

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

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

DECEMBER 17, 2018 CITY COUNCIL AGENDA

The Portland City Council will hold a regular City Council meeting at 5:30 p.m. in City Council Chambers. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

PRESENTATIONS:

Arts in the Chamber, Beth Wilbur Van Mierlo, Executive Director of Side x Side, an Innovative Arts Education Initiative in the Public School System.

ANNUAL MEETING:

SPECIAL MEETING:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

December 3, 2018 Draft Inaugural Minutes

December 3, 2018 Draft Regular City Council Minutes

PROCLAMATIONS:

Proclamation 18-18/19 Honoring Melisa Huntley, Health and Human Services Department, Public Health Division, as Employee of the Month for October 2018 - Sponsored by Mayor Ethan K. Strimling.

Proclamation 19-18/19 Honoring Portland High School Sailing Team - Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

Order 108-18/19 Appointing Constables for 2019 - Sponsored by Jon P. Jennings, City Manager

This order appoints constables from multiple City Departments and from the Portland Housing Authority for the 2019 calendar year.

The Fire Department constables will be issuing citations authorized by the City Code of Ordinances Chapter 10 and Fire Prevention Laws. The Permitting and Inspections Department enforces City Code provisions for business licensing, rental housing, building, electrical and plumbing codes. The Department of Parks, Recreation, and Facilities enforces dogs at large violations in the parks, playgrounds and cemeteries as well as failure to dispose of animal waste, all from Portland City Code Chapter 5. Constables working for the Police Department issue citations for violations of City Code, including, for example, harboring a dangerous dog and smoking in city parks.

Property Managers employed by the Portland Housing Authority (PHA) are responsible for lease enforcement, including serving legal documents in eviction cases. In accordance with Maine law, certain documents can only be served by a Constable or Sheriff.

These appointments are effective from 12:01 a.m. on January 1, 2019 until 12:00 midnight, December 31, 2019, and are made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests or issue parking tickets, except for the constables listed who work for the Parking Division and issue parking tickets as part of their job.

Five affirmative votes are required for passage after public comment.

Order 109-18/19 Authorizing Special Council and Outside Boards and Commissions for 2019 - Sponsored by Mayor Ethan K. Strimling.

This order appoints City Councilors and City staff to various boards and commissions for 2019.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 110-18/19 Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Quinton L. Smith – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$743.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Quinton L Smith.

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

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

comment.

LICENSES:

Order 111-18/19 Granting Municipal Officers' Approval of Austin Street Brewery LLC dba Austin Street Brewery LLC. Application for a Class A Lounge with Entertainment without Dancing and Outdoor Dining on Private Property at 109 Fox Street - Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Austin Street Brewery LLC dba Austin Street Brewery LLC. Application for a Class A Lounge with Entertainment without Dancing and Outdoor Dining on Private Property at 109 Fox Street. Application was filed on 11/09/2018. New City and State applications.

Five affirmative votes are required for passage after public comment.

Order 112-18/19 Granting Municipal Officers' Approval of Eighteen Twenty LLC dba Eighteen Twenty Wines. Application for a Winery with Outdoor Dining on Private Property at 219 Anderson Street - Sponsored by Michael Russell, Director of Permitting and Inspections Department.

Eighteen Twenty LLC dba Eighteen Twenty Wines. Application for a Winery with Outdoor Dining on Private Property at 219 Anderson Street. Application was filed on 11/19/2018. New City applications. The owners currently operate the same business in a different unit.

Five affirmative votes are required for passage after public comment.

Order 113-18/19 Granting Municipal Officers' Approval of Deering 539, LLC dba Masa & Malt. Application for a Class I FSE at 646 Forest Avenue - Sponsored by Michael Russell, Director of Permitting and Inspections.

Deering 539, LLC dba Masa & Malt. Application for a Class I FSE at 646 Forest Avenue. Application was filed on 11/26/2018. New City and State application.

Five affirmative votes are required for passage after public comment.

Order 114-18/19 Granting Municipal Officers' Approval of RB Portland LLC dba Westin Portland Harborview. Application for a Class IA Inn 40+ Rooms with Entertainment with Dancing and After Hours Entertainment at 157 High Street - Sponsored by Michael Russell, Director of Permitting and Inspections.

