility requirements.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Refinancing

The Owner must get the City's approval to refinance the first mortgage or get an additional mortgage for a Workforce Unit. Refinancing must follow the same limitations outlined above for Financing. Owners may not refinance their unit for a value greater than 95% of the maximum allowable sale price at the time of refinancing as determined by the City. Under no conditions will the long term affordability or City's right of first refusal be compromised as a result of refinancing.

Transfer to Owner's Heirs

If the Owner should die still owning the Workforce Unit, then upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of such Owner (or the last surviving co-owner if the Property was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Property to one or more of the following:

1. The spouse of the deceased Owner (in cases where the spouse was not a joint tenant with the Owner); or
2. The child or children of the deceased Owner; or
3. Member(s) of the deceased Owner's household who have resided in the Property for at least three years prior to the Owner's death.

Any subsequent transfer by a transferee under 1, 2, or 3, above, shall be subject to the terms of this Agreement.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

ATTACHMENT 4

Portland, Maine   Yes. Life's good here.

Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) of the units in the development shall meet the definition of Workforce Housing Unit for rent. The number of units required is rounded down to a whole number whether the Workforce Units are provided on- or off-site. A fractional fee-in-lieu would result when the calculation of a project's inclusionary obligation results in a fractional unit. The fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a 19 unit project that provides one Workforce Unit would also pay 90% of the fee-in-lieu. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) Workforce Units and a fractional obligation of 60% as a fee-in-lieu. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence.

Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their ~~adjusted~~ gross income. The City will use a process similar to what HUD recommends for the HOME program to determine ~~adjusted~~ gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts.
The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to place an asset limitation test for eligibility.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. Households must comply with such requests for verification work, health, or emergency reasons or their lease will not be renewed. For the purposes of this section, incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Phasing

Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, Workforce Units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

Integration of Units

Workforce Units are encouraged to be integrated with the rest of the development, should use a common entrance, and should provide no indications from common areas that these units are Workforce Housing Units.

Size and Bedroom Count

Workforce Units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

<u>Kitchen</u>

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
  - Studio – 4 linear feet
  - 1BR – 6 linear feet
  - 2BR – 8 linear feet
  - 3BR – 10 linear feet

<u>Bathroom</u>

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

<u>Flooring</u>

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)

All bedrooms shall have at least one closet including at least one closet for a studio
All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability
10%	Longest term permitted under federal, state, and local laws and ordinances.
25%	30 Years
50%	20 Years
100%	10 Years

For Workforce Rental Units the reduced terms of affordability will apply to all proposed Workforce Units including those in excess of the required minimum 10% of units. For example, if a rental project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than all 10 Workforce Units would have a 30 year term of affordability.

Dwelling units created or redeveloped by non-profit educational institutions for use as housing exclusively for enrolled students of educational institutions shall not be subject to the set aside requirement of Division 30. If the units are no longer used exclusively by enrolled students the building will be required to meet the workforce housing standards set forth in Division 30.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce Units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years
2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
3) Persons employed full time by the City
4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 60 days for initial occupancy and 30 days for subsequent rentals during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible Households. The Owner shall cooperate with the City and with any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e)4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and prefers to pay the fee for all units the Developer would be required to pay 2.5 times the current rate as established by the City.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring, and fixtures, kitchen/bath countertops, fixtures, cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities, such as air conditioning, dishwasher or washer and dryer are provided for the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

ATTACHMENT 5

Portland, Maine — Yes. Life's good here.

Regulations for Owners & Tenants of Workforce Rental Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence. Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their ~~adjusted~~ gross income. The City will use a process similar to what HUD recommends for the HOME program to determine ~~adjusted~~ gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to place an asset limitation test for eligibility.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertifications. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. Households must comply with such requests for verification of health or emergency reasons or their lease will not be renewed. For the purposes of this section, Incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities =Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years

2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
3) Persons employed full time by the City
4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible

Households. The Owner shall cooperate with the City and provide any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Department will not be eligible for a Workforce Unit in the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the

Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

ATTACHMENT 6

Part 5 (Section 8) Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

INCOME INCLUSIONS:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**

(5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;

(6) Welfare Assistance.

(a) Welfare assistance received by the family.

(b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) <u>Periodic and determinable allowances</u>, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and

(8) <u>All regular pay, special pay, and allowances</u> of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.)*, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income. *(Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)*

INCOME EXCLUSIONS:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 CFR 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

(8)

(a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);

(b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);

(b) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(c) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident- initiative coordination. No resident may receive more than one such stipend during the same period of time; or

(d) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.

(9) Temporary, nonrecurring, or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);

(11) Earnings in excess of $480 for each full-time student 18 years or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. *NOTE: the following is the updated list from the Federal*

Register dated May 20, 2014.

The following is a list of income sources that qualify for that exclusion:

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (e.g., employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);

(c) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

(d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

(f) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540,section 6);

(g) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(h) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1407-1408), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-11, section 327) (as amended);

(i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42U.S.C. 3056g))(e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program);

(j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);

(k) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);

(l) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32[l]);

(n) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

(o) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);

(p) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05) children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1821), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(q) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

(r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(s) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1780(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(t) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990(25 U.S.C. 1774f(b));

(u) Deferred amounts from Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts(42 U.S.C.§ 1437a(b)(4));

(v) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs;

(w) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(x) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(y) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust

Settlements" (25 U.S.C. 117b(a)); and

(z) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by the States, local government, and disaster assistance organizations (42 U.S.C. 5155(d)).

Memorandum
Planning and Urban Development Department
Planning Division

To: Sean Dundon, Chair and Members of the Portland Planning Board

From: Stuart O'Brien, Planning Director, and Barbara Barhydt, Development Review Services Manager
Date: December 8, 2018

Re: Proposed B-2, B-2b and B-2c Text Amendments regarding Drive Throughs, City of Portland, Applicant

Meeting Date: December 11, 2018

I. INTRODUCTION

The Community Business Zone- B-2, includes the B-2b and B-2c as subdistricts. The B-2 zones are located along major transportation corridors and encompass larger commercial districts. It is a zone where a wider range of businesses and more intensive commercial uses, including drive-throughs, have been allowed.

Starting in 1999, the B-2 zone has been revised multiple times in order to refine the zone. The amendments are intended to better accommodate policy initiatives for the redevelopment of Portland's commercial districts by supporting denser urban infill and transit-oriented development. A detailed history of the evolution of the B-2 zone is contained in the March 22, 2016 Planning Board report (included in the packet as Att D) when the Board was considering a B-2b map amendment for a section along Forest Avenue. Please refer to Section III, Background and Existing R-2) of that report (page 3) for a detailed history of the evolution of the B-2 zone.

In 2016, the Board recommended (6-1, Whited opposed) a map amendment from B-2 to B-2b for the section of Forest Avenue near the intersection of Forest Avenue, Preble Street Ext and Baxter Boulevard. During the public hearing discussion, the Board suggested exploring options to link the creation of new housing with proposals for new drive-throughs. The recommendation for the map amendment was placed on hold and not forwarded to the Council. The City is now prepared to move forward with the proposed map amendment (see page 4 of this memo) and is seeking the Board's recommendations on B-2, B-2b, and B-2c zoning text amendments that address drive-throughs for pharmacies and banks to require upper floor residential units.

II. CURRENT B-2 REGULATIONS

A. Purpose Statement for B-2, B-2b and B-2c Districts

The purpose statements for each of the three (3) B-2 zones are excerpted below. The revisions to the B-2 zone, particularly with the dimensional standards, have made the B-1 and B-2b more similar and designed to support an urban form of redevelopment.

Sec. 14-181. Purpose.
(a) B-2 Community Business Zone
The purpose of the B-2 community business zone is:

1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.
2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.
3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.
4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.

(b) B-2b Community Business Zone

The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood-oriented building pattern.

(c) B-2c Community Business Zone

To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.

B. <u>Permitted and Conditional Use Provisions for Drive-throughs</u>

Drive-throughs associated with a permitted or a conditional use are listed as an auto oriented use on the table of permitted uses (Use table included as Attachment A. Drive-throughs are not permitted in the B-2b zone and are listed as a conditional use in the B-2 and b-2c zones. In addition to the general conditional use standards contained in Section 14-474 of the Land Use Code, the specific conditional use standards of the B-2 zone for auto related uses are below with specific provisions for drive-throughs found under subsection 6:

Sec. 14-183. Conditional uses.

The following uses are permitted in the B-2,B-2b and B-2c zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

(a) “A” group conditional uses. Notwithstanding section 14-474(a)of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

1. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.

2. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.

3. Conditions specific to major or minor auto service stations, car washes and automobile dealerships:

a. A landscaped buffer, no less than 5 feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual; and

b. Car washes shall be designed to avoid the tracking of residual waters into the street.

4. Reserved.

5. Reserved.

6. Drive-throughs: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

a. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.

b. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.

c. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.

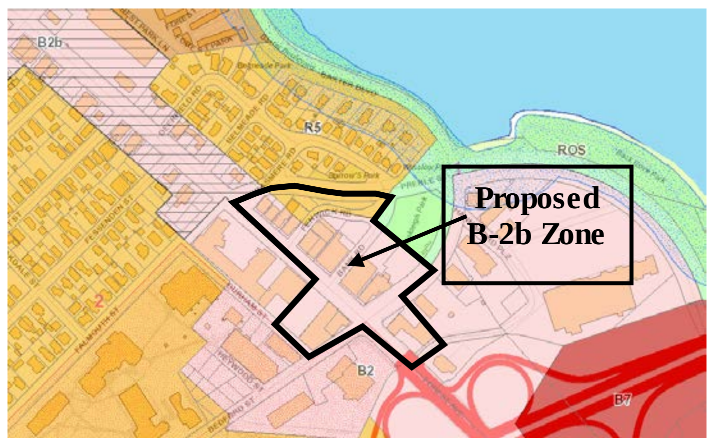
d. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and

e. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

f. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.

III. <u>LOCATIONS OF B-2 ZONE</u>

The B-2 zone is found throughout Portland. It is generally located along arterials, including along portions of Forest Avenue, and encompasses larger off-peninsula commercial areas, such as the North Deering commercial district at the intersection of Washington Avenue abd Allen Ave. In addition, the B-2b zone is found on the peninsula along Washington Avenue, St. John Street and portions of lower Congress Street. The B-2b is located along the Forest Avenue corridor from I-295 to Woodfords Corner, with the exception of the B-2 zone that encompasses the Hannaford Shopping center, Oakhurst Dairy and other properties in that vicinity. The Board's 2016 recommendation (6-1, Whited opposed) was to rezone a portion of this area to B-2b (see insert of map amendment). The B-2c encompasses a portion of the westerly side of Forest Avenue between Saunders Street and Baxter Woods. There is also a second location along the southerly side of a portion of Bishop Street. Portland's zoning map is available on the city's web site: http://portlandme.maps.arcgis.com/apps/webappviewer/index.html?id=53778b868b5f4465a8931ebb4faae4c5 Attachments B and C present excerpts from the zoning map showing the B-2 zones located off-peninsula and on-peninsula, respectively.



IV. <u>Proposed Options for Text Amendments and Potential Text Amendments</u>

The city is considering text amendments that further refine drive-throughs in the B-2 zones. Three options for proposed revisions are outlined below.

Options 1-3

1. **Decrease allowances for drive-throughs in the B-2 and B-2c zone to only pharmacies and banks and maintain prohibition on drive-throughs in B-2b.**

2. **Limit addition of drive-throughs to mixed use projects in all B-2 zones as follows:**

a) Limit Drive-throughs for all permitted/conditional uses in B-2c: Currently, drive-throughs are not permitted in the B-2b zone. The draft proposal is to exclude drive-throughs that are accessory to permitted or conditional uses as a conditional use in the B-2c zone. Thus, drive-throughs for restaurants and other uses, would not be permitted in both the B-2b and B-2c districts. There is a least one restaurant within the B-2c zone that would become non-conforming in terms of its drive-through.

b) Allow Drive-Throughs for Pharmacies with Retail and Bank Facilities in Mixed Use Projects with Residential above in B-2, B-2b and B-2c: The proposal adds a category of drive-throughs for pharmacies and banks that would be a conditional use in all three zones. A conditional use standard is added to the current list of standards for these facilities, which would require upper floor residential units. A minimum of 3 units is suggested for the Board's consideration. As noted above, the B-2, B-2b and B-2c zones encompass areas along major transportation corridors where increased housing density is sought. This would create an option for a drive-through in the B-2b zone where drive-throughs are now not permitted but only for pharmacies and banks in a mixed-use project with residential units.

c) Continue to Allow other Types of Drive-throughs in B-2 only in mixed-use project with residential above: Drive-throughs associated with permitted and conditional uses would still be allowed as a conditional use in the B-2 zone. A conditional use standard is added to the current list of standards for these facilities, which would require upper floor residential units. A minimum of 3 units is suggested. Additional screening provisions could be added as a standard. As noted above, the B-2, B-2b and B-2c zones encompass areas along major transportation corridors where increased housing density is sought. This would retain the option of adding drive-throughs for a number of different uses (such as fast food) as part of mixed used projects.

3. **Same as 2 above for B-2b and B-2c, but retain conditional use status for all types of drive-throughs in the B-2 zone without the mixed-use component (existing status).**

As an example of the language that could be considered, a preliminary draft of the potential text amendments that would support Option 2, subparagraphs a and b is shown below. Additional revisions will be prepared based upon the Planning Board's guidance.

A	Drive-throughs associated with a permitted or conditional use4	C	N	~~C~~ N
A	Drive-throughs associated with a permitted pharmacy with retail or bank facility 4	C	C	C
A	Auto service stations	C	N	N
A	Expansion of auto service stations in existence as of November 15, 1999	C	C	C
A	Car washes	C	C	C

A	Automobile dealerships	C	C	C

The additional conditional use standards of proposed in Section 14-183 are as follows:

6. Drive-throughs and drive-throughs associated with permitted pharmacies with retail or bank facilities: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:

(a through f as written)

Add subparagraph:

g. Drive-throughs for Pharmacies with a retail component or Bank Facilities: Drive-throughs proposed for permitted pharmacies or bank facilities shall provide upper floor multi-family housing providing a minimum of three (3) dwelling units.

4. Same as B above but retain conditional use status for drive-throughs in the B-2 without the mixed-use component.

V. Staff Analysis

Pharmacies and banks seek drive-through windows to serve their clientele. The intensity and impacts of the drive-throughs are generally less than those that are associated with fast food restaurants, coffee shops, bottle redemption centers, and other uses. While pharmacy and bank drive-throughs are less intensive, the auto-oriented use does impact the pedestrian environment and Portland's goals for a walkable city. In addition, Portland has a stated goal to provide for more housing, particularly along major transit corridors. The proposal to require drive-throughs for pharmacies and banks to provide housing supports economic development objectives of the Comprehensive plan and creates an incentive for more housing along transportation corridors. Examples of this model of new development with residential units above pharmacies and banks can be found in many cities. A similar example of new construction in Portland is the c-Port Credit Union that met the minimum height requirements of the India Street Form Based Code by including a third-floor residential unit over the retail and office facilities located on the first and second floors.

VI. Comprehensive Plan

The central vision of Portland's Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for job growth and transforming Portland through orderly growth and development be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.

The comprehensive plan includes the following economic and housing goals that are relevant to the proposed text amendments:

- Create economic prosperity by growing Portland's tax and employment base.
- Invest in, attract, and retain human capital to support a growing economy.
- Respect that our unique quality of place is key to our current and future economic success.
- 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 notes and corridors as a means of supporting complete neighborhoods.
- Pursue policies to enable people who work in Portland to have the option to live in Portland.

VII. <u>Next Steps</u>

- Revise draft to incorporate Board comments in Text Amendments
- Schedule a public hearing

Community Business – B-2
Sec. 14-182. Table of uses.

Group[1]	Use	B-2[2]	B-2b	B-2c
R	Single family home	Y	Y	Y
R	Two family home	Y	Y	Y
R	Three family home	Y	Y	Y
R	Multifamily housing	Y	Y	Y
R	Combined live/work spaces provided the living space is at least 33% of the total net floor area	Y	Y	Y
B	General business and professional offices, as defined in section 14-47, and offices of trades	Y	Y	Y
B	Personal services, as defined in section 14-47	Y	Y	Y
B	General retail establishments	Y	Y	Y
B	Pharmacies with retail sales	Y	Y	Y
B	Banking Facilities	Y	Y	Y
B	Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless otherwise authorized by the City Council	Y	Y	Y
B	Drinking establishments, as defined in section 14-47	Y	Y	N
B	Billiard parlors	Y	Y	Y
B	Funeral homes	Y	Y	Y
B	Miscellaneous repair services, excluding motor vehicle repair services	Y	Y	Y
B	Communication studios or broadcast and receiving facilities	Y	Y	Y
B	Health clubs and gymnasiums	Y	Y	Y
B	Veterinary hospitals and clinics provided there is no outdoor kennel	Y	Y	Y
B	Theaters and performance halls	Y	Y	Y
B	Hotels, Motels and Inns	Y	Y	Y
B	Bakeries, breweries, distilleries, commercial kitchens and similar uses with a retail component and with a total floor	Y	Y	Y

Group[1]	Use	B-2[2]	B-2b	B-2c
	area under 10,000 net sf.			
B	Bakeries, breweries, distilleries, commercial kitchens and similar uses with a retail component and with a total floor area of 10,000 net sf. or greater	Y	N	N
B	Expansion of existing dairies	Y	Y	Y
B	Registered medical marijuana dispensaries	Y	C	C
I	Long term, extended and intermediate care facility	Y	Y	Y
I	Clinics, as defined in section 14-47	Y	Y	Y
I	Places of assembly	Y	Y	Y
I	Kindergarten, elementary, middle and secondary schools	Y	Y	Y
I	College, university, trade schools	Y	Y	Y
I	Municipal buildings and uses	Y	Y	Y
O	Lodging houses	Y	Y	Y
O	Day care facilities	Y	Y	Y
O	Accessory uses, as provided in section 14-404[3]	Y	Y	Y
O	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 for weddings, seminars, receptions, business meetings and the like and if the facility is less than 4,000 net sf.	Y	Y	Y
O	Studios for artists and craftspeople, less than 4,000 net sf. per space	Y	Y	Y
W	Wind energy systems, as defined and allowed in Article X, Alternative Energy	Y	Y	Y
U	Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding	Y	Y	Y
A	Drive-throughs associated with a permitted or conditional use[4]	C	N	C

Group[1]	Use	B-2[2]	B-2b	B-2c
A	Auto service stations	C	N	N
A	Expansion of auto service stations in existence as of November 15, 1999	C	C	C
A	Car washes	C	C	C
A	Automobile dealerships	C	C	C
M	Printing and publishing establishments of 10,000 gross sf. or less	C	C	C
M	Expansion of existing printing and publishing establishments of greater than 10,000 gross sf. in existence since April 4, 1988	C	C	C
M	Wholesale distribution establishments of 10,000 gross sf. or less	C	C	C
M	Research and development and related production establishments of 10,000 gross sf. or less	C	C	C

1 Uses within the same group lettering may be substituted without being considered a change of use under zoning, provided all dimensional and other requirements of this section are met. Other reviews may be required under City regulations, including but not limited to building permit, subdivision and site plan reviews. However, no additional parking shall be required for changes within the same use group for a change in total floor area up to 10,000 sf, except for the provision of additional housing units.