RB Portland LLC dba Westin Portland Harborview. Application for a Class IA Inn 40+ Rooms with Entertainment with Dancing and After Hours Entertainment at 157 High Street. Application was filed on 11/26/2018. New City and State applications. This is a change of ownership of an existing business.

Five affirmative votes are required for passage after public comment.

Order 115-18/19 Granting Municipal Officers' Approval of Illmadic LLC dba Illamdic. Application for a Class A Lounge with Entertainment without Dance and Outdoor Dining on Private Property at 41 Fox Street - Sponsored by Michael Russell, Director of Permitting and Inspections.

Illmadic LLC dba Illamdic. Application for a Class A Lounge with Entertainment without Dance and Outdoor Dining on Private Property at 41 Fox Street.

Application was filed on 11/26/2018. New City application. The owners currently operate a Class A Lounge with Outdoor Dining on Private Property at this location.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

Com 18-18/19 Economic Development Committee Calendar Year 2018 Accomplishments - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on November 14, 2018 and voted unanimously (3-0) to forward this item to the City Council as a Communication.

At the November 14, 2018 Economic Development Committee (EDC) meeting, staff presented a summary of the accomplishments of the Committee for calendar year 2018. Notable accomplishments include directing proposed amendments to three existing area-wide TIF Districts (Bayside, Downtown/Transit, and Waterfront) to add workforce training as an allowable use of TIF revenue, along with increasing the TIF District capture rate for the Downtown/Transit TIF to shelter the value of TIF revenue, and recommendations to sell or amend an existing Purchase and Sale Agreement related to City-owned Bayside properties.

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

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 96-18/19 Approving Purchase and Sale Agreement with Waterstone Properties Group, Inc. - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development met on October 16, 2018, and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The City has determined that the 4.82 acre vacant parcel, located in Portland between the Maine Turnpike and the proposed large scale mixed use project in Westbrook, is not needed for municipal use and should be sold. The interested buyer for this property is the Westbrook mixed-use project developer Waterstone Properties Group, Inc.

The subject site is not a legal conforming parcel to develop because it lacks street frontage, and there is no access to public utilities. Additionally, the site is encumbered by 1.81 acres of wetlands and two CMP easements (including 1.48 acres), which prohibit erecting or maintaining structures of any kind.

The upland areas, estimated to be 1.53 acres (excluding the no-build CMP easements), are not contiguous, and access to these areas would require crossing wetlands on-site and wetlands located on the adjacent privately owned Westbrook mixed-use project property.

The proposed purchase price is \$11,220, as determined by the City Assessor. It is noted that the property appraisal determined the value of this property to be \$0.

The Buyer agrees to indemnify the City regarding any environmental issues, and the property is sold in an “AS IS WHERE IS” condition.

At the November 5, 2018, City Council meeting, this item was postponed to this meeting. Staff is asking that this item be postponed to the February 20, 2018 Council meeting.

Order 97-18/19 Authorizing Lease-Purchase Agreement for Conversion to LED Street Lights - Sponsored by Jon P. Jennings, City Manager.

The Finance Committee considered this agreement at its November 29, 2018 meeting and voted 3-0 to forward it to the City Council with a recommendation for passage.

In October 2017 the City Council unanimously approved an \$8M contract with TEN Connected Solutions in support of the City’s goal to convert streetlights to LED. In advance of that approval a two-phase financing proposal for the project was presented to the City Finance Committee. The financing proposal included two \$4M municipal leases, paid entirely from savings generated by the LED conversion. The total cost of the first \$4M lease (approved unanimously by City Council in October 2017) was approximately \$446k annually, significantly less than the overall \$1.065M project savings projections from TEN. As noted in the original financing proposal, a second \$4M municipal lease would be required in FY19 and authorization for this lease must be approved by City Council. The second lease would add an additional \$475-\$525k in annual debt service costs to future City budgets (depending on final interest rate) and the combined cost of both municipal leases will be lower than the savings generated by the LED conversion. It is worth noting that the debt service on each municipal lease will end in 2028-2029 but the savings generated from the LED conversion project, approximately \$900-950k in reduced streetlight maintenance annually plus \$100-150k in electricity savings from reduced energy consumption, will continue for decades.