Use Groups include the following:

R = Residential
B = Business
I = Institutional
O = Other
U = Utility
A = Auto related
M = Manufacturing/Processing/and other Industrial

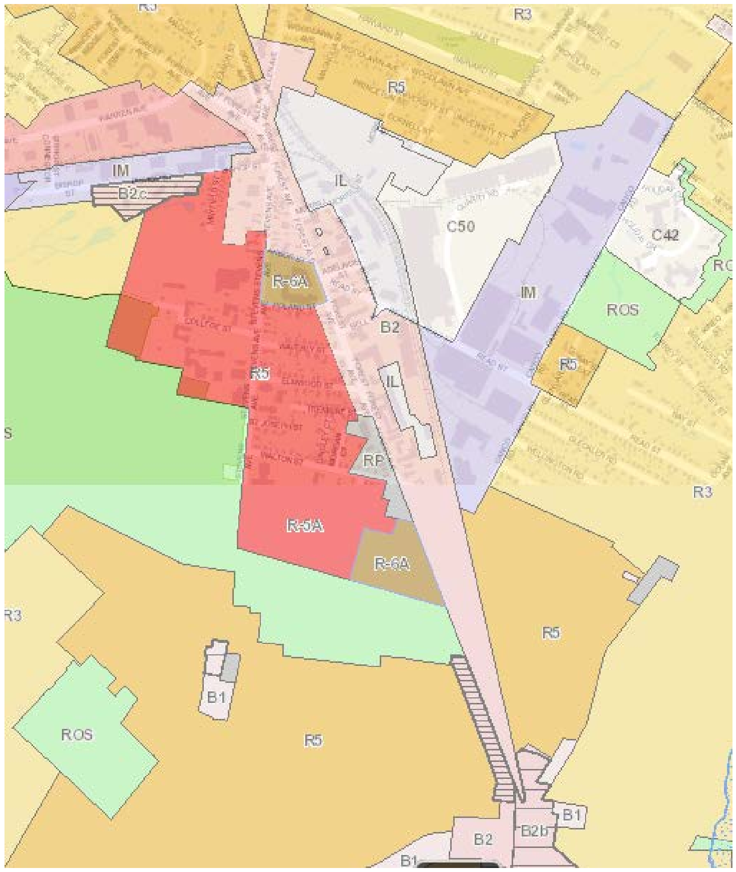
2 Y-Permitted N-Not Permitted
C-Conditional use, see section 14-183 for specific standards in

addition to the general conditional use standards

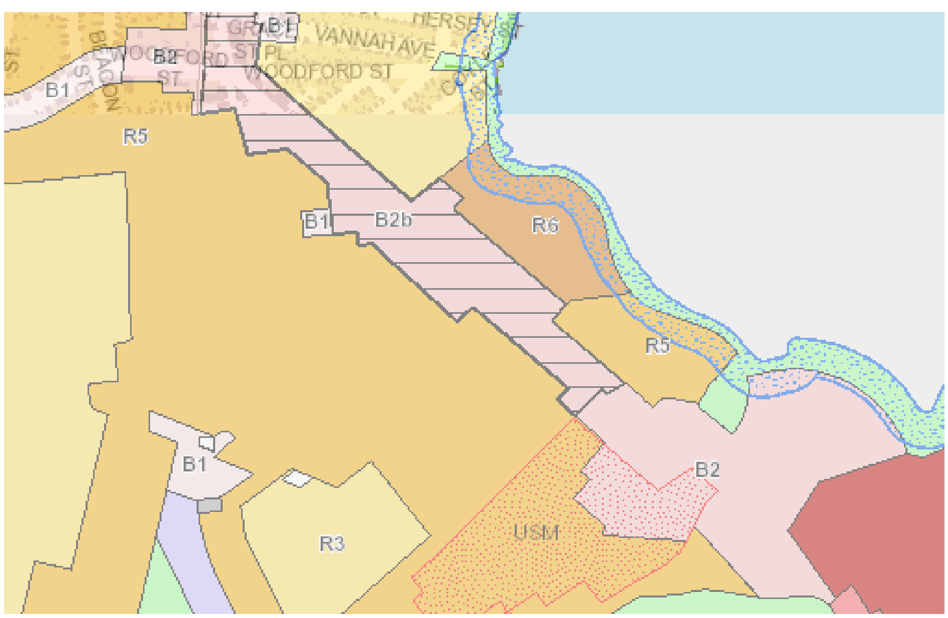
3 Expansion of accessory uses into space used by a permitted use shall not be considered a change of use

Community Business B-2 Zones in Portland
Off- Peninsula Locations

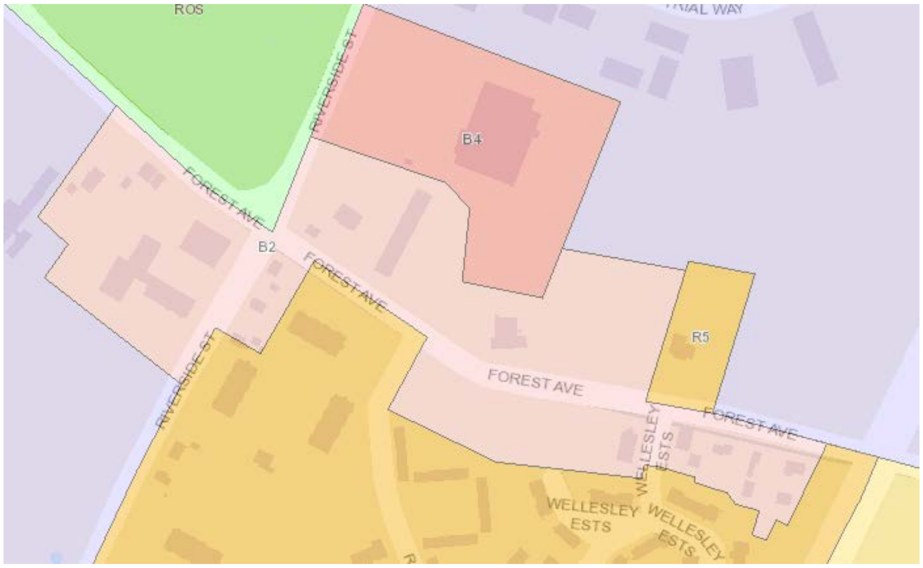
Forest Avenue Corridor -Woodford to Morrill's Corner



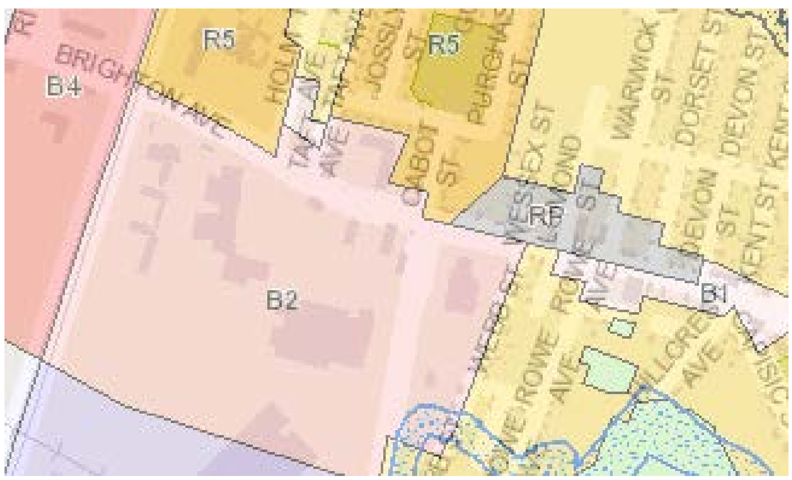
I-295 to Woodford



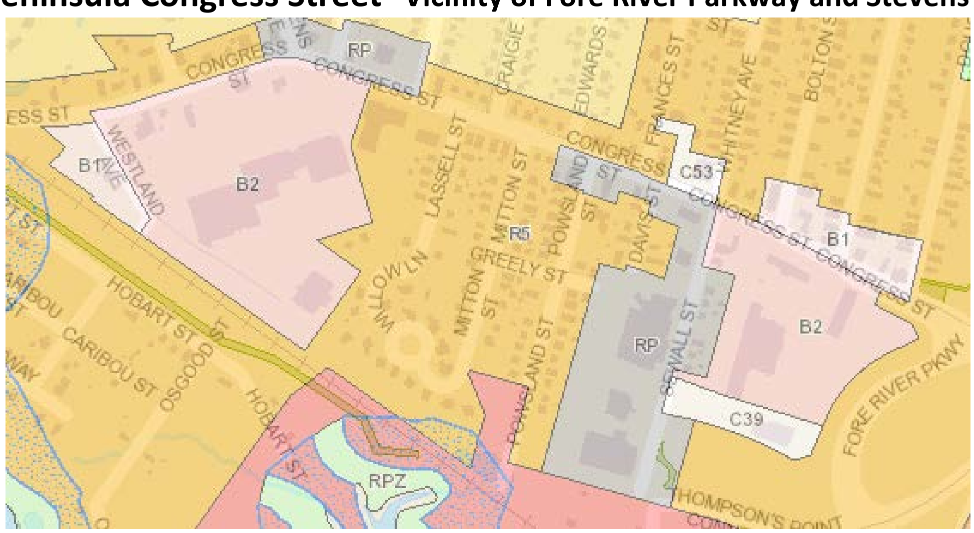
Outer Forest near Westbrook Line



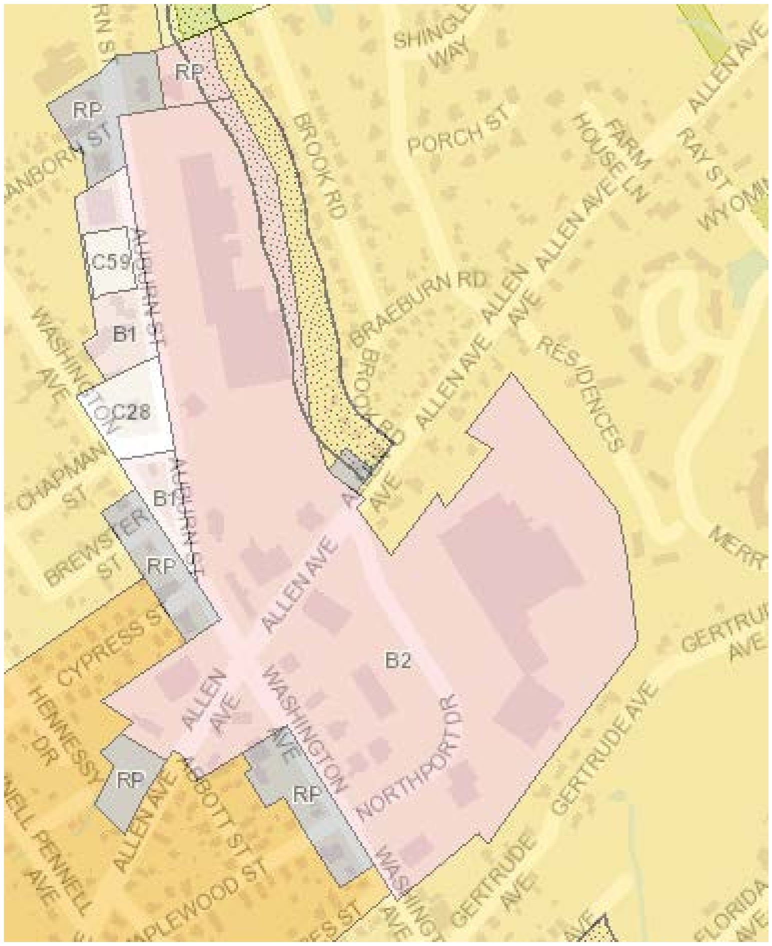
Brighton Avenue



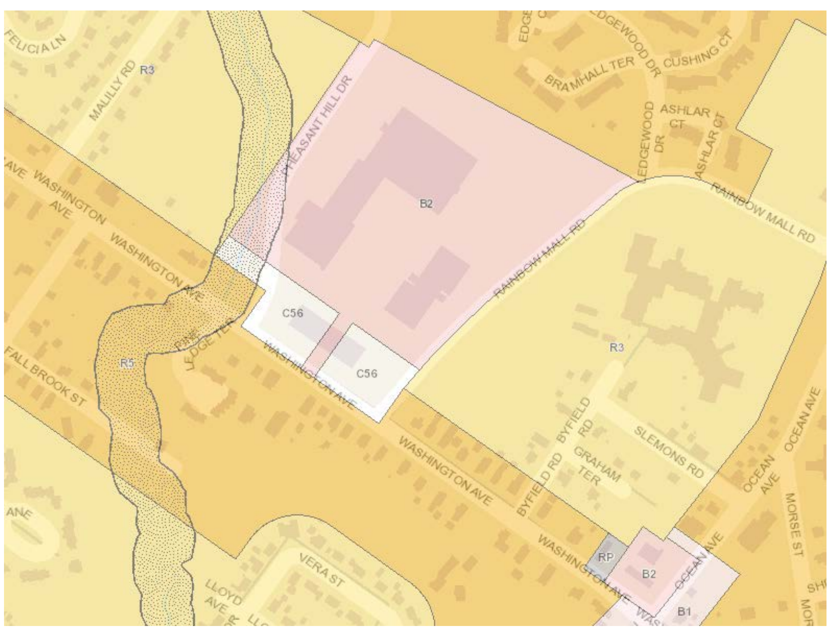
Off-Peninsula Congress Street **Vicinity of Fore River Parkway and Stevens Avenue**



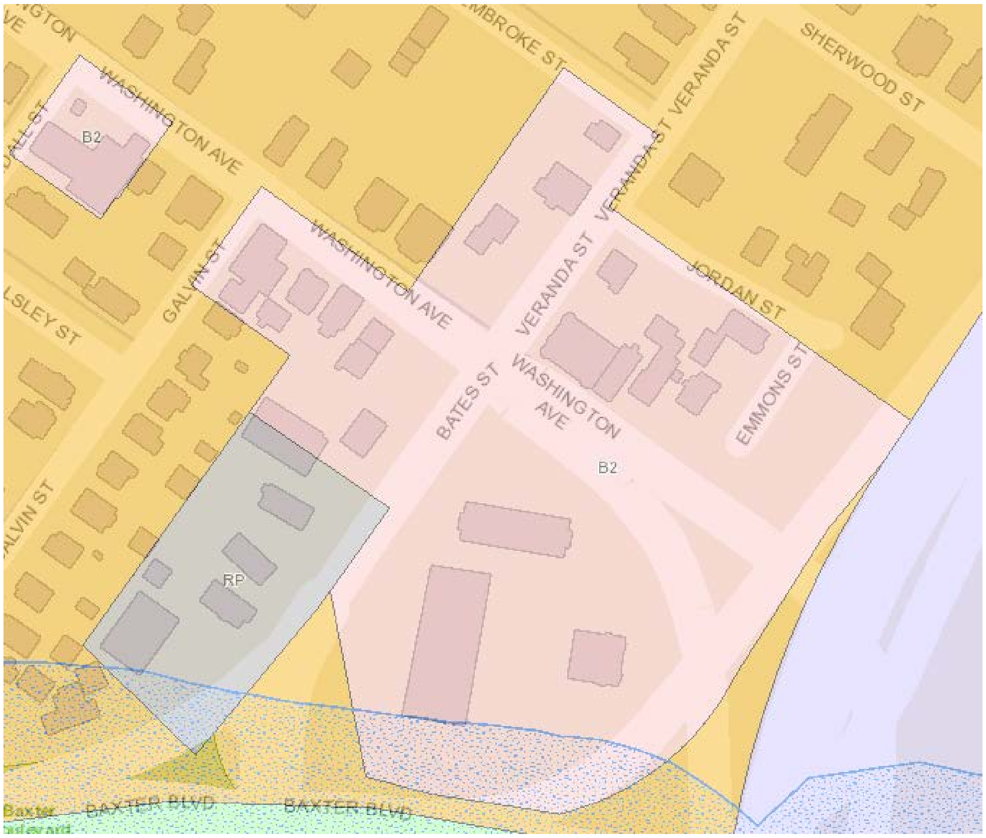
Washington Avenue Corridor - Washington, Allen Avenue, Northport and Northgate



Washington Ave at Rainbow Mall Road and Ocean Avenue

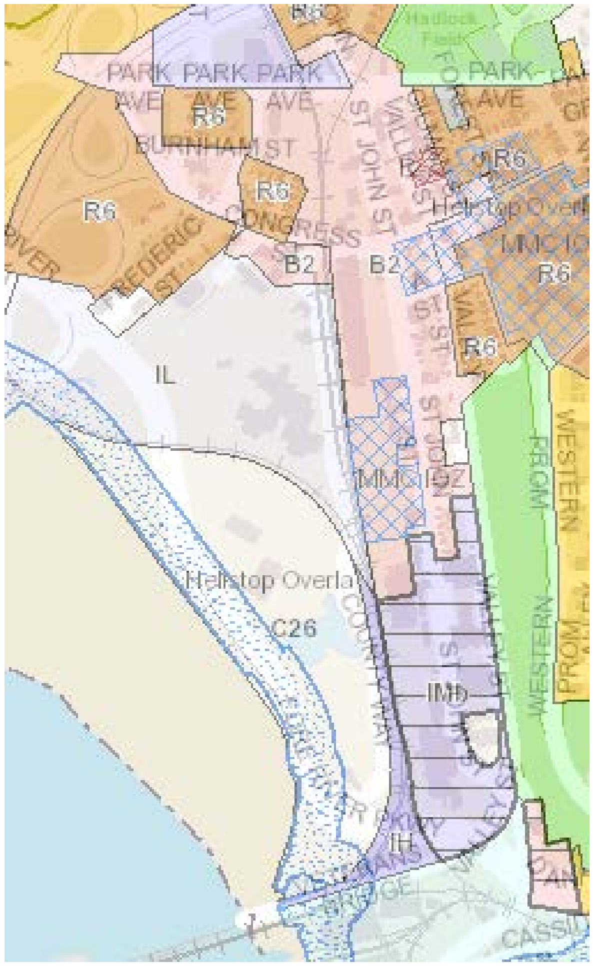


Washington Ave -Vicinity of Veranda Street

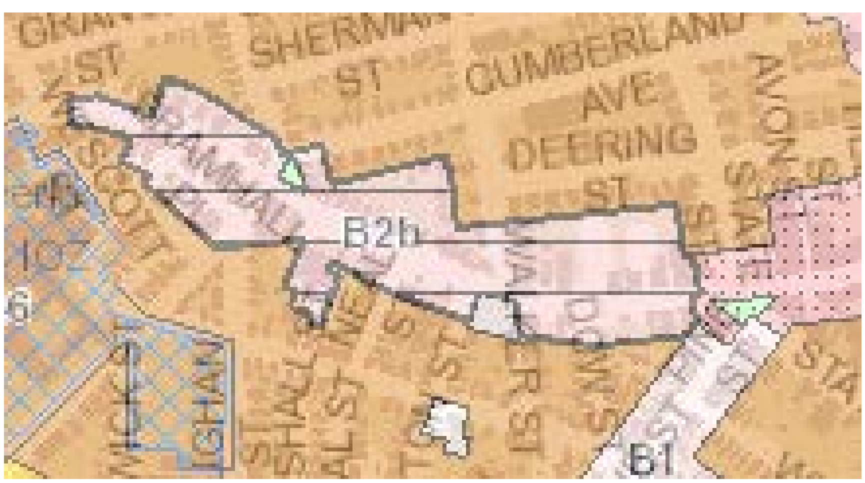


Community Business B-2 Zones in Portland
Peninsula Locations

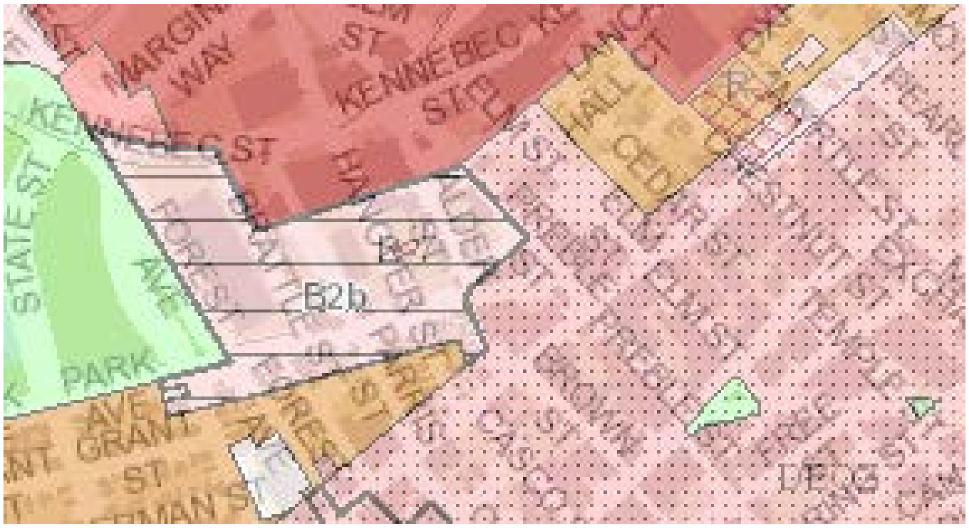
Libbytown - St. John , Congress and Park