This item must be read on two separate days. It was given a first reading on November 5, 2018. At the November 19, 2018 City Council meeting this item was postponed to this meeting. Five affirmative votes are required for passage.

Order 107-18/19 Establishing the City Council Ad Hoc ReCode Committee - Co-sponsored by Councilor Kim Cook and Councilor Nicholas M. Mavodones, Jr.

By this order, the City Council would establish an Ad Hoc Committee to provide policy guidance to the Planning Board during its work to rewrite Chapter 14, the Land Use Code, of the Portland City Code.

Five affirmative votes are required for passage after public comment.

Com 7-18/19 Re: Mayor's Appointments to Ad Hoc ReCode Committee - Sponsored by Mayor Ethan K. Strimling

By this communication, which was postponed on December 3, 2018 to this meeting, the Mayor appoints three City Councilors to the Ad Hoc ReCode Committee.

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

ORDERS:

Order 116-18/19 Approving an Appropriation of Up To \$36,000 from the Housing Trust Fund - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

The Housing Committee met on November 14, 2018 and voted unanimously, 2-0 (Ali absent), to recommend to the City Council the appropriation of funding from the Housing Trust fund to lower the effective sale price of three Inclusionary Zoning Home Ownership units. This agenda item implements that recommendation through a proposed public match to additional developer subsidy for these units in the form of a down payment assistance program.

The three units, one in 1 Joy Place and two in 60 Parris Terraces, would each be reduced in price by up to \$12,000 plus the developers' 79% match, allowing them to be sold at a lower price to qualified low income households.

Five affirmative votes are required for passage after public comment.

Order 117-18/19 Approving the Amended and Restated Lease with Casco Bay Island Transit District - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee meet on November 14, 2018, and voted 2-0 to forward this item to the City Council with a recommendation for passage. (It is noted

that Councilor Mavodones recused himself from the Lease discussion and vote because he is employed by CBITD.)

The City is currently leasing land, located on the Maine State Pier, to the Casco Bay Island Transit District (“CBITD” or “the tenant”) for their public transit operations in Casco Bay. The Current Lease expired in June 2018, but the parties have continued to perform their obligations under that

Lease (the “Current Lease”). Based on guidance from the Economic Development Committee, a draft Amended and Restated Lease is enclosed and recommended for City Council (the “New Lease”).

CBITD has noted that a long-term agreement is essential to preserve previously approved Federal and State transportation funding of \$7M+ and to obtain new grants to improve the property and maintain / upgrade their fleet. CBITD also has noted they will be required to prove right title and interest in the property they are improving to obtain permits and future grants. To ensure CBITD has the longer-term lease they desire, the New Lease being brought forward to the Council is a 20-year lease with automatic 1-year renewal terms. Termination is permitted after the initial 20-year term with 1-year notice. Expiration of the initial 20-year term coincides with the expiration of the Casco Bay Garage Condominium Association, at which point the City will have significant flexibility over Casco Bay Garage operations.

There is no change to the leased premises. Please see Financial Impact of this transmittal memo regarding details of the rent.

One change from the Current Lease to the New Lease worth mentioning was a request from CBITD to be permitted to have a food vendor or small café on site in order to provide coffee / snacks for their patrons. CBITD made it clear they were not seeking a full-service restaurant and that no plans to add any food vendor on site were imminent. The request for the lease amendment was simply to give themselves flexibility to add a small café or perhaps have a food vendor on site at some point in the future as an added convenience for passengers.

Five affirmative votes are required for passage after public comment. Economic Development Committee/Councilor Justin Costa, Chair; meeting held on November 14, 2018, and the vote was 2-0 to forward this to the City Council for approval. (It is noted that Councilor Mavodones recused himself from the Lease discussion and vote because he is employed by CBITD.)

Order 118-18/19 Approving the Termination and Transfer of the Asa Clapp Trust - Sponsored by Jon P. Jennings, City Manager.