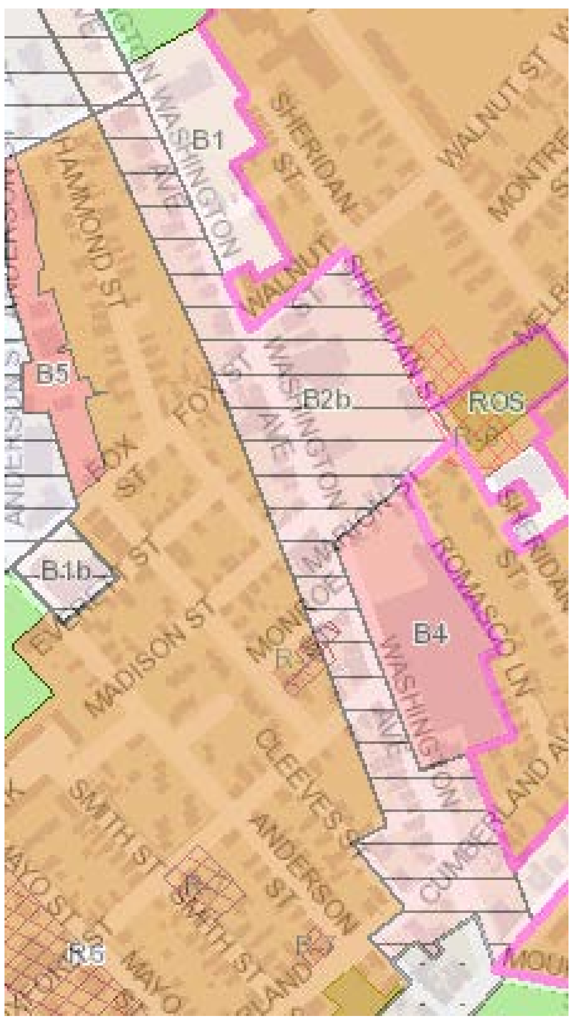
Congress Street between Westcott and Park



Bayside – Forest, Park and Cumberland



Washington Avenue Corridor



PLANNING BOARD REPORT
PORTLAND, MAINE

Zoning Map Amendment from B-2 and R-5 to Community Business B-2b

Map Amendment for Forest Avenue in the vicinity of Baxter Boulevard, Preble Street Extension and the northerly side of Forest Avenue, and at the intersection of Forest Avenue, Baxter Boulevard and Bedford Street.

City of Portland Applicant

Submitted to: Portland Planning Board: Public Hearing Date: March 22, 2016	Prepared by: Stuart O'Brien, Planning Division Director and Barbara Barhydt, Development Review Services Manager Date: March 18, 2016

I. INTRODUCTION

On February 1, 2016, Councilor Ray moved to have the Planning Board consider a zoning map amendment from the current Community Business B-2 zone and the Residential R-5 zone to the Community Business B-2b zone. The City Council voted unanimously to refer this item to the Planning Board and for the Board to make a recommendation to the Council by April 1, 2016 (Council Order included as Attachment 1). The City Council is asking the Board to consider whether the B-2b, which promotes a more urban form and prohibits drive-throughs, is a more appropriate zone for this area.

There are no pending development review applications for the properties in this area; however, interest in potential redevelopment has been brought to the attention of the City. Concurrently, several of the buildings had been identified as potentially eligible for designation following a historic preservation analysis recently commissioned by Greater Portland Landmarks entitled *Forest Avenue and Stevens Avenue: Historic Context*. The Historic Preservation Board review and recommendations are included below in Section II.

In addition, the Transforming Forest Avenue report as discussed under the comprehensive plan analysis below, contemplates revisions to the zoning along the corridor to encourage possibilities for the future of land development around Forest Avenue to facilitate opportunities for transit supportive development.

Public notice of the public hearing appeared in the Portland Press Herald on March 7 and 14th and 105 notices were sent by mail and by e-mail to property owners and interested citizens. The neighborhood meeting was held on March 10, 2016 and the packet is included as Attachment 4. There is one piece of written comment that was submitted at the neighborhood meeting. Public comment has also been submitted by Mary Costigan and Sandra Guay.

II. EXISTING CONDITIONS & SITE SELECTION

A. <u>Existing Conditions</u>

The section of Forest Avenue between Baxter Boulevard and Preble Street extension contains a range of uses. The development in this block faces Forest Avenue with parking in the rear, which can be seen from Preble Street Extension. There is one curb cut that serves the parking areas off Preble with all other access points off Forest Avenue. The city's zoning map lists the accessways as Bank and Fenwick Roads. The businesses along Forest Avenue include: office buildings, retail uses, a bar, personal service businesses, and 70 residential units above first floor commercial at 331-337 Forest Avenue.

Pedros Field is a public park and ballfield, which is located at the intersection of Preble Street extension and Baxter Boulevard. This portion of the block is not including within the proposed zone change.

The B-2 zone is located across Forest Avenue from the proposed area for rezoning. The uses include the Oakhurst Dairy and a multiple tenant retail building on the corner of Forest and Bedford (owned by Oakhurst Dairy). An aerial of the area obtained from Google is included as Figure 1. In general, office uses facing Baxter Boulevard are located across from this block, as is an entrance drive to the Hannaford plaza. A residential neighborhood is located on the opposite side of the Preble Street extension and the university credit union is located at the corner of Preble and Forest.

Figure 1: Aerial

On City maps, the block being considered for rezoning shows Fenwick Road and Bank Road, which appear to be former public streets. Fenwick Road was discontinued in 1991 with a public easement retained for the city sewer line; however, a street sign still is located on the corner. A portion of Bank Road was discontinued in 1991 and a section leading to Preble Street was accepted in 1920. It appears that this portion remains a public street. The status of the streets, as shown below (Figure 2), is based upon the City's records at the Department of Public Works. This is preliminary information that may be revised once a survey of the area is completed.

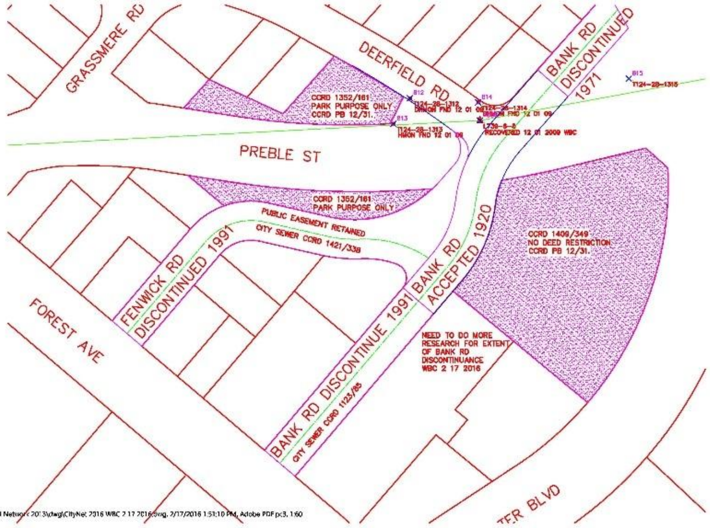


Figure 2: Street Status

B. Historic Preservation Board's Review of Potential Designation of Buildings

On February 3rd, the Historic Preservation Board held a public hearing on the question of eligibility of three Forest Avenue buildings for local landmark designation. The 3 buildings in question are 351-355, 369 and 371-371 Forest Avenue. The request for determination of eligibility was prompted by a letter from legal counsel for CVS indicating CVS' intent to demolish 5 contiguous structures near the intersection of Preble Street Extension. Consistent with the City's demolition permit review process, the letter of intent was reviewed by historic preservation staff to determine whether any or all of the subject structures were eligible for listing in the National Register of Historic Places and/or local historic designation. In this case, the buildings at 355 Forest and 369 Forest had been determined eligible for National Register listing by the Maine Historic Preservation Commission in 2011. As well, all three buildings had been included in a Forest Avenue Historic Resources survey conducted last summer. Accordingly, the question of eligibility was forwarded to the Historic Preservation Board for consideration. Following a lengthy public hearing, the Historic Preservation Board found that 355, 369 and 371-373 Forest meet the designation criteria for individual landmark designation under Portland's Historic Preservation ordinance. The determination of eligibility is expected to be followed by formal designation deliberations. As the buildings are proposed for designation as individual landmarks, the HP Board's recommendation would be forwarded directly to the City Council, as provided in the historic preservation ordinance. No date has yet been set for formal deliberations on the designation. The public hearing report to the Historic Preservation Board regarding the determination of eligibility and attachments A and B are included as Attachment 2 of this report.

III. BACKGROUND AND EXISTING ZONING

The current zoning in the block bounded by Baxter Boulevard, Preble Street Extension and Forest Avenue includes Community Business B-2, Residential R-5 and Recreation and Open Space (ROS) (refer to Figure 3). There is a mix of commercial and residential uses in this area including office buildings, retail uses, a bar, personal service businesses, and 70 residential units above first floor commercial at 331-337 Forest Avenue. Pedros Field is a public ballfield located within the block and is zoned Recreation and Open Space (ROS). This portion of the block is not part of the proposed zoning map amendment.

Figure 3: Existing Zoning

The Community Business Zone extends across Forest Avenue to incorporate the Oakhurst dairy and the retail building on the corner. The B-2 zone also extends up Bedford Street and includes a portion of the USM campus. Commercial uses were located in this area at one time, but the area is now owned and occupied by the University of Southern Maine. The USM overlay zone extends over these properties.

The B-2 zone is also located between Baxter Boulevard and I-295 where this is a mix of office and retail uses fronting on Baxter Boulevard. The Hannaford Shopping Center is situated to the rear of the Baxter Boulevard and Forest Avenue lots with frontage on the Preble Street extension. The Community Business B-2b zone runs along either side of Forest Avenue from the intersection of Preble and Forest Avenue through Woodford's Corner.

A portion of the block being studied includes the Residential R-5 Zone, which run along the Preble Street extension. The residential neighborhoods that flank either side of Forest Avenue are generally zone Residential R-5, with the exception of the multifamily complexes at the intersection of Dartmouth Street and Baxter Boulevard, which are zoned the R-6 zone. Per the Planning Board's suggestion, the commercial properties on the corner of Forest Avenue and Bedford Street and Baxter Boulevard as shown on the map insert were included in the notice.

The Forest Avenue Corridor between Preble Street Extension and through Woodford's Corner was zoned as Community Business B-2b in 1999. At that time, there was a comprehensive review of the B-2 zone and the B-2b zone was created. Previously, the entire corridor had been zoned B-2. The B-2b zone was considered for section of the corridor from the Preble Street Extension to I-295. A conversion to B-2b would have made Oakhurst Dairy and the auto related uses in this area non-conforming. Thus, the area between I-295 and the Preble Street extension remained within the B-2 zone due to the type and scale of uses in this area at that time.

The B-2b zone was created in 1999 as a result of the Nason's Corner/Outer Brighton Avenue Study, completed the previous year, which sought to increase the compatibility between commercial districts and residential neighborhoods. As described in Planning Board Report #50-99 dated October 18, 1999, the B-2b was instituted as a new zone "designed to preserve the more compact urban development of Portland". At the same time amendments were made to the B-2 to allow residential uses and to make major and minor offices uses conditional, allow dairies and bakeries as permitted uses if in existence before 1999, and limit new bakeries in the B-2b to no more than 7,000 s.f.

The 1999 changes also resulted in the creation of a conditional use designation for all drive-throughs in the B2, as opposed to merely for restaurants uses. Drive-throughs in the newly created B-2b were only allowed if accessory to a permitted principal use. Additional conditional use standards were added for drive-throughs relating to location, noise, screening, pedestrian access and hours. Finally, it should be noted that at this time auto uses became conditional uses in the B-2 and these auto uses were prohibited in the B-2b except for pre-existing minor auto uses which were proposed to become conditional uses. These amendments to the code were adopted on November 15, 1999.

Additional changes were adopted in early 2000, the map amendment proposed intended to create a B-2b zone along a portion of Forest Avenue. In addition, among other text changes as described in in the March 24, 2000 City Council Agenda Request the proposed B-2b text amendments for off peninsula locations would:

> "allow new structures to be placed no further back than the average depth of the front yards of adjoining buildings. Currently, B-2b requires structures to meet a ten (10) foot build-to line and this would remain for on-peninsula locations. The proposed off-peninsula B-2b front yard setback is the same standard as found in the B-2 zone."

These changes were adopted on April 24, 2000.

In 2005, the Council adopted the the B-2C zone which essentially mirrored the B-2 but excluded establishments that served liquor for a portion of Forest Avenue.

In 2010, changes were adopted increasing density of B-2 and B-2b zones on-peninsula to current levels, adding housing to the zones purpose statements and clarifying some language. As reflected in the Planning Report #02-10, dated January 22, 2010, the most significant change was establishing a lot area per dwelling unit of 435 s.f., which was equivalent to the R-7 density. At the time Avesta was proposing a project in the vicinity of 701 Congress St, which due to lot configuration could not meet the maximum front yard requirement, although the report states this was believed to not be a common occurrence, to encourage infill development on these "rear yards" the current footnote allowing relief for lots with less than 40 feet of frontage and depth of more than 100 feet and/or 20 feet of front yard and a remaining frontage of less than 40 feet was added.

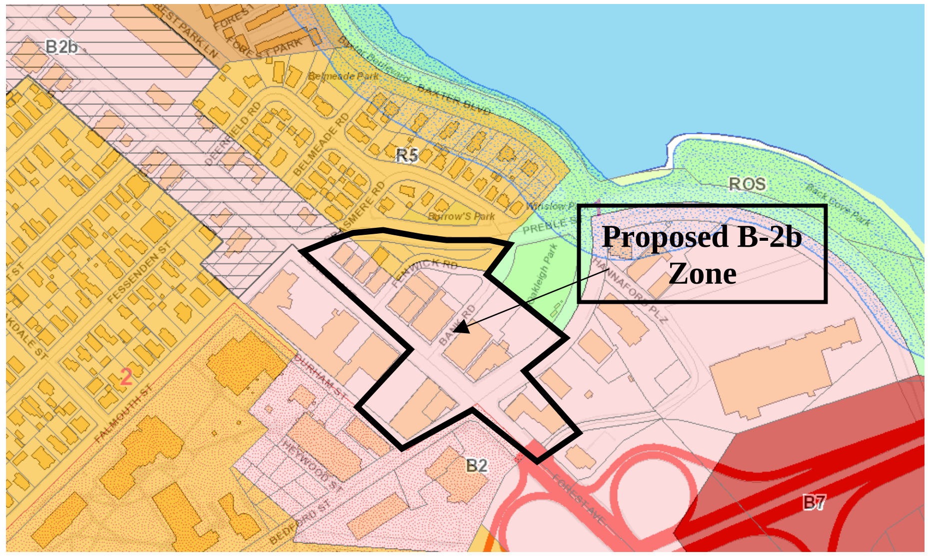
Changes were made in 2011 to clarify language concerning the proximity of drive-thrus to residential zones and to add language about wind energy facilities in 2013.

In July of 2014, the council adopted changes to the B-2, B-2b and B-2c resulting greater allowance of multi-family housing in all B-2 derivative zones with the previously existing qualification that multi-family was only allowed when abutting higher density residential zones (R-4 and up). A stronger prohibition on front yard parking was included for the same reasons. A table was added to simplify the dimensional requirements which also made significant changes to the zones dimensional requirements. These changes included reducing the maximum front yard setback to 10 feet, reducing street frontage, reducing lot area for projects off peninsula with active street frontages to 435 s.f.. Lastly, a new section, 14-188, was added under the premise that rather than mandating ground floor commercial uses active street frontage requirements would better accomplish the goals of vibrant street life and accordingly, a density bonus of 435 s.f. was added.

Finally, in November of 2014 drive-throughs were eliminated as an allowed use in the B-2b as incompatible with the purpose of the B-2b such as providing neighborhood and community retail built close to the street and written for area which a pedestrian scale and character and inconsistent with the Transforming Forest Avenue Study. A technical change to step backs was also made.

IV. PROPOSED MAP AMENDMENT

The proposed zoning map amendment is to rezone the B-2 zone and the R-5 zone to B-2b, as shown in the insert. Per the Planning Board's suggestion at the workshop, the area to be considered for rezoning was expanded to include the commercial building and parking at the corner of Bedford and Forest and the commercial building at the corner of Baxter Boulevard and Forest Avenue (to Hannaford Plaza lane. Please note that the property at the corner of Bedford and Forest is owned by Oakhurst Properties LLC (CBL 114A – F 3,7 and 8).



V. ZONING COMPARISON

A. Purpose Statements

The R-5 zone is a medium density residential area that is characterized by single family and low-intensity multi-family development. The B-2 Zone is intended to provide areas for a mix of commercial and residential uses, which have a greater intensity than the business uses permitted in the neighborhood business zone. The types of uses articulated in the purpose statement of the B-2 zone include " grocery stores, shops and services located in major shopping centers and along arterial streets." The vision is that these uses would be readily accessible by all means of transportation (automobile, pedestrians and bicyclists). Generally, the B-2 zone is found along Portland's major transportation corridors with residential neighborhoods adjacent to the zone. Thus the intent of the zone states that development should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. Both the B-2 and B-2b provide for moderate to high density housing development.

The B-2b is part of the B-2 zone and varies in some ways from the zone. The purpose statement highlights that the development should be close to the street and have a more compact urban development pattern. It is recommended for locations "on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character." The purpose statements of the R-5 zone and the B-2, B-2b and B-2c are listed in Table 1 below.

Zone	Purpose
Residential R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially sized parcels. Such PRUD

	development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
Community Business B-2	1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. 2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone. 3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. 4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.
Community Business B-2b	The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern.

B. Permitted and Conditional Uses

Following is a chart of the permitted uses for the R-5, B-2 and B-2b zones. Again, the R-5 zone is a moderate density residential zone, thus the permitted uses include single and two family homes, handicapped family units, planned residential unit developments and multiplexes. The permitted residential uses in the B-2 and B-2b zone allow for many of the same residential uses, but the zones also permits higher density housing, such as multifamily development, combined living/working spaces, and lodging houses.

In the R-5 zone most institutional uses, except for government or municipal uses, are listed as a conditional use. In the B-2 zones, institutional uses, including schools, universities, clinics, long-term or intermediate care facilities and others are listed as permitted uses.

The R-5 zone does not permit business uses. The B-2 and B-2b zones share most of the same permitted and conditional uses. A significant difference is that drive-throughs are not listed as permitted or conditional uses in the B-2b zone, which is a recent change that was adopted on November 17, 2014. Drive-throughs are listed as a permitted use in the B-2 and as a conditional use in the B-2 zone when the site is adjacent to a residential zone. Another differentiation between the two zones is that the B-2b establishes a size limit of 7,000 sf for commercial kitchens (must include a retail component or tasting room) and bakeries in order to encourage smaller scale establishments oriented to pedestrians. The proposed map amendment as suggested by the Planning Board includes the land at the corner of Bedford and Forest, which is owned by Oakhurst Properties. While the current use is a mixed use retail building, a map amendment to B-2b could limit the dairies ability to expand.

Table 2: Permitted and Conditional Uses

Permitted Uses				
Residential		R-5	B-2	B-2b
	Single-family and two-family dwellings	•	•	•
	Multi-family dwellings		•	•
	Handicapped family units	•	•	•
	Single-family single- or multiple-component manufactured housing	•		
	Combined living/working spaces		•	•
	Lodging houses		•	•
	PRUDs	•		
	Multiplex development	•		
Institutional		R-5	B-2	B-2b
	Schools		•	•
	Clinics		•	•
	Places of assembly		•	•
	Long term, extended and intermediate care facilities		•	•
	Governmental buildings and uses/municipal uses	•	•	•
	College, university or trade schools		•	•
	Nursery schools, kindergartens			
	Day care facilities		•	•
Business		R-5	B-2	B-2b
	General, business, & professional offices		•	•
	Personal services		•	•
	Business services			
	Offices of building tradespeople		•	•
	Retail establishments		•	•
	Restaurants (close at 11)		•	•
	Drinking establishments (not allowed in B-2c)		•	•
	Billiard parlors		•	•
	Mortuaries or funeral homes		•	•
	Miscellaneous repair services, excluding motor vehicle repair		•	•
	Communication studios or broadcast and receiving facilities		•	•
	Health clubs and gymnasiums		•	•
	Veterinary hospitals (excluding outside kennels)		•	•
	Theaters		•	•
	Hotels of less than 150 rooms		•	•
	Dairies and bakeries in existence as of Nov 15, 1999		•	•
	Bakeries after 1999, must have a retail component and bakeries in the B-2b shall be no greater than 7,000 sf in size		•	•
	Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. ..“adjacent to” shall include uses across a street if within 100 feet of the subject lot boundary;		•	
	Registered medical marijuana dispensaries		•	•
	Commercial kitchens provided it includes retail sales or tasting room. Commercial kitchens shall be no greater than 7,000 sf in B-2b		•	•
Other		R-5	B-2	B-2b
	Accessory uses	•	•	•
	Municipal uses	•		

	Parks	•		
	Home occupation	•	•	•
	Studios for artists and craftspeople – not to exceed 4000 sf studio space		•	•
	Special needs independent living units	•	•	•
	Bed and breakfasts		•	•
	Hostels		•	•
	Wind energy systems	•	•	•
	Utility substations		•	•
Conditional Uses				
Residential		R-5	B-2	B-2b
	Sheltered care group homes	•		
	Additional accessory dwelling units	•		
	Alteration of non-residential structure to 3+ dwelling units	•		
	Use space existing as of 9-3-08 to accommodate additional dwelling units	•		
	Conversion of multi-family structure to lodging house	•		
Institutional		R-5	B-2	B-2b
	Schools	•		
	Long-term and extended care facilities	•		
	Intermediate care facility	•		
	Places of assembly	•		
	Hospitals	•		
	Nursery schools and kindergartens			
	Day care facilities	•		
	College, university, trade schools	•		
Business		R-5	B-2	B-2b
	Major and minor auto service stations		•	
	Major and minor auto service stations if in existence as of 1999			•
	Car washes		•	•
	Drive-throughs adjacent to residential uses or zones		•	
	Automobile dealerships		•	•
Other		R-5	B-2	B-2b
	Utility substations	•		
	Professional offices			
	Chancellery			
	Off-street parking	•		
	Temporary wind anemometer towers	•	•	•
	Wind energy systems	•	•	
	Printing and publishing establishments		•	•
	Wholesale distribution establishments		•	
	Research and development and related production establishments		•	•

C. Dimensional Standards

The dimensional standards for the R-5 zone focus on the residential form for a moderate density area. The B-2 and B-2b zone are similar in their lists of permitted and conditional uses, as well as their dimensional standards. A comparison of the dimensional standards is contained in Table 3. Dimensional Standards.

Table 3. Dimensional Standards

Standard	R-5[1]	B-2	B-2b
Minimum Lot area per dwelling unit	3,000 sf, except 3,600- 4,800 sf for special needs independent	none	none
Street Frontage	50 feet	20 ft	20 ft
Minimum Lot Width	60 feet, except 90 for multiplex	none	none
Minimum Front Yard	20, except average depth if less than 20		
Maximum Front Yard	N/A	10 ft, Bd may grant waiver for irregular lots with less than 40 ft of frontage (Building Additions do not have to meet this section)	10 ft, Bd may grant waiver for irregular lots with less than 40 ft of frontage (Building Additions do not have to meet this section)
Minimum Rear Yard	20 feet	10 ft, accessory structures, 5 ft	10 ft, accessory structures, 5 ft
Minimum Side Yard	8-15 feet, depending on building height and location	None, accessory structures, 5 ft	None, accessory structures, 5 ft
Minimum Side Yard on Side St		None	None
Structure Height	35 feet	45 ft, 50 ft if 1st floor commercial is whole or partially commercial use	45 ft, 50 ft if 1st floor commercial is whole or partially commercial use
Structure Stepbacks		Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Maximum Lot Coverage (building coverage)	40%		
Maximum Impervious Surface	N/A	Residential uses – none All permitted uses - 80%	Residential uses – none All permitted uses - 90%
Minimum Lot Area per Dwelling Unit		a. Off-peninsula locations, as defined in section 14-47: 1,500 SF, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 SF	a. Off-peninsula locations, as defined in section 14-47: 1,500 SF, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 SF.

[1] Additional restrictions on the number of dwelling units apply to the PRUD standards and separate requirements for small residential lot development may apply

The history of the B-2 zone outlines the text amendments that have occurred over time, which have brought the B-2 zone in alignment with the more urban based parameters of the B-2b zone. Currently, both B-2 and B-2b have a maximum front yard setback of 10 feet (does not apply to building additions), which was not the case before the B-2 update in 2014. Prior to that update, only the B-2b zone had a maximum front yard setback requirement. In both the B-2 and B-2b zones. there is a provision that allows the Planning Board to grant waivers of the maximum front yard setback for irregular lots with less than 40 feet of frontage. In such cases, no maximum setback is required, but where setbacks exceed 10 feet than a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street.

There is no maximum impervious surface ratio for residential uses, but for all other permitted uses the maximum coverage is 80% in the B-2 zone and it is 90% in B-2b. There is also a distinction between the allowable residential density for both B-2 and B-2b, which is tied to whether a site is on-peninsula or off-peninsula. The density is 1,500 sf per unit off-peninsula, unless the project has active street frontage as defined. The density is 435 sf per unit on-peninsula or for those projects with active street frontage. The B-2 zone is predominantly located off-peninsula and the B-2b is on-peninsula and along a portion of the Forest Avenue corridor.

VI. SITE <u>PLAN STANDARDS AND DESIGN STANDARDS</u>

Under the site plan standards of the Site Plan Ordinance (Section 14-526) there are zoning related design standards under subsection (d). The general provision states:

> *a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:*

Subparagraph iii relates to the B-1 and B-2 zones as follows:

> *(iii) B1, B1-b, B2, B2-b Zones: Development in the B1, B1-b, B2 and B2-b business zones shall provide an established street wall with entrances and public portions of the building oriented to and directly accessible from the public sidewalk and shall be designed and scaled to be compatible with surrounding residential and commercial development as demonstrated by compliance with all applicable design standards listed in the Design Manual.*

The standard does state that development in the B-2 zones <u>shall provide</u> a street wall with entrances and public portions of the building oriented to the street and other provisions, <u>as demonstrated by compliance with all applicable design standards listed in the Design Manual.</u>

The Design Manual contains the design standards, which are presented in the chart below.
The design standards for the urban street wall and building entrances are not required for projects within B-2; however, the standards cross reference the design guidelines and encourages development in the B-2 zone to meet both of these standards. The B-1 and B-2 Design guidelines are contained in Appendix 2 of the Design Manual, which are intended to illustrate how development may meet the

the specific standards. The guidelines are shown below the design standards. The sections pertaining to urban street wall and entrances are highlighted.

Portland Design Manual		
Design Standards	**Applicability of Design Standards –**	
	B-2	**B-2b**
***Urban Street Wall*:** …buildings shall be located to create and preserve an urban street wall.		Required
***Mixed Uses*:** …buildings shall be multi-storied with mixed uses. (B-1-only)		
Building Entrances: …building entrances shall be oriented toward, located adjacent to, and directly accessible from a sidewalk in a public right-of-way.		Required
Windows: … windows shall be required along the street frontage of a building. Windows shall be transparent (with a visible transmittance (VT) of 0.7 or greater) and installed at a height to allow views into the building by passerby.	Required	Required
Façade Character: ….active and public portions of buildings (e.g. doors, windows, entries, retail displays) ***shall be oriented to and, where possible, be located adjacent to the public sidewalk*** to create an active presence along the sidewalk. (1) Where building facades situated along a public way have no interactive use or function, such facades shall be designed to provide sufficient architectural and graphic amenities to provide visual interest along the street and relate the building, and its use to passerby.	Required	Required
Building Design: … commercial buildings shall be designed to be compatible with their residential and commercial neighbors. In the B-1 and B-1b zones building scale, roof pitch, and fenestration shall be designed to complement surrounding residential structures.	Required	Required
Building materials: Façade materials of buildings located in the B-1, B-1b B-2, and B-2b zones shall be compatible with those materials of surrounding residential and commercial uses.	Required	Required
Building Scale; In the B-1 and B-1b zones building scale must relate and be compatible with surrounding residential structures.		
Landscaping and buffers: In the B-1, B-1b, B-2 and B-2b zones buildings and associated parking areas must be screened to buffer abutting properties. A densely planted landscape buffer and/or fencing will be required to protect neighboring properties from the impacts associated with the development, including lighting, parking, traffic, noise, odor, smoke, or other incompatible uses. Where buildings are setback from the street, a landscaped area must be planted along the front yard street line.	Required	Required
Guidelines		
Please refer to Appendix 2 of this manual, the B-1, B-1b, B-2, B-2b		

Design Guidelines, for applicable design guidelines for the B-1 and B-2 zones. In addition, the following design guidelines shall also apply.		
1. Buildings located in the B-2 zone are specifically ***encouraged*** to adhere to the design guidelines contained in the B-1, B-1b, B-2, B-2b Design Guidelines (Appendix 2) of this section concerning the creation and preservation of an ***urban street wall***.		
2. In the B-1b and B-2 zones, buildings are specifically *encouraged* to adhere to the guidelines contained in the B-1, B1b, B-2, B-2b Design Guidelines (Appendix 2) of this section concerning *building entrances.*		

Appendix 2 Guidelines
Development in the B-1, B-1b, B-2, B-2b shall meet the following guidelines in order to meet the Site Plan Standards
1. Building Location and Form
Buildings shall be located near the street so as to create an urban street wall. An urban street wall is created by a pattern of buildings which line the street in a consistent manner, thereby establishing a desirable spatial relationship between the building in the commercial district and the major object. Location is one of several related factors defining the street environment.
Building Form, including height, bulk, and massing, contribute to the development of a street wall. The desired condition is to have the building frame and enclose the street, which is achieved by providing building height that is proportionate to the width of the adjoining major street. A ratio of building height to street width of one-to-two creates a strong "room-like" street, while a one to-three ratio provides good street definition and proportion. Shorter buildings of one story facing broad streets will not achieve the desired relationship.
In the B-2b zone, buildings adjacent to streets should approach 1:2 height to street width, with a minimum of 1:3. For a fifty-foot street right-of-way, therefore, a minimum height of 15' is required, with 25'height preferred. An eighty-foot right-of-way requires about 27' to achieve the 1:3 proportion with 40'-height preferred. Obviously, buildings located as close as possible to the street right-of way will provide better definition and proportion than buildings set further back.
2. Building Function
An urban street and business district requires a substantial intensity and variety of uses. It is beneficial to have mixed uses within portions of buildings situated near the street. For example, a retail first floor might have office or residential on the second or third floors. This provides both the scale of building height desired, as well as the economic vitality of the business district.
3. Orientation of Buildings and their Entrances to the Street
Major building entries shall be designed and located to provide the primary building access oriented to the public street and sidewalk. Doorways should be prominent and obvious in appearance, so as to attract the users toward the entry. Major entry features should primarily address the street, with entry courts, display windows, signage, lights, walkways, and vestibules, as appropriate. Major entries should be adjacent to, or very close to, the street and public sidewalk.
4. Windows
Windows shall be located in all building facades visible from the public way, especially on

building facades along the major public street.
Retail uses with store fronts are the most desirable feature for locations adjacent to the public sidewalk; and active, transparent (minimum visible transmittance (VT) of .7 or greater), and interesting windows contribute the maximum value. Limitations on transparency, such as dark or reflective glass, or interior coverings, should be avoided. Where uses (such as office) are not conducive to transparent viewing from the public way, windows can still convey a sense of activity and presence along the street. Even these more private windows can convey occupancy and habitation when lighted from within, as during evening hours, even if the interior is screened from view.

5. Building Character, Detail, Scale, and Graphic Qualities

Building design will include various architectural and graphic amenities to provide a strong presence along a street and relate a building to its community.
Awnings, canopies, and flags may be utilized to highlight entryways and to further identify the activity and identity of a use.
Facade lighting may be used to highlight entryways or to provide visual interest along an otherwise blank facade
Building scale, roof pitch, architectural detail, and fenestration shall be designed to complement and be compatible with surrounding residential and commercial buildings.

6. Signage and Building Entrances

Building entrances and building signage in the B-1, B-1b, and B-2b zones will be designed and constructed at the pedestrian scale.

7. Development Relationship to Street

Building facades and site amenities shall form a cohesive wall of enclosure along a street.
Where buildings are not located at the street line, site amenities, including masonry walls, fences, and landscaping, shall be placed along the street to provide a sense of enclosure or definition.

8. Parking Lots

Parking Lots shall be screened from view of the public way.
Landscaping or fencing shall be used to screen parking lots from public ways and residential neighbors. Where parking is located within the front yard (or side yard of a corner lot), a landscaped buffer or fence shall be placed along the street line to distinguish the private space from the public space and to help define the street wall.

Parking lots shall be screened from neighboring properties.
A densely planted landscape buffer or fencing shall be installed to protect neighboring properties from the impacts associated with the parking lot and the use it serves.

VII. COMPREHENSIVE PLAN AND ZONING ANALYSIS

The Planning Board will be asked to make a determination of whether the proposed map amendment is consistent with the Comprehensive Plan and make a recommendation to the City Council. A full analysis will be prepared for a public hearing. The Comprehensive Plan includes policies that support commercial nodes near residential areas and seeks to limit business expansion into residential zones. In addition, the housing element of the Comprehensive Plan includes many policies to support increasing the diversity and density of housing in the city and support a variety of neighborhood businesses and services to be located in proximity of residential areas. The B-2 and B-2b zone provides greater flexibility for housing development and a diverse mix of uses.

More recently, Portland conducted a corridor study of Forest Avenue from Park Avenue through Woodfords Corner. Transforming Forest Avenue was adopted by the City Council on June 4, 2012 and it included recommendations for land use, transportation, and streetscape alternatives based upon a community process and best practices for transit supportive development. The report Transforming Forest Avenue is available on the City's web site: http://www.portlandmaine.gov/documentcenter/view/3388

Transforming Forest Avenue considered land use options for the corridor, including use based zoning, form based code and transit supportive development (TSD). Feedback from the community process indicated satisfaction with the current zoning with enhancements, adjustments and incentives considered to promote TSD principles. Encouraging vibrant and diverse land uses is an important principle of TSD development in order to provide multiple destinations in close proximity within an area. The report notes that while B-2 and B-2b currently support mixed uses, many of those uses have not located along the corridor. It is suggested that other incentives may be needed to encourage the type and density of uses envisioned, such as expedite reviews, financial incentives or other options. The report also points out that the transitions between the commercial and residential areas may require attention in order to achieve adequate buffers without limiting commercial activity. The development pattern should "provide for vibrant loci or activity at a pedestrian scale." Architectural quality, high quality parking, and public spaces are other land use components that are identified as components for creating a high quality transit corridor.

Compact development that increases the concentration of uses and structures in the built environment is identified as a strategy to support TSD. While the B-2 and B-2b zones have similar uses and dimensional standards, the design guidelines between the two zones do differ. The design standards for the B-2b zone are more urban and pedestrian oriented. For example, in B-2b the building entrances shall be oriented toward or directly accessible from a public sidewalk, transparent windows are required along street frontages, and street frontages should create an active presence along the sidewalk. The standards and accompanying guidelines are included as Attachment 3.

The Board will want to advise the staff on the extent of the area to be considered for rezoning. The Board can choose to expand the area for advertising and then refine the boundaries at the public hearing. Once the boundaries of a proposed map amendment are advertised, the boundaries cannot be expanded beyond the advertised area.

VIII. STAFF RECOMMENDATION

The staff suggests a positive recommendation on the proposed map amendment with the possible exception of excluding the property held by Oakhurst Properties LLC at the corner of Bedford and Forest Avenue.

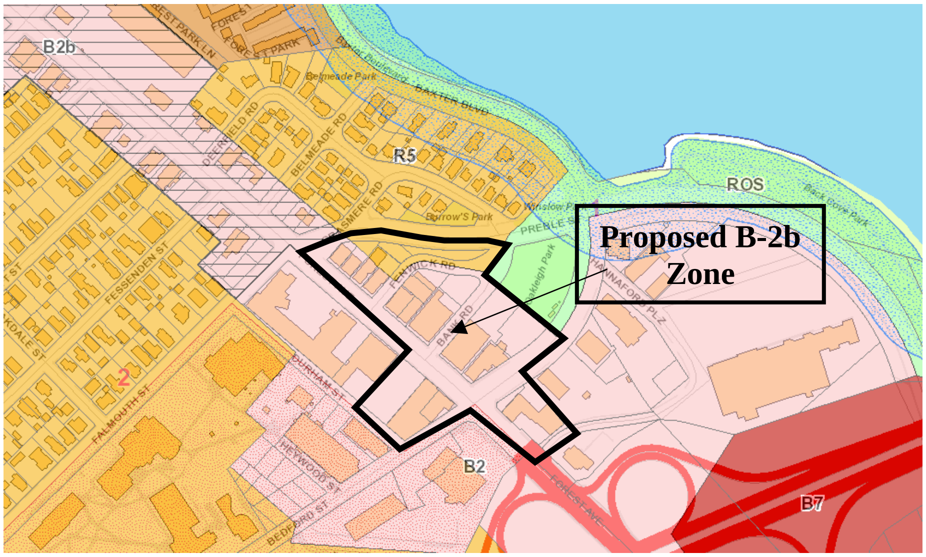
IX. PROPOSED MOTION

On the basis of plans and materials submitted by the City of Portland, the policies of the Residential R-5 Zone, the Community Business B-2 Zone and the Community Business B-2b zone, Portland's Comprehensive Plan, public comment, the information provided in public hearing on March 22, 2-16 for the Council's referral to the Planning Board to consider rezoning a portion of the Forest Avenue Corridor, and/or other findings as follows:

1. Map Amendment

The Planning Board finds that the proposed rezoning of the R-5 and B-2 zones to B-2 b as shown on the map below **[is or is <u>not</u>]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[<u>recommends</u> or <u>does not recommend]</u>** to the City Council approval of the zoning map amendment.



X. ATTACHMENTS

1. Council Order #157
2. Historic Preservation Memo and attachments
3. B-2 and B-2b Design Guidelines
4. Neighborhood Packet – March 10, 2016
5. Public Comment