The City Council is asked to approve a change in the management of a trust originally received by the City of Portland by a bequest in the Last Will and Testament of Asa Clapp in 1848. Since October 4, 1943, by City Council Order, the income of the trust was distributed to the Portland Provident Society for the benefit of poor widows and other

women in Portland. Staff has recommended that this trust be terminated and transferred to the Portland Provident Association for the benefit of the Portland charitable organizations. The value of the trust is approximately \$13,700.48.

The Portland Provident Association was incorporated in 1864 and has been providing humanitarian relief in the Greater Portland area since that time. Income from the trust would be distributed by the Association in accordance with the terms of Asa Clapp's gift, namely, to aid "poor widows" and married women in need "of the common necessities of life". Any such amounts would be directed to the following charities, among others: Cora Brown Foundation, Crossroads, Florence House, Martha's Cottage, and Southern Maine Agency on Aging. The funds will be separately accounted for. The Secretary of the Association, Attorney Peter Webster, works at the law firm Verrill Dana and has agreed to present a complaint to the Cumberland County Probate Court, under the purview of the Office of Corporation Counsel, on a pro bono basis.

Five affirmative votes are required for passage after public comment.

AMENDMENTS:

Order 119-18/19 Approving 180-Day Moratorium on Non-Marine Use Expansion in the Waterfront Central Zone - Sponsored by Jon P. Jennings, City Manager.

Responding to concerns brought forward from members of the Portland Harbor fishing community, the City Council is asked to enact a moratorium on all construction of new non-marine structures and expansion of non-marine use. The moratorium is intended to be effective as of December 17, 2018 (date of First Reading) and should be enacted as an emergency order. As drafted, the moratorium will be in effect for 180 days, unless extended by Council order.

During the period of this moratorium the City shall not accept applications for building permit, site plan, and subdivision applications, conditional use applications, contract zone or conditional rezoning requests, zoning text amendment and/or development applications for any new non-marine structure or expansion of a non-marine use in the WCZ .

Applications already received shall not be processed unless substantive review has been undertaken prior to the effective date of this moratorium. The only exceptions shall be for immediate threats to public safety as determined by the Director of Permitting & Inspections.

During the term of the moratorium, the City Manager has committed to facilitating the following process in order to address the concerns that have given rise to the proposed moratorium:

1. Zoning: Interested parties will be invited to collaborate on an evaluation of the current Waterfront Central Zone text and provide recommendations to the Portland Planning Board for amendments, if deemed warranted.

2. Transportation: Interested parties will be invited to participate in and inform the on-going Commercial Street Operations and Master Plan process. City staff from Planning, Economic Development, and Public Works will continue to guide the study consultants to respect the marine use priority of the corridor consistent with the Comprehensive Plan and as described in the study scope of services. Commercial Street stakeholders will be notified of all relevant meetings and will be invited to have a formative role in the generation of ideas for evaluation and the recommendation of alternative solutions for implementation.

3. Tax Increment Financing -TIF: The City Manager will create a Waterfront Tax Increment Financing Task Force with representation from the fishing community, waterfront property owners, and others to recommend use of TIF revenues consistent with the waterfront focus of the Waterfront TIF District.

4. Berthing: The City Economic Development Department will monitor commercial berthing opportunities in Portland Harbor. If Commercial berthing demand cannot be met by existing private and public supply, the Economic Development Department will report such conditions to the City Council and advocate for an expansion of berthing for commercial fishing on both public and private facilities, including the Portland Fish Pier. The City will also explore financing options to create such berthing, if needed.

5. Enforcement: Existing ordinances limiting or prohibiting expansions of commercial parking for offsite, non-marine use within the Waterfront Central Zone will remain in effect. Any violations will be investigated and enforcement action undertaken as appropriate.

6. The City will reexamine issues of wharf access, and opportunities for loading and off-loading gear and product, and areas to work on gear, at private and public spaces, including the Fish Pier.

Staff is requesting that the second read of this two-read item be waived, and that it be passed as an emergency. If the second read is waived by a vote of seven or more, seven affirmative votes are required for passage as an emergency, following public comment.

